

In re DYLAN APPLE TRUST dated September 10, 1999. HEIDI HUTCHINSON APPLE, Plaintiff and Appellant, v. JEFFREY APPLE, Defendant and Respondent.

B164076

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION ONE**

2003 Cal. App. Unpub. LEXIS 12170

December 30, 2003, Filed

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PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County. Los Angeles County (Super. Ct. No. BP060630. Thomas W. Stoeber, Judge.

DISPOSITION: Affirmed.

COUNSEL: David L. Jensen for Plaintiff and Appellant.

Law Office of Martin L. Horwitz and Martin L. Horwitz for Defendant and Respondent.

JUDGES: VOGEL (MIRIAM A.), J. We concur: SPENCER, P.J., MALLANO, J.

OPINION BY: VOGEL (MIRIAM A.)

OPINION

A child who suffered injuries at the time of his birth has a trust fund that was created out of a medical malpractice settlement. The child's parents are now involved in an acrimonious divorce, and the mother purports to act on the child's behalf in challenging certain reimbursements made to the father over four years ago. The trial court sustained the father's demurrer without leave to amend, and we affirm that order.

FACTS

A.

Dylan Apple suffered severe [*2] and permanent injuries at the time of his birth in 1995. Dylan's parents, Heidi Hutchinson Apple and Jeffrey Apple, attributed the injuries to medical malpractice, and a lawsuit against the

attending physician and the hospital was filed by Dylan (for his injuries), and by Heidi and Jeffrey (for negligent infliction of emotional distress), with Heidi designated as Dylan's guardian ad litem. In June 1999, the malpractice suit was resolved by a court-approved settlement in the amount of \$ 4.75 million, which was allocated \$ 250,000 to Heidi, \$ 250,000 to Jeffrey, and \$ 4.25 million to Dylan, with a reimbursement to Jeffrey from Dylan's share of \$ 191,026 for the medical expenses Jeffrey had paid between the time of Dylan's birth and the settlement.

A trust was created for Dylan's benefit, and (as requested by Heidi as Dylan's guardian ad litem) Northern Trust Bank of California, N.A., was appointed Trustee of the Dylan Apple Trust. Among other things, the Trustee has the power to "commence or defend, at the expense of the trust, any litigation with respect to the trust that the Trustee deems advisable"

B.

More than three years later, in August 2002 -- by which time [*3] Heidi and Jeffrey were embroiled in a bitter divorce -- Heidi, purportedly acting as Dylan's guardian ad litem, initiated the present proceedings by filing a petition in probate in which she asked for orders requiring Jeffrey to account for the \$ 191,026 reimbursed to him at the time the medical malpractice action was settled. The gist of Heidi's petition was that Jeffrey had not incurred the expenses for which he was reimbursed, and that Jeffrey knew his claim "was grossly inflated, fraudulent, and incorrect when he made it."

Jeffrey demurred to the petition on numerous grounds, including a challenge to Heidi's standing. Over Heidi's opposition, the demurrer was sustained without leave to amend, and Heidi's petition was dismissed. Heidi's appeal is from the order of dismissal.

DISCUSSION

Heidi's entire brief addresses the statute of limitations issue raised in Jeffrey's demurrer, and she offers nothing at all with regard to the standing issue. In his respondent's brief, Jeffrey responds to the limitations issues but also contends his demurrer was properly

sustained on the ground that (assuming the existence of a claim) the Trustee, not Heidi, had standing to pursue it. [*4] Heidi has filed a reply brief, but it too is silent on the issue of standing. We treat her silence as a concession of the point (*Roos v. Kimmel* (1997) 55 Cal.App.4th 573, 594, fn. 12), which would in any event have to be decided against her.

The Trustee of Dylan's trust has legal title to any cause of action related to the Trust's assets, and neither Dylan (as the beneficiary) nor Heidi (as the beneficiary's former guardian ad litem) has standing to pursue a claim belonging to the Trust where, as here, there is no contention that the Trustee has failed or refused to act under circumstances where it should have done so. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 460; *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, 1341-1342.)

Because we review the trial court's ruling, not its

reasoning, it is immaterial that the demurrer was sustained on other grounds -- the point is that a ruling correct on any ground raised in the trial court will be affirmed on appeal. (*Lee v. Bank of America* (1990) 218 Cal. App. 3d 914, 919, 267 Cal. Rptr. 387.)

DISPOSITION

The [*5] judgment (order of dismissal) is affirmed. Jeffrey is awarded his costs of appeal.

VOGEL (MIRIAM A.), J.

We concur:

SPENCER, P.J.

MALLANO, J.