

Department 5 Probate Notes for Friday, November 8, 2024

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8:30 a.m.

- 1. Estate of King (PR11586).** Before the Court this day is a hearing on the petition for final distribution in a case released into the wild on 10/26/2018. Pursuant to Probate Code §§ 11000 and 11601, notice of this petition was to have been given to all interested persons, including those requesting special notice. A review of the Court file indicates that several persons *might* be entitled to notice (Sheryl King, Ruth King, and John Viglienzoni) but the Notice of Hearing filed herewith (DE-120) does not include page 2, so this Court is uncertain as to who should, and did, receive notice.

There is a minor miscalculation regarding counsel's statutory fee. Pursuant to Probate Code §10810(b), the fee shall be based upon "the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales." The real property sold for \$105,000.00, and the \$29,500.00 motorhome was transferred in exchange for a waiver of John Viglienzoni's \$2,350.00 creditor claim. With the cash on hand of \$2,731.66, the statutory fee basis was \$110,081.66, not \$137,331.00. The statutory fee is \$4,302.45.

With regard to the request for \$2,800.00 in extraordinary fees to defend a \$2,350.00 claim in CVL62521, this court declines to award any such fees. It was petitioner's burden of proof to justify her decision to offer Mr. Viglienzoni only \$500 (see §9254), and it appears to this Court that his invoice dated 11/16/2018 was not subject to bona fide dispute. By putting him to the task of litigating such a *de minimus* claim, counsel exposed petitioner to a possible award of adverse fees and costs (see §9354(c)). To avoid that, petitioner ultimately agreed to *give* Mr. Viglienzoni that motorhome, a ten-fold recovery. There was no benefit to the estate from this litigation.

With regard to the request for \$14,000.00 in extraordinary fees to defend the Merced partition action, that will be granted in part. A petition for extraordinary compensation must show (1) the nature and difficulty of the tasks performed, (2) the results achieved, (3) the benefit of the services to the estate, and (4) the productivity of the time spent. CRC 7.702. The property was sold for a loss of \$15,000.00. While there was certainly some litigation effort (CourtCall appearances and a deposition), the length of time it took to sell the property *for a loss* is unclear. The absence of billing summaries makes this process even harder. This Court finds that \$8,750.00 is more than sufficient.

- 2. Estate of Powers (PR12278).** No appearance is necessary. This Court, having received and reviewed counsel's 12201 status report, finds by a preponderance of the evidence that good cause exists to extend the administrative period for 90 days. Court intends to set new review hearing date.

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3. **Estate of Belletto (PR12514).** This is a petition for letters of administration. There is a disconnect since petitioner requested both “full” and “limited” authority under the IAEA (compare caption to Para 2.c.). In addition, because there are persons who appear to have superior and/or equal priority to petitioner for the right to represent the estate, petitioner will need a declination/nomination from decedent’s spouse and the siblings. See §§ 8461-8465. Finally, because this is an intestate estate and there are no bond waivers on file (§8481), the bond cannot be waived without a receipt showing that all of the estate assets are currently held in a blocked account. See §8483. Since the estate consists of real property, and a bond would likely be required to at least cover the net equity (§8482(d)), a bond in the amount of \$200,000 will be required.
4. **Estate of Jasper (PR12521).** No appearance is necessary. This is a petition for letters of administration with “full” authority under the IAEA. Petitioner, having supplied for this Court bond waivers and nomination papers, is entitled to appointment as the personal representative for her father’s estate. Court intends to enter order, issue letters, and set §§ 8800/12200 review dates.
5. **Estate of Higgins (PR12328).** No appearance is necessary. This was to be a continued hearing and OSC re sanctions based upon petitioner’s failure to timely file the I&A. Although the I&A was late, a final I&A is now on file and this hearing can go off-calendar.
6. **Estate of Keller (PR12402).** No appearance is necessary. This is a petition for final distribution and to approve statutory fees. The Court, having received and reviewed the petition and its attachments, finds that the proposed distribution and statutory fee are proper ... except that the Court notes the statutory fee could be slightly higher if the difference between DOD valuation and current assets is based on sale gains rather than market forces. Assuming no appearance, the Court intends to grant the petition as prayed for.
7. **Estate of Patterson (PR12494).** Before the Court this day is a petition to determine summary succession of a purportedly wild deed to APN 091-050-027-000. The petitioner herein is the acting successor trustee for a trust which holds title *to the promissory note* associated with the deed of trust (worth \$87,630.80), but the deed itself remains in decedent’s individual name. Although a “Heggstad” petition moving the deed into the trust seems most logical, following several hearings in which viable options were addressed, petitioner and counsel elected to proceed via disclaimers from all heirs. The three sibling-heirs disclaimed not only the deed of trust, but the underlying note as well (now valued at (\$87,630.80). In so doing, the deed and note are free to rejoin, and it no longer matters if they rejoin inside the trust or outside since petitioner is the sole interested party. In addition, because petitioner is the *debtor* on the note, that fact that he now holds sole interest to both

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the deed and note seemingly results in a merger and full satisfaction of the debt. See *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1235; *Ito v. Schiller* (1931) 213 Cal. 632, 635; *Bailey v. Citibank, N.A.* (2021) 66 Cal.App.5th 335, 359-360; *Great Western Bank v. Kong* (2011) 90 Cal.App.4th 28, 32; *Kolodge v. Boyd* (2001) 88 Cal.App.4th 349, 361-362; *Wilson v. McLaughlin* (1937) 20 Cal.App.2d 608, 610-611. Assuming this is the intent of those other heirs disclaiming interest, the obvious self-dealing can be overlooked. Counsel to provide this Note to the disclaimants and provide proof of that service at the hearing hereon. If no objection is lodged, the petition shall be approved as prayed.

8. **Estate of McMeechan (PR12511).** This is a spousal property petition. As previously noted, the Court found by a preponderance of the evidence that the conditions set forth in §§ 13540 and 13651 had been satisfied except that there was a gap in “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” (see §13651(a)(3)) because there was no evidence submitted with the petition to demonstrate how title was *currently* held. Since that time, counsel has learned that one of the properties sought to be transferred was indeed no longer in decedent’s name – avoiding what could have amounted to an inadvertent slander of title. Supplemental papers have been filed vis-à-vis the remaining two parcels, but the “proof of contemporaneous ownership” (referenced as Exhibits B and C) is not attached to the version viewable in the Court file.
9. **Estate of Stephens (PR12520).** This is a petition to determine succession to 50% of APN 033-363-001-000, filed by decedent’s four surviving next of kin. A current preliminary title report shows that decedent owns 50% of the parcel as her separate property, and another 50% in joint tenancy with Gary. Reading between the petition lines, it would appear that Gary was decedent’s spouse, and that the joint tenancy would have been severed in favor of decedent when he passed. Thus, decedent apparently owned 100% of the subject property as her separate property when she passed away. Compare §§ 13005, 13050(a)(1) and 13052. Since the probate referee was asked to only appraise 50% of the parcel, and that came to \$173,000.00, it would appear that decedent’s gross estate exceeds the statutory cap for this summary proceeding (§13100).

10:00 a.m.

10. **Conservatorship of Cotta (PR9987).** No appearance is necessary. This 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

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the conservatee's protection, and that that the conservator is serving the conservatee's best interests. Court to set annual review date.

11. **Guardianship of Tuchsén (PR10954).** Before the Court this day is an oral petition by one of the two co-guardians to terminate the guardianship involving two minor children – who presently reside with their biological mother. The investigative report does not include any input from the other co-guardian, but otherwise presents a strong basis for a finding that the guardianship – at least in its present posture – is no longer necessary/convenient. Court will need an update on mother's criminal cases and testimony regarding the succession plan should mother find herself incarcerated.
12. **Guardianship of Mutchler (PR12159).** Still no GC-251.
13. **Guardianship of Harwell et al (PR12538).** Before the Court this day is the hearing on the petition by the paternal grandparents for temporary letters of guardianship over their three grandchildren based on allegations of parental neglect. All three children have been the subject of juvenile dependency proceedings, and there was a DVRO between the proposed guardian and biological father (FL13439). Although the petition for temporary letters does not include Otis (see Para 6), that appears to be an oversight. Although it appears that the biological parents may have given consent to the guardianship in August, it would appear that the biological mother has rescinded that consent and fled with two of the three children. Court requires additional information as to where the children currently reside, and will likely need to have separate guardianship petitions established for each. Court intends to appoint the court investigator, and will consider appointing minor's counsel.

1:30 p.m.

14. **Marriage of Brooks (FL17648).** Hearing on Petitioner's motion to set aside MSA; possible bifurcation if time permits.

3:30 p.m.

15. **Guardianship of Lima (PR12496).** In chambers conference with proposed wards to determine necessity/convenience of maternal grandmother's petition to establish guardianship over children in the sole custody of the biological father. Court to confirm availability of court reporter or waiver of presence by interested parties.