

## Department 5 Probate Notes for Friday, October 4, 2024

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### 8:30 a.m.

- 1. Estate of Ross (PR11991).** Counsel to advise whether the property which has been sold was the property Cynthia has been seeking permission to enter/inspect. Assuming that is the case, there may be a basis for a modest surcharge against Catharine. Counsel also to advise regarding options for liquidating other property encumbered by 1% owner. Court intends to set a filing deadline for the final petition.
- 2. Estate of Hackett (PR12508).** No appearance is necessary. This is a petition to determine succession to a small estate, consisting of real and personal property. Although the required DE-161 is incomplete, this Court accepts the estimated appraisal of the entire estate offered by the probate referee as falling beneath the statutory cap for these expedited proceedings. Petitioner's description of the condition is most helpful. Court intends to grant the petition.
- 3. Estate of Nute (PR12482).** No appearance is necessary. This is an intestate spousal petition involving APN 032-312-001. Decedent acquired his interest in said parcel in 1998 via grant deed, but did not marry petitioner until 2020. Absent evidence of a written marital transmutation consistent with Family Code §852, the parcel was decedent's separate property when he passed. See Family Code §770. Pursuant to Probate Code §6401(c), petitioner is reportedly entitled to one-half of the property, and the balance to decedent's child. That individual has since disclaimed all interest therein. There being no other heirs, petitioner is entitled to the whole thereof. Court intends to grant the spousal petition.
- 4. Estate of Hamilton (PR11413).** This is a petition for probate and letters of administration that was released into the wild in February of 2017. It started out normal enough, with §880 and §12200 review hearings. There was a special petition to determine distributive rights, resolved back in 2020. Thereafter, the case went cold. This estate needs to be revived, and closed.
- 5. Estate of Pacheco (PR12438).** No appearance is necessary. This was to be the §8800 review hearing, and a final I&A is already on file.
- 6. Estate of Benoit (PR12133).** This probate administration was released into the wild (aka Letters issued) on 09/09/22. On 12/20/23, counsel for petitioner informed this Court that the petition to settle the accounting and permit distribution "will be filed within six weeks." While this Court does not profess to be a math whiz of any kind, it seems that "six weeks" from 12/20/23 expired long ago. Counsel advises that he has lost contact with the personal representative. An OSC and citation was issued for the personal representative to personally appear.
- 7. Estate of Bellinger (PR12414).** This petition includes a good 'ol fashioned will contest. In the red corner stands petitioners (Mark and Kimberly), who proffer for this Court's consideration decedent's alleged holographic slop from 2003 devising the bulk of his estate equally amongst his three children. In the blue corner stands objector (Melissa), who proffers for this Court's consideration a typed will from 2023 devising the entirety of his estate to Melissa, leaving nothing

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to Kimberly, and expressly disinheriting Mark. The parties were directed to find a resolution, but have reportedly failed to do so. In the interim, petitioners filed a 850 petition and an ex parte application seeking replevin, injunction and fees. Parties must clarify the Request for Dismissal submitted 09/12/24 and referenced in this Court's Order After Judicial Review. Court to set evidentiary hearing on will contest – parties to advise 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 the parties is required. Courts intends to impose restraint on use of improperly registered/insured vehicles, as well as a restraint on alienation of any property, until the matter of the competing instruments is resolved.

8. **Estate of McCue (PR12413).** No appearance is necessary. This was to be the §8800 review hearing, and a final I&A is already on file.
9. **Estate of Rossman (PR12391).** No appearance is necessary. This was to be the §8800 review hearing, and a final I&A is already on file.
10. **Estate of Tarone (PR12407).** No appearance is necessary. This was to be the §8800 review hearing, and a final I&A is already on file.
11. **Estate of Higgins (PR12328).** This was to be the §8800 review hearing, but there is no final I&A on file. Counsel to advise.
12. **Estate of Bauman (PR12419).** No appearance is necessary. This was to be the §8800 review hearing, and a final I&A is already on file.
13. **In re Light Living Trust (PR12504).** This is, among other things, a §§ 15660/17200 petition to fill a vacancy left in the office of trustee. The settlor passed away on 09/20/2022. The only nominated successor trustee (Tomara) assumed the office but has since passed away. Given that no trustee currently manages the trust, there exists a vacancy in the office of trustee. See §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. Petitioner, while not nominated to serve in any fiduciary capacity, might qualify for appointment under Probate Code §15660 if she can show she has statutory priority as a personal representative or “a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.” See §48(a); in accord, *Colvis v. Binswanger* (2023) 96 Cal.App.5th 393, 397-399; *Estate of Sobol* (2014) 225 Cal.App.4th 771, 782-783. She does not allege the former. As to the latter, although petitioner does not have a direct property right in the trust res, it is noted that she is listed as the alternate beneficiary should Tomara fail to survive decedent. Tomara did survive, but failed to receive the trust res before her passing. As such, Tomara's *estate* has the requisite property interest. Petitioner has not provided any evidence as to what Tomara's estate plan consists of – leaving this Court to speculate as to whether petitioner does

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in fact have any interest in the subject property. Assuming she has an interest in Tomara's estate, a nomination from other interested parties would be ideal. Either way, petitioner will need to file with her supplemental papers a death certificate for both Thomas and Tomara.

Assuming petitioner can establish standing as an interested person to fill the vacancy with herself, the next issue is whether to declare the real property an asset of the trust. The trust instrument identifies the subject property as an asset of the trust (see II.A. and Schedule A), at least as of December 2011 when the trust was established. The litigation guarantee shows that the property is presently in the name of decedent/settlor, and not the trust. Since the settlor retained for himself the right to control all trust property (see III.B. and VII.B.), the fact that it was not in the trust at the time of his passing is not necessarily a product of innocent error. It is entirely possible that decedent/settlor decided against placing, or keeping, the property in trust. In other words, without a copy of decedent's will, it is difficult to determine that the omission was indeed error. A trial court may make a transfer under §856 of property into a 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. Additional evidence on this topic will be required.

### 10:00 a.m.

14. **Conservatorship of Jardine (PR11602).** Need "last" accounting from prior conservator and "hand off" to successor conservator of estate.
15. **Conservatorship of Jardine (PR12450).** Court is prepared to grant petition for permanent conservatorship but is informed that petitioner is having some trouble securing the required bond. Counsel to advise.
16. **Conservatorship of Cattaneo (PR11563).** No appearance is necessary. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that that the conservator is serving the conservatee's best interests. Court to set annual review date.
17. **Conservatorship of Tolhurst (PR11138).** According to counsel, the conservatee is missing, and potentially qualifies for a presumption of death. Counsel is invited to review §§ 1840 et seq and 1853 regarding the procedure for a missing conservatee.
18. **Conservatorship of Smith (PR10905).** Court is still awaiting tender of the 6<sup>th</sup> accounting.
19. **In re ASH (PR12216).** Court is presently satisfied that the prior order permitting withdrawal of funds has been resolved with the filing of paid invoices and receipts. Court is aware that a new

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petition to withdraw funds has been filed. Due to the delay in providing invoices and receipts, this court will not grant this or future requests ex parte. Counsel and petitioner shall provide an oral explanation for the need for funds. Each request must include a description of the fund balance.

20. **Guardianship of Rown (PR11416).** There is no GC-251 report on file.
21. **Guardianship of Meek (PR11073).** Related to #23. There is no GC-251 report on file.
22. **Guardianship of Hagerman (PR11704).** Related to #27. Petition to terminate guardianship by bio mom. Guardian consents. Bio dad on vacation (Pelican Bay). History is significant for CWS and criminal filings. Court has received and reviewed the investigative report but feels compelled to interview the ward given the circumstances.
23. **Guardianship of Jones (PR12098).** Related to #21. There is no GC-251 report on file.
24. **Guardianship of Hernandez (PR12472).** This is a petition by the paternal grandmother to establish a guardianship over a 14 yr-old girl. Bio father consents. Bio mother and MGM object. This proceeding is related to FL10822, wherein the Court granted bio mom full custody but removed the proposed ward from the care of her biological parents and made a non-probate family placement with the guardian. 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. Father requests §3044 rebuttal hearing, though Mother contends that hearing already occurred. Court investigator was reappointed. Court intends to also appoint counsel for the proposed ward. Although Father lives near proposed boarding school, child indicated in interview no desire to attend boarding school.
25. **Guardianship of Ireland (PR11484).** The Court has received and reviewed the earlier investigative report regarding the ongoing need for this guardianship, the propriety of the current guardians continuing to serve in that capacity and bio mom's recent request (through maternal aunt) to appoint the aunt as the guardian instead. Jury trial in CRF70157 vacated with talks of global resolution. Court to set §2650 hearing and consider suspension of co-guardian powers (§2654) in the interim.
26. **Guardianship of Gwin (PR11711).** No appearance is necessary. 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 is serving the ward's best interests. Court intends to set annual review date.
27. **Guardianship of Martinez (PR11676).** Related to #22. Petition to terminate guardianship by bio mom. Guardian consents. Bio dad recently returned from vacation. History is significant for CWS and criminal filings. Court has received and reviewed the investigative report but feels compelled to interview the ward given the circumstances.

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28. **Guardianship of Jones (PR12519).** Petition to establish new, out-of-county guardianship by paternal grandfather and step-GM based on alleged domestic disturbances. No consent from either parent. No POS. Court investigator already appointed. This case is related to FL15791, in which court granted Father's DVRO in full, as well as Mother's DVRO in full (which included no contact and stay away from child). Current order is Father has alternate weekends. Custody dispute ongoing and et for hearing 10/10/2024. Consider consolidating with family case.
29. **In re Greener Special Needs Trust (PR11296).** No appearance is necessary. Since the order approving the 5<sup>th</sup> accounting did not include a biennial review date, the Court intends to set.

**1:30 p.m.**

30. **Petition of ED (CV66309).** Nonconfidential petition for name change. No proof of publication in the file. No POS on bio father (see §1277(a)(4)) and no basis to conclude that publication is sufficient. No contentions re address confidentiality program for DV. Query whether change is in best interests of child (§1278.5).
31. **Petition of RL (CV66268).** Nonconfidential petition for name change. Petitioner absent last hearing, continued as courtesy.
32. **Petition of LN (CV66326).** Nonconfidential petition for name change. No proof of publication in the file.
33. **Marriage of Pfeiffer (FL18186).** Settlement conference, day 2.
34. **Petition of IR (CV66264).** Nonconfidential petition for name change. Query whether change is in best interests of child (§1278.5).