MCLE SELF-STUDY ARTICLE

A SNARL OF CONFLICTING PRESUMPTIONS- *IN RE BRACE AND ESTATE OF WALL* CONTINUE CALIFORNIA'S STRUGGLE TO SQUARE THE CONFLICTING PRESUMPTIONS SET FORTH IN FAMILY CODE SECTION 760 AND EVIDENCE CODE SECTION 662

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I. INTRODUCTION

Most Californians are aware that property acquired during their marriage is presumed to be community property, and that property they owned before marriage is their separate property. What most California married couples are not aware of is that beneath the surface of this bedrock tenet of California law are conflicting presumptions that, when put to the test, may not match the average married couple's expectations.

Take, for example, a joint tenancy deed. Married couples are frequently advised by brokers or escrow officers to take title in joint tenancy to avoid probate. However, joint tenancy deeds have consequences that many people do not anticipate. And when "the rubber hits the road" and actual ownership of property is put to the test in different contexts, things get complicated fast. This, in large measure, has to do with the different presumptions courts may apply regarding characterization of property owned by married couples. For instance, what happens when property that was acquired during marriage (that was neither gifted nor inherited) is titled in the name of only one spouse and then that spouse dies? Under the Family Code, this property would be presumed community property. But under the Evidence Code, this property would be presumed to belong to the spouse in whose name it is titled. Further complicating the picture for trust and estate practitioners is how the priority of presumptions operates when property is held in trust.

At this time, no bright line rules exist, and no cases fully resolve these questions. However, several decisions afford guidance. In *In re Marriage of Valli*, the California Supreme Court determined the community property presumption should govern when an insurance policy was purchased with community funds but was titled solely in the wife's name.[01] *In re Brace* expanded the holding of *Valli* beyond actions between spouses, finding that the community property presumption also governed in a bankruptcy action between a married couple and a bankruptcy trustee.[02] Yet, in *Estate of Wall*, the Third District Court of Appeal determined that, in the probate context, the form of title presumption for real property supersedes the community property presumption after death.[03] This article is a survey of recent cases addressing these characterization issues. The hope is that this survey will provide practitioners with information regarding how courts have applied the

conflicting presumptions in Family Code section 760 and Evidence Code section 662.

II. THE PRESUMPTIONS SET FORTH IN FAMILY CODE SECTION 760 AND EVIDENCE CODE SECTION 662

In 1992, the Legislature enacted the Family Code to unify "the dispersion of family law in several codes."[04] The general community property presumption, previously codified under the former Civil Code section 5110, now appears as a stand-alone provision in Family Code section 760.

Family Code section 760 provides: "Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property."[05] In 1965, the Legislature enacted Evidence Code section 662, which provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."[06] Evidence Code section 662 does not reference the Family Code, nor does it explicitly characterize property as separate so as to provide an exception to Family Code section 760.

There are competing policy goals that drive much of the analysis of the interplay of these two presumptions. The presumption set forth in Family Code section 760 supports "the most fundamental principle of California's community property law" and reflects the general theory that spouses form a sort of partnership, and further, that property acquired during the marriage by the labor or skill of either belongs to both.[07]

The purpose of the presumption set forth in Evidence Code section 662 is to promote the public policy in favor of the stability of titles to property.[08] An underlying component of that policy goal is the protection of third-party creditors. Specifically, if a third-party creditor is engaging in a transaction with a married person, does the form of title for a particular real property owned by a spouse put the creditor on notice that a spouse's ability to manage and control a particular property is constrained by community property principles? And, will that creditor be aware whether or not they will be able to reach another spouse's community property share of the asset in the context of collections?

As this survey of recent cases shows, these presumptions and policy goals have not always fit well together.

III. *VALLI* DETERMINES THAT THE FAMILY CODE SECTION 760 PRESUMPTION APPLIES IN A DISSOLUTION PROCEEDING, AWARDING WIFE HER COMMUNITY PROPERTY INTEREST IN HUSBAND'S LIFE INSURANCE POLICY

In re Marriage of Valli[09] originated from divorce proceedings involving the famous singer Frankie Valli, the falsetto voice behind the Four Seasons, with hits such as "Sherry" and "Big Girls Don't Cry."

Frankie and his wife, Randy, were married for 20 years and had three children before they separated in September of 2004.[10] Before the separation and while hospitalized with heart problems, Frankie purchased a $3.75 million life insurance policy using community funds.[11] Randy was designated as the sole owner and beneficiary.[12] During divorce proceedings, Frankie claimed that, because the policy was purchased with community property funds, he still owned half of the policy's value, which at the time was $365,000.[13] The trial court determined that the policy was community property and ordered Frankie to buy out Randy's half of the current value of the life insurance policy, which at the time of dissolution was $182,500.[14] The Court of Appeal reversed, holding that the insurance policy was wife's separate property.[15]

At the California Supreme Court, Randy argued that despite the fact that community property funds were used to purchase the policy, the policy was her separate property because when Frankie put the policy in her name alone, the policy was transmuted to separate property pursuant to Family Code sections 850 et seq.[16] Randy wound up painting herself into a bit of a corner by arguing transmutation. In order to get around the stringent transmutation requirements in the Family Code, Randy had to argue that Frankie purchasing the life insurance policy was not a transaction between spouses but a transaction between Frankie and a third party—the insurance company issuing the policy.[17] The *Valli* court rejected this argument and instead applied the Family Code section 760 community property presumption to find for Frankie.

Valli discussed at length the longstanding conflicts between the Family Code section 760 community property presumption and the Evidence Code section 662 title presumption, and held that the form of title presumption does not apply in marital dissolution proceedings when it conflicts with the transmutation statutes:

> This reasoning by the Court of Appeal, we also conclude, is erroneous. We need not and do not decide here whether Evidence Code section

> 662's form of title presumption ever applies in marital dissolution proceedings. Assuming for the sake of argument that the title presumption may sometimes apply, it does not apply when it conflicts with the transmutation statutes.[18]

Valli established a bright line rule in holding that, in disputes between living spouses, the Family Code 760 presumption applies. Six years later, in *In re Brace*,[19] the court would revisit *Valli* and extend the application of the Family Code section 760 community property presumption to disputes with third parties.

IV. IN *BRACE*, THE SUPREME COURT EXTENDS *VALLI'S* HOLDING TO JOINT TENANCY PROPERTY IN THE BANKRUPTCY CONTEXT AND HOLDS THAT THE EVIDENCE CODE SECTION 662 FORM OF TITLE PRESUMPTION IS NOT APPLIED WHERE IT CONFLICTS WITH THE FAMILY CODE SECTION 760 COMMUNITY PROPERTY PRESUMPTION

Clifford and Ahn Brace married in 1972.[20] They acquired a residence in Redlands sometime around 1977 or 1978.[21] Later, before Clifford declared bankruptcy, the couple acquired a rental property in San Bernardino.[22] Both properties were purchased with community funds, and the Braces took title to both properties as "husband and wife as joint tenants."[23] Clifford filed for bankruptcy in 2011.[24]

In the bankruptcy proceeding, the Braces contended that form of title presumption set forth in section 662 of the Evidence Code should trump the community property presumption set forth in section 760 of the Family Code and that, as a result, the Braces each owned a 50% interest in the real properties.[25] If the argument advanced by the Braces succeeded, the result would be that each of the Braces owned an undivided 50% interest in the properties and, accordingly, only Clifford's 50% interest would be part of the bankruptcy estate. If the argument advanced by the Braces failed, the properties held in joint tenancy would be deemed community property and the entirety of the Braces' interests would be part of the bankruptcy estate. In 2015, the bankruptcy court rejected the argument advanced by the Braces and ruled in favor of the bankruptcy trustee.[26] This decision was affirmed by the Bankruptcy Appellate Panel.[27] The Braces appealed the decision to the Ninth Circuit, and the Ninth Circuit published an order certifying the question to the California Supreme Court.[28]

The question posed to the Supreme Court was "whether the form of title presumption set forth in Evidence Code section 662 applies to the characterization of property in disputes between a married couple and a bankruptcy trustee when it conflicts with the community property presumption set forth in Family Code section 760."[29]

The Ninth Circuit got their answer in an opinion that spanned over 50 pages and included a survey of California community property law and the Evidence Code presumption from 1850 through the present. The court's extensive historical analysis outlines the progress of California law towards women having equal management powers over the community estate. As, the focus of this article is the impact of the *Brace* holding for trust and estate practitioners, a detailed analysis of the history of community property presumptions is beyond the scope but well worth reading. The authors invite readers interested in the development of California community property law to read the detailed analysis set forth in *Brace*.

As a starting point, the court discussed *Valli's* holding that where the Evidence Code section 662 presumption conflicts with the transmutation statutes set forth in the Family Code, the Family Code section 760 community presumption prevails in divorce proceedings with respect to property purchased with community funds.[30] *Brace* went on to extend the *Valli* analysis to joint tenancies in bankruptcy proceedings:

> We answer the Ninth Circuit's question as follows: Evidence Code section 662 does not apply to property acquired during marriage when it conflicts with Family Code section 760. For joint tenancy property acquired during marriage before 1975, each spouse's interest is presumptively separate in character. For joint tenancy property acquired with community funds on or after January 1, 1975, the property is presumptively community in character.[31]

As detailed in *Brace*, the timing of the acquisition of the property at issue is crucial: as California community property law evolved with various statutory revisions to the Family Code, the legal standards changed. If the property was acquired and transmuted before 1985, the parties can show a transmutation from community property to separate property by oral or written agreement or a common understanding.[32] Under the pre-1985 rules, although a joint tenancy deed is insufficient to effect a transmutation, a court may consider the form of title in determining whether the parties had a common agreement or understanding.[33] For joint tenancy property acquired with community funds and arguably transmuted on or after January 1, 1985, a valid transmutation from community property to separate property requires a written declaration

that expressly states that the character or ownership of the property is being changed.[34] A joint tenancy deed, by itself, does not suffice.[35] The court stated in dicta that the holding in *Brace* "does not alter the well-established default rule that form of title controls at death, nor does it alter the procedures through which a surviving joint tenant may clear title to real property held in joint tenancy."[36] *Brace* suggested or at least left open that one priority of presumptions may apply during the lifetime of the spouses, as between themselves and as between themselves and a third party, and a different priority of presumptions applies when one or both spouses have died.

V. *ESTATE OF WALL* CONFIRMS THAT, IN THE PROBATE CONTEXT, THE EVIDENCE CODE SECTION 662 FORM OF TITLE PRESUMPTION CONTROLS AT LEAST WHEN THE ASSET IS REAL PROPERTY TITLED AS SEPARATE PROPERTY

In *Estate of Wall*, the Third District Court of Appeal held that, in a probate action pertaining to the real property assets of a decedent, the "title presumption" takes priority over the "community property presumption" but the title presumption is not conclusive and may be overcome with clear and convincing evidence, just as the community property presumption may be overcome when it takes priority.[37] And, undue influence presumptions in transactions between spouses also still apply and, as in *Estate of Wall*, can carry the day regardless of title.

Decedent Benny and his wife Cindy were married in 2008.[38] Both had been married before and Benny had children from a previous marriage.[39] Benny believed his prior wife took financial advantage of him and he did not want to make the same mistake again.[40] Accordingly, Benny and Cindy undertook precautionary measures and "did not commingle assets, and they held no joint accounts or assets."[41] In 2010, Benny purchased a home where he and Cindy lived until Benny's death in 2016.[42] This house would become the subject of the probate dispute between Benny's heirs and Cindy.[43] The house was purchased two years into Benny and Cindy's marriage.[44] The $99,205.83 down payment was funded solely with Benny's separate property, and the remaining $134,000 balance of the purchase price was financed via bank mortgage.[45] The house was titled as follows:

> "Benny M. Wall, a married man as his sole and separate property."[46]

During the marriage, Benny made all mortgage payments from his separate property sources, which included pension benefits earned pre-marriage and social security benefits.[47] Even when Benny refinanced the home in 2013, he did not include Cindy on the loan and the deed listed the borrower as "Benny M. Wall, a married man as his sole and separate property."[48] Despite Benny's best efforts to preserve the house's separate property character at seemingly every turn, Cindy presented several facts to support the conclusion that the house was actually a community property asset.[49]

The first fact in Cindy's favor was that Cindy testified that she wrote a check to Benny in 2008 for $3,500 "to use toward the future purchase of a home."[50] She further testified that in 2010, she and Benny decided to buy the home as joint owners, but the joint loan application was denied because she still had a home mortgage from her previous marriage.[51] The implication was that Cindy suggested that Benny apply for the loan himself and add her name to the title later.[52] The mortgage broker confirmed this, testifying that the parties' collective understanding was that both Benny and Cindy were owners.[53]

Second, Cindy contributed to home improvements over the years, paying for improvements, painting, landscaping and installing fixtures.[54] The spouses also split household expenses.[55] Cindy testified that she helped out only because she believed herself to be an owner of the home.[56]

Third, Cindy's son and nephew rented rooms in the house, and she testified that Benny agreed she was entitled to half the rent.[57] Rent checks were made out to Benny, who deposited them in his separate property account, but Cindy testified that this was only for convenience.[58] Ultimately, Cindy testified that Benny's actions led her to believe that she was financially contributing to paying down the mortgage on their home and was an owner of the property.[59]

When Benny died intestate in 2016, Cindy petitioned the probate court to determine that the house was community property, claiming the Family Code section 760 presumption controlled the character of property.[60] Benny's adult children objected to this petition, claiming that the house was Benny's separate property because the Evidence Code section 662 form of title presumption controlled, and that, as a result, they had an intestate entitlement.[61]

The lower court granted Cindy's petition, finding that the community property presumption should govern.[62] The probate court relied on Justice Chin's concurrence in *Valli*, which stated:

> [T]he statutes in the Family Code governing community property, including the section 760 presumption, are sufficient unto themselves ... Future courts resolving disputes over how to characterize the property acquired during the marriage in an action between the spouses should

apply the community property statutes found in the Family Code and not section 662.[63]

The probate court acknowledged the dispute was not between spouses but concluded *Valli* still applied because the children essentially stood in the shoes of decedent. On that basis, the probate court reasoned that the community property presumption of Family Code section 760 still applied.[64]

In reversing the lower court's opinion, *Estate of Wall* revisited both *Valli* and *Brace*. Placing supreme importance on the statement in *Brace* that the holding "does not alter the well-established default rule that form of title controls at death," *Estate of Wall* concluded that the Evidence Code's form of title presumption—not the Family Code's community property presumption—should apply.[65]

In addressing *Valli*, *Estate of Wall* also highlighted that even though the *Valli* court determined that the life insurance policy titled solely in the wife's name, but paid for with community funds, should be considered community property based on Family Code section 760, *Valli* expressly limited its holding to the characterization of property acquired during the marriage in a dissolution action between living spouses.[66]

Turning to the analysis of *Brace*, even though *Brace* expanded the holding of *Valli* by deciding that the community property presumption trumped the form of title presumption in actions involving third parties (and therefore was *not* limited to actions between spouses, as *Valli* may have originally suggested), *Brace* also took care to emphasize that its holding "does not undermine the stability of title in the context of probate," and that its decision "does not alter the well-established default rule that form of title controls at death ...."[67]

Extending *Brace*, *Estate of Wall* concluded that the "probate court's reliance on *Valli* was misplaced," because "Justice Chin's concurrence pertained to actions between spouses," whereas the facts of *Estate of Wall* pertained to a surviving spouse and a decedent's children.[68] The *Wall* court conceded that "the ... reasoning that the children stand in the shoes of the decedent has some intuitive appeal," but noted that it collided "with the *Brace* court's teaching that form of title controls at death." On this basis, the *Wall* court concluded that "the probate court erred in determining Family Code section 760 prevailed over Evidence Code section 662 in this probate action."[69]

Notwithstanding the priority of presumptions applied in *Estate of Wall*, the court ultimately decided in favor of Cindy on grounds unrelated to the application of Family Code section 760 versus Evidence Code section 662.[70] Instead, the court's disposition rested on the fact that Benny's children failed to overcome a presumption of undue influence that arose when Cindy presented substantial evidence of constructive fraud.[71] Thus, the actual outcome in *Estate of Wall* is immaterial to the analysis of the application of the conflicting presumptions in Family Code section 760 and Evidence Code section 662. What is important is what *Estate of Wall* says about the competing presumptions in the probate context. Namely, that **when there is a dispute over the character of property in the probate setting, the property's form of character controls at death**. Had Benny's heirs rebutted Cindy's evidence of constructive fraud, Benny's house would have been considered his separate property because Evidence Code section 662 would govern at death in a probate dispute. Whether this holding will be limited to real property or even real property held in one or both spouses' name is also of interest to practitioners seeking to distinguish or rely on *Estate of Wall*.

VI. THE UNPUBLISHED DECISION OF *BURNS V. FITZGERALD* PROVIDES INSTRUCTIVE ANALYSIS REGARDING WHAT HAPPENS WHEN PROPERTY IS TITLED IN A TRUST

Though *Estate of Wall* established that form of title governs in the probate context, a more recent unpublished decision, *Burns v. Fitzgerald*, indicates that the form of title presumption may not always trump section 760's community property presumption after death.[72] Specifically, when the assets in question are stock certificates (rather than real property, as in *Estate of Wall*) and the assets are in trust, the community property presumption may have priority. Although this is an unpublished decision, the *Burns* court addressed circumstances which are most likely to face practitioners. Specifically, how are courts likely to apply the conflicting presumptions set forth in Family Code section 760 and Evidence Code section 662 when real property is titled in the name of a married couple as trustees of their revocable living trust?

In *Burns*, both spouses were deceased at the time a dispute concerning the character of stock in a company formed during marriage arose. The dispute arose in the context of stale trust funding but the timing of the dispute and the death of both spouses versus the death of only one spouse were not discussed by the court as dispositive facts. In *Burns*, during his marriage to his wife Barbara Fitzgerald, Decedent Terence Fitzgerald formed a company with his business partner.[73] At the death of the first spouse, Terence, the stock certificates were held in the name of both spouses as trustees of the Fitzgeralds' family trust.[74] Though the stock certificates originally issued by the company listed Terence as the sole owner before the stock was placed in trust, and Terence's son argued the original versus the date of death title controlled under Evidence Code section 662,

an abundance of evidence—including a signed declaration, a trust schedule, and oral testimony—suggested that the couple intended the stock to be community property.[75]

After surviving spouse Terence died, Barbara's heirs asserted that the stocks constituted community property, and accordingly, they were entitled to half, while Terrence's heirs contended the company was Terence's separate property and they were entitled to the entirety of the stock. Before *Estate of Wall* was published, the trial court found for Barbara's heirs and characterized the stock certificates as community property in part based on the community property presumption in Family Code section 760.[76] On appeal, Terence's son argued that *Estate of Wall*—which was published shortly after the trial court's decision— should govern and that, accordingly, the Evidence Code's section 662 form of title presumption should apply to the stock certificates which were not titled to husband at the time of his death but originally had been before being funded to the spouses' revocable trust.[77]

The *Burns* court disagreed, finding that: "*Wall* is not instructive here as it involved title in the form of a deed to real property, not stock. . . . Thus, neither *Brace* nor *Wall*, which both address title in the form of a deed to real property, are directly on point."[78] Terence's son also asserted that the stock certificate is "the title document of relevance," akin to the deeds at issue in *Brace* and *Wall*.[79] This too was rejected, as the court found "no authority indicating a stock certificate is a title document under either Evidence Code section 662 or the more general default rule discussed in *Brace* that form of title controls at death. . . . To the contrary, as explained in *Brace*, those title presumptions arose from concerns regarding the ways in which spouses took joint title to real property."[80]

Broadly, the *Burns* court did

> not read the Court's statement in *Brace* regarding the default rule that, for property titled in joint tenancy, form of title controls at death as carving a wide exception to its primary holding that 'Evidence Code section 662 *does not apply* to property acquired during marriage *when it conflicts with Family Code section 760*,' or as suggesting Evidence Code section 662 governs over Family Code section 760 in all probate actions.[81]

Ultimately though, *Brace* is an affirmation of the centrality of the form of title presumption as it applies *at the time of death*, even in the context of titular trust ownership:

> At the time of both Barbara and Terence's deaths, the stock certificate was issued to Terence and Barbara, as co-trustees of the Trust, and not to Terence in his own name. And the Trust . . . unambiguously defined the [stock] as the couple's community property. [Citations.] [Terence's son] contends the transfer of the stock to the Trust is "immaterial," but [he] himself contends the original stock certificate is a title document. Thus even if we were to accept his assertions, which we do not, that title controls at the time of death and the stock certificate is a valid title document, we would conclude the relevant title document establishes that the stock was held by Terence and Barbara as their community property.[82]

Even though it is an unpublished decision, *Burns* demonstrates that there is still uncertainty in how courts are going to apply the conflicting presumptions set forth in Family Code section 760 and Evidence Code section 662. If estate planners and litigators are left wondering how to reckon with the possible consequences of the application of these conflicting presumptions for their clients, they are not alone. It seems that the *Brace* court was aware of the confusion they were trying to clean up and invited the Legislature to intervene:

> The Legislature may wish to examine whether the current statutes are aligned with the expectations of married couples and third parties when spouses use community property to acquire property as joint tenants.[83]

This leaves us with the question of what, if any, legislation could create more predictability for married couples and practitioners who are trying to navigate their way through these conflicting presumptions. Should Evidence Code section 662 be amended to expressly reference and be dominate or subordinate to Family Code section 760 after death of one or both spouses? Or should the Legislature amend Family Code sections 850 et seq. to limit the reach of the transmutation requirements in the context of joint tenancy deeds? It seems that a legislative solution would be a worthwhile pursuit to create more predictability for married couples and practitioners working their way through these issues. The authors do not have specific proposals regarding how to resolve this issue, but we invite our readers to provide input regarding possible legislative solutions.

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01 *In re Marriage of Valli* (2014) 58 Cal.4th 1396.

02 *In re Brace* (2020) 9 Cal.5th 903.

03 *Estate of Wall* (2021) 68 Cal.App.5th 168.

04 22 Cal. Law Revision Com. Rep. (1992) at p. 7.

05 Fam. Code, section 760.

06 Evid. Code, section 662.

07 *In re Marriage of Valli*, *supra*, 58 Cal.4th at pp. 1408–1409 (conc. opn. of Chin, J.).

08 *In re Marriage of Valli*, *supra*, 58 Cal.4that p. 1410.

09 *In re Marriage of Valli*, *supra*, 58 Cal.4th 1396.

10 *In re Marriage of Valli*, *supra*, 58 Cal.4th at p. 1399.

11 *Ibid.*

12 *Ibid.*

13 *Id.* at p. 1400.

14 *Id.* at p. 1399.

15 *Ibid.*

16 *In re Marriage of Valli*, *supra*, 58 Cal.4th at p. 1400.

17 *Id.* at p. 1401.

18 *In re Marriage of Valli*, *supra*, 58 Cal.4th at p. 1406 (citing *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 593).

19 *In re Brace*, *supra*, 9 Cal.5th 903.

20 *In re Brace*, *supra*, 9 Cal.5th at p. 913.

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *In re Brace*, *supra*, 9 Cal.5th at p. 913.

26 *Ibid.*

27 *Ibid.*

28 *Id.* at p. 911.

29 *In re Brace*, *supra*, 9 Cal.5th at p. 911.

30 See Part III, *ante*.

31 *In re Brace*, *supra*, 9 Cal.5th at p. 938 (citations omitted).

32 *In re Brace*, *supra*, 9 Cal.5th at p. 938.

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 *Id.* at p. 934.

37 *Estate of Wall*, *supra*, 68 Cal.App.5th 168.

38 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 170.

39 *Ibid.*

40 *Ibid.*

41 *Ibid.*

42 *Id.* at p. 171.

43 *Id.* at p. 172.

44 *Id.* at p. 171.

45 *Id.* at p. 170.

46 *Ibid.*

47 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 170.

48 *Ibid.*

49 *Id.* at pp. 171-172.

50 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 171.

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 172.

55 *Ibid.*

56 *Ibid.*

57 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 172.

58 *Ibid.*

59 *Ibid.*

60 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 168.

61 *Id.* at p. 170.

62 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 170.

63 *Id.* at p. 173.

64 *Ibid.*

65 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 168.

66 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 174.

67 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 174.

68 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 174.

69 *Ibid.*

70 *Estate of Wall*, *supra*, 68 Cal.App.5th at p. 174.

71 *Ibid.*

72 *Burns v. Fitzgerald* (Cal.Ct.App., Jan. 25, 2022, No. D078564) 2022 WL 213333 (unpub. opn.).

73 *Burns v. Fitzgerald*, *supra*, 2022 WL 213333 at p. 2.

74 *Ibid.*

75 *Ibid.*

76 *Burns v. Fitzgerald*, *supra*, 2022 WL 213333 at p. 3.

77 *Id.* at p. 12.

78 *Burns v. Fitzgerald*, *supra*, 2022 WL 213333 at pp. 12, 14.

79 *Id.* at p. 14.

80 *Ibid.*

81 *Burns v. Fitzgerald*, *supra*, 2022 WL 213333 at p. 14.

82 *Burns v. Fitzgerald*, *supra*, 2022 WL 213333 at p. 14.

83 *In re Brace*, *supra*, 9 Cal.5th at p. 912.