

Beverly Hills Bar Association – Trusts & Estates Section
June 2020 Legal Updates

Conservatorship of J.Y., First District Court of Appeal No. A157323, filed May 21, 2020

Respondent was appointed as LPS conservator of JY's person in 2005 and reappointed several times between 2006 and 2017. In 2018, Respondent filed a petition for reappointment as conservator of appellant's person, but JY objected and requested a jury trial. At the trial, JY was called to testify, but she objected on the ground that she should not be compelled to testify against herself, as it was a violation of her due process and equal protection rights. At the end of the jury trial, JY was found to be gravely disabled and Respondent was reappointed as conservator.

On appeal, the Court of Appeal found that there is no constitutional right to refuse to testify in civil proceedings, including LPS commitment proceedings. However, the Court of Appeal noted that people who have been found not guilty by reason of insanity in criminal proceedings (otherwise known as "NGIs") have a statutory right to refuse to testify against themselves in civil commitment extension proceedings, under Section 1026.5 of the Penal Code. The Court ruled that potential LPS conservatees are sufficiently similarly situated to NGIs with respect to the right against compelled testimony, disagreeing with another recent First District Court of Appeal case, *In re Bryan S.* and agreeing with the First District Court of Appeal decision, *In re E.B.* The Court further found that the Respondent failed to establish a compelling reason for the disparate treatment between potential LPS conservatees and NGIs. However, the Court did not find that there never could be a compelling reason justifying this disparate treatment, just that the Respondent failed to establish one in this case.

Arace v. Medico Investments LLC, (2020) 48 Cal. App. 5th 977, filed March 24, 2020

After a jury trial, the defendant owner of an elder care residential facility was found to have committed financial elder abuse and neglect. The jury assessed economic damages for the neglect verdict, but it assessed no economic or noneconomic damages as part of its financial elder abuse verdict. Judgment was entered for plaintiff, including attorney fees.

Defendant appealed the judgment of attorney fees stemming from the financial elder abuse finding, arguing that attorney fees should not be awarded where there was no finding of economic damages. The Court of Appeal disagreed with Defendant and affirmed the trial court's judgment, finding that under the plain language of Section 15657.5 of the Welfare & Institutions Code, where there was a finding that a defendant is liable for financial abuse, an award of attorney fees is a mandatory form of relief regardless of whether the plaintiff is awarded any other form of relief.

Badgley v. United States, 957 F.3d 969 (9th Cir. 2020), filed April 28, 2020

Decedent transferred her partnership interest in a family-run company into a GRAT, for the ultimate benefit of her daughters, while retaining a right to an annuity paid from the GRAT for 15 years, at which point the GRAT's corpus would pass to the daughters. However, Decedent died before the 15-year annuity period had expired. The executor of Decedent's estate included the full value of the GRAT's assets in Decedent's gross estate on the 706, but subsequently brought a suit asserting that Decedent's estate overpaid estate taxes based on the inclusion of the entire date-of-death value of the GRAT. The executor argued that only the net present value of the unpaid annuity payments should have been included.

The district court held that the full date-of-death value of the GRAT was includable in Decedent's gross estate, because Decedent retained both a right to income and a continued enjoyment from the property. The Ninth Circuit affirmed. It first found that while section 2036 of the Internal Revenue Code, which discusses includability of transfers with a retained life estate, does not specifically mention annuities, annuities are still covered. The Court then ruled that when a grantor derives substantial present economic benefit from property, as Decedent still did during the 15-year period of the GRAT, she retains the enjoyment of the property for purposes of § 2036, and as such, because Decedent died before the termination of the GRAT, the partnership interest was not transferred to its beneficiaries before Decedent's death, and it "remained tied to her by the string she created."