Department 5 Probate Notes for Friday, March 7, 2025

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

8:30 a.m.

1. **Estate of Costa (PR12441).** Before the Court this day is a petition to approve the final accounting, allow fees and costs, and authorize distribution of the estate. Although it is customary to include the Seller's Closing Statement for all real property sold during the administration, this Court can see from a search online that it did indeed sell for $250,000. With that, the accounting and fee/cost allowance is approved. As for the proposed distribution, the will provides that "the remainder of my estate be given to the Executor to share with my brother, DAVID COSTA, on an equal basis, of my estate for their help in the administration of my estate." Since this devise appears in the Article appointing petitioner to serve as the executor, it stands to reason that decedent did not intend to give petitioner *both* a statutory fee for "help in the administration" *plus* 50% of the residue for that same assistance. Otherwise, that entire subordinate clause would be superfluous. A more natural read of that provision is that decedent anticipated that petitioner and David would share in the workload to administer the estate, and that they would share equally in the reward. If petitioner seeks to recover her statutory fee as the personal representative, that is to be deducted from her "equal share" of the residue before splitting with David. Otherwise, she is being paid twice for her "help in the administration of the estate." With that small adjustment (remitting $4,000 back to David), the petition is ready for approval.

2. **Estate of Williams (PR12385).** This probate action was released into the wild on 03/29/2024. Pursuant to Probate Code §§ 12200-12201, petitioner has twelve (12) months from then to file a petition for final distribution or a status report explaining the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate. For those needing to file a status report, this Court has created a very fine local form (TUO-PR-125) to ease the effort. A review of the court file reveals no petition or status report. Although this hearing is set prematurely, an update is anticipated given that the singular asset is a tort settlement.

3. **Estate of Bacon (PR12329).** Before the Court this day is a petition to allow fees/costs and to authorize distribution of the estate. Although it is customary to include the Seller's Closing Statement for all real property sold during the administration, this Court can see from a search online that it did indeed sell for $430,000. Without the Closing Statement, this Court is unable to confirm decedent's ownership percentage, but will elect to take petitioner and counsel at their word. Assuming counsel intended to proceeding without a request for reimbursement of costs actually incurred (none are listed), the petition is ready for approval.

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4. **Estate of Bridge (PR11944).** This is a petition to account, distribute and eventually close decedent's estate. A review of the petition reveals no anomalies, and in the ordinary course of events would be approved as is. However, since the Probate Code requires at least 15 days' notice for all substantive petitions and Lester did not withdraw his request for notice following the dismissal of his petition to enforce the settlement, this Court would prefer to proceed after notice has been provided to all those impacted hereby (Bruce, Lisa, Lester), and there is no proof of service accompanying the petition. See, e.g., Probate Code §§ 1042, 1260. This is particularly important in a case such as this, when there is a Breslin settlement binding all of the beneficiaries. See Probate Code §§ 9830 et seq. Counsel shall provide the Court with proof of service on the affected persons. If we do not hear from Attorney West this hearing, the case will be dismissed.

5. **Estate of Benoit (PR12133).** This is an intestate administration in which the administration has seemingly disappeared. When she took the oath of office back in June of 2022, she signed the DE-147 agreeing to work with counsel, make prudent investments, protect the estate assets, and bring the administration to a close in a timely fashion. She even posted a bond assuring her compliance with her fiduciary obligations. She has now been derelict for over a year. Who is minding the residence where decedent once lived? This Court shall either issue a citation for removal (§8500), find petitioner in contempt (§8505), or declare there to be a vacancy in office as a result of having abdicated the post (§8520). Either way, Counsel shall propose a successor administrator. Liability on the existing bond shall remain, and the bond shall not be exonerated (§8525).

6. **Estate of Bellinger (PR12414).** Before the Court this day is a review hearing to confirm compliance with §8800. Pursuant thereto, petitioner is required to have on file a final Inventory & Appraisal within four months after securing Letters. There is minor ambiguity here as there are two filings: a "partial" I&A signifying $272,000.00 in assets, and a "final" signifying $1,499.52. Since, by definition, the "final" cannot have fewer assets than a "partial," this Court must assume a mere scrivener's error with the box-checking.

7. **Estate of Correa (PR12097).** At the last hearing, counsel was going to prepare a spreadsheet of beneficiary breakdown based on the different sale price for the residence, the parties were going to prepare some kind of video or inventory of the personal/sentimental items inside the home for distribution, and the listing agent was going to submit a declaration explaining how the list price of $417,000 turned into an accepted offer of $360,000 in just three weeks. A review of the Court file reveals none of these items, suggesting that this hearing will likely produce no substantive movement past the objectors' concerns. What is the status of that proposed action to sell the property, and the assistance to be offered from other family members to make it worthwhile to the objectors?

8. **Estate of Smitheman (PR12560).** Before the Court this day is the continued hearing on this petition to probate a will and for Letters Testamentary. No appearance is necessary. Petitioners have successfully cured the previous probate notes, and it is this Court's intention to grant the petition, issue the Letters, and set §§ 8800/12200 review dates. It is important to note that because the disclaimer is limited to specific assets (rather than the entire estate), Alice will still be entitled to notice.

9. **Estate of Jenkins-Bushart (PR12455).** This probate action was released into the wild on 05/31/2024. Pursuant to Probate Code §8800, petitioner had four (4) months from then to file a final Inventory & Appraisal. A review of the court file reveals a vacancy where the DE-160 should be. Since this is the third review hearing with no I&E, fail to comply by the hearing will result in issuance of a citation for removal (§8500), an OSC re contempt (§8505), or a hearing to declare a vacancy in office as a result of having abdicated the post (§8520). Since one of our local trust attorneys (McKernan) served as a subscribing witness for the will, this Court intends to inform her of petitioner's transgression and the need to consider another family member to serve as personal representative here.

10. **In re Wertz Trust (PR12584).** Before the Court this day is a *Heggstad* petition involving three assets: an account held at US Bank; an account held at Capital Group; and real property in this county, identified as APN 048-140-026-000. A trial court may make a transfer of assets into a trust pursuant to §856 if the settlor(s) presently own(s) the asset in question, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence to find by a preponderance of the evidence that the settlor(s) intended said property to be held in that trust, and failed to make the transfer by mistake, surprise, excusable neglect or innocent omission. See, e.g., *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. Since there is often little objection to a *Heggstad* petition, the quantum of evidence needed to prevail on an unopposed petition is said to be "fairly light" and "just enough to do equity."

    Here, petitioner contends that the settlor failed to transfer these three assets into her trust "through oversight" for the following reasons. First, she established a trust with herself as trustor, directing herself to hold property in trust for her own benefit. Second, she notarized a Declaration of Trust in which she declared "that all assets of every kind and description and wheresoever situated which I presently own (regardless of the means by which acquired and/or the record title in which held; including, by way of illustration and not limitation, all

real property, investments, bank accounts, etc.) are transferred to and the same shall be owned by The Maureen Wertz Living Trust … even though 'record' ownership or title, in some instances, may, presently or in the future, be registered in my respective individual name, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed." Third, decedent prepared at the same time a will which provided in pertinent part as follows: "I give, devise and bequeath the remainder of my estate to the then-acting trustee of The Maureen Wertz Living Trust, together with any additions or amendments thereto, to be added to the principal of that trust and to be held, administered and distributed under the Trust Agreement." The evidence presented of decedent's intent is anemic, to put it kindly; however, since decedent's will pours everything back into the trust, and puts the same two individuals Michael and Elizabeth) in the cockpit regardless of the make/model of the aircraft involved, there is just enough here "to do equity."

That being said, there is still a "hiccup" to resolve. The petition lacks evidence to show decedent's contemporaneous ownership of the two bank accounts or the real property. There is a supplement to the petition describing the records needed for the real property, but much like the trailers for the *Fifty Shades* movies, the actual filing was a serious letdown because the records are not attached. Counsel will need to attach those, and then establish decedent's contemporaneous ownership of the bank accounts too before any order for transfer can be completed.

11. In re Starr Special Needs Trust (PR12583). Before the Court this day is the *initial* hearing on a petition for instructions regarding an obligation to reimburse Medi-Cal from a special needs trust res for benefits provided to a deceased beneficiary. Respondent has filed an ex parte application to continue the hearing in order to prepare a response, apparently concerned that this Court might actually render a decision on the merits without giving respondent the courtesy of some breathing room to respond. That is not how we roll here in Dept. 5. A continuance is not needed, for it is easier with all parties present to agree on a briefing schedule commensurate with any requests for limited discovery and how the parties wish to have the petition actually decided (see *infra*).

A special needs trust is used to set aside assets to pay for the special medical needs of a severely disabled beneficiary. The purpose of a special needs trust is to enhance the beneficiary's quality of life through the purchase of additional goods and services that are not covered or adequately provided by government programs. To this end, assets held in a special needs trust are exempted from the list of available assets impacting program eligibility. When a first-party special needs trust is established under Probate Code §§ 3604 et seq, it is generally understood that trust res is subject to government claims for

reimbursement of benefits paid/received once the trust purpose no longer remains (ie, the beneficiary recovers or dies). There are exceptions to the rule (W&I Code §14009.5), which it seems lie at the heart of the present impasse, despite an abundance of authority. See, *e.g., Riverside County Public Guardian v. Snukst* (2022) 73 Cal.App.5th 753 , 756; *Gonzales v. City National Bank* (2019) 36 Cal.App.5th 734, 743-744; *Herting v. State Dept. of Health Care Services* (2015) 235 Cal.App.4th 607, 612; *Conservatorship of Kane* (2006) 137 Cal.App.4th 400, 405-408; *Shewry v. Arnold* (2004) 125 Cal.App.4th 186, 194; *Belshé v. Hope* (1995) 33 Cal.App.4th 161, 163–165.

This being a probate petition, the parties are entitled to discovery if needed. §17201.1. Once discovery commences, it proceeds just like normal civil actions (see §1000(b)). This Court does not pretend to foretell the need, or scope, of discovery herein, but the suggestion from respondent that briefing should conclude this month needs is akin to saying that neither side desires discovery – and that remains to be seen. Once the dust settles on discovery, the parties will have a choice as to how they wish to secure a final decision on this issue. In other words, the parties will need to decide whether this can be resolved as a summary proceeding under §§ 1000 (§437c, 1010, 1005 et seq, CRC 3.1306), 1022, 1046 and 9620, or if live testimony from parties will be needed.

10:00 a.m.

12. **Conservatorship of Jardine (Part Une) (PR11602).** Court is still awaiting the final accounting for the hand-off.

13. **Conservatorship of Jardine (Part Deux) (PR12450).** Court is still awaiting the amended bond to receive the conservatorship estate.

14. **Conservatorship of Watson (PR12553).** Before the Court this day is a petition to establish a general conservatorship over the person (only) of an adult male with Downs Syndrome, filed by his biological parents. Although there is no capacity declaration or VMRC assessment, it is the position of the family that a general conservatorship is needed due to his "limited reading, writing, comprehension, communication challenges, and current need for support for his daily living" even though he "can handle most of his hygiene/ grooming tasks" and can be "fairly independent." Since petitioners are seeking a finding that the conservatee lacks the ability to provide informed consent for medical treatment (see box g), they are required to include with the request "a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure" confirming the lack of capacity. §1890. In addition to the power to

make medical decisions, for developmentally disabled adults with some basic life skills, trial courts are expected to default in the direction of a limited conservatorship, especially if there is no regional center assessment on file. See §§ 1801, 1828.5.

15. **Conservatorship of Krasner (PR12365).** No appearance is necessary. Before the Court this day is the annual review of a limited conservatorship of the person (a developmentally disabled adult) established by his biological parents, with whom he does not reside. Based on the updated report, this Court intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a limited conservatorship, that a limited conservatorship remains the least restrictive alternative for his protection, and that the conservators are properly providing for him by selecting a highly-suitable assistive living community here in Tuolumne County. Given the nature of the conservatee's condition, and long-term residential stability, this Court is inclined to consider an adjustment to biennial §1850 reviews on condition that the residence and conservators promptly notify the court investigator of any interim material changes.

16. **Conservatorship of Bellah (PR12316).** No appearance is necessary. Before the Court this day is the annual review of a limited conservatorship of the person (a developmentally disabled adult) established by her parents, with whom she resides. Based on the updated report, this Court intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a limited conservatorship, that a limited conservatorship remains the least restrictive alternative for her protection, and that the conservators are properly providing for her needs. Court intends to set the annual review hearing date. Separately, should anyone appear, this Court notes that there is an "ex parte application" for appointment of a guardian ad litem apparently set in this case for hearing on April 11, 2025 – which seems rather delayed for an ex parte application. This Court is amenable to advancing the hearing thereon to this date, but is unclear as to why a GAL is needed rather than authorization for the conservatee's counsel to either accompany the conservatee to the forensic interview, or decline participation on the conservatee's behalf. As a reminder, "the role of legal counsel of a conservatee is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct." §1471(d). Moreover, since "the proposed limited conservatee shall pay the cost for that legal service if they are able to" (§1471(b)), the decision to use current counsel rests mostly with the family. If the family is unable to absorb that cost, "the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay" (§1472(b)), so this Court has to avoid stacking the lineup too much. Finally, there is insufficient information provided to this Court to explain the need for a guardian ad litem to exercise substituted judgment for the conservatee distinct from current counsel. As

explained in *Conservatorship of Hart* (1991) 228 Cal.App.3d 1244 (at 1253): "where amounts are large or the stakes otherwise especially high, it may be prudent for the superior court to appoint a guardian ad litem, empowered to retain independent counsel, to protect the conservatee's personal interest." This Court has already done this by appointed counsel for the conservatee and leaving counsel in place after the conservatorship was established.

17. **Guardianship of Ayala-Baxter (PR12606).** Before the Court this day is a petition to establish a guardianship over one child, filed by the child's maternal grandparents. Petitioner's CG-212 is missing the required attachments. Bio mother has provided consent; bio father has not. Maternal grandfather may be DQ'd. Ward already resides with petitioners. Need notice to paternal side. Awaiting court investigator report.

18. **Guardianship of Duncan (PR11768).** The GC-251 is missing page 3 and attachments.

1:30 p.m.

19. **Marriage of Norton (FL17725).** Settlement Conference. On 07/26/22, H filed to dissolve 5 yr marriage: No children; No CP; SP – residence in Florida, "pension" (really 401k) and 2 vehicles; On 10/14/22, W filed response to divorce petition: No children; CP – residence in Discovery Bay (already sold and split), 401k account ; SP – business, 2 vehicles, bank account, $110,000 toward CP residence; Restore prior name. W is asking for spousal support. He earns $5,400/month working IT in Florida. W cannot work, lives in an RV. Court set temporary spousal support at $600/month (could be as high as $1,700/month). Parties were ordered to file FL-125