Department 5 Probate Notes for Friday, April 19, 2024

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8:30 a.m.

1. **Estate of Madrid (PR12308)**. No appearance is necessary. Pursuant to §8800 et seq, petitioner is required to submit a single I&A designated as "final" – meaning that it includes all of the assets in the estate. Petitioners submitted a "final" that was much smaller in value than the "partial" filed the same day. Clarification is required.

2. **Estate of Peterson (PR12241).** This hearing is off-calendar. Matter is concluded.

3. **Estate of Hopper (PR12187).** Although petitioner complied with this Court's request to have a status report on file before the next hearing, only page 1 of that report appears in the court file. Petitioner is asked to re-file the report in full. Since this Court is informed that the subject property has been sold, it would appear that a petition for final distribution should be forthcoming.

4. **Estate of Dobbins (PR12296).** No appearance is necessary. The Court is in receipt of petitioner's final I&A.

5. **Estate of Reeves (PR12248).** No appearance is necessary. There is no status report or petition on file. This was to be the annual §12200 review hearing, but given that this is right at the 12-month mark and this Court generally gives parties a little breathing room, Court intends to continue this hearing for 30 days.

6. **Estate of Larson (PR12422).** No appearance is necessary. The Court, having reviewed the petition and supporting filings, concludes that the Petition for Letters of Administration is proper in all respects and shall be granted. Court will set §8800 and §12200 review dates. Administrator is ordered to submit the §8573 statement within 30 days.

7. **In re Ylimaki Family Trust (PR12370).** Counsel to advise whether agreement has been reached with the acting trustees to surrender control and permit Mr. Nixon to serve as trustee.

9:30 a.m.

8. **Guardianship of Means (PR11889)**. No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments, is prepared 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. However, the Court notes that parental visits are of such frequency that additional Para 7 information will be required if guardianship is to remain in place. Court will set annual review date.

9. **Guardianship of Nulph (PR10997).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments, is prepared 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 will set review date, noting that ward will be aging out soon.

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10. **Guardianship of Flores (PR12055).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments, is prepared 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. However, the Court notes that maternal visits are of such frequency that additional Para 7 information will be required if guardianship is to remain in place. Court will set annual review date.

10:00 a.m.

11. **Conservatorship of Ferreira (PR12354).** The Court, having received and reviewed the investigative report, is unable at this time to make the required findings by clear and convincing evidence that any conservatorship is required. An attorney will need to be appointed for the conservatee. The conservatee reportedly has an attorney who assisted with the Alameda action, so that person would likely be a good candidate for appointment here.

12. **Conservatorship of Jardine (PR11602).** This was to be the hearing on the 3rd accounting, covering the period 11/15/21 – 11/14/23. Although §2620 does not prescribe the time period in which the conservator is to "present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance," (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. The accounting is tardy. Petitioner to advise.

13. **Conservatorship of Conly (PR12412).** The Court, having received and reviewed the petition, concludes that there is a prima facie basis for making the requisite findings for a conservatorship by clear and convincing proof. However, before such a finding can be made, the conservatee is entitled to the appointment of counsel (§1471), and a court investigator must be appointed to complete an evaluation (§1826). The Court must also ascertain the conservatee's desire to have any conservatorship, and whether an evidentiary hearing will be necessary (§§ 1827-1828).

14. **Conservatorship of Smith (PR10905).** This was to be the hearing on the 6th accounting, covering the period 07/01/21 – 06/30/23. Although §2620 does not prescribe the time period in which the conservator is to "present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance," (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. The accounting is tardy. Petitioner to advise.

10:30 a.m.

15. **Conservatorship of McClintock-Cole (PR12057).** The Court, having received and reviewed the petition, concludes that there is a prima facie basis for making the requisite findings for a conservatorship by clear and convincing proof. However, there remains the question of whether the conservatee is entitled to the appointment of counsel (§1471) and whether this Court must ascertain the conservatee's level of functionality and rights to an evidentiary hearing (§§ 1827-1828).

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1:30 p.m.

16. In re Audrey S. (PR12389)
17. In re Austin S. (PR12387)
18. In re Jordan S. (PR12388)
19. In re Nathan S. (PR12386)

Overview

In these related actions, four of Melissa Patania's five children seek court approval of settlements reached in a personal injury action involving (1) the death of their mother Melissa, and (2) personal injuries to those children who were also in the car. The claimants are as follows:

Robert (age 19)	Wrongful death only (he was not in the car); as an adult, no need for court approval
Audrey (age 17)	Wrongful death and personal injury; biological father serving as proposed guardian ad litem
Nathan (age 14)	Wrongful death and personal injury; maternal grandfather appointed as guardian
Austin (age 11)	Wrongful death and personal injury; maternal grandfather appointed as guardian
Jordan (age 10)	Wrongful death and personal injury; maternal grandfather appointed as guardian

The at-fault driver was covered by a 100/300 policy with California Casualty, and Melissa had only a minimal 15/30 UIM with State Farm. Although the at-fault driver was operating his father's vehicle, there was limited information from which to pursue a claim for negligent entrustment (let alone a fruitful source of recovery). There is some indication that Melissa's sister raised $22,765.00 through a GoFundMe campaign, but those funds are not before this Court.

The Accident

On 10/26/20, at approximately 6:15 pm, Melissa Patania was traveling eastbound on Phoenix Lake Road (one block from home). Accompanying her in her Suzuki SUV were four of her five children: Audrey (13); Nathan (10); Austin (7); and Jordan (6). Augustus Marinovich was traveling in the opposite (westbound) direction in his Toyota Tundra. Marinovich was on his way to work (graveyard shift at Diestel Turkey Ranch), and traveling at a "high rate of speed" while reportedly hopped up on marijuana, Xanax and "enough" beer to register a BAC of .14. He failed to negotiate a slight bend in Phoenix Lake Road approaching Bear Cub Drive, crossed the center divide, and collided head-on into Melissa's SUV. Melissa did not survive the crash. Jordan barely survived. Audrey, Nathan and Austin sustained varying degrees of injuries. Marinovich later confessed to a battery of offenses (CRF64924), and is currently serving a lengthy prison term.

Jonathan Shrader

Jonathan Shrader (hereinafter "JS") is the presumed biological father of Nathan, Austin, and Jordan. He was generally barred from having any contact at all with Melissa (see FL14091, CRF51630), but was allowed to have very limited contact with the children. On 03/21/19, the Department of Social Services opened dependency cases for all three children. See JV8003, JV8004, JV8005. Melissa participated in reunification services; JS did not. On 09/15/20, Melissa was awarded sole legal and physical custody over the kids, and JS was permitted to have supervised visits at Melissa's sole discretion. JV8003, JV8004, JV8005. Five days after the accident, JS retained Sachs Law APC to represent the interests of his three children.

Robert Patania

Robert Patania (hereinafter "RP") is Melissa's father, and grandfather to all five of her children. At the time of the accident, Melissa and her children were living with RP – who had been a regular fixture in their lives for years. RP was appointed by the Court to supervise JS for any visits. On 03/04/21, RP was awarded temporary guardianship over Nathan, Austin and Jordan. See PR11901. Four weeks later, RP was awarded permanent guardianship. JS, who was made aware of RP's petition, failed to appear or object.

Robert Slawinsky

Robert Slawinsky (hereinafter "RS") is the biological father of Audrey and Robert Jr. In 2008, he was convicted of manslaughter and sentenced to eleven (11) years in prison. CRF26798. As a result, he did not participate in any of the family reunification services provided as part of the W&I §300 proceedings involving Robert Jr. (JV8006) or Audrey (JV8007). On 09/15/20, the Court gave Melissa sole legal and physical custody of Robert Jr. (FL16794) and Audrey (FL16792), with no visitation rights (supervised or otherwise) to RS. RS had no parenting responsibility for Audrey at any time prior to Melissa's death.

Right to Compromise

There are only three persons authorized by law to compromise a minor's injury claim:

1. the minor's legal guardian (Prob. Code §§ 2401, 2451, 2462);
2. the minor's appointed guardian ad litem (CCP §372(a)(2));
3. the parent having care, custody, or control of the minor (Prob. Code §3500).

As it pertains to Nathan, Austin or Jordan, JS was not their legal guardian, did not seek appointment as their guardian ad litem, and did not have care, custody or control over them. As such, JS had no power to compromise a claim on their behalf, and no authority to retain legal counsel on their behalf. Since RP was the one providing care for the children, and secured appointment as their guardian, RP was the only person with authority to retain counsel and settle their claims.

As it pertains to Audrey, RS is not her legal guardian and did not have care, custody or control over her. Although he has sought appointment as her guardian ad litem, this Court is concerned that RS may have an undisclosed conflict of interest (see CCP §372(d)) given his consent to settle Audrey's claim on much the same terms as his other child, Robert, despite the fact that Robert did not witness, or suffer injury in, the subject accident. Although Audrey was not hurt as bad as the others in the accident (suffering only a broken wrist), her claim is patently more significant than that of Robert's – and RS should have seen this. Absent objection from Audrey, this Court intends to appoint RP to serve as Audrey's guardian ad litem.

Resolution

The settlement reached on behalf of the four minor children is not effective without court approval. Prob. Code §§ 2504(b), 3500(b). The petition must be verified, and presented using the Judicial Council forms. The petition must be signed by an attorney of record, and must include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui v. Chui* (2022) 75 Cal.App.5th 873, 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. In granting such approval, the trial court shall make orders relating to the reimbursement of medical expenses, litigation expenses, and reasonable legal fees – with the balance presumably delivered to the petitioner for deposit into a blocked or special needs account. See Probate Code §§ 3601-3604.

There is no signed settlement agreement proffered with the petitions, but the petitions propose the following settlement terms and conditions:

Robert (age 19)	$47,092.01 Wrongful death only
Audrey (age 17)	$52,165.72 Wrongful death, bystander, and personal injury (broken wrist)
Nathan (age 14)	$66,780.80 Wrongful death, bystander, and personal injury (broken arm, leg, jaw)
Austin (age 11)	$60,652.84 Wrongful death, bystander, and personal injury (broken vertebrae, lacerated spleen)
Jordan (age 10)	$73,308.61 Wrongful death, bystander, and personal injury (broken skull/face/leg; lasting impairments)

Based on the extent of the physical injuries suffered by the children present for the accident, and the fact that this resolution is intended to cover both the vicarious (wrongful death) and direct physical damages suffered by the children, equating them is hard to justify. While this Court can appreciate the goal of putting the same net amount ($37,657.01) into a bank account for all five children, the

calculus simply does not work in this instance. The parties are free to renegotiate, but this Court would certainly approve something along the lines of Robert ($15,000); Audrey ($35,000); Nathan ($72,500); Austin ($72,500); Jordan ($105,000).

As far as this Court can tell from reviewing the papers, the settlement further proposes a 15% attorney fee across the board as follows:

- For the claims of Nathan, Austin and Jordan: 15% to Sachs Law;
- For the claim of Audrey: 15% to Young, Ward & Lothert;
- For the claim of Robert: consent to reduce to 15% to Young, Ward & Lothert.

As previously indicated, since JS had no legal authority to settle the claims on behalf of Nathan, Austin and Jordan, and no authority to hire Sachs Law to manage that claim, this Court would have some trouble authorizing any distribution from the settlement proceeds to Sachs Law. That firm may be entitled to quantum meruit, but without a CRC 7.995 declaration from Sachs Law, even that would be hard to justify. As for Young, Ward & Lothert, the CRC 7.995 declaration from Attorney Scott Ward is clear that very little work was required on this file. This was clear liability, with a policy limit offered up immediately. No "lawyer work" was needed to settle; most of the "lawyer work" was in the probate arena (guardianships, GALs, petitions to compromise).

Without a summary of the actual hours expended in the case sufficient to permit a baseline lodestar calculation (see CRC 7.955(b)(2) and (8)), this Court is not prepared to approve a 15% contingency fee for the lawyers. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in contingency fee agreements. See Probate Code §3601(a); CRC 7.955(a)(2) and (b); CRPC 1.5; in accord, *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175-1178; *Gonzalez v. Chen* (2011) 197 Cal.App.4th 881, 885-886; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382; *Ojeda v. Sharp Cabrillo Hospital* (1992) 8 Cal.App.4th 1, 17; in accord, *L.C.C. by and through Callahan v. United States*, WL16579320 at *3-4 (S.D. Cal. 2022). The lawyers are entitled to some fee related to the settlement of the claim, as well as for the post-settlement court proceedings herein. Since no billing summaries were provided, this Court will likely conclude that $30,000 is more than enough to compensate the lawyers for their work in negotiating this settlement and securing court approval. Since Robert's claim could have been settled without court intervention, the bulk of that fee should belong to the others, something like: Robert's legal fee shall be $2,000; and the other four shall each pay $7,500. As for court costs, those should be split equally between the four minors requiring judicial intervention.

There is no perfect solution here given that the at-fault driver caused harm of such magnitude that even a six-figure policy barely scratches the surface. This Court is receptive to argument and suggestions from petitioner and counsel, and if need be is amenable to an evidentiary hearing regarding the proposed distribution and fees. Of course, the focus really ought to be on the children who lost both a parent and some degree of function.

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20. Conservatorship of Garness (PR10012). Bench trial re LPS Conservatorship. On 02/13/24, this Court ordered parties to file/serve trial documents (witness list, exhibit list, trial brief, motions in limine0 by 04/05/24. A review of the court file reveals that no trial documents have been filed, leading this Court to reasonably surmise that the conservatee no longer seeks an evidentiary hearing on the issue of whether his conservatorship (first established in 2006) remains necessary. This would result in the granting of the 11/14/23 petition for re-establishment. Counsel to discuss.