

CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION
THREE

Goebner v. Superior Court

Goebner · No. A171241 · Decided April 30, 2025

SUMMARY

The California Court of Appeal held that Probate Code section 1043 governs the timing for filing a demurrer to a probate petition. Because the demurrer may be filed at or before the hearing, the trial court erred in applying the 30-day deadline under Code of Civil Procedure section 430.40. The court issued a peremptory writ directing the trial court to vacate its order and consider the demurrer on the merits.

CASE DETAILS

COURT	California Court of Appeal, First Appellate District, Division Three
WRITING FOR THE COURT	Rodríguez, J.; Tucher, P. J.; Fujisaki, J.
JURISDICTION	California Court of Appeal, First Appellate District, Division Three
DECIDED	April 30, 2025
DOCKET	A171241
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Trustee William Goebner petitioned for a writ of mandate challenging the superior court's order overruling his demurrer as untimely in a Probate Code proceeding.
STANDARD OF REVIEW	Orders overruling a demurrer and questions of statutory interpretation are reviewed independently. Writ review of an order denying or overruling a demurrer is ordinarily unavailable when review on appeal from a final judgment would be adequate, but is appropriate when compelling circumstances and an issue of widespread interest or conflicting trial-court interpretations warrant immediate resolution.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	William Goebner, as Trustee v. The Superior Court of San Mateo County, Thomas R. McDonald, Real Party in Interest

TOPICS

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QUESTIONS PRESENTED

1. Whether writ review was appropriate to resolve the conflict concerning the deadline for filing a demurrer in a Probate Code proceeding.
2. Whether Probate Code section 1043, permitting an interested person to make a written response or objection at or before the hearing, governs the timing of a demurrer to a Probate Code petition instead of Code of Civil Procedure section 430.40's 30-day deadline.
3. Whether the superior court properly overruled Goebner's demurrer as untimely.

HOLDINGS

1. Writ review was warranted because there was no appellate authority resolving the conflict between Probate Code section 1043 and Code of Civil Procedure section 430.40, and trial courts had adopted inconsistent approaches to the timing of demurrers in probate proceedings.
2. A demurrer to a petition brought under the Probate Code must be filed at or before the initial hearing on the petition under Probate Code section 1043; Code of Civil Procedure section 430.40's 30-day deadline does not govern.
3. Goebner's demurrer, filed two days before the initial hearing, was timely under Probate Code section 1043.
4. The holding concerning section 1043 applies to pleadings such as demurrers and answers, not to summary judgment motions; because the Probate Code provides no summary judgment procedure, the applicable Code of Civil Procedure provisions govern summary judgment proceedings in probate court.

KEY QUOTATIONS

“Reading these Probate Code and Code of Civil Procedure statutes together, an interested party may file a demurrer to a petition under the Probate Code “at or before the hearing.”” (at 5)

“In sum, and pursuant to section 1043, we hold a demurrer to a petition brought under the Probate Code must be filed at or before the initial hearing.” (at 8)

FACTUAL BACKGROUND

Thomas R. McDonald filed a petition challenging amendments to the Judith E. Stratos 2000 Trust, alleging undue influence, fraud, and financial elder abuse. The amendments eliminated McDonald and his sister as beneficiaries and named William Goebner as successor trustee. Goebner filed a demurrer two days before the noticed hearing on the petition, and the superior court ruled that the demurrer was untimely because it was filed more than 30 days after service of the petition.

PROCEDURAL HISTORY

Thomas R. McDonald filed a Probate Code petition contesting amendments to a trust and served notice of a hearing. Goebner filed a demurrer two days before the hearing, more than four months after the petition had been served. The superior court overruled the demurrer as untimely under Code of Civil Procedure section 430.40. The Court of Appeal issued an order to show cause and granted writ relief, directing the superior court to vacate its order and consider the demurrer on the merits.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The superior court must vacate its order overruling Goebner's demurrer as untimely and consider the demurrer on the merits.

CASES CITED

- California Dept. of Tax & Fee Administration v. Superior Court (2020) 48 Cal.App.5th 922, 929
- Stancil v. Superior Court (2021) 11 Cal.5th 381, 393
- Apple Inc. v. Superior Court (2017) 18 Cal.App.5th 222, 239
- Omaha Indemnity Co. v. Superior Court (1989) 209 Cal.App.3d 1266, 1273
- County of Los Angeles v. Superior Court (2024) 107 Cal.App.5th 160, 176
- Dudek v. Dudek (2019) 34 Cal.App.5th 154, 162
- Merrill v. Finberg (1992) 4 Cal.App.4th 1443, 1447
- Landrum v. Superior Court (1981) 30 Cal.3d 1, 14
- Friends of Shingle Springs Interchange, Inc. v. County of El Dorado (2011) 200 Cal.App.4th 1470, 1482
- Tan v. Appellate Division of Superior Court (2022) 76 Cal.App.5th 130, 137
- County of Santa Barbara v. Connell (1999) 72 Cal.App.4th 175, 180 fn. 4
- Key v. Tyler (2019) 34 Cal.App.5th 505, 521
- Swaithe v. Superior Court (1989) 212 Cal.App.3d 1082, 1089
- Estate of Neilson (1962) 57 Cal.2d 733, 747-748
- Osornio v. Weingarten (2004) 124 Cal.App.4th 304, 316 fn. 7