

Department 5 Probate Notes for Friday, February 28, 2025

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8:30 a.m.

- 1. Estate of Bollinger (PR12580).** This is a petition for letters of administration. There is no proof of publication, no executed Duties and Responsibilities, no bond waivers, no proof of service/notice, and no proposed Letters or orders. This seems the proverbial dipping of a toe into the probate pond just to see if its warm.
- 2. Estate of Hayes (PR11917).** Parties to advise if resolution has been reached.
- 3. In re Redpath-Benhard Trust (PR12577).** This is a petition to (1) appoint a successor trustee and (2) direct transfer a real property into the trust. As to the former, the deceased settlor nominated Edgar Benhard to serve as successor trustee, but he declined. Next in line was Gordon Benhard, who ostensibly declined by way of a Power of Attorney. While a properly executed POA presumptively contains such power (see §4458), no party may expect a court to proceed on such representation without having first proven the existence and content of the POA (see §§ 4302, 4307). However, petitioner advises that in the intervening weeks Gordon passed away, so he would not be able to assume the position of trustee anyway. Given that no trustee currently manages the trust, there exists a vacancy in the office of trustee. Prob. Code §15643(d). By statute (§15660), the vacancy “shall be filled” in one of three ways: (1) following the “practical method of appointing a trustee” as set forth in the instrument; (2) by a trust company that has agreed to accept the trust on agreement of all adult beneficiaries; or (3) on petition of any interested person, in the court’s discretion, giving due consideration to the wishes of the beneficiaries. There is no practical method set forth in the instrument for selecting a successor trustee, and since petitioner does indeed have an interest therein seemingly equal in value to anyone else, he has a co-equal right to appointment. Since both nominees also nominated petitioner, his appointment rights are arguably superior to anyone else. As such, absent objection, the Court intends to appoint petitioner to the office of trustee.

As to the second concern, a trial court may make a transfer of APN 086-212-008-000 under §856 into the subject trust if the settlor(s) presently own(s) the subject property, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence from which to conclude that the settlor(s) intended said property to be held in that trust. See *Carne v. Worthington* (2016) 246 Cal.App.4th 548, 558-560; *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156, 160-161; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1443; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. Here, petitioner contends that the settlor acquired and expressed an intention to hold said property in trust based upon the following: (1) the property was originally held in trust; (2) the property was pulled from the trust only for purposes of refinance; (3) Schedule A to the trust identifies the

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subject property as a trust asset; (4) the addendum to the instrument identifies the subject property as a trust asset; and (5) there is a “forgotten item” clause in the instrument directing the successor trustee to sweep forgotten real property assets into the trust. The only “hiccup” here is that the petition lacks evidence to show decedent’s contemporaneous ownership of the property to justify an order today directing it into the trust. This is ordinarily provided in the form of a litigation guarantee, preliminary title report, escrow report, or similar title confirmation. Petitioner provides an unauthenticated screen printout from RealQuest created on an unknown date, and drawn from an unknown source. Petitioner to advise.

4. **Marriage of Watkins (FL17611).** This is an OSC re Contempt in a family matter, scheduled for this date in error ... not my error mind you, but error nonetheless. Ok, maybe it was *technically* my error, but who’s counting.

10:00 a.m.

5. **Conservatorship of Kuffler (PR12289).** This matter was intended to be set for a hearing on a motion to permit execution of a settlement agreement, but the papers associated with that hearing were – for reasons only known to the parties – set for hearing in Dept 2 before Hon. Gorman Campbell and not Dept 5 before Comm. Streger. Since CV64893 remains in the inventory of Dept 1, and PR12289 seemingly remains in the inventory of Dept 5, parties will need to advise whether there has been any procedure causing some disqualification in Dept. 5 to occur without this bench officer’s knowledge.
6. **Guardianship of Gonzalez (PR12541).** The Court file does not include either the court investigator report or a petition for permanent guardianship (only the temporary). These concerns/omissions were addressed at the last hearing in January.
7. **Guardianship of Hernandez (PR12472).** Although this Court recently extended the temporary guardianship another six months (see OAJR dtd 12/17/24), in the related family case (FL10822) both bio parents indicated to this Court as desire to terminate the guardianship and to return to co-parenting. While no formal written petition has been filed (see §1601), if both bio parents, the current guardian, and the ward (who is of sufficient age) all agree, then the procedure can be expedited with the signing of consents and the completion and home study by the court investigator.
8. **Guardianship of Zukal (fka Underwood) (PR10766).** This is a request to transfer a guardianship to the maternal grandmother. The request makes sense given that (1) the ward

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has resided full-time with the maternal grandmother for a substantial period of time (Family Code §3041) and (2) wards are supposed to be raised in a permanent stable environment (Probate Code §1610(a)), which is hard to control for when the ward does not reside with the guardians. A guardian may at any time tender a resignation from the office upon a noticed motion, which resignation “shall” be accepted “when it appears proper.” Probate Code §2660. However, appointment of a successor guardian requires “notice and hearing as in the case of an original appointment of a guardian.” Probate Code §2670. Ideally, the hearing on the resignation and the hearing on appointment of the successor should occur together, and the Court has no actual petition from the maternal grandmother commencing a substitute guardianship. The investigative report is favorable to the transfer, so if grandmother is present and willing to complete the required forms, the transfer can occur.

9. **Guardianship of Hartzell (PR11369).** This is a long-term guardianship of three minors being cared for by an elderly family member. There was a notable gap in reporting from the guardian (almost two years. Recently, the guardian complied with her reporting obligation, and appeared in court with the biological father – who requested that the guardianship remain in place. Bio mom had a prior motion to terminate guardianship that was voluntarily withdrawn. Bio mom has renewed her petition to terminate, and in that time the bio dad has passed away. Guardian no longer objects to termination as bio mother resides with the family under the same roof. Court is awaiting investigative report and will determine the need for appointment of minor’s counsel and chambers interviews.
10. **Guardianship of Luckett (PR11928).** No appearance is necessary for two reasons. First, the Court has received a completed GC-251 and intends to find by a preponderance of the evidence that the guardianship remains necessary and convenient. Second, even if the guardianship is necessary and convenient, it is moot because the guardianship has termination by operation of law given that the ward has already reached the age of majority.
11. **Guardianship of Trevino (PR10483).** Court is awaiting investigative report to ascertain whether a change in the guardianship is needed.
12. **Guardianship of Harwell et al (PR12538).** Court intends to extend guardianship in 3-month increments to ensure that guardians remain vigilant about who has regular access to the wards.
13. **Guardianship of Tracy (PR12582).** This is a petition for guardianship over one putative ward by that child’s adult sibling and brother-in-law. Consent was provided by bio dad, but not by bio mom. It is alleged that both bio parents are unfit. Based on current residence of

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ward, presumption favoring temporary guardianship exists. Court investigator has already been appointed. Court to consider appointment of minor's counsel.

- 14. Conservatorship of Villasenor (PR9919).** Review hearing to determine that all bills and account balances have been transferred to sole conservator of the estate following voluntary resignation of co-conservator of the estate.

1:30 p.m.

- 15. Barnes v. Teichert (FL18559).** Plaintiff has made a prima facie showing that he may be entitled to status as presumed father of the subject child under Family Code §7611(d). However, the evidence available to this Court in the related actions demonstrates that defendant, despite being in default, qualifies as a conclusively presumed father of the subject child under Family Code §7540. Since the parties are unable to execute a VDOP under Family Code §7573, the only effective way to rebut the conclusive presumption is through genetic testing, which can be coordinated privately (see Family Code §7551) or through the local child support collection agency CSCSA (see Family Code §7558). Either way, petitioner was to have completed genetic testing by this hearing, and there is nothing in the Court file to show completion.
- 16. Petition of KB (CV66797).** Confidential petition to change name.
- 17. Petition of EG (CV66796).** Nonconfidential petition to change name. Court file does not include proof of publication.
- 18. Petition of DL (CV66810).** Nonconfidential petition to change name.
- 19. Petition of LL (CV66813).** Nonconfidential petition to change name.
- 20. Petition of JS (CV66479).** Nonconfidential petition to change name. Court file does not include proof of publication.

4:00 p.m.

- 21. Guardianship of Phillips (PR12462).** Review of investigative report with bio parents and secure consent for termination of guardianship. Make findings regarding best interests.