

Can an Old Dog Make New Gifts?: An Analysis of the *Anderson v. Hunt* Case and Determining the Standard for Mental Capacity to Execute an After Death Transfer by Trust

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In the recent case of *Andersen v. Hunt* (California Court of Appeal, Second District, B221077, June 14, 2011), the California Court of Appeal articulated the applicable standard by which to evaluate an individual's capacity to make an after-death transfer by trust.

In 1992, Decedent Wayne Anderson and his wife Harriet established a family trust that named their children, Stephen and Kathleen the sole beneficiaries after their parents' deaths. Harriet died in 1993. Before Harriet died, Wayne had become involved in a close personal relationship with Pauline Hunt, and this relationship continued until Wayne's death. In 2003, after suffering a stroke, Wayne amended his trust to leave a 60 percent portion of his estate to Pauline, with the remainder going to his children, Stephen and Kathleen, and to his grandson John. Decedent made subsequent amendments later in 2003 and in 2004, but retained the provision leaving 60 percent of his estate to Pauline.

When Wayne died in 2006, his children brought an action in Probate Court to invalidate the 2003 and 2004 trust amendments and recover funds placed in accounts held jointly by Wayne and Pauline. The Probate Court ruled that Decedent lacked capacity under *Probate Code* Sections 810 - 812 to execute an amendment to his Trust, transfer funds from the trust to joint tenancy accounts, and change the beneficiary of his life insurance policy. Additionally, the Probate Court ruled that Pauline had exerted undue influence with respect to the amendments and transfers. Pauline appealed from these rulings.

The appellate court decided that the probate court was wrong when it evaluated Wayne's capacity to execute the trust amendments by the general standard of contractual capacity set out in *Probate Code* Sections 810 - 812, instead of the standard of testamentary capacity set out in *Probate Code* Section 6100.5. *Probate Code* Sections 810 to 812 set forth the standard by which to evaluate a Decedent's capacity to enter into a contract ("contractual capacity"), while *Probate Code* Section 6100.5 sets forth the standard by which to evaluate a Decedent's capacity to draft a Will. The issue in this case was whether the standard used to determine whether an individual has the capacity to amend a Will or Trust should be the "contractual" standard or the "testamentary" standard.

Under *Probate Code* Sections 810 - 812 regarding "Contracting Capacity," the standards set forth in those sections states that there is a "rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions." (*Probate Code* § 810(a).) In other words, the trier of fact, which, in California, would be the judge, but in other states it might be a jury, starts out

believing that everyone is capable of entering into an agreement with another person. However, by creating the artificial idea of a “presumption,” the trier of fact requires a higher standard of proof, meaning that the person claiming the lack of capacity must provide either slightly more proof or proof by way of “clear and convincing evidence that the person lacks the capacity to contract than the Party claiming competence has to provide.

In the *Anderson* case, the Court decided that these sections made it clear that a person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions. (*Probate Code* Section 810(b).) A person may only be found to lack capacity when there exists a correlation between the deficit and the decision or act in question. (*Probate Code* § 811(a).) Even if a mental deficit exists pursuant to the Code, the deficit may only be relevant if it “significantly impairs the person's ability to understand and appreciate the consequences of his or her actions *with regard to the type of act or decision in question.*” (*Probate Code* § 811(b).)

The Court stated that it had to evaluate the Decedent’s mental capacity to contract under *Probate Code* Sections 810 to 812. However, in examining these code sections, the Court decided that they do not set out a “single standard for contractual capacity, but rather provide that mental capacity, “must be evaluated by a person’s ability to appreciate the consequences of the particular act he or she wishes to take.” Thus, the Court concluded, more complicated decisions and transactions would require greater mental function while less complicated decisions and transactions would appear to require less mental function. The standard might very well deviate with regard to such different acts as making a contract, making a will and/or making or amending a trust document.

In this case, the Court found that while the original trust documents were complex, the amendments to the Trust were not. The Court reasoned that since each trust amendment closely resembled a will or codicil in its content and complexity, it would actually be more appropriate to look to *Probate Code* Section 6100.5, the lower standard for “testamentary capacity” in order to evaluate the Decedent’s mental capacity. The Court stated, “In other words, while Section 6100.5 is not directly applicable to determine competency to make or amend a trust, it is made applicable through section 811 to trusts or trust amendments that are analogous to wills or codicils.” Thus, if a Trust amendment is as simple as a will or codicil, it will be treated like a will or codicil and held to the same standard for evaluating mental capacity as a will or codicil.

Thus, for a simple trust or simple trust amendment, the standard that would be applied under *Probate Code* Sections 810-813 is the “testamentary capacity” standard applied under *Probate Code* Section 6100.5 to make a will or codicil. Under *Probate Code* Section 6100.5, an individual is deemed not mentally competent to make a will if at the time of making the will “...[t]he individual does not have sufficient mental capacity to be able to...understand the nature of the testamentary act.” Using this standard, the Court found that there was no substantial evidence that Decedent lacked testamentary capacity to execute the 2003 and 2004 trust amendments, which the Court deemed quite simple.

Under the holding in *Andersen v. Hunt*, it is clear that a court would first need to determine whether the trust or trust amendment was simple or more complex in nature, and presumably apply a higher standard than that articulated under *Probate Code* Section 6100.5 when the trust or amendment is determined to be more complex. Likewise, it is also evident that capacity to execute an after-death transfer by Will or Trust will continue to be a question of fact to be determined on a case-by-case basis.

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