

Bringing a Pre-Death Trust Contest

February 2015

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Previously, the conventional understanding was that a beneficiary could not challenge a revocable trust while the trust's settlor was still alive. This was because a beneficiary's interest in trust property was purely hypothetical until the settlor died. Until death, the trust's assets were treated as the settlor's property. And absent an interest in the trust property, a beneficiary lacked standing to go to court and challenge a revocable trust.

This conventional understanding was challenged, however, in 2013 when the Third District Court of Appeal decided *Drake v. Pinkham*. In *Drake*, a trust beneficiary filed a probate petition seeking to invalidate certain revocable trusts based on the settlor's lack of capacity and the trustee's undue influence. The Probate Court granted the trustee's motion for summary judgment because it found the beneficiary's claims were barred by collateral estoppel and the statute of limitations. The Court of Appeal ultimately affirmed the Probate Court's judgment but discussed the beneficiary's standing to bring a pre-death trust contest. The Court of Appeal stated that the beneficiary may have had standing if, as the beneficiary alleged, the settlor was incompetent at the time she brought her trust contest. The court suggests that an aggrieved beneficiary may be able to bring a pre-death trust contest if the beneficiary can ultimately prove the settlor's incompetence. In the end, the Court of Appeal did not decide whether or not the beneficiary had standing but rather found that she waited too long to assert her rights.

This case is at odds with multiple prior appellate decisions and leaves many questions unanswered. For example, would a revocable trust beneficiary have standing if the incompetent settlor is conserved and therefore has a representative? What happens if the settlor regains competency? Would the revocable trust beneficiary still have standing if there will be no trust property left at the time of settlor's death? Unfortunately, neither the California Supreme Court nor other appellate courts have discussed *Drake* in any meaningful way. But it appears that, given the right circumstances and the right legal arguments, a trust beneficiary may be able to challenge a revocable trust during a settlor's lifetime.

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