60 Cal.App.5th 1115 (2021)

HILJA KEADING et al., Plaintiffs and Respondents,

v.

KENTON KEADING, Defendant and Appellant.

KENTON KEADING, Plaintiff and Appellant,

v.

HILJA KEADING, Defendant and Respondent.

Nos. A151468, A153075, A152034.

Court of Appeals of California, First District, Division Three.

February 18, 2021.

Appeal from the Superior Court of Contra Costa County, Superior Court Nos. MSP1600402, MSC1602351. John H. Sugiyama, Judge.

Kenton Keading, pro. per., for Defendant and Appellant.

Hartog, Baer & Hand, David W. Baer, Andrew R. Verriere and Jonna M. Thomas for Plaintiffs and Respondents.

1118 *1118 **[CERTIFIED FOR PARTIAL PUBLICATION[*]]**

OPINION

FUJISAKI, Acting P.J.—

In these three consolidated appeals, Kenton Keading, appearing in propia persona, appeals from a judgment and orders in related actions arising from claims asserted by his sister, Hilja Keading, that he committed elder abuse against their deceased father.

The first two appeals stem from Hilja's elder abuse litigation against Kenton.[1] In the first, Kenton appeals from the judgment which found him liable for elder financial abuse through undue influence and ordered
1119 him to pay approximately $1.5 million in damages. In the second, Kenton appeals a *1119 prejudgment right to attach order which attached Kenton's interest in a property in partial satisfaction of the anticipated damages in the elder abuse litigation. The third appeal arises from the libel complaint Kenton filed against Hilja for an e-mail she wrote stating Kenton had committed elder abuse. Kenton appeals the trial court's order granting Hilja's motion to strike the complaint as a strategic lawsuit against public participation (SLAPP) and dismissing the action.

In the published portion of this opinion, we hold that substantial evidence supports the trial court's finding of elder financial abuse (pt. A.1.b. of Discussion, *post*) and conclude that Probate Code section 859 authorizes an award of double damages for the commission of elder financial abuse without a separate finding of bad faith (pt. A.2.a. of Discussion, *post*) in his appeal of the elder abuse judgment. In the

unpublished portion of the opinion, we reject Kenton's other challenges to the elder abuse judgment and his appeals of the prejudgment attachment order and dismissal of his libel action.

FACTUAL AND PROCEDURAL BACKGROUND

Many of the following facts are taken from the trial court's posttrial statement of decision in the elder abuse action.

Lucille and Lewis Keading, wife and husband, died within a few months of each other in September 2015 and January 2016, respectively. Decades before their deaths, they created a family trust for the benefit of their two children, Kenton and Hilja, who were to split the trust assets equally after their parents' deaths. The main trust asset was the family residence on 60, 50, and 21 Laurel Lane in El Sobrante (the Property).

During their lifetimes, Lucille and Lewis provided financial assistance to Kenton but not to Hilja. This was in part to help Kenton after he was imprisoned for nine years following felony convictions. Also, for many years, Hilja and her parents were estranged from each other as a result of the parents' inability to accept Hilja's sexual orientation.

In 2011, Lucille and Lewis amended the trust to give Hilja a specific gift (an investment account) and made Kenton the residual beneficiary of the remainder of the trust. By fall 2014, the parents and Hilja had reconciled, and they began to see each other more. Nonetheless, in February 2015, when the parents again amended the trust, they essentially restated the terms of the 2011 amendment that left Kenton all trust assets but for the investment account left to Hilja. At the same time, Lewis granted a power of attorney to Kenton.

1120 *1120 In June 2015, Lucille was diagnosed with a brain tumor. Hilja, who lived in Southern California, returned to her parents' home in Northern California to spend time with and care for them, clean their house, and organize their finances and medical care. Kenton was living overseas around this time but once Lucille fell ill, he also returned to Northern California and frequently visited his parents, sometimes staying overnight. Lucille died on September 10, 2015.

Following Lucille's death, Lewis's health began to deteriorate. He required semi-weekly kidney dialysis treatment and ongoing in-home care. Hilja stayed on to help her father. Kenton, too, helped and generally stayed overnight with his father for the night shift. Connie Warner, a long-time family friend, and Kim Terry, a home health care agency worker, also assisted with Lewis's care.

During this time, it appears that Lewis's attitude towards Hilja had changed. He executed a durable power of attorney designating Hilja his attorney-in-fact in late September 2015. Around the same time, he contacted his estate planning attorney, Peter Sproul, about undoing the earlier amendment and amending the trust to equalize the assets distributed to his children after his death. Sproul testified that he spoke with Lewis on the phone and met with him in person to discuss this change.

Lewis executed an "`equalizing amendment'" to his trust in early October 2015. The amendment directed that trust assets be divided to result in a "`net equalization'" between the siblings, meaning each one would receive the same net amount from the trust as a whole. To account for assets previously distributed, the amendment specifically noted that Lucille and Lewis had previously lent Kenton $75,000. Sproul testified that after he explained the details to Lewis, Lewis signed the amendment in front of him. Sproul further explained that he typically makes efforts to determine if a client has capacity or is subject to undue

influence. Sproul "saw no indication Lewis lacked capacity or was under influence," and he perceived that Lewis "understood, was very sharp" and "knew exactly what he was doing."

On December 8, 2015, Hilja returned to Southern California for a week. While she was away, Kenton discovered an e-mail she sent to an attorney friend stating she was looking for a lawyer to pursue Kenton for claimed elder abuse. In the e-mail, she wrote, "I need the best bad-ass, take-no-prisoner Probate Attorney that I can find who is willing to litigate if necessary, and will not put up with the antics of my brother, a homophobic felon who has manipulated and engaged in every literal category of elder abuse with his parents.... I need someone to represent me on every level so I do not have to interact with my brother in any way. He is dangerous to me." *1121 Kenton promptly shared the e-mail with Lewis, who was upset by it. According to Kenton, upon reading the e-mail, Lewis stated, "`I have misjudged your sister'" and "`I have made a big mistake,'" and he wished to change the disposition of his estate.

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On December 12, 2015, while Hilja was still away, Kenton took Lewis to a United Parcel Service (UPS) Store, where Lewis executed a new power of attorney designating Kenton as attorney-in-fact, which was notarized. When Hilja returned to Northern California days later, she and her father discussed the e-mail Kenton had discovered. According to Hilja, Lewis told her "`it didn't change anything.'" Even so, Lewis executed a typed declaration on December 19, 2015, stating he was not the victim of elder abuse. In the declaration, Lewis asserted, "My son, Kenton Keading, has not committed any acts of abuse, either physical or mental to myself.... On the contrary, Kenton has always been actively supporting and caring of myself and his mother." The document set forth the statutory definition of "elder abuse" under the Penal Code, after which Lewis continued: "It is my firm belief that my son, Kenton Keading, never willfully or otherwise, committed any acts or omissions that constitute `elder abuse' as defined above." At trial, Kenton explained that Lewis signed the document after Kenton shared his fear that Hilja would fabricate criminal elder abuse charges against him that could send him back to jail. He said the general content of the letter was Lewis's idea, but Kenton had included the statutory reference.

Lewis's execution of the declaration was witnessed by home health care worker Terry and neighbor Scott Maskell, who both signed the document as witnesses and testified at trial. Terry stated there was a blank cover sheet over the document when she signed it. She also recalled that Lewis said he wrote the document, though she had seen Kenton typing the document on the computer and making various changes to it before presenting the document to Lewis without explaining what it was. She further added that Lewis was declining at the time. Maskell similarly stated that the document he saw Lewis sign was covered, so Lewis could not see what he was signing. According to Maskell, Lewis said he wrote the document and confirmed that it concerned his estate and that his estate was in order. It was Maskell's impression that Lewis seemed to know what he was doing.

Around Christmas, Lewis made the decision to discontinue dialysis.

On December 30, 2015, acting under the recently conferred power of attorney, Kenton executed a grant deed transferring the Property out of the trust and to himself and Lewis in joint tenancy with right of survivorship. He did not show Hilja the deed before Lewis's death.

*1122 Several witnesses described further deterioration to Lewis's health in the final days of 2015 once he had stopped dialysis. Terry stated she worked on New Year's Eve, and Lewis was very sick that day and could not eat. The next day, New Year's Day, he got out of bed and ate but did not get up much after that.

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It was also on New Year's Day, or January 1, 2016, that Lewis transferred to Kenton nearly 99,678 shares of stock in Freedom Motors, which had been purchased years earlier for $1 per share. Lewis's signature on

the transfer document is barely legible. Warner, the family friend helping with Lewis's care, was present when Lewis executed the transfer. At trial, she testified that Lewis was very sick, could not raise his head, and barely had strength to physically sign. Kenton admitted he did not show Hilja the stock transfer before Lewis died.

On January 2, 2016, acting again under the power of attorney, Kenton executed another trust amendment that removed Hilja as successor trustee.

Lewis died on January 4, 2016. Four days later, Kenton recorded the grant deed which had transferred the Property from the trust to him and his father as joint tenants.

After Hilja left the Property on January 9, 2016, Kenton held possession of the Property. In late February 2016, he rented out the house while he went abroad. He also sold Lewis's car for $8,500, which he kept.

On March 16, 2016, after discovering that Kenton had represented himself as their father's attorney in fact and had executed a grant deed transferring the Property from the family trust to himself, Hilja petitioned the trial court ex parte to suspend and remove Kenton as trustee of the family trust, appoint a successor trustee, and confirm trust ownership of the Property. Through this petition, which functioned as the operative pleading in the litigation, Hilja sought to set aside the December 30, 2015 grant deed, recover any assets Kenton attempted to transfer from the trust to himself, and hold Kenton liable for damages resulting from elder abuse, fraud, conversion, and intentional interference with an expected inheritance.

That same day, the trial court suspended Kenton as trustee. It appointed Elizabeth Soloway, a professional fiduciary, as the trustee. The court declared the grant deed invalid on its face and ordered Kenton to account for his actions as attorney in fact and as a trustee over the previous year. It set a further hearing on the petition.

In May 2016, Kenton, represented by counsel, filed an answer to Hilja's petition setting forth multiple
1123 objections, including one to the trial court's *1123 order invalidating the grant deed without due process. Following a hearing, the court vacated and set aside its March 2016 orders as void, other than the appointment of Soloway as trustee, to which the parties had stipulated. With the pleadings settled, the parties engaged in months of discovery and motions.

In early 2017, Soloway joined as a plaintiff in Hilja's cause of action seeking to confirm trust ownership of the Property. Around this time, Kenton's counsel withdrew from the case.

In April 2017, while the litigation progressed, Hilja filed an application for a writ of attachment against Kenton's interest in a separate property located in Crockett. In the application she averred that Kenton had few ascertainable assets, which made her concerned that he was going to wrongfully transfer or encumber his interest before her claims against him reached judgment. Following a hearing, and over Kenton's objection, the trial court granted the application, Kenton appealed the court's attachment order in case No. A151468.

Months later and by stipulation of the parties, the trial court resolved the discrete issue of whether the December 30, 2015 grant deed transferring the Property from the trust to Kenton and Lewis as joint tenants was valid. The court found the transfer invalid, set aside the grant deed, and vested title to the Property with the trustee as an asset of the trust. The court cited multiple reasons for its decision, including Kenton's concession that the grant deed was invalid. Independent of this concession, the court reached its own conclusion the grant deed was invalid because Kenton had no authority to execute it. The court explained

the December 2015 durable power of attorney purportedly restoring Kenton as attorney in fact did not satisfy the statute of frauds since Lewis signed the durable power of attorney individually and not as a trustee, though the Property was held in the trust. The court further observed that the trust terms did not authorize Lewis to delegate the authority to convey real property from the trust. Noting its decision did not adjudicate all of Hilja's claims, the court deferred the unresolved issues for trial, including the issue of whether Kenton's execution of the grant deed constituted elder financial abuse.

Prior to that trial, an entirely separate proceeding initiated by Kenton against Hilja reached resolution in the trial court. Kenton, appearing in propia persona, had sued Hilja for libel based on her e-mail stating he had committed elder abuse of his parents and was homophobic. Hilja moved to strike the complaint as a meritless SLAPP suit. Following a hearing, the trial court granted Hilja's anti-SLAPP motion and denied Kenton's request to conduct discovery. Kenton appealed the court's dismissal of his complaint in case No. A152034.

1124 *1124 In late June and early July 2017, there was a four-day bench trial on the remaining issues in Hilja's elder abuse action against Kenton, who by then obtained counsel to represent him. The trial court heard testimony from various witnesses and admitted dozens of documents into evidence.

The trial court issued a statement of decision, in which it concluded Kenton was liable for elder abuse. While finding that Kenton "did not have substantial authority over Lewis" and did not isolate Lewis or make Lewis solely dependent on him, the court nonetheless found that Kenton exerted "substantial undue influence over Lewis." Thus, the court determined that the power of attorney, the grant deed transferring the Property out of the trust, and the stock transfer—all done in the month before Lewis died—all resulted from elder abuse. In the court's view, "[t]he last clear, lucid, considered disposition of the trust was to equalize the distribution between Hilja and Kenton."

The trial court's amended judgment, entered on September 19, 2017, ordered Kenton to pay damages in the amount of $1,548,830. The court directed that Kenton "immediately vacate" the Property and declared that Soloway, as successor trustee, was entitled to its immediate possession. The court also ordered Kenton to immediately provide the original Freedom Motors stock certificates to Soloway. After the judgment, Kenton resumed representing himself in propia persona and filed an unsuccessful motion for a new trial.

Kenton appealed the foregoing judgment in case No. A153075. In his notice designating the record on appeal, Kenton elected to proceed with a settled statement as a record of oral proceedings in the trial court. The parties stipulated that they would attempt such a statement but were unsuccessful. The court prepared it instead.

After the appeals in case Nos. A151468, 152034, and 153075 were fully briefed, we consolidated them for purposes of oral argument and decision and further granted them calendar preference.

DISCUSSION

A. *Case No. A153075*

1. Elder Abuse Act

The purpose of the Elder Abuse and Dependent Adult Civil Protection Act (Elder Abuse Act; Welf. & Inst. Code, § 15600 et seq.) is "`essentially to *1125 protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.'" (*Estate of Lowrie* (2004) 118 Cal.App.4th 220, 226 [12 Cal.Rptr.3d 828].) Although the Elder Abuse Act was originally enacted to encourage the reporting of abuse of elders and dependent adults, the Legislature modified the statutory scheme to "provide incentives for private, civil enforcement through lawsuits against elder abuse and neglect." (*Lowrie,* at p. 226.)

a. Standing[*]

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b. Substantial Evidence

Kenton argues substantial evidence does not support the trial court's finding of elder financial abuse. We disagree.

"In reviewing a judgment based upon a statement of decision following a bench trial, ... [w]e apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 [212 Cal.Rptr.3d 158].)

Pursuant to Welfare and Institutions Code section 15610.30 of the Elder Abuse Act, financial abuse of an elder occurs when a person "[t]akes, secretes, appropriates, obtains, or retains ... real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70." (Welf. & Inst. Code, § 15610.30, subd. (a)(3); further undesignated statutory references are to this code unless otherwise stated.) Section 15610.70 defines "undue influence" as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (§ 15610.70, subd. (a).) In determining whether a result was produced by undue influence, section 15610.70 directs courts to consider: (1) the victim's vulnerability; (2) the influencer's apparent authority; (3) the tactics used by the influencer; and (4) the inequity of the result. (§ 15610.70, subd. (a)(1)-(4); see also *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 867 [222 Cal.Rptr.3d 360].) Because perpetrators of undue influence rarely leave any direct evidence of their actions, plaintiffs typically rely on circumstantial evidence and the reasonable inferences drawn from that evidence to prove their case. (*In re Cheryl E.* (1984) 161 Cal.App.3d *1126 587, 601 [207 Cal.Rptr. 728] [because direct evidence of undue influence is rarely obtainable, "[t]he court is often obliged to infer undue influence from the totality of the circumstances" (italics omitted)].)

Here, there was substantial evidence supporting the trial court's finding of elder financial abuse. First of all, the record amply establishes that Kenton took, obtained, or retained both real and personal property belonging to Lewis. Kenton executed the grant deed to remove the Property as a trust asset to be shared with Hilja, essentially attempting to deed the Property to himself. Kenton also obtained stock certificates belonging to Lewis and exercised rights over Lewis's car when he sold it.

The record also evidenced each of the four considerations for undue influence under section 15610.70. The first factor, the victim's vulnerability, may be demonstrated by "incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability." (§ 15610.70, subd. (a)(1).) Here, there was abundant evidence that Lewis was vulnerable around December 2015 when Kenton executed most of the improper transactions. In the last weeks of his life, Lewis was grieving the loss of Lucille and his health had deteriorated such that he needed round-the-clock care. He required kidney dialysis, which he ultimately decided to discontinue. As one of Lewis's care providers, Kenton was well aware of his father's many vulnerabilities in the last month of his life.

The second factor, the "influencer's apparent authority," may be demonstrated by the influencer's "status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification." (§ 15610.70, subd. (a)(2).) This criterion was readily satisfied, since Kenton was Lewis's only son and one of his care providers.

The third factor, the influencer's actions or tactics, may be demonstrated by the influencer's "[i]nitiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, [and] effecting those changes at inappropriate times and places." (§ 15610.70, subd. (a)(3)(C).) Here, the record discloses that, in the week Hilja was away, Kenton rushed his father to a UPS Store to execute a new power of attorney designating him attorney in fact. As Lewis's attorney in fact, Kenton then executed the grant deed that transferred the Property out of the trust. Kenton mentioned nothing about these matters to his sister.

The fourth factor, the inequity of the result, may be demonstrated by "the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the
1127 value conveyed *1127 to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship." (§ 15610.70, subd. (a)(4).) Here, there was substantial evidence that the effects of Kenton's activities on Hilja, a trust beneficiary, were significant. Kenton's actions removed the main asset from the trust, resulting in a significant economic loss for Hilja as a trust beneficiary. As the trial court found, such result was counter to Lewis's last clear, lucid, and considered disposition of the trust to equalize distribution between Hilja and Kenton. In sum, there was substantial evidence of elder financial abuse by undue influence.

Kenton argues there was no substantial evidence of any real property taking because he conceded the grant deed was invalid. We cannot agree. In December 2015, Kenton executed the grant deed, then recorded it to give it legal effect. He used the grant deed as a basis to maintain possession of the Property, lease it, and regulate access provided to Soloway in her capacity as acting trustee. Kenton's concession occurred after months of litigating and defending against Hilja's lawsuit challenging the validity of the grant deed. For 18 months, until the court invalidated the grant deed, there was indeed an actionable taking of real property in violation of the Elder Abuse Act.

Estate of Sarabia (1990) 221 Cal.App.3d 599 [270 Cal.Rptr. 560], superseded by statute on other grounds as stated in *Rice v. Clark* (2002) 28 Cal.4th 89 [120 Cal.Rptr.2d 522, 47 P.3d 300], does not assist Kenton's case. In *Sarabia,* the court held: "The presumption of undue influence arises only if *all* of the following elements are shown: (1) the existence of a confidential relationship between the testator and the person alleged to have exerted undue influence; (2) active participation by such person in the actual preparation or execution of the will, such conduct not being of a merely incidental nature; and (3) undue profit accruing to that person by virtue of the will. If this presumption is activated, it shifts to the proponent of the will the burden of producing proof by a preponderance of evidence that the will was not procured by undue

influence." (*Sarabia,* at p. 605.) According to Kenton, there was no undue influence here because evidence of the second and third *Sarabia* elements were missing. We are not convinced.

Sarabia describes the common law test for undue influence, and as indicated by the holding quoted above, addresses when a *presumption* of undue influence arises. Here, the trial court did not rely on any presumption and instead made a direct finding of undue influence under the statutory standard based on all relevant facts and circumstances. Nevertheless, even under the common law test, substantial evidence supports a presumption of undue influence. As already discussed, Kenton was an active participant in
1128 Lewis's execution of the power of attorney that made him attorney in fact, *1128 and he prepared and executed the grant deed that would transfer the Property out of the trust. By virtue of the grant deed, stock transfers, and car sale, Kenton accrued undue profit when those assets were removed from the trust in contravention of Lewis's intent for net equalization between Kenton and Hilja.

Finally, Kenton argues the evidence was insufficient to support the finding that he acquired stock certificates and Lewis's vehicle through elder financial abuse. Not so. The stock transfer occurred days before Lewis's death, when he was very sick and barely capable of signing. And though the car was sold after Lewis died, Kenton came to control the Property and its contents, including the car, by virtue of the grant deed he executed under the dubious power of attorney which he rushed Lewis to execute.

2. Probate Code Section 859

Kenton raises several challenges to the imposition of liability under Probate Code section 859.

a. Bad Faith

Kenton first argues the court erroneously construed Probate Code section 859 by imposing double damages for his commission of elder financial abuse without a finding of bad faith.

Since this is an issue of statutory construction, we follow "the oft-repeated rule that when interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning. [Citation.] If the language of the statute is not ambiguous, the plain meaning controls." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919 [129 Cal.Rptr.2d 811, 62 P.3d 54] (*Kavanaugh*).)

Probate Code section 859 provides: "If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action under this part."

The language of Probate Code section 859 is not ambiguous in specifying when a bad faith finding is
1129 necessary for double damages. The *1129 statutory language contains three different clauses describing the three different categories of conduct that can support double damages, each of which is separated by the conjunction "or." The first two categories require a separate finding of bad faith but the third one—applying when a person "has taken, concealed, or disposed of the property ... through the commission of elder or

dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code"—does not. (*Ibid.*)

Three Courts of Appeal have addressed this issue. Our reading comports with two of them. In *Hill v. Superior Court* (2016) 244 Cal.App.4th 1281 [198 Cal.Rptr.3d 831], the court noted that "the last alternative of section 859 allows for double damages without any requirement that petitioners show any aggravated misconduct—only financial elder abuse." (*Id.* at p. 1287.) In *Kerley v. Weber* (2018) 27 Cal.App.5th 1187 [238 Cal.Rptr.3d 781], the court reviewed the statutory language and concluded no separate bad faith finding was necessary for double damages when liability was premised on the third category of conduct, that is, when property had been taken through elder or dependent adult financial abuse. (*Id.* at pp. 1197-1198.)

Levin v. Winston-Levin (2019) 39 Cal.App.5th 1025 [252 Cal.Rptr.3d 518] (*Levin*) concluded otherwise, stating, "We do not believe the Legislature intended to provide double damages for undue influence *without* bad faith." (*Id.* at p. 1036.) We respectfully disagree with *Levin*'s reasoning. First, *Levin* based its conclusion on the language "`by the use of undue influence *in bad faith.*'" (*Ibid.*) But this "bad faith" language appears in the clause pertaining to the second category of conduct, not in the clause relating to the third category at issue here. (Prob. Code, § 859.) Second, *Levin* found no indication in the legislative history of an intent to create two different standards for penalizing undue influence. (*Levin,* at p. 1036.) This reasoning, however, belies a plain reading of the statute, which serves as the foremost determinant of legislative intent.

Levin also reasoned that if courts could impose double damages in elder financial abuse cases without a finding of bad faith, the second category of conduct—"undue influence in bad faith"—would be rarely used and only applicable in the few cases involving minors. (*Levin, supra,* 39 Cal.App.5th at p. 1036, italics omitted.) But the second category of conduct also refers to the taking of property belonging to a "trust" or the "estate of a decedent," regardless of whether the victim is or was an elder or dependent adult. Thus, the second category covers a broad array of cases, not just those involving minors or elders, in which a defendant who takes property through undue influence is not necessarily committing elder financial abuse. In sum, we are not persuaded by *Levin*'s reasoning to ignore the plain meaning of the statutory text, which
1130 expressly makes "the use of undue influence in bad *1130 faith" and "the commission of elder or dependent adult financial abuse" separate and distinct categories triggering double damages. (Prob. Code, § 859.)

Kenton's other interpretation arguments do not compel a different result. He argues that Probate Code section 859's introductory phrase "[i]f a court finds that a person has in bad faith ..." modifies all three categories of conduct in the statute. Not so. The "bad faith" reference plainly modifies only the first category of conduct, because otherwise the "bad faith" modifier in the second category would be rendered surplusage. (See *B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 12-13 [471 P.3d 329].) He also contends the words "in bad faith" in the phrase "by the use of undue influence in bad faith" apply to the phrase "or through the commission of elder or dependent adult financial abuse" (Prob. Code, § 859) because both refer to the same property taken. Kenton's reading disregards the word "or" that separates the clauses and offers no legal or logical basis for departing from that term's ordinary, well-settled, and disjunctive meaning. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 622 [10 Cal.Rptr.3d 205, 85 P.3d 2].)

Kenton's remaining statutory interpretation arguments rely on tools of statutory construction that need not be considered because the plain meaning is clear. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1045 [95 Cal.Rptr.3d 636, 209 P.3d 963]; *Kavanaugh, supra,* 29 Cal.4th at p. 919.)

Because the court found Kenton took property by committing elder financial abuse within the meaning of section 15610.30, double damages were proper without a separate finding of bad faith.

b., c.[*]

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B., C.[*]

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DISPOSITION

In case No. A153075, the judgment is affirmed. In case No. A151468, the appeal of the court's prejudgment writ of attachment order is dismissed as 1131 *1131 moot. In case No. A152034, the order granting the motion to strike the complaint and dismissing the action is affirmed. Hilja Keading is awarded costs on all appeals.

Petrou, J., and Jackson, J., concurred.

[*] Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts A.1.a, A.2.b, A.2.c, B, and C of the Discussion.

[1] The two parties and their parents share the same last name. For brevity sake, we will refer to all of them by their first names. No disrespect is intended.

[*] See footnote, *ante,* page 1115.

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