Department 5 Probate Notes for Friday, March 21, 2025

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8:30 a.m.

1. **Del Ponte v. Xavier (FL18642).** This is supposed to be in Dept. 2.

2. **Estate of Bacon (PR12329).** Just waiting for proposed order on final petition.

3. **Estate of Hayes (PR11917).** Update on settlement efforts.

4. **Estate of Worsham (PR12557).** Before the Court this day is an unopposed spousal property petition for real property technically referred to as APN 041-381-004. The petition must affirmatively show "the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse." §13651(a)(3). Since the real property was acquired prior to marriage, it is presumptively separate. See Family Code §770(a)(1). There is no contemporaneous title run showing that it was ever transferred into the community. Moreover, given the limited notice provided (§13655), this Court must conclude that decedent did not have a will or trust. Thus, it seems that the property passes in equal amounts to petitioner and Justin. §6401(c)(2)(A). Justin's "consent" filed 12/03/24 is not a sufficient disclaimer. §278. Assuming a proper disclaimer is submitted, the Court still requires proof of decedent's current ownership of APN 041-381-004, not that he owned it in 1987.

5. **Estate of Thomas (PR12469).** Before the Court this day are two matters.

   First, there is a motion by the originating counsel of record to withdraw. Since an amended petition has already been filed by a *different* attorney (Ms. Patton), this Court has two options: strike the amended pleading by the different attorney until such time as the former attorney's motion to withdraw has been granted; or accept the amended pleading as a *de facto* substitution of attorney and deem the motion to withdraw moot. To avoid exalting form over substance, this Court intends to select Door #2 and deem the motion to withdraw moot. Attorney Elledge is officially relieved of duty without further order/effort, except that he shall be entitled to recover out of pocket *costs* actually incurred (if any) as part of the final petition for allowance. Due to the lack of effective service on his watch, Attorney Elledge shall not be entitled to any share of the statutory fees.

   Second, there is a petition for Letters of Administration with general authority to act. There are two items missing from this petition before it can be approved. Because the petitioner resides out of state, she is required to provide a permanent resident statement (§8573), and risks removal from office if she fails to comply (§8577). In addition, since petitioner and Travis have equal priority (§8461), there is a presumption that they will both be appointed

(§8467) unless one nominates the other (§8465). Since it is customary to set a bond for nonresident administrators (§8571), Court will require a nomination from Travis in order to proceed with just petitioner, without bond.

6. **Estate of Correa (PR12097).** Counsel for petitioner is directed to provide the Court with (1) a copy of the inspection report, (2) an estimate of the carrying costs that Sharon has incurred for the property since submitting her purchase offer, and (3) an estimated seller's closing statement.

7. **Estate of Castle (PR12572).** This is a petition to determine statutory succession to a portion of real properties currently in the estate of one Walter Castle, who died eight years ago (hereinafter "decedent"). As reflected in the petition, decedent reportedly owned, at the time of his passing, a 14.1297% interest in three parcels along Lyons Bald Mountain Road: APN 085-040-015-000, 085-010-069-000 and 044-010-047-000. According to petitioner, the parcels have a gross acreage of 84 acres. With several *contingent* assignments (one of which is actually a sales agreement) in hand, Petitioner contends that she is the sole standing heir to decedent's estate, and that his share of these parcels should summarily pass to her. Petitioner's assumption that the 2009 grant deed from Ethel Burgess to Paul, Vernon, Walter, Devon, and Eva (instrument 2009016287) resulted in a gift to each of 20% is not entirely accurate. An unapportioned deed to a specific group of individuals creates either a joint interest, a partnership interest or an interest in common. Civil Code §682. Absent the buzz word "joint" or a stated partnership purpose, the presumption is that the five grantees hold interests in common (Civil Code §685), giving each of them an ownership interest in perpetuity. This means that decedent had a right to live there, and to dispose of his share however he wanted. However, it is unlikely that someone with a 14% interest utilized the property as his primary residence. Why does that matter? Because recent legislative changes to §13151 now limit the use of these summary succession petitions to the decedent's "primary residence" only.

The legislative history does not provide much guidance as to why legislation increasing the cap to $750,000 (a good thing) also reduced the nature of assets amenable to these petitions (a bad thing). Retroactivity in ordinary jurisprudence can be a fairly complex thing, but not so much in probate land. We have a statute that controls retroactivity. Probate Code §3(c) provides in pertinent part as follows: "a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before the operative date, including, but not limited to, commencement of a proceeding." In other words, retroactivity is presumed. But then §3(d) goes on to suggest some wiggle room by providing, in pertinent part, that "if a petition is filed before the operative date, the contents (and notice requirements) are governed by the old law but any subsequent

proceedings concerning the petition, including a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law." In other words, retroactivity is substantive, not procedural. Finally, §3(h) extends the fullest degree of wiggle room by proving in pertinent part that "if the court determines that application of a particular provision of the new law in the manner required by this section would substantially interfere with the effective conduct of the proceedings or the rights of the parties in connection with [a] circumstance that existed before the operative date, the court may apply the old law to the extent reasonably necessary to mitigate the substantial interference." As explained by the Supreme Court in *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1138:

> "The provisions of Probate Code §3(h) comport with due process by allowing a party affected by a new statute to show why, under the circumstances presented, justice requires the application of former law. In weighing such a claim, we consider the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions."

Turning to the issue at hand, decedent died 01/22/2017. Applying the statutory grace period of 40 days, this petition for succession could have been filed any time over the past five years and not run into this current quagmire. Had it been filed at that time, it would have been heard and decided well before the change to §13151 took effect. This is a small asset (roughly $64,000 in value) with no objection from anyone regarding the substantive request for succession. The "contents" of this petition were proper when filed because it sought to transfer assets below the fiscal cap of §166,250, and – as noted – this Court did not find anything substantive in the Legislative history behind the reasoning to limit these petitions to just the decedent's primary residence. The premise behind *raising* the cap to $750,000 was to *expand* the use of these petitions and streamline transfer of property, but why narrow the use of the petition to just the primary residence and nothing else? It would have been quite easy to raise the cap for a primary residence, and leave the lower cap for all other assets – and perhaps that was the original idea – but as framed it seems someone threw the baby out with the bathwater. Thankfully, §3(h) gives this Court, and the parties, the needed wiggle room. Applying the new law here would likely relegate a very small transfer to ordinary probate, complete with publication, accounting, structured petitions, administrator fees, and statutory legal fees – making the entire process unwieldy. As such, this Court intends to utilize the old law.

8. In re Wertz Trust (PR12584). Before the Court this day is a *Heggstad* petition involving two assets: an account held at Capital Group (xx9775); 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." Court intends to grant the petition.

9. Estate of Mills (PR12599). No appearance is necessary. The Court, having read and considered the whole of this convoluted petition for limited special administrative powers, intends to find that the request is appropriate. §§ 8540, 8544. However, the fact that the will waives bond is not enough when the petitioner is not the named executor, so actual waivers will be needed. §8543.

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10:00 a.m.

10. **Conservatorship of Merz (PR11254).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservator continues to serve the conservatee's best interests. Court intends to set the annual review hearing date.

11. **Guardianship of Taylor (PR11259).** The Court, having received and reviewed the GC-251 with attachments, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardian continues to serve the ward's best interests. However, the Court does have some concerns regarding the ward's attendance issues at school, and how those issues appear to be affecting her grades. Court intends to set an annual review date.

12. **Guardianship of Cortez (PR12196).** No appearance is necessary. The Court, having received and reviewed the GC-251, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardians continue to serve the ward's best interests. Court intends to set the annual review hearing date.

13. **Guardianship of Smith (PR11605).** The Court, having received and reviewed the GC-251 with attachments, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardian continues to serve the ward's best interests. However, the Court does have some concerns regarding the ward's grades. Court intends to set review date to correspond to the ward's age of majority unless guardian intends to petition to extend guardianship.

14. **Thomson v. Grogan (FL18372).** Court to confirm status of appointment/investigation by court investigator and minor's counsel. Court to confirm parentage is now complete, and Judgment can be entered. Court to inquire regarding status of guardianship in Stanislaus, and whether parties will have case transferred here.

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1:30 p.m.

15. **Petition of KC (CV66881).** Confidential proceeding to change name.

16. **Petition of TF (CV66863).** Nonconfidential proceeding to change name.

17. **Petition of MJ (CV66919).** Confidential proceeding to change name.

18. **Marriage of Nelson (FL7943).** Short cause hearing regarding termination of permanent spousal support pursuant to *Gavron* and Family Code §4323. Issue: does "nonmarital partner" mean something different than "domestic partner"

19. **Petition of KP (CV66891).** Confidential proceeding to change name.

20. **Petition of JY (CV66852).** Nonconfidential proceeding to change name. Court file does not include proof of publication.