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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

IN RE:)	CASE NUMBER: BP 168725
)	
ADVANCE HEALTH CARE DIRECTIVE OF SUMNER M. REDSTONE)	TENTATIVE RULING ON MOTION TO DISMISS PETITION
)	
)	Date: May 9, 2016
)	Time: 8:30 a.m.
)	Dept.: 79

At the above-referenced date and time, the renewed motion of Sumner M. Redstone (“Redstone”) to dismiss this case, pursuant to Probate Code sec. 4768, came on for hearing, during the trial, before the undersigned. Hueston Hennigan, by Robert N. Klieger, as well as Loeb & Loeb, by Gabrielle A. Vidal, appeared on behalf of Redstone. Greenberg, Glusker, et al., by Pierce O’Donnell, appeared on behalf of Manuela Herzer.

The Court has considered the evidence discussed below, as well as the matters previously made part of the file of this case, reviewed the motion and response to the motion, both received May 8, 2016, and heard oral argument of counsel.

1 **INTRODUCTION**

2

3 Towards the end of the first day of trial on May 6, 2016, after hearing two of *Herzer's*

4 witnesses, Redstone and Dr. Read, Redstone brought this motion to dismiss the petition on the

5 basis that the petition was no longer necessary in light of the testimony. As discussed below, this

6 testimony does in fact completely alter this case.

7

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9 **STATEMENT OF KEY TESTIMONY**

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11 Redstone, almost ninety three years of age, from whom the Court had not previously heard

12 in any manner, testified at trial, by way of a video transcript of his deposition, pursuant to an

13 order filed May 2, 2016, essentially as follows:

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- 15
- 16 - “Manuela is a fucking bitch.” (He made this statement several times.)
 - 17 - She used to live with him for a year and he kicked her out in 2015. She helped him with
 - 18 his health care.
 - 19 - Herzer had stolen money from him.
 - 20 - He removed her from his home because “she lied to me.”
 - 21 - She lied “about Terry’s availability and Sydney’s letter.”
 - 22 - He tried to use the board of letters in front of him (which was not easy for him in view of
 - 23 his difficulty in moving his arm) to spell out “LIE.”
 - 24 - He had fallen in love with Manuela but did not still love her.
 - 25 - He has been seeing his family lately and is satisfied with the nursing care he is receiving.
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- 1 - "I hate her. I want Manuela out of my life."
- 2 - He does not want Manuela to make health care decisions for him.
- 3 - He wants "Shar...Shari" to make his health care decisions for him if he is unable to do so
- 4 himself.

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7 Dr. Stephen Read testified to the following key point:

- 8
9 - It would be "very difficult" for Herzer to now act as Redstone's agent. If a relationship
- 10 between a principal and agent is severed, and the principal does not trust the agent, it
- 11 would be rational for the person not to use that person as agent. The principal should
- 12 have some trust in the agent.
- 13

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15 **APPLICABLE LAW**

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17 Probate Code sec. 4650 states in relevant part: "The Legislature finds the following: (a) In

18 recognition of the dignity and privacy a person has a right to expect, the law recognizes that an

19 adult has the fundamental right to control the decisions relating to his or her own health care..."

20
21 Probate Code sec. 4657 states in relevant part: "A patient is presumed to have the capacity

22 to give or revoke an advance health care directive, and to designate or disqualify a surrogate..."

23
24 Probate Code sec. 4750(a) states: "An advance health care directive is effective and

25 exercisable free of judicial intervention."

1 Probate Code sec. 4697(a) states: "If after executing a power of attorney for health care the
2 principal's marriage to the agent is dissolved or annulled, the principal's designation of the
3 former spouse as an agent to make health care decisions for the principal is revoked."

4 Probate Code sec. 4768 states in relevant part: "The court may dismiss a petition if it
5 appears that the proceeding is not reasonably necessary for the protection of the interests of the
6 patient..."
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8 9 **DISCUSSION**

10 11 **1. THE PRIOR DISMISSAL MOTION**

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14 Initially, the Court is in a considerably different position now than when it heard this
15 motion on February 29, 2016: First, the Court did not grant that motion before where there were
16 disputed material facts requiring an evidentiary hearing. Now, by contrast, the Court is holding
17 an evidentiary hearing. The Court has heard from the two key witnesses whom Herzer herself
18 wanted the Court to hear from – Redstone and her expert, Dr. Read. Second, as the Court stated
19 at the hearing on the earlier motion to dismiss, it had no testimony from Redstone. For this
20 reason, at that time, the Court anticipated the trial would likely focus on the competing expert
21 opinions. The Court has now, however, heard from Redstone – who has stated in very firm terms
22 what he wants. Without that testimony previously, the Court was not in a position to make a
23 factual determination concerning the conflicting accounts as to his capacity.
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1 For these reasons, the Court denied the motion, *without prejudice*, and specifically noted it
2 might be brought again at trial.¹ Therefore, though at the hearing counsel asked the Court to
3 “reconsider” its decision not to dismiss this petition, the Court treats the request as a renewed
4 motion. Accordingly, the Court’s prior decision does not now bar it from deciding the motion as
5 now framed.
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8 **2. RELEVANCE OF TRIAL TESTIMONY**

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10 The Court has heard from the one key witness Herzer herself insisted from the outset of
11 this case that the Court hear from: Redstone. Redstone had not otherwise intended to appear at
12 trial in view of the medical risks and difficulties involved in doing so. However, Redstone’s
13 testimony has ultimately defeated her case. Though Herzer may have believed that Redstone
14 would not be able to say anything, or be able to understand the questions, Redstone did both:
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16 In brief but compelling testimony, Redstone overcame his very significant physical
17 ailments, including inability to speak clearly and what looked like much pain in swallowing, to
18 do his best to recount what is set forth above. Though indisputably the Court relied on the
19 interpreter to understand what Redstone said, the Court could still see him enunciating words
20 that seemed consistent with what the interpreter stated.² The Court was able to see the strong
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24 ¹ See February 29, 2016 ruling, p. 6, fn. 5. As also then stated, one advantage of bringing a
25 motion at trial is that it allows the Court to weigh the credibility of the evidence – which is not
26 possible when just reviewing declarations before trial.

27 ² The interpreter, Anne Lefton, was sworn in as such prior to the start of the deposition. The
28 Court has been offered no proffer of evidence to suggest that she did not follow her oath or that
she did not know how to interpret Redstone. The Court also did not notice any discrepancy, to
the extent it could, between what the interpreter said and what it appeared Redstone was trying to
say.

1 conviction he had about what he said. He seemed very alert. He was composed and did not
2 appear angry. The Court does not believe Redstone had any confusion about what he was asked,
3 about his wishes or the reasons for his wishes. His lawyer asked him what he wanted the judge to
4 do and the Court heard what he wanted – for his daughter Shari Redstone (“Shari”) to serve as
5 his agent.³

6 As discussed below, there are no legal grounds not to follow his stated wishes.

7
8 Herzer’s other witness, Dr. Read, and her only expert, did not testify to anything which
9 would change the Court’s analysis. Dr. Read’s report of February 4, 2016 was that Redstone’s
10 level of comprehension was just “*somewhat* impaired.” He agreed with Drs. Spar and Gold –
11 who also believe Redstone has not lost his ability to comprehend matters. Specifically, Dr. Read
12 stated in his report on this issue: “Redstone seemed essentially to be able to understand my
13 questions such that many responses were meaningful.” Significantly, Dr. Read also stated at trial
14 that Redstone remembered all of the names of his children, grandchildren and great
15 grandchildren. Dr. Read also stated though that even if Redstone understood the questions at his
16 deposition, or understood what he did on October 16, he did *not* have an understanding of their
17 consequences.
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20 However, Redstone made crystal clear at his deposition that the reason he did not want
21 Herzer as his agent was that he had kicked her out of his home. He did not trust her because he
22 believed she had lied to him and stolen money from him. He also recalled what she had lied to
23 him about. The Court can think of no more rational reason to change one’s agent. Further,
24 Redstone understood what the significance would be of his having kicked her out where he knew
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28 ³ For ease of reference, and without intending any disrespect, the Court will use Ms. Redstone’s
first name herein to differentiate her from her father.

1 that she had been helping him with medical issues and that she would no longer be his health
2 care agent. Similarly, Dr. Read testified Redstone understood the risks with his medical
3 conditions, including his feeding tube, and that he would need a health care agent to make
4 decisions for him if he were incapacitated.

5 Redstone had also not forgotten what Herzer meant to him: he remembered that he had
6 loved her and she had been living with him. Though Herzer states she and Redstone have known
7 each other for some seventeen years, as Redstone noted, they have only lived together for a year
8 or so. Redstone's testimony, though strong (and apparently this is consistent with how he has
9 always been), it was not out of control anger that overshadowed his other thoughts – as Dr. Read
10 indicated might happen. Likewise, if as Herzer argues he was just brainwashed by Shari or those
11 allegedly working with her, he would not have acknowledged his vulnerability by admitting that
12 he had fallen in love with Herzer when shown a photograph of them together he remembered
13 was at the Paramount lot.
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15
16 Herzer argues that the Court should not take what Redstone stated at face value in the
17 same way just because a person says in a will what he or she wants that this would not be
18 dispositive of lack of capacity or undue influence in such context. However, seeing Redstone
19 speak was a far different experience than when a court, after a person, passes reviews what that
20 person stated in a will – where that court then would have no insight from the document as to
21 what the person intended from the testator himself.
22

23 Finally, Herzer argues that because Redstone appeared to answer questions of his counsel
24 more easily than some of those of Herzer's counsel, Redstone was coached. However, Redstone
25 did answer the questions of Herzer's counsel – about which he could not have been coached.
26 Moreover, it is not uncommon, and advisable, for a witness to think about a question from an
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1 attorney for an opposing side before answering. That Redstone did what most people would do
2 cannot be fairly used against him. Furthermore, Redstone likely knew his own attorney, as
3 opposed to Herzer's lawyer, and hence would have been more comfortable answering her
4 questions.

7 3. LEVEL OF REQUIRED CAPACITY

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9 The issue to be decided that Redstone needed to have the ability to understand its nature
10 and consequences, under Probate Code sec. 4609 (and Probate Code sec. 812 by reference), is
11 solely as to which agent he wanted; not a decision as to what care he needed. (The decision about
12 his care would be something that his physician or the nursing staff would assist him with.)
13 However, the law is unclear what level of capacity is required for this purpose.

14
15 Herzer argues that a high level of contractual level of capacity is required to change an
16 agent on an advanced health care directive. Redstone argues, by contrast, that the correct level
17 would be the capacity to make a decision to marry or divorce – which is at the lowest level of
18 capacity on the sliding scale of capacity relating to the act in question, citing to *Marriage of*
19 *Greenway* (2013) 217 Cal.App.4th 628. (See also *Anderson v. Hunt* (2011) 196 Cal.App.4th 722)
20 In *Greenway*, the Court does not hold that changing an advanced health care directive requires
21 contractual capacity and merely states in *dicta* that the power to contract includes powers of
22 attorney. *Id.*, 217 Cal.App.4th at 642.

23
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25 Where the Court is not now making a finding as to capacity, however, the Court does not
26 need to decide this question.

1 Solely for purposes of deciding whether it is reasonably necessary to continue with this
2 proceeding, the analogy to marrying or divorce, at the lowest level of capacity, makes sense
3 where similarly the issue here boils down to one of trusting another person (and not of any legal
4 obligations between Redstone and Herzer).⁴ Whatever the reasons may be for loss of trust, even
5 if those reasons are wrong, the underlying issue for Redstone, as set forth above, is that he does
6 not now trust Herzer. While Redstone acknowledged that he had loved Herzer, he no longer did
7 so. In the same way when people have “irreconcilable differences” and separate, the issue is not
8 who is right or wrong but that one person chooses to no longer live with the other person. For
9 this reason, courts do not now attempt to determine who, if anyone, is “at fault” in a dissolution
10 of marriage. The same rationale is applicable here. Whether Redstone ultimately was wrong
11 about what Herzer did or did not do no longer matters. The issue is he has lost his trust in her.
12 (See also *Greenway, supra*, “it is well settled the decision to end a marriage is irretrievably
13 broken does not need to be based on objective facts.” *Id.*, 217 Cal.App.4th at 651)
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16 Given this predicament, Dr. Read had to rightfully acknowledge that Herzer could not now
17 serve as Redstone’s agent.
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19 20 **4. ANY NEED TO HEAR THE REST OF THE EVIDENCE**

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22 This Court sees no overriding reason to put Redstone – who is the only person that this
23 case is ultimately concerned about (or family members) - through the significant time and
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26 ⁴ In this regard, it should be noted that for purposes of testamentary capacity, at a higher level of
27 capacity than marital capacity, “old age, feebleness, forgetfulness... failure to recognize old
28 friends or relatives, physical disability, absent-mindedness and mental confusion do not furnish
grounds for holding that a testator lacked testamentary capacity.” *Greenway, supra*, 217
Cal.App.4th at 642

1 expense, at high emotional cost, particularly at this precarious stage in his life, as well as cause
2 undue infringement on his private and personal matters, where this proceeding would not make
3 any difference for purposes of the very limited issue at stake in this case as to who he has named
4 as his health care agent.⁵ Such evidence would not make a difference, again, not just because of
5 Redstone's testimony, as Herzer argues the Court would be relying upon, but also based upon the
6 testimony of her expert that Herzer could not serve as his agent at this point.
7

8 Moreover, to require the parties to address whether Redstone was or was not under a
9 delusion about various matters – which is the primary reason Dr. Read has to differentiate his
10 opinion from that of Dr. Spar - is inconsistent with Probate Code sec. 4697(a): If an agent is the
11 spouse of the patient, and those persons divorce, and the directive is thereby automatically
12 revoked, the Court does not see any reason why a patient who has *no* legal duties to his agent
13 should have to go through a far more complicated process than persons who do have legal duties
14 to one another. There is no dispute, after all, that Redstone had a right to remove Herzer from his
15 house on October 12, 2015.
16

17 Under these circumstances, where Herzer has no other expert testimony to offer, the Court
18 does not see any reason it needs to hear any further evidence. There is nothing more that Herzer
19 could put on that would be “reasonably necessary for the interest of the patient” *for purposes of*
20 *Probate Code sec. 4768.*
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25 ⁵ Importantly, the issue on this petition is not Redstone's medical care – about which there is no
26 controversy he is receiving the same top quality attention he received when Herzer was living
27 with Redstone – or even who would be the *best* agent (as Herzer asserts) – only did Redstone
28 understand what he was doing in changing his agent or if he was unduly influenced to do so.
Similarly, this Court is definitely not the party which decides whether a directive is activated – as
the response to this motion contends. Under all circumstances, this would be for Dr. Gold to
decide.

1 Herzer has had “her day in court” even if coincidentally here that coincided with one day –
2 including testimony of Redstone that this Court ultimately believed it needed to order, on her
3 insistence, given his centrality to the issues to be decided at trial.
4

5 **5. THE SPECIFIC RULING THE COURT IS MAKING**

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7
8 In now granting this motion, the Court is *not* making any ultimate finding related to
9 Redstone’s mental capacity, one way or another, or whether he was unduly influenced in
10 revoking the September directive.⁶ Similarly, the Court is not making any judgment calls about
11 Herzer or Shari’s credibility or motives at this time where the Court has not heard all the
12 evidence it would need to make such decisions.
13

14 The Court recognizes that Herzer would put on additional witnesses to attempt to prove
15 these contentions and seek to rebut the presumption of capacity.⁷ There is no requirement,
16 however, as there is on a motion for non-suit, for example, to wait until Herzer has finished
17 putting on her case to decide this motion under Probate Code sec. 4768. Indeed, it would make
18 no sense for this motion to only be able to be brought at the end of the case. If that were true,
19 there would be no reason for the statute and the Court would just have to decide the issues.
20 Moreover, Herzer made no argument when this motion was made before that it was premature to
21 do so *before trial*. If the motion was not premature then it cannot be premature now. Finally, the
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25 ⁶ In order that there be no confusion, the Court is not in this case addressing Redstone’s mental
26 capacity for any purposes other than with respect to the health care directive.

27 ⁷ Therefore, this is not an issue of the Court not keeping an open mind – as Herzer suggests. The
28 Court is not now deciding these issues at all. Similarly, the Court purposefully did not make any
ruling on May 6 on the motion to dismiss this case without first giving the parties an opportunity
to address the issue and itself taking time, like a juror, to carefully consider what to decide.

1 language of the statute – in stating “not reasonably necessary” - infers that the motion would be
2 heard before the case was concluded.

3 The Court is finding only that the “proceeding is not reasonably necessary to protect the
4 interests of the patient.” Specifically, Herzer cannot be restored as his agent and Redstone is
5 satisfied with the care he is receiving and to be with his family.
6

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8 **6. LIMITED FOCUS OF CASE AND INABILITY TO FASHION REMEDY**

9

10 Herzer argues that Redstone’s wish that she not now serve as his agent, and the opinion
11 of her expert, Dr. Read, that her serving as agent would be “very difficult,” should not put a stop
12 to this case. She argues that the Court may fashion some other solution should she prove lack of
13 capacity or undue influence. However, the nature of this proceeding is limited to the petition
14 Herzer filed; i.e., only for an order finding the October directive invalid either for lack of
15 capacity or because of undue influence.⁸ If Herzer had wanted the Court to make an order that
16 put someone other than her in charge of Redstone’s care, or be able to have some discretion to
17 create a solution that was in Redstone’s best interests, she could have filed a petition for
18 conservatorship of his person and sought such an order. For whatever reason, she did not do so.
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20 This Court has no power in this limited scope case to put someone other than Herzer in charge of
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26 ⁸ In a similar vein, Herzer argues that the Court needs to hear from Keryn Redstone before
27 dismissing the case. Though the Court anticipated Herzer would call her as a witness, Keryn
28 Redstone is not a party to this case and has no right to be heard in this case. It was precisely out
of a concern for this sort of unanticipated issue that the Court denied her last minute request to
intervene. Should she wish to be heard relating to her grandfather’s care, she can consult with her
own attorneys.

1 Redstone's care – in the event the Court were to have found the September directive invalid for
2 one of the claimed reasons.

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4 **7. LIKELY WEAKNESS OF UNDERLYING CLAIMS**

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Though the Court is not determining if Redstone lacked capacity, the Court does note the following in addressing Dr. Read's concern that Redstone might not appreciate the consequences of his deposition testimony where it is also not in dispute that Redstone suffers from either mild or moderate dementia:

1. Herzer did not allege that in the September 3, 2015 directive wherein Redstone named her as the primary agent that he then lacked capacity – this was only a month before. There was no evidence that Redstone's mental acuity deteriorated in that month. Therefore, the claim of lack of capacity would likely be a hard one on which to prevail.
2. Dr. Read stated himself it was not irrational for Redstone to choose to elevate Phillippe Dauman from the alternate agent that he was under the September 3 directive to his primary agent in the October 16 directive replacing Herzer. It was undisputed that Dauman is and has been Redstone's long term trusted advisor and business colleague.
3. Herzer had never in fact acted as his agent pursuant to the September 3 directive. As of this date, no directive has been activated by the person designated in the directives to make the decision as to whether it should be activated - his primary physician, Dr. Gold. (See also Probate Code sec. 4658) In turn, the medical team in place at the house was apparently installed before Herzer moved in and hence was not something for which she

1 could claim all credit. Therefore, Redstone would have little reason to believe that
2 Herzer's role in his life was so essential.

- 3 4. Even if Redstone and Shari have had disagreements about money or business over the
4 years, as have many families, and even if they were estranged for periods for whatever
5 reason, it is without controversy that the bond of love between a parent and child is a hard
6 one to break completely. Particularly when vulnerable, as it is agreed Redstone now is, it
7 is natural that he would reach out to his daughter, particularly in the absence of a spouse,
8 as someone he could trust and for them to attempt to reconcile. Redstone states that he is
9 happy to be with his family and Shari has stated that they have reconciled. (Subsequently,
10 on April 4, 2016, a further directive was executed naming Shari as his primary agent.)⁹
11
12 5. Several of Dr. Read's critiques of Redstone's mental acuity related to matters not directly
13 impacting his comprehension of choice of agent – such as mathematical skills. Similarly,
14 Dr. Read's expectations of Redstone seemed a bit unrealistic in terms of what could be
15 reasonably expected of somebody who is almost ninety three. No person that age is likely
16 going to have all the mental faculties expected of younger people.
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22 ⁹ Herzer argues that the Court cannot allow Shari to serve as Redstone's agent. However, Herzer
23 never sought to join Shari as a party to this case and therefore where she is not a party it is
24 unclear if the Court would have the power to prevent her taking on that duty in any event. The
25 issue of whether she is a necessary party has never been raised. At this point, she is just a witness
26 for purposes of whether she unduly influenced her father in executing the October, 2015
27 directive. The Court understands Herzer's petition to have been only amended to address the
28 April, 2016 directive (wherein Shari is named as primary agent) inasmuch as that might be
likewise invalidated if the October, 2015 directive was invalidated.

Moreover, it was already agreed that the issue concerning the time when Redstone was in
the hospital in 2014, and what Shari and or Herzer did or said at that time relevant to whether
Shari should serve as agent, would not be a part of the evidence to be heard even if this trial did
go forward.

1 6. Dr. Read agreed that he could find little to fault in Dr. James Spar's letter stating it was
2 his opinion that on October 16 Redstone had the capacity to and did understand the
3 consequences of what he was doing, and that he made those decisions himself free of
4 undue influence. Dr. Read also acknowledged that Dr. Spar was in a better position than
5 he was to assess Redstone in view of Dr. Spar having met Redstone before and that he
6 was present at the time the directive was revoked. Dr. Read also acknowledged that
7 reasonable minds can differ about capacity and that he respected the expertise of his
8 colleague, Dr. Spar.

10 7. Further, the two matters about which Dr. Spar stated in his letter dated October 23, 2015
11 that Redstone told him were the reasons he was signing the documents on October 16 as
12 to Herzer -- namely, that Herzer lied to him about Terry Holbrook and the Holland letter -
13 were *not* matters about which Dr. Read performed any investigation as to whether they
14 were delusions on Redstone's part. Therefore, other than what Herzer told him, Dr. Read
15 does not provide any reason not to believe what Redstone told Dr. Spar when the
16 directive was revoked -- which exact testimony Redstone repeated at his deposition.¹⁰

19 Finally, as far as whether the Court still needs to hear further concerning undue influence,
20 the parties stipulated already at trial that Redstone was "susceptible" to undue influence. Hence,
21 the Court does not need to hear anything further on this part of the issue. As far as whether Shari,
22 or persons at her behest, in fact unduly influenced Redstone to revoke the directive, again is
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27 ¹⁰ At trial, Herzer introduced Ex. 305 -- a chart that was intended to show the reasons Dr. Read
28 supposedly believed Redstone was deluded. However, for whatever reason, these ostensible
reasons why Redstone was deluded did not include the two reasons Redstone identified for why
he removed Herzer from the directive.

1 immaterial where there is the same overriding issue now that Redstone does not trust Herzer and
2 that it no longer makes sense for her to serve in such capacity.

3 Moreover, if Shari had been able to unduly influence her father to revoke the directive, for
4 sake of argument, presumably she would have made herself his agent. In fact, however, it is
5 undisputed that on October 6, 2015 Redstone chose *Dauman* as his primary agent and another
6 business colleague, *Thomas Dooley*, as the alternate agent – not Shari. It is undisputed that
7 Redstone had not by then reconciled with Shari. Further, it is unclear how Shari would “profit”
8 from Redstone revoking the health care directive. For these reasons, the undue influence claim
9 makes little sense.¹¹ The Court does not see how Herzer could prevail on this theory so as to
10 make it necessary to keep this case going to its conclusion.
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14 CONCLUSION

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16 Herzer asks this Court to exercise its powers to look after Redstone. The Probate Code
17 makes clear, however, that medical decisions are for people themselves to make and that they
18 should be able to do so, in private and without interference, in consultation with their physician.
19

20 Ordinarily, patients should not have to go through litigation over such matters if interested
21 persons disagree about a person’s medical care. Advanced health care directives are intended to
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24 ¹¹ The Court does not find that Shari was acting for improper purposes from the testimony of the
25 nurse, Joseph Octiviano, that he and Shari apparently had an agreement that he would report to
26 her any *abuse* he saw of her father in the home, notwithstanding his agreement with Redstone
27 not to disclose what he saw to anyone and his ethical duties as a nurse. It appears Shari felt the
28 need to go to considerable lengths to find out if Herzer or others were stealing from her father –
which Redstone now states was the case at least as to Herzer. Presumably, if Herzer was looking
out for Redstone’s best interests, she would have no reason not to allow Shari to have an easier
way of finding out what was happening. As indicated above, however, the Court reaches no final
conclusions on these issues.

1 be effective without judicial involvement. Courts are ill equipped to analyze medical issues and
2 it is an indignity for patients to have to publicly disclose their ailments in court unless there is
3 some good cause for it.

4 Here, there is no good cause for further judicial involvement where the Court has now
5 heard directly from Redstone that he has lost trust in Herzer, does not want her in his life and
6 instead wants his daughter Shari to look after him if necessary. Redstone is presumed to have
7 capacity and Herzer's expert did not establish that he lacked capacity to change his agent.
8 Redstone is free to make this decision for whatever reason, even if for a poorly thought out or
9 erroneous reason. This Court has no business interfering with his prerogatives. Furthermore,
10 Herzer's own witness, Dr. Read, has stated that where there is a lack of trust, it would not make
11 sense for Herzer to serve as Redstone's agent. In addition, Redstone has stated he is satisfied
12 with the care he is receiving and wants Shari to be his agent (who has since become his agent –
13 apparently due to Dauman's unavailability). Therefore, this proceeding is "not reasonably
14 necessary for protecting the interests of the patient."
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17 For these reasons, this motion is granted. Herzer's petition is dismissed, with prejudice.
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20 IT IS SO ORDERED.

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22 **DATED:** May __, 2016

23 _____
24 DAVID J. COWAN
25 Judge of the Superior Court
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