

**COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE
DISTRICT, DIVISION THREE**

**Estate of EVA MAE JAMES, Deceased. GLENN EARL TURNER,
Petitioner and Appellant, v. SUSAN JAMES, Contestant and
Respondent.**

Estate of Eva Mae James v. James, No. B216894 (Cal. Ct. App. Oct. 6, 2010) · No. B216894

SUMMARY

The California Court of Appeal affirmed an order invalidating a will based on lack of authenticity and common law undue influence, holding that the appellant's failure to challenge the authenticity finding independently supported the judgment and rendered any error regarding undue influence harmless. The probate court properly applied common law undue influence under Probate Code §6104 rather than the statutory disqualification of Probate Code §21350, making the blood-relative exception irrelevant. Substantial evidence supported the findings of a confidential relationship, susceptibility, and undue benefit.

OPINION

Estate Of Eva Mae James v. James, B216894 Estate of EVA MAE JAMES, Deceased.GLENN EARL TURNER, Petitioner and Appellant, v.SUSAN JAMES, Contestant and Respondent. B216894 Super. Ct. No. BP105374 COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION THREE October 06, 2010 NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b).

This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. APPEAL from an order of the Superior Court of Los Angeles County, Reva G. Goetz, Temporary Judge. (Pursuant to Cal. Const., Art. VI, § 21.) Affirmed. Glenn Earl Turner, in pro. per., for Petitioner and Appellant. Wilkinson & Wilkinson and Patricia Jo Wilkinson for Contestant and Respondent.

Glenn Earl Turner appeals an order declaring the will of Eva Mae James invalid. He contends (1) the probate court erroneously invalidated the will based on Probate Code section 21350, which does not apply to blood relatives such as him; (2) the evidence does not support the court's findings regarding undue influence; and (3) the court deprived him of due process and equal protection of the law by denying him an evidentiary hearing to determine whether he was a blood relative.

We conclude that he has shown no prejudicial error and affirm the order. FACTUAL AND PROCEDURAL BACKGROUND Turner is the nephew of the decedent, and Susan James is her adopted daughter. Turner resided with the decedent for a short time as a child and again later as an adult in the years prior to the decedent's death. He petitioned for letters of administration and to have the decedent's will admitted to probate.

He served the petition on Susan James at the decedent's former address, where he resided and where he knew that Susan James had not resided for almost two years. The will distributed the decedent's most valuable asset, a house ### Table 1 | Court: | Writing for the Court: | Decision Date: | Docket Number: | Citation: | Parties: | | California Court of Appeals | CROSKEY, J. | 06 October 2010 | Super.

Ct. No. BP105374, B216894 | Estate of James v. James, B216894, Super. Ct. No. BP105374 (Cal. App. Oct 06, 2010) | Estate of EVA MAE JAMES, Deceased. GLENN EARL TURNER, Petitioner and Appellant, v. SUSAN JAMES, Contestant and Respondent. | --- Page Break --- located at 4180 Mount Vernon Drive in Los Angeles, to Turner.

After learning of the probate proceedings, Susan James petitioned to remove Turner as personal representative and contested the validity of the will. After a nonjury trial, the court found that the will was invalid on two grounds: (1) undue influence by Turner on the decedent; and (2) lack of authenticity of the will admitted to probate.

The court stated in its statement of decision, "The court cannot find that the document signed by Eva is the same document that was lodged with the court to be admitted to probate." The court stated further, "The court finds that t he [sic] evidence that document signed by Eva is insufficient to establish that the document that was lodged with the court to be admitted to probate is the same document signed by Eva on November 27, 2006."

CONTENTIONS Turner contends (1) the probate court erroneously invalidated the will based on Probate Code section 21350, which does not apply to blood relatives such as him; (2) the evidence does not support the court's findings regarding undue influence; and (3) the court deprived him of due process and equal protection of the law by denying him an evidentiary hearing to determine whether he was a blood relative.

DISCUSSION Turner challenges the finding of undue influence but does not challenge the finding of lack of authenticity. Because lack of authenticity is an independently sufficient ground to invalidate the will (see Evid. Code, §§ 1400-1401), we conclude that he has shown no prejudicial error. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475) Moreover, Turner's contentions have no merit.

The court did not rely on Probate Code section 21350 in invalidating the will. Susan James's counsel initially argued that section 21350 disqualified Turner, as the drafter of the will, from

receiving any donative transfer under the will.¹ She later acknowledged the exception for blood relatives, however, and stated that she was relying on "common law undue influence" instead of section 21350.² The court in its statement of decision stated that James had established by clear and convincing evidence the following indicia of common law undue influence: (1) the existence of a confidential relationship between the testator and the person who allegedly exerted undue influence; (2) the testator's susceptibility to undue influence; and (3) a testamentary document that unduly benefits the person who allegedly exerted undue influence.

(See *Estate of Yale* (1931) 214 Cal. 115, 122-123.) The court also found that Turner had "complete control over the preparation and signing of Eva's will," and that he failed to present evidence sufficient to show that the decedent freely signed the will.

Thus, the court's finding of undue influence was based on common law undue influence and was not based on section 21350. The exception to section 21350 for blood relatives therefore is inapplicable. We review Turner's contention that the evidence does not support the findings under the substantial evidence standard. Substantial evidence is evidence that a rational trier of fact could find to be reasonable, credible, and of solid value.

We view the evidence in the light most favorable to the probate court's decision and accept as true all evidence tending to support the decision, including all facts that reasonably can be bededuced from the evidence.

We must affirm the decision if an examination of the entire record viewed in this light discloses substantial evidence to support the decision. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) Turner contends there is no evidence to support the following statement in the statement of decision: "When Glenn was present at Eva's home Susan did not go over to visit her mother.

Eva told Susan and others to call back when Glenn was in the house. This indicates that Eva did not feel comfortable to speak freely when Glenn was around and that others did not feel welcome at the house when Glenn was there." He overlooks pages 28 to 29 of the reporter's transcript, where James testified that she visited her mother only "[w]hen Glenn wasn't there" and that her mother would tell her and others to "[c]all back later" if they called when Glenn was present.

This testimony supports the challenged findings. Turner's argument that there is no evidence to support the finding that the decedent told Susan James to move because of him overlooks page 27 of the reporter's transcript, where James testified: "My mom came down the hallway. She was very upset and cursing, and she said that we needed to get out of the house, we needed to go.

She said, 'Get out. Get my grandchildren and get out of here before Glenn kills me over this house—over the house.' That's what she said. So that's why we moved." This testimony supports the challenged finding. Turner also argues that, contrary to the court's finding that the will unduly

benefited him, the evidence shows that he was closer to the decedent than Susan James was and that the benefit therefore was not undue.

He cites testimony by Michelle Scott, a mortgage loan broker and friend who had done business with the decedent. He characterizes that testimony as "complimentary" of him and uncomplimentary of Susan James and her relationship with her mother. Other evidence that Turner fails to cite or discuss, however, amply supports the finding that the decedent was unlikely to have favored him over her only living child and grandchildren.

Finally, Turner and others testified that he was the decedent's nephew, there was never any dispute as to that --- Page Break --- fact, and the court found in its statement of decision that he was the decedent's nephew.

We conclude that Turner has not shown that there was any need for a further evidentiary hearing to determine whether he was a blood relative or that he was prejudiced in any way by the purported denial of such a further evidentiary hearing.

Moreover, because the court did not rely on Probate Code section 21350 in invalidating the will, the exception for blood relatives was irrelevant. Turner has not shown any denial of either due process or equal protection. DISPOSITION The order is affirmed. Susan James is entitled to recover her costs on appeal. NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS CROSKEY, J. WE CONCUR: KLEIN, P. J. ALDRICH, J. 1.

Probate Code section 21350, subdivision (a) states in relevant part: "Except as provided in section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following: [¶] (1) The person who drafted the instrument." Probate Code Section 21351 states that section 21350 does not apply if "[t]he transferor is related by blood or marriage to... the transferee or the person who drafted the instrument."

(Id., subd. (a).) 2. The common law doctrine of undue influence is codified in Probate Code section 6104. (Rice v. Clark (2002) 28 Cal.4th 89, 96.) Contrary to Turner's argument, the cited portion of Rice, which was also cited by the probate court in its statement of decision, discusses common law undue influence rather than Probate Code section 21350.