

Department 5 Probate Notes for Friday, July 5, 2024

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8:30 a.m.

- 1. 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 either provide the Court with proof of service on the affected persons or the court can simply continue the hearing hereon to permit notice.
- 2. Estate of Thomas (PR12469).** This is a petition to open a decedent's estate. Unfortunately, the petition is not ready to be approved, as there are quite a few anomalies requiring cure. The petition indicates a request to probate a will, but then notes that the decedent died intestate. Petitioner must confirm. There is no request for IAEA authority, which petitioner would presumably like to have. There are no bond waivers attached, despite the reference. There are no other heirs listed in Para 8, but notice was provided to someone with the same surname as decedent. Petitioner resides out of state and did not include a permanent resident attestation required of out-of-state personal representatives. Para 3 does not appear to be filled out correctly. There is, also, no proof of publication. Petitioner will be encouraged to seek out the assistance of legal counsel in this matter to avoid delays.
- 3. In re Husher Trust (PR12452).** This is a petition to confirm an asset from one trust to another. Specifically, petitioner seeks an order declaring proceeds from a life insurance policy (GenAmerica Financial Policy No. xx1749) to be an asset of either the Husher Insurance Trust dtd 11/14/01 (hereinafter "Insurance Trust") or the John D. Husher Trust dtd 12/08/22 (hereinafter "Individual Trust"). At present, the policy benefits (\$300,000) are earmarked as an asset of the Husher Survivor's Trust dtd 05/31/96 (hereinafter "Survivor's Trust"), which was apparently revoked as part of the trust consolidation effort in 2022. As a technical matter, since the trustee of the Survivor's Trust (petitioner herein) "continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust" (§15407), petitioner could have received the payout into the Survivor's Trust, and then merged the Survivor's Trust with either the Insurance Trust or the Individual Trust (§15411). This version would have avoided judicial intervention, but likely would have required an additional EIN and perhaps some filings. It further seems that petitioner could have executed an assignment of the policy from the Survivor's Trust to the Insurance Trust (Ins. Code §10173). Either way, a trial court may make a 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

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1434, 1443; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. Assuming that the Survivor's Trust remained revocable during the settlor's lifetime, and the MetLife beneficiary designation was itself amendable (see Ins. Code §10170), decedent owned the rights to the policy at the time of his passing. The evidence provides quite clearly that decedent intended to hold his policies in the Insurance Trust (which was never revoked). See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. Since the beneficiaries appear to be the same regarding of which trust the MetLife payout lands in, and since there is nothing in the Individual Trust suggesting an intent to hold insurance policies, the order shall be that with the failure of the designee Survivor's Trust to survive decedent, the owner of the policy in question shall be the Insurance Trust and not the decedent individually. This is an imperfect solution, but where a tree falls in an empty forest, no objections to the sound made are expected.

- 4. In re Boucher Trust (PR12474).** This is a petition to confirm APN 048-483-005 an asset of the Terry James Boucher Revocable Living trust dtd 12/23/20. A trial court may make a 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. The petition includes sufficient evidence of factors 2 and 3, but the only "evidence" of current ownership is the verified Para 7, but that lacks sufficient indicia of foundation and personal knowledge. See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. Ordinarily petitioners will submit some additional evidence to show that the property remains in decedent's name. Counsel to advise.

10:00 a.m.

- 5. Guardianship of Hernandez (PR12472).** This is a petition by the paternal grandmother to establish a guardianship over a 14 yr-old girl. There is no consent from either biological parent. In fact, both the biological mother and the maternal grandmother have filed formal objections. This proceeding is related to FL10822, wherein the Court removed the proposed ward from the care of her biological parents and made a non-probate family placement with petitioner herein. Although the family court did not make express findings under Family Code §3041, many of the required findings have been made inferentially. Nevertheless, the objectors are entitled to a hearing herein. The matter must be referred to a court investigator. Court intends to also appoint counsel for the proposed ward.
- 6. Guardianship of Robicheaux (PR12446).** Based on investigative report, Court intends to deny the petition absent a §3041 hearing. Petitioner to advise.

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10:30 a.m.

7. **Conservatorship of Egan (PR10510).** No appearance is necessary. The Court, having received and reviewed the court's investigative report, will find by clear and convincing evidence that the conservatorship remains necessary, that a general conservatorship is the least restrictive option available for present purposes, and that the conservator is acting in the conservatee's best interests. Court intends to set an annual review date.
8. **Conservatorship of Wilcox (PR10600).** No appearance is necessary. The Court, having received and reviewed the court's investigative report, will find by clear and convincing evidence that the conservatorship remains necessary, that a general conservatorship is the least restrictive option available for present purposes, and that the conservator is acting in the conservatee's best interests. Court intends to set an annual review date.
9. **Conservatorship of Hempler (PR11622).** This was to be the annual review, but the conservatorship of the person has terminated by operation of law. See §1860(a). This included a conservatorship of the estate and there is no final report/accounting. Counsel to advise.
10. **Guardianship of Gayle (PR12283).** No appearance is necessary. This is an existing guardianship established by the maternal grandmother. The Court, having received and reviewed the GC-251, intends to find by a preponderance of the evidence that the guardianship remains necessary or convenient, and that the guardian is serving the ward's best interests. Court intends to set an annual review date.
11. **Guardianship of Stacy (PR10715).** No appearance is necessary, as this review hearing was previously moved to 11/22/24.
12. **Guardianship of Hickie (PR12284).** No appearance is necessary. This is an existing guardianship established by the maternal grandmother. The Court, having received and reviewed the GC-251, intends to find by a preponderance of the evidence that the guardianship remains necessary or convenient, and that the guardian is serving the ward's best interests. Court intends to set an annual review date.

1:30 p.m.

13. **Marriage of Dunn (FL18239).** Bifurcation and settlement conference.

3:00 p.m.

14. **Marriage of Bacon (FL14012).** Nonconfidential hearing to restore former name.