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Guidance in distinguishing a trust reformation from a trust contest: *Packard v. Packard*

In Packard v. Packard (2025), the California appellate court ruled that a petition to reform a trust based on a mistaken expression of intent, rather than contesting the validity of the trust, was not subject to the 120-day statute of limitations for trust contests

By Denise E. Chambliss

At issue in *Packard v. Packard* (2025) – Cal.Rptr.3d–, 2025 WL 585677 is the quandary of distinguishing a petition to reform a trust’s mistaken expression of intent from a related and very similar petition to invalidate a trust by reason of undue influence or lack of capacity. The answer to that question in the *Packard* case was vital to whether the petition was time-barred by the 120-day statute of limitations set forth in California Probate Code section 16061.8 for a trust contest or was the reformation petition timely under a three-year statute of limitations. The *Packard* case went up on appeal from the trial court’s ruling that the reformation petition was to be treated as a trust contest, and as such the petition was time-barred as the petition was not filed within the 120-day limitations period for trust contests.

The reformation at issue was created by the word “one-half” handwritten on a trust amendment. Here, Newton *Packard* (“Newton”) left his trust in equal shares to his two sons, Greg *Packard* (“Greg”) and Scott *Packard* (“Scott”). Newton created and executed The Newton Roy *Packard* Trust, providing for that equal distribution. Newton amended his trust by a first amendment to provide that Greg would receive Newton’s residence and Scott would



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receive a sum equal to the value of the residence, and all remaining property would be divided equally between the two sons.

But later Newton wrote “one-half” on the first amendment near to the provision addressing the equalized distribution of the residence to Greg with an equalizing sum to Scott. The handwritten interlineation was initialed and dated by Newton. Depending on construction and interpretation of the handwritten word,

the trust amendment could be construed to distribute to Scott only an equalized distribution of one-half of the value of the residence or interpreted as a general intent of an equalized distribution between his two sons.

Newton died in 2020, survived by Greg and Scott. With Greg’s trustee notice served in August 2020, the 120-day limitations period for trust contests expired by the end of 2020. But, in May 2022, Scott filed his petition to construe and reform the

first amendment so that it accurately reflected what he alleged to be Newton’s intent, an equal distribution of all trust assets, with the house to his brother being equalized by more cash to Scott. Scott sought the opportunity to permit consideration of his extrinsic evidence to demonstrate the true intent of his father Newton. Scott contended that his petition was intended to reform the trust to reflect Newton’s true intent and therefore

was not a “contest” to the trust subject to 120-day limitations period.

Before the trial court, Greg successfully asserted that Scott’s reformation petition should be treated as a trust contest, and as a trust contest, Scott’s petition was time-barred. The trial court granted Greg’s motion for judgment on the pleadings on that theory. The *Packard* appellate court reverses the trial court.

On appeal, the *Packard* court examined the nature of Scott’s reformation petition and found a distinction in its purpose of enforcement of a testament intent as being separate and distinct from the function of a trust contest (which the court equated with a petition that would violate a no-contest clause).

The California Probate Code contains a special statute of limitations which imposes a 120-day period for a trust contest to be filed. (Prob. C. §16061.8.) The 120-day period begins to run when a trustee serves the required statutory notice on beneficiaries. Trust contests not filed within this time frame are time-barred. Unlike a trust contest, a claim for reformation of a trust based on mistake is subject to a three-year statute of limitations. (*Getty v. Getty* (1986) 187 Cal.App.3d 1159, 1168; Code Civ. Proc., § 338, subd. (d).)

In support of its reversal of the trial court, the *Packard* court was appropriately deferential in recognition of the public policy favoring the court’s determination and enforcement of testamentary intent. A reformation petition that does not question the validity of a trust but instead seeks to determine and implement the trustor’s intent is not a contest. (*Giammarrusco, v. Simon* (2009) 171 Cal.App.4th 1586, 1602, 1607.) “In such a case [of re-

formation], the beneficiary is seeking merely to determine and to protect the donor’s intention and is not seeking to circumvent it.” (*Id.* at p. 1607 [quoting Restatement (Third) on Trusts, § 8.5, com. d, p. 198].) “[A] petition seeking construction or interpretation of a will is [not] a ‘contest,’ although such proceedings might result in invalidation of certain of the will’s provisions.” (Estate of Black (1984) 160 Cal.App.3d 582, 588.)

Favorable to Scott’s reformation petition, California jurisprudence on reformation of wills and trusts was significantly changed by the Supreme Court in the 2015 Estate of Duke case. In *Duke*, the California Supreme Court abandoned the historical rule that extrinsic evidence was inadmissible to reform an unambiguous will. (Estate of Duke (2015) 61 Cal.4th 871, 875-876.) In *Duke*, the California Supreme Court explained that extrinsic evidence is admissible to determine the intent of a donor in certain circumstances even where the donative document appears unambiguous. (Estate of Duke, supra, 61 Cal.4th at pp. 875-876, 887.)

“The purpose of reformation is to carry out the wishes of the testator, and the remedy reflects no judgment other than a preference for disposition pursuant to the wishes of the testator.” (Estate of Duke (2015) 61 Cal.4th 871, 892.) A beneficiary may petition the probate court to reform a trust that, due to a mistake, does not accurately reflect the trustor’s intent. (Estate of Duke, at p. 889.) “Rather than thwarting the donor’s intent, a petition for construction or reformation “serves to ascertain and enforce that intent.” (*Donkin v. Donkin* (2013) 58 Cal.4th 412, 434.) The paramount

consideration in the construction of an estate plan, whether a will or a trust, is a determination of the subjective intent of the settlor. (See e.g., *Wilkin v. Nelson* (2020) 45 Cal. App.5th 802, 810).

The *Packard* court’s ruling is consistent with this long-established touchstone of enforcement of the intent of a settlor with examination of extrinsic evidence subject to clear and convincing evidence in a reformation petition. For guidance, the *Packard* court provides this direction: “In determining whether [a petition] constitutes an action to contest [a] trust within the purview of section 16061.8, we look to the substance of that petition and its ‘practical effect.’ We are not bound by its label.” (Estate of Stoker (2011) 193 Cal.App.4th 236, 241.)

The *Packard* court drew a line of distinction from a reformation petition from a trust contest based on whether or not the petition violated a no contest clause, in part on the long-standing precedent that historically, disputes over the interpretation of instruments have not usually been treated as violating a no contest clause. (*Donkin*, supra, 58 Cal.4th at p. 434.) In other words, declaratory relief claims for construction of trust did not violate no contest clause because they sought “to ascertain the true meaning of the trustors’ intent rather than to thwart their wishes in creating the Trust.” (See also *Graham v. Lenzi* (1995) 37 Cal.App.4th 248, 258-259.)

Aside from the statute of limitations question, the *Packard* court drew a distinction in dicta on the ambiguity question that Greg’s argument conflated the merits of Scott’s claim with the nature of Scott’s claim. The *Packard* court explained that

answer of whether a petition is deemed a trust contest, or a trust ambiguity reformation, is not to be decided on the perceived merits of the subject petition. Stated in other words, “a meritless reformation petition is still a reformation petition.” In reliance on *Duke*, the *Packard* court opined that to conclude otherwise would contradict the Supreme Court’s holding that extrinsic evidence is admissible to determine the trustor’s intent, whether the donative document is unambiguous or ambiguous. The *Packard* court further noted that such a merit-based analysis of whether a petition was for reformation or was a trust contest would undermine the purpose of reformation.

Based on somewhat contradictory and unclear precedent, the *Packard* court held that Scott’s reformation petition of the handwritten “one-half” notation to conform the trust to his father’s true intent of an equal division of his trust was not to be treated as a trust contest.

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