NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CAMERON TROY ISOM et al., Plaintiffs and Appellants, v. MISCHELYNN SCARLATELLI as Trustee, etc., Defendant and Respondent.	E067988 (Super.Ct.No. PROPS1500303) OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan Foster, Judge. Affirmed.

Law Offices of John A. Belcher, John A. Belcher, and Nicholas W. Song for Plaintiffs and Appellants.

Reid & Hellyer and Daniel E. Katz; Dagrella Law Firm and Jerry R. Dagrella for Defendant and Respondent.

When Armie Troy Isom (Troy) left the majority of his $10 million estate to his stepdaughter from his second marriage (Mischelynn Scarlatelli, hereafter respondent), his three biological children (Cameron Isom, Darci Isom, and Victoria Taylor, hereafter appellants) petitioned to invalidate the testamentary provisions in his trust, arguing they were the product of mental incapacity and undue influence. After a 17-day bench trial, the court concluded the distribution, while unfair, was the product of a sound and independent mind, and entered judgment in favor of respondent. Appellants ask us to reverse. They argue the trial court applied incorrect legal standards when evaluating their challenge to the trust. They also argue the court erred in refusing to enforce a 1975 interlocutory judgment from their parents' divorce proceedings, which they claim entitled them to half of Troy's estate. We conclude these arguments lack merit, and affirm the judgment.

I

FACTS

A. *Family Background and Troy's Marriage Dissolution Obligations*

Appellants are the biological children of Troy and his first wife, Betty Jo.[1] The two were married for 22 years and lived in Claremont. When they divorced in 1975, the court issued an interlocutory judgment (1975 divorce judgment) that, among other things, obligated Troy to provide for Betty Jo in his will and Betty Jo to provide for appellants in hers. Specifically, the divorce judgment says:

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[1] Troy had two other biological children, not by Betty Jo, who are not involved in this appeal.

"(3) [Troy] agrees to irrevocably maintain [Betty Jo] as the primary beneficiary under his will or any subsequent will or codicil for a period of 9 years and 9 months. Thereafter, [Betty Jo] shall be irrevocably maintained as primary beneficiary under his will as to one-half of all his property.

"(4) [Betty Jo] agrees to likewise maintain the three children [(appellants)] as primary beneficiaries under her will or any subsequent will or codicil for a period of 9 years and 9 months. Thereafter, the three children shall be irrevocably maintained as the primary beneficiaries under her will as to one-half of all her property.

"Failure to fulfill the requirements of provision (3) and provision (4) of this Judgment shall automatically result in a claim against the estate of the decedent who failed to comply with the provisions . . . as though the provisions had been complied with."

Betty Jo remarried, and in 1984 she and Troy executed a "Compromise and Release" (1984 release), agreeing to excuse each other from all of the obligations in the 1975 divorce judgment except for Troy's obligation in paragraph 3 to give Betty Jo half his property upon his death. In other words, it released Betty Jo from any testamentary obligation to appellants (presumably because appellants were no longer minors). A month later, Betty Jo executed her will, giving essentially half her estate (the majority of which consisted of her residence in Palm Desert) to her current husband and the other half to her four biological children (appellants and their other stepsister). A couple years

later, Betty Jo revised her will to give the entire interest in her residence to her second husband. In 1989, Betty Jo passed away.

Meanwhile, Troy married respondent's mother, Shirley Isom. Respondent was about nine years old when she and her mother moved into the Claremont house Troy had shared with Betty Jo. Appellants were teenagers then and, by all accounts, they and respondent did not get along. One by one, appellants moved out of the Claremont house and lived their adult lives in other cities—Darci in Dallas, Victoria in Los Angeles, and Cameron in Montana and later Palm Springs. At some point after appellants had moved out, Troy and Shirley purchased a much larger home in La Verne. According to one of the couple's longtime friends, Troy would comment how they never could have purchased the property if Shirley hadn't put all of the proceeds from her divorce settlement towards it.

Respondent, unlike her siblings, always lived either with or very close to Troy and Shirley, even after she married. There was almost never a period in her life where she saw her parents less than once a week, and for most years she saw them nearly every day. She lived with them until 1994, when she married Mark Scarlatelli. She and Mark had two children together. Throughout their marriage, they maintained a close relationship with Troy and Shirley, who gave them significant financial help. Troy worked in construction equipment and real estate development. Before they married, respondent was a hairdresser and Mark sold window blinds, but after the marriage Mark began working in construction and real estate development, with the help of numerous loans and

investment opportunities from Troy and Shirley. Respondent was the bookkeeper for Mark's construction company. Troy built respondent and her family a 7,500 square-foot house in La Verne next door to his and Shirley's 9,000 square-foot home, and respondent began living there in 2007.

In 2006, Troy had a serious motorcycle accident necessitating facial reconstruction surgery. In 2009, respondent filed for divorce, and Mark proceeded to file numerous lawsuits against Troy, Shirley, and the couple's family trust, claiming they owed him money from their joint ventures and for his helping build the house in La Verne. In 2012, Troy suffered a severe stroke and underwent rehabilitation at a treatment center. The following year, he suffered a heart attack. Then, tragically, on December 26, 2014, Troy and Shirley were violently murdered in their home.[2] The couple had been married for over 30 years, and together for another 10 before that. Troy was 89 years old and Shirley was 74.

B. *The Trust*

In 2004, Troy and Shirley executed a family trust, which set out, among other things, testamentary provisions. Under those provisions, appellants were to receive, in the event of Troy's death, a property located on Mission Boulevard in Ontario (Mission

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[2] The record indicates the criminal investigation was still ongoing at the time of the trial in this case but contains no other information about the circumstances of the murders.

property), which contained his construction equipment business and rental properties.[3] In the event of Shirley's death, respondent was to receive $400,000, and after both Troy and Shirley were deceased, the remainder of the estate would be split equally among appellants and respondent.

Thereafter, the couple amended the trust's testamentary provisions three times, each revision taking increasingly more of the estate from appellants and giving it to respondent. In 2009, Troy and Shirley revised the trust to give the Mission property to appellants and the balance of the estate entirely to respondent. In 2011, they revised the trust to add respondent as a recipient of the Mission property. Finally, in October 2013, they further revised the trust to reduce appellants' inheritance to specific gifts of $25,000 each—the remainder of the estate going to respondent. And so, in less than a decade, respondent replaced appellants as the primary beneficiary of the trust.

C. *Appellants' Lawsuit*

In April 2015, Cameron and Victoria filed a petition to invalidate the 2013 restated trust and enforce the 1975 divorce judgment. They alleged the trust's testamentary provisions were the product of undue influence and lack of capacity, and that under the

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[3] Appellants claim the Mission property, which Troy acquired during his marriage to their mother, was his largest real property holding. Respondent takes issue with the notion that Troy's largest assets were derived from his previous marriage, arguing Shirley and Troy procured the vast majority of their assets during their more than 40 years together, and even the few that were obtained separately by Troy, like the Mission property, "were held in a joint trust with the maintenance and property taxes paid over those 40 years with marital funds." At trial, neither party presented evidence on the fair market value of the Mission property or any of the other trust assets, and those matters are not necessary to our review of the challenged testamentary provisions in any event.

1975 divorce judgment they were entitled to one-half of their father's estate—as that was the bequest the judgment obligated Troy to make to their mother, Betty Jo. After she made a separate and unsuccessful attempt to challenge the trust in Los Angeles Superior Court, Darci joined her siblings' petition in pro. per.[4]

Before trial, respondent moved for nonsuit on appellants' second cause of action—their claim to enforce the 1975 divorce judgment. The court concluded it could decide the claim without evidence, as it depended entirely on the meaning and effect of the 1975 divorce judgment and the 1984 release. After argument from counsel, the court concluded the claim lacked merit and granted nonsuit.

Most of the testimony in the lengthy bench trial on trust validity that ensued centered on the parties' views of their blended family dynamic and emotional bond with Troy. Suffice it to say, there was no love lost between appellants and respondent. Appellants described their childhood as loving and idyllic until Shirley and respondent entered their lives, and respondent said appellants never welcomed her into the family. Each side believed the other cared only about Troy's money. Appellants presented witnesses who testified Troy had at best a neutral relationship with respondent, and respondent presented witnesses who testified she shared a close bond with her stepfather. Rather than recount the details of the parties' views and observations of their family

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[4] Darci's complaint also alleged respondent physically and financially abused Troy (allegations she said she didn't get a chance to review before her attorney filed the lawsuit). The Los Angeles court granted respondent's unopposed motion for sanctions against Darci and her attorney, ruling the lawsuit was frivolous and harassing under Code of Civil Procedure section 128.7.

history, we summarize only the trial testimony relevant to Troy's mental state—the soundness and independence of his mind when he decided to drastically reduce appellants' inheritance in favor of respondent.

1. *Appellants' evidence*

It was undisputed that Troy ran the family businesses and Shirley handled the finances. But according to appellants, in the final years of Troy's life, Shirley began to also control his access to *them*. They recounted various incidents of Shirley failing to tell them about Troy's health issues and hospital stays, and of her staying on the line during phone conversations and answering questions for him.

Darci and Victoria recounted an incident when Troy had initially agreed to give Victoria a loan for a business opportunity, but later refused saying Shirley wouldn't let him. According to the sisters, Troy would complain after respondent's divorce that the lawsuits were "draining" him financially and he was worried about money. Victoria said that in the fall of 2014, Troy told her Shirley and respondent had "moved the accounts all around, and he was not even able to access his own accounts at the bank." She said he told her he was too old and sick to do anything about it and that he "had a lot of regrets about a lot of things," including his financial situation.

According to appellants, Troy promised on numerous occasions that he would provide for them in his will. Victoria said he continued making these types of statements even as late as 2014. Cameron said that in the summer of 2010, Troy called him and said

Shirley had threatened to leave him if he didn't change the trust provisions. He also said Troy had apologized during that conversation for not being a better father.

Appellants believed Troy was not the same person after his motorcycle accident and stroke. Once a strong, independent person, he became weak, confused, and particularly susceptible to Shirley and respondent's control. They also noticed how respondent's divorce and Mark's multiple lawsuits were significant stressors for Troy, taking a huge toll on his finances and emotions.

Appellants called a few witnesses who had known Troy for decades to support their theories of undue influence and lack of capacity. Respondent's ex-husband Mark had stayed in touch with Darci after the divorce. Mark said that during the years he was part of Troy's family he could tell Troy loved all of his children, but had a special affection for Darci. He said respondent and Shirley would often badmouth appellants in front of Troy, and Troy didn't seem to appreciate their comments.

The son of one of Troy's close friends, who saw Troy on a regular basis until his passing, said Troy had made various remarks to him regarding his family and finances. He said around 2007 Troy said he was leaving the Mission property to "his kids" and that "he wanted equality for his kids." Then later, in 2012 or 2013, Troy told him Shirley and respondent had "taken" a million dollars from him and that he was "very upset."

Appellants' second cousin, Troy's grandniece, said she had seen Troy in the summer of 2014 and thought he seemed withdrawn, but she couldn't say whether that was because of cognitive deficits or because he simply couldn't hear the conversation.

Finally, appellants called two doctors to testify about Troy's mental state in his later years. Dr. Gupta was his treating physician from 2012 until his death. She said he suffered a "severe" stroke in 2012. She believed he "probably had dementia," to a "mild to moderate" degree, citing as a reason for her belief the fact he refused to participate in a mental examination after his stroke. Dr. Gupta said she prescribed Exelon, a medication used to treat Alzheimer's, for Troy's issues with memory loss. She refused to offer a professional opinion about Troy's mental competency because she felt she wasn't qualified to do so as his treating physician. However, she said it was her *personal* opinion Troy should not have been making "any complex decisions or any financial decisions" during the time he was her patient.

Dr. Trader, a geriatric psychiatrist, had never met or treated Troy, but concluded based on his review of the medical records and trust documents, that Troy was susceptible to undue influence from his 2012 stroke onwards and lacked capacity to enter into a complex trust like the 2013 restated trust. However, Dr. Trader acknowledged he had been asked to offer an opinion only as to capacity to enter into contracts, not capacity to make a will, for which the legal standard is less exacting. When asked whether Troy had the mental capacity to make a testamentary distribution in 2013, Dr. Trader replied, "I can't say because I don't have enough information." Dr. Trader acknowledged Troy's medical records indicated he improved after his stroke and that Dr. Gupta was the only person in his medical records to diagnose him with dementia.

2. *Respondent's evidence*

Respondent's witnesses painted a much different picture of Troy and his relationship with the parties. Respondent said she had a very close relationship with her parents. She also said Troy was devoted to her son and daughter. After Troy's motorcycle accident in 2006, she and her children moved into her parents' house for a few months to be closer to Troy. Respondent said Troy told her that in 2012 Cameron had threatened to sue him to get his inheritance early. She said she knew nothing about her parents' estate planning decisions, and they never talked to her about the subject.

The couple's estate planning attorney, Suzanne Graves, handled each of the trust revisions from 2009 to 2013. She has written four treatises on estate planning and over 75 percent of her clients are elderly. She said both Troy and Shirley were present at each meeting, but when it came to revising the testamentary provisions, Troy did the talking. She said Troy's decision to drastically reduce appellants' inheritance was not spontaneous and they had discussed it many times, starting in 2009. He had conveyed to her he was very close with respondent and her children but said he "didn't have a close relationship with [appellants]." He said "whenever they came around to visit, they were always asking him for money." Troy told Ms. Graves he was "being pressured to sell his properties and give [appellants] their inheritance now, and he was mad because he said that they couldn't even wait until he died." Ms. Graves said Troy never mentioned his divorce settlement with his previous wife or mentioned he felt any financial responsibility to appellants as a result of that divorce.

"He had told me why he was doing what he was doing, and he was concerned about what [appellants] would do after he died. And that discussion started clear back in 2009 when he was slowly exiting them out of the estate plan, that he made changes over a period of time where he was slowly removing them. So this wasn't something that was just brand-new in 2013. He was just taking it a step further." She said Troy was particularly worried appellants would "create problems for [respondent], and he was afraid that they weren't going to accept what his wishes were in his estate plan. And that didn't start just in 2013."

Ms. Graves did not know Troy had a stroke in 2012 or had been diagnosed with early dementia by one of his physicians. She said he seemed alert and logical during their meetings, and nothing ever made her suspect he was being influenced by Shirley. She said it was very common for parents to disinherit their children, so the mere fact Troy was reducing their inheritance was not a red flag for her. In her opinion, the 2013 restated trust was not the product of undue influence or lack of capacity. Troy seemed to fully understand what he was doing and genuinely wanted to make the changes.

Ms. Graves said shortly after Troy's and Shirley's deaths, before she even had a chance to meet with respondent, Victoria's lawyer then Darci's lawyer called her to inquire about the trust.

Mary Ireland, an estate planning attorney who works at Ms. Graves's firm, oversaw the execution of the 2013 trust revisions. She said Troy was able to summarize to her the testamentary provisions in the 2011 restated trust and explain how they were

changing in the 2013 restated trust. She said Troy told her he was making the changes because appellants kept demanding money from him.

Jerry Dagrella was the couple's attorney for several years and defended them against Mark's lawsuits. In November 2013, they had asked him to review the latest trust revisions because they were worried appellants would try to contest them and make life hard for respondent. Mr. Dagrella met with the couple at the Mission property and asked Shirley to leave the room while he spoke to Troy about the trust. He said Troy was able to explain his and Shirley's family to him, summarize the changes they were making to the trust, and explain the reason they were doing so. "When I asked him why he was making a change, [Troy's] comment was that his kids have been asking for money a lot. And he said that he's tired of them always asking for money, feeling a sense of entitlement, and this is his way of dealing with that."

David Patterson is a physiatrist and the medical director of the rehabilitation center where Troy was being treated after his stroke. Dr. Patterson also knew Troy and Shirley on a social basis, from attending the same charity events in Claremont for years. As a physiatrist, Dr. Patterson is qualified to conduct capacity evaluations for court proceedings. In the spring of 2013, he conducted a physical and neurological evaluation of Troy to determine whether he was fit for a heavy equipment license. Troy passed the evaluation. Dr. Patterson said he saw no issues with Troy's mental capacity in the last years of his life. It was his opinion as both a physiatrist and a friend that Troy was a strong-willed and independent person, even after his stroke.

Dr. Patterson was familiar with Troy's medical records, including Dr. Gupta's notes. He said the cognitive deficits Dr. Gupta had documented "were very mild and wouldn't affect much of daily functioning." He did not agree with her opinion that Troy had dementia. He said Troy may have suffered some memory loss or other cognitive deficits after his stroke, but by the time he was seeing him at the rehabilitation center he was improving, not declining. Dr. Patterson said the Exelon prescription was temporary and Troy was not taking it by the time he was his patient.

Steve Hunter, one of Troy's business associates, recalled an incident in 2013 when Troy overrode one of Shirley's financial recommendations. Mr. Hunter had a meeting with Troy and Shirley after a loan Troy had given him for a real estate development project had defaulted. Shirley wanted Troy to foreclose on the note, but Troy refused and instead agreed to forbear until Mr. Hunter could repay him. Mr. Hunter said he had known Troy since 2000 and always found him to be intelligent and coherent, even after his stroke.

Respondent also presented the testimony of several longtime friends of Troy and Shirley who remained close with the couple until their deaths. By all accounts, Troy was a strong-willed person who loved Shirley and respondent very much and loved to take care of them. These witnesses unanimously testified Troy was logical and coherent up until his passing.

D. *Statement of Decision*

In a 28-page statement of decision, the trial court explained its reasons for granting nonsuit on appellants' claim to enforce the 1975 divorce judgment and for finding the 2013 restated trust valid.

As to the nonsuit, the court rejected as a matter of law appellants' claim the 1975 divorce judgment entitled them to half of Troy's estate. It concluded even assuming the judgment did entitle *Betty Jo* to half of Troy's estate on his passing, her entitlement lapsed under Probate Code section 21109 when she predeceased Troy. It further concluded even if Betty Jo's entitlement had not lapsed, any interest appellants had in Troy's estate vanished when their parents signed the 1984 release excusing Betty Jo of her obligation to maintain them as "primary beneficiaries under her will as to one-half of all her property."

Turning to the validity of the trust, the court found Troy's testamentary decisions, while "unjust," were nevertheless the product of a competent and independent mind. It found Troy's reason for "essentially disinherit[ing]" appellants was unfair because although he claimed they were always asking for money, "[t]he irony is that [respondent] received much more financial support than any of the Isom children." But, the court reasoned, "[u]nfairness is not the standard that the law sets forth in determining the validity of a testamentary disposition. The law requires that an objector to a will or testamentary trust establish that the instrument was invalid due to incapacity of the

testator or that it was the product of undue influence. The evidence presented was insufficient to support either ground."

The court concluded appellants' evidence of health issues and financial stress brought on by respondent's divorce was insufficient to demonstrate he lacked capacity when he revised his trust in 2013 for the final time. It found Dr. Gupta's notes credibly indicated Troy "had the early stages of mild dementia," but otherwise found her testimony untrustworthy. It found Mr. Hunter gave the most unbiased testimony, which tended to show that Troy was "able to ask probing and cogent questions and overruled Shirley's position" around the same time he revised the trust.

The court also concluded appellants' evidence was insufficient to demonstrate either Shirley or respondent unduly influenced Troy's testamentary decisions. It found the trust amendments were not at variance with his stated intentions; he was not mentally or physically susceptible to subversion of his free will; and neither Shirley nor respondent actively procured the trust amendments.

The court declared respondent the prevailing party and entered judgment in her favor.

II

DISCUSSION

A. *The 1975 Divorce Judgment Is Irrelevant*

Appellants argue the court erred in concluding the 1975 divorce judgment did not entitle them to half of Troy's estate. They say the court should not have decided the issue

at the nonsuit stage based on the plain language of the judgment, but should have instead admitted extrinsic evidence about Troy's intent during the divorce. Pointing to no evidence in particular, appellants simply assert "the extrinsic evidence was uniform on the intent to create an irrevocable devise which was enforceable by appellants after their mother's death." We are unpersuaded.

The trial court correctly determined the lapse rule, codified in Probate Code section 21109, renders the 1975 divorce judgment irrelevant to the distribution of Troy's estate. "A court cannot compel a person to make a will [citation], and a person has the raw power to amend or revoke a will prior to death, even though contrary to agreement. [Citation.] Because the promisor has all of his lifetime to comply with the agreement, ordinarily no breach occurs until [the promisor's] death, at which time a cause of action first accrues." (*In re Marriage of Edwards* (1995) 38 Cal.App.4th 456, 460.) Under Probate Code section 21109, "[a] transferee who *fails to survive* the transferor of an at-death transfer . . . *does not take* under the instrument." (Prob. Code, §21109, subd. (a), italics added, unlabeled statutory citations refer to this code.)

Here, the 1975 divorce judgment did not obligate Troy to give any of his estate *to appellants* upon his passing. His only testamentary obligation under that judgment was to provide for Betty Jo. However, by the time he passed away, Betty Jo had been deceased for decades. While section 21110 makes an exception to the lapse rule (commonly called the antilapse statute), the exception applies only where the "transferee" is "kindred of the transferor or kindred of a surviving, deceased, or former spouse of the

transferor, but does not mean a spouse of the transferor." Betty Jo, as a former spouse, does not meet the antilapse statute's definition of transferee. (*Estate of Dye* (2001) 92 Cal.App.4th 966, 982 [current spouse was not a "transferee" under section 21110].) In addition, even if Betty Jo's entitlement had not lapsed, the 1984 release—which excused her from her obligation to appellants under the judgment—eliminated any interest in Troy's estate appellants had obtained by way of their mother.

Despite these clear outcomes, appellants urge us to ignore the plain language of the judgment and release and find that Troy's intent during the divorce was to ensure they received half of his estate upon his death. In support, they rely on *Estate of Duke* (2015) 61 Cal.4th 871, where the California Supreme Court held it was proper to consider parole evidence of the deceased's intent because there was "clear and convincing evidence" the will "contain[ed] a mistake in [his] expression of intent at the time the will was drafted." (*Id.* at p. 898.) But appellants have not demonstrated there was a mistake in the 1975 judgment. Its postdivorce obligations were clear. Troy had to provide for Betty Jo and in turn Betty Jo agreed to provide for their children—an obligation both Troy and Betty Jo later decided to eliminate when appellants were adults.

Appellants' citation to various decisions imposing constructive trusts to enforce promises made in marriage dissolutions is unhelpful. (*Tintocalis v. Tintocalis* (1993) 20 Cal.App.4th 1590; *Franklin Life Ins. Co. v. Kitchens* (1967) 249 Cal.App.2d 623; *In re Marriage of O'Connell* (1992) 8 Cal.App.4th 565.) In those cases, the beneficiaries of the constructive trusts were *alive* when the dissolution promises were breached, so the

lapse statute never came into play. Additionally, none of those cases involved a later release by the parties to the dissolution of the postmarital obligations.

There was no reason for the trial court to admit parole evidence or look beyond the plain language of the 1975 judgment to determine its effect. We conclude the court correctly granted nonsuit on appellants' second cause of action.

B. *Mental Capacity*

1. *Legal standard*

Appellants argue the trial court erred in applying the mental capacity standard for making wills (§ 6100.5) when it should have applied the capacity standard more broadly applicable to making decisions and entering contracts (§§ 810-812). They say the latter standard applies to Troy because the 2013 restated trust was lengthy and, in certain areas, quite complicated. We conclude the trial court correctly relied on *Andersen v. Hunt* (2011) 196 Cal.App.4th 722 (*Andersen*) to apply the capacity standard in section 6100.5 because the relevant trust provisions were relatively simple and analogous to a will.

Sections 810 through 812 set out the capacity standard for "mak[ing] a decision or do[ing] a certain act, including, but not limited to," the ability "to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts." (§ 811, subd. (a).) Under those provisions, a person is presumed mentally capable of making decisions and entering into transactions unless the challenger can show (1) the person suffered from one of the listed mental deficits and (2) there is a *correlation* between that mental deficit and the "decision or acts in question." (*Ibid.*) The deficit

must "significantly impair[] 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*." (§ 811, subd. (b), italics added.) These sections create a sliding-scale test for capacity; more complicated decisions and transactions require greater mental function and less complicated decisions and transactions require less mental function. (*Andersen*, *supra*, 196 Cal.App.4th at p. 730.) Comparatively, section 6100.5 "contemplates a significantly lower mental capacity standard for the making of a will, requiring only that the person understand the nature of the testamentary act, the nature of the property at issue, and his or her relationship to those affected by the will, including parents, spouse, and descendents." (*Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1351 (*Lintz*).)

In *Andersen*, the court addressed "the measure by which a court should evaluate a decedent's capacity to make an after-death transfer *by trust*." (*Andersen*, *supra*, 196 Cal.App.4th at p. 730, italics added.) The case, like ours, involved a challenge that the deceased lacked capacity to amend the testamentary provisions of a trust to reallocate the percentage of the estate among beneficiaries. The court concluded that although section 6100.5 does not expressly apply to trusts, "it is made applicable through section 811 to trusts or trust amendments that are *analogous to wills or codicils*" (*Andersen*, at p. 731, italics added) because section 811 says the relevant inquiry for competency is "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*" (§ 811, subd. (b), italics added). Because the trust amendments at issue—although contained in a complex document—

were themselves simple, testamentary, and "indistinguishable from a will or codicil," the appellate court held the trial court had erred in applying a "different, higher standard of mental functioning" than the one articulated in section 6100.5. (*Andersen*, at p. 731.)

Here, the court was correct to rely on *Andersen* because the trust provisions appellants challenge are nearly identical to the provisions in that case—they simply reallocate the percentage of the trust estate among beneficiaries. Despite whatever complexities may lie in other articles of Troy and Shirley's trust, the challenged provisions are simple and indistinguishable from a will.

Appellants' reliance on *Lintz* is misplaced because that case involved more complicated trust amendments. The *Lintz* court applied the reasoning in *Andersen* and concluded the sliding-scale standard applied to the challenged amendments because they were "unquestionably more complex than a will or codicil." (*Lintz*, *supra*, 222 Cal.App.4th at pp. 1352-1353.) The amendments didn't simply reallocate gifts among beneficiaries as the provisions here do; rather, they "addressed community property concerns, provided for income distribution during the life of the surviving spouse, and provided for the creation of multiple trusts, one contemplating estate tax consequences, upon the death of the surviving spouse." (*Id.* at p. 1353.) We conclude the trial court applied the correct capacity standard.

2. *Sufficiency of the evidence*

Appellants argue the record contains insufficient evidence Troy was mentally capable of executing the 2013 trust amendments. They point to Dr. Gupta's dementia

diagnosis and a few parts of Troy's medical records that note he experienced certain physical and mental difficulties in 2012 and 2013.

When considering a challenge to the sufficiency of the evidence to support a trial court's factual finding, "we consider all the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving conflicts in favor of the [finding]." (*Bunch v. Hoffinger Industries, Inc.* (2004) 123 Cal.App.4th 1278, 1303.) "[I]t is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the [finding] if there is evidence to support it." (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 916.)

By our review, the record contains ample evidence Troy had sufficient mental capacity to execute the trust amendments in October 2013. No one disputes he had suffered a severe stroke in 2012 and underwent rehabilitation to recover. No one disputes that after the stroke, he suffered memory loss, physical weakness, and was diagnosed by Dr. Gupta as having mild dementia. The problem with appellants' challenge is they have presented no evidence Troy was suffering from dementia or a cognitive deficit *in late 2013* that affected *his ability to reallocate testamentary gifts between his children.* (See *Estate of Goetz* (1967) 253 Cal.App.2d 107, 114 ["When one has a mental disorder in which there are lucid periods, it is presumed that his will has been made during a time of lucidity"].)

Respondent, on the other hand, presented witnesses who actually discussed the trust amendments at issue with Troy—Ms. Graves, Ms. Ireland, and Mr. Dagrella. Each said Troy had lucidly and rationally explained the substance of the revisions and why he believed they were warranted. They also said Troy had confided in them that he was worried appellants would be upset about their reduced inheritance and take respondent to court over it. Significantly, Ms. Graves said Troy's decision to reduce appellants' inheritance based on his view of their recent behavior was not spontaneous but had been made years earlier and discussed each ensuing year. This testimony reasonably supports several inferences—that Troy knew his family, understood his assets, and understood what he was doing, so much so that he correctly predicted how things would turn out after he passed.

In addition to the attorney testimony, respondent produced testimony from Dr. Patterson and several longtime close friends who all said Troy was of sound mind after recovering from his stroke. In short, respondent's evidence provided the court a reasonable basis to conclude that even if Troy was suffering from various physical and cognitive deficits (he was in his late 80s after all), he fully understood the testamentary decisions he made. Section 6100.5 does not require the testator to have a perfect bill of health when making testamentary distributions. Appellants demonstrated Troy had various health issues in the last years of his life, but respondent demonstrated none of those issues impaired his ability to make lucid estate planning decisions, even if those decisions appear overly harsh to his biological children.

C. *Undue Influence*

1. *Shirley*

Appellants argue the court should have applied Family Code section 721's presumption of undue influence to Shirley, and its failure to do so is reversible error. We disagree. The presumption does not apply, and even if it did, the error would be harmless.

"Spouses have the right to enter into property-related transactions with each other." (*In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 343 (*Fossum*).) However, Family Code section 721 makes clear "spouses occupy a confidential and fiduciary relationship with each other" (*Fossum*, at pp. 343-344) and thus the statute "imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other." (Fam. Code, § 721, subd. (b).) As a matter of public policy, our courts have held whenever "an interspousal transaction results in one spouse obtaining an advantage over the other, a rebuttable presumption of undue influence will attach to the transaction." (*Fossum*, at p. 344; see also *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 27 [holding presumption applies to marriage dissolution agreements but not premarital agreements].)

But here, as the trial court aptly observed, Shirley did not gain an advantage under the challenged testamentary trust provisions, respondent did. In other words, appellants challenge a bequest among children, not a transmutation of property between spouses or some other type of interspousal agreement to which the Family Code section 721

presumption applies. (*Compare In re Estate of Muller* (1936) 14 Cal.App.2d 129, 132 [testamentary gift to one's child is not a personal benefit] *with Fossum*, *supra*, 192 Cal.App.4th at p. 342 [presumption applied to husband's agreement to transmute his separate property residence into community property].)

Appellants are incorrect that *Lintz* mandates a different outcome. *Lintz*, unlike this case, involved trust amendments that directly and personally advantaged the spouse—by "granting her an exclusive and virtually unfettered life estate in [decedent husband's] property" and giving her the authority to designate her own children *or herself* as his heir. (*Lintz*, *supra*, 222 Cal.App.4th at p. 1353.) Here, in contrast, Troy chose to advantage his stepdaughter—with whom he appeared to have had a close, loving relationship and whom he saw on a daily basis—over his three biological children. That is not the type of transaction to which the interspousal agreement presumption applies.

Straining to find a trigger for the presumption, appellants argue that during the marriage Shirley "systematically moved substantial assets out of her husband's control to her own control . . . [and] pushed to obtain all of the estate for the benefit of her daughter." But this is simply their theory of undue influence, it is not a reason to apply the presumption, which does not arise unless there is a contract between Troy and Shirley that advantages her over Troy. Indeed, the fact Shirley did not profit from the trust amendments means appellants must make a *stronger* showing of undue influence on her part, not a lesser one. (See, e.g., *Estate of Ventura* (1963) 217 Cal.App.2d 50, 58-59 [challenger must present "*clear and convincing evidence*" of undue influence, and "the

fact that the person charged with undue influence did not actually benefit by the will tends to refute the charge"], citing 4 Witkin, Summary of Cal. Law, Wills, § 77.)

But even if we assume for argument's sake the presumption applies to Shirley, respondent successfully rebutted it. To do so, the spouse advantaged by an intermarriage transaction ""'must establish that the disadvantaged spouse's action 'was freely and voluntarily made, with a full knowledge of all the facts, and with a complete understanding of the effect of' the transaction.'"" (*Fossum*, *supra*, 192 Cal.App.4th at p. 344.) Here, the trial court found Troy "understood that he was making changes to the disposition of his estate at the time he amended his trusts" and those changes "were what [he] desired." Those findings are supported by the record.

2. *Respondent*

Finally, appellants argue we must reverse the finding that respondent didn't unduly influence Troy because the court applied the wrong standard when analyzing her relationship with her stepfather. Again, we disagree.

"Undue influence is pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency." (*Rice v. Clark* (2002) 28 Cal.4th 89, 96.) While the person challenging the testamentary instrument ordinarily bears the burden of proving undue influence, "a presumption of undue influence, shifting the burden of proof, arises upon the challenger's showing that (1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in

procuring the instrument's preparation or execution; and (3) the person would benefit unduly by the testamentary instrument." (*Id.* at pp. 96-97.)

Appellants argue the court's conclusion in its statement of decision that respondent was not in a "fiduciary relationship" with Troy demonstrates it failed to consider whether their relationship was a "confidential" one. Assuming there is a meaningful difference between confidential and fiduciary relationships in this context, and assuming the court did err in applying the wrong standard, appellants' argument does not warrant reversal. The status of the beneficiary's relationship with the testator is only one of the elements necessary to satisfy the presumption and shift the burden to the document's proponent. Here, the trial court found respondent did not actively participate in procuring the trust amendments, and appellants do not contend, nor could they, that the finding is not supported by the record.

We uphold the court's conclusion that appellants produced insufficient evidence to demonstrate respondent unduly influenced Troy to amend the trust.[5]

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[5] Because we uphold the trial court's validity determination, we do not address respondent's alternative argument that collateral estoppel should have barred appellants from challenging the trust because Darci had litigated and lost the issue before the trial court in Los Angeles and Victoria and Cameron were in privity with her.

III

DISPOSITION

We affirm the judgment. Appellants shall bear costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

SLOUGH
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.