

Department 5 Probate Notes for Friday, May 24, 2024

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NOTE: Due to the Commissioner's unfortunate respiratory ailment, the Probate Notes were delayed and D.5 remains dark this week. If immediate judicial intervention is necessary to avoid a miscarriage of justice, please contact D.2. Otherwise, if the Probate Notes here does not satiate your concerns, feel free to file a brief declaration and the matter will be addressed upon the Commissioner's return. Matters noted for attendance will be heard in D.2

8:30 a.m.

- 1. Conservatorship of Zapata (PR11778).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, will find by clear and convincing evidence that a conservatorship remains necessary for this individual, that a general conservatorship appears to be the least restrictive option for this individual giving his pronounced deficits, and that the conservator continues to serve in the conservatee's best interests. Court to set annual review date.
- 2. Conservatorship of Lail (PR11963).** No appearance is necessary. A review of the court file reveals an anomaly. This matter transferred in-county in 2021, and has been subjected to a standard "transfer in" investigation by the court investigator. That report was submitted 02/08/23, and provided an opinion that a conservatorship of the estate remains necessary. A hearing took place two days later. The Minute Order does not describe any findings made by clear and convincing evidence that the conservatee remains substantially unable to manage his/her own financial resources or to resist fraud or undue influence, but that would appear to be the clear implication since a new accounting has since been submitted. This Court can understand the position proffered for a conservatorship to sell the San Mateo property and relocate, but the need for ongoing financial management is unclear. The conservatee receives only a modest Social Security check each month, which pales in comparison to expenditures – which the conservator voluntarily covers as a "gift" to her spouse. Since it appears that the conservatee is openly receptive to having his lawful spouse handle household affairs, which most married men would agree is a good practice, perhaps a financial POA will suffice without the formality (and accounting requirements) of a conservatorship. Court intends to approve the accounting without regard to the number of times this married couple went to Applebees, and would look favorably to a petition to terminate the conservatorship at some point. Court intends to set the date for the annual review.
- 3. Estate of Welsh (PR12217).** No appearance is necessary. The petition for final distribution, for settlement, and for allowing *statutory* compensation is ready for approval, but the related petition for *extraordinary* fees is not. The fees sought for work related to the admittedly unrelated proceeding in Orange County (see Para 17) or twice the amount of the statutory fee and in this Court's reasoned estimation excessive. The hourly rate for each participant (ranging from \$200-\$400) is not itself the concern, but the allocation of tasks between them suggests that those commanding a high fee should have either worked faster, or delegated better. Either way, the hearing will be continued and counsel will be invited to submit a supplemental declaration – not to exceed 5 pages – explaining with more precision why anything north of \$3,000 is warranted. Court intends to continue the hearing to 06/28/24, with supplemental papers filed by 06/19/24.

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4. **Estate of Terzich (A4341).** No appearance is necessary. The petition for final distribution will be approved, and the court will enter the proposed order.
5. **Estate of Blair (PR12249).** No appearance is necessary. The petition for final distribution and allowance of statutory fees is not ready for approval. Counsel and petitioner draw a statutory based on the I&A plus gain for the F&G Annuity, but note a separate line item for a disbursement from the estate of \$124,128.88 for an inadequately described tax withholding from that same annuity. Without further detail, this suggests to the Court that actual value of that asset was in fact \$116,944.33 (\$241,073.21 - \$124,128.88). Petitioner shall provide the paperwork from F&G to better explain this “disbursement,” and shall provide briefing regarding the legal basis for said disbursement (in order to assess the true “value” for purposes of the statutory fee. Court intends to continue the hearing to 06/28/24, and require supplemental papers to be filed/served on or before 06/19/24.
6. **Estate of Correa (PR12097).** No appearance is necessary. This Court has received and reviewed counsel’s latest response to the prior concerns, and accepts the representation that progress is being attempted. As such, good cause exists for one last extension of the administrative period. Court intends to grant a continuance of 120 days, but that shall be an OSC re: sanctions (see §§ 12202 et seq) and shall be rendered moot if, and only if, there is at the time a petition for final distribution already on file with a hearing date.
7. **Estate of Spearer (PR12435).** No appearance is necessary. The petition for administration and letters is ready for approval. Court will execute order, issue letters, and set §§ 8800 and 12200 review hearings dates.
8. **Matter of Matz (PR12447).** No appearance is necessary. Petitioner seeks an order declaring APN 081-052-008 to be an asset of the subject trust dtd 11/15/23. A court may make the requested transfer under §856 if the settlor presently owns the subject property, the settlor created a trust with him/herself as trustor, and there exists sufficient evidence from which to conclude that the settlor 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. Although the property was not identified on the missing Exhibit A from the trust, it appears that the Bill of Transfer was perhaps intended to serve as the Exhibit A. More importantly, the Quitclaim Deed recorded 11/15/23 more than adequately establishes decedent’s intention to hold the property in trust. See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. The concern regarding notice to the parents is appreciated, but not presently an issue since there is no request being made to distribute out from the trust to identified persons (triggering the deadline for disclaimers), so the request to dispense with notice to them for the limited purpose of this petition only will be granted.

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9:30 a.m.

9. **Guardianship of Woodall (PR12068).** No appearance is necessary. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date.
10. **Guardianship of Block (PR12079).** No appearance is necessary. This case is related to #12 and #14. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date. Guardians are kindly reminded that Para 5.a. is supposed to include the wards and everyone in the house, not just biological children.
11. **Guardianship of Hernandez (PR10832).** No appearance is necessary. This case is related to #19. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date. Guardians are kindly reminded that if visits with biological mother are causing issues on school nights, the guardians have the authority to adjust, as the Court is unaware of any formalized visitation agreement/order.
12. **Guardianship of Murphy (PR12080).** No appearance is necessary. This case is related to #10 and #14. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date. Guardians are kindly reminded that Para 5.a. is supposed to include the wards and everyone in the house, not just biological children.
13. **Guardianship of Price (PR11618).** No appearance is necessary. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date. Court expects to see ward returned to on-site public school for the 2024-2025 school year, unless good reason exists otherwise.

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14. **Guardianship of Murphy (PR12081).** This case is related to #10 and #12. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date.

10:00 a.m.

15. **Conservatorship of Conly (PR12412).** No appearance is necessary. Petition granted. The Court, having received and reviewed the court investigator's confidential report, finds by clear and convincing evidence (1) that even though the conservatee is developmentally delayed and presumptively entitled to a limited conservatorship, the degree of his impairment is so extensive that he lacks the capacity to perform any of the tasks necessary to provide properly for his/her own personal needs for physical health, food, clothing, or shelter or to manage his/her own financial resources; (2) that a general conservatorship appears to be the least restrictive option for this individual giving his pronounced deficits; and (3) that the conservators will most likely serve in the conservatee's best interests. Court intends to enter the order, issue letters, and set annual review date.
16. **Conservatorship of Gillette (PR11986).** No appearance is necessary. This was to be a review hearing on the Second Accounting, which petitioner acknowledged at the last hearing was tardy. Nothing has been filed in the interim. Court intends to continue the hearing to 06/28/24, and require the accounting to be on file on or before 06/19/24.
17. **Conservatorship of Smith (PR10905).** No appearance is necessary. This was to be a review hearing on the Sixth Accounting, which petitioner acknowledged at the last two hearings was tardy. Nothing has been filed in the interim. Court intends to continue the hearing to 06/28/24, and require the accounting to be on file on or before 06/19/24.
18. **Guardianship of Millis (PR12440).** No appearance is necessary. This is a single petition by the maternal grandmother for *permanent* guardianship over two individual wards (siblings, aged 10 and 12). The biological father is reportedly deceased. The biological mother has reportedly abandoned the wards with petitioner, voluntarily. There are numerous concerns, most notably petitioner's confession that she "would prefer to have the boys with their mother" if she can course-correct. Court will appoint an investigator to look into this. Based on that report, this Court may also consider appointing counsel to represent the boys. Court may also consider interviewing the wards to determine what is in their best interests. As such, even though this was filed as an application for *permanent* guardianship only, the Court is prepared to enter a *temporary* guardianship because the boys are presently living with petitioner. Court intends to set a hearing for permanency, and will require actual notice to all persons and consent from biological mother.

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19. **Guardianship of Hernandez (PR11351).** No appearance is necessary. This case is related to #11. The Court, having received and reviewed the Confidential Guardianship Report (GC-251), finds by a preponderance of the evidence that the guardianship remains necessary and convenient, that the guardians are serving the ward's best interests, and that neither biological parent has indicated a desire, let alone an ability, to return to the role of parent. Court intends to set an annual review date. Guardians are kindly reminded that if visits with biological mother are causing issues on school nights, the guardians have the authority to adjust, as the Court is unaware of any formalized visitation agreement/order.
20. **Guardianship of Robicheaux (PR12446).** No appearance is necessary. This case is related to FL18116 and CRF73638. There is a long and contentious history between these biological parents, which includes a pending felony DV charge against an individual residing *in* petitioner's residence – which is a disqualifying status for most guardianships. Petitioner also failed to mark boxes for #8 and #13 on the GC-212. Petitioner does not consent from either biological parent, and has not presented any evidence from which to glean the factors necessary for a guardianship over the objection of one or both biological parents. A court investigator has already been appointed, but the report is not yet complete. Court intends to continue the hearing on this temporary application to the date set for the permanency hearing (07/05/24), and to re-set the permanency if warranted at that time. However, this Court notes that if the allegations regarding these parents (both mother and father) are found true, given the allegations made by father about petitioner, a guardianship with someone else might actually be in this child's best interests. Court will reserve the issue pending review of any objections from father.
21. **Guardianship of Alexander (PR12459).** Although Attachment 3C appears to be a consent to the guardianship by at least one of the two biological parents, biological parent consent must appear on the GC-211. There is a defect with service, as petitioners indicate that the biological parents are homeless and yet there is a physical address provided for them on the GC-020. Although the standard for granting a guardianship is relatively low ("necessary or convenient"), the petition fails to provide sufficient information beyond the fact that the biological parents are having trouble getting the child to school. Where is the child currently residing? Where is she currently enrolled for school? Also, do petitioners intend to take the child out of county for residence and schooling? A court investigator has been appointed, but the report is not yet complete. Court is unclear if a temporary guardianship is warranted absent additional information.
22. **Guardianship of Corne (PR12378).** Due to clerical error, this hearing appears to have been inadvertently set at 1:00 pm, which is during the lunch recess. Nevertheless, should the parties appear for a hearing this day, there is no proof of service from the prior hearing as ordered by this Court. As such, it is not feasible from a review of the court file to determine whether the biological mother continues to object to this guardianship converting from temporary to permanent. Court intends to continue the hearing.

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1:30 p.m.

23. **Petition of Krempa (CV66057).** This is a non-confidential petition to change a last name. There is no proof of publication in the court file, which is a prerequisite to any relief. Assuming proof is provided at the hearing, petitioner should prepare to show proof of the facts stated in Para 7 and to be questioned under oath per CCP §1279.5.

24. **Roessler v. Glassman (CV63606).** This is a motion to terminate an existing 5-yr civil TRO, issued 05/15/23. The dispute exists between step-father and step-son, and appears to be motivated in part by step-father's desire to keep step-son from seeing his dying mother. There is no proof of service on the protect party in the court file.