Department 5 Probate Notes for Friday, May 2, 2025

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8:30 a.m.

1. **Estate of Bollinger (PR12580).** Due to the unilateral pre-appointment dismissal of the action, the hearing on the petition is now moot.

2. **Estate of Powers (PR12278).** Counsel to report on status on property sale and final petition.

3. **Estate of Gallo (PR12259).** This was supposed to be the final §12200 hearing. Where is the final petition?

4. **Estate of Johnson (PR12510).** Before the Court this day is petitioner's final accounting and a prayer to settle, allow and approve the proposed distribution plan for the ancillary (aka, "California") portion is testate probate estate. As noted, the California portion includes only the real property located on Via Redondo, and is devised solely to decedent's child David (the petitioner herein). Based on the brief schedules attached, the allowance and distribution plan are acceptable. However, because the petition fails to disclose sufficient liquidity to permit payment of the statutory fees and recoverable costs from the estate, there must be an acknowledgement from petitioner of his personal liability for those expenses (see §11424) in the proposed order thereon. Since no proposed order was submitted (see §11640 and TCSC Rules 5.06.0 and 5.19.0), the petition will technically be lying in repose for a bit.

5. **In re Patton Trust (PR12477).** This is a special proceeding to address alleged concerns regarding the existence and scope of competing trust instruments, pitting members of a blended family at odds with one another. An initial *Breslin* mediation took place, without success. A second *Breslin* mediation apparently bore fruit, as a settlement agreement was circulated and executed by the parties just a few weeks ago. Sadly, within days of said execution, one of the parties filed in the related action (PR12460) a motion to strike specific provisions from the settlement agreement on the ostensible ground that said provisions were either overbroad or unnecessary. Setting aside the obvious timing and notice shortcomings, the legal basis for the motion is unclear to this Court – especially since it was filed by a party who signed the settlement agreement, whose attorney signed the agreement, and who filed the pending motion to strike in pro per (apparently releasing her attorney in just the past week or so). Hopefully the other parties to this action had sufficient notice to at least appear and bring this Court up to speed on what exactly is going on here.

6. **Patton Family Trust (PR12460).** See #5 above.

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10:00 a.m.

7. **Marriage of Chavez (FL18281).** Hearing reserved for oral arguments re: objections raised and clarifications sought by Petitioner in response to Court's tentative statement of decision (CRC 3.1590). Parties requested 30 min.

8. **Conservatorship of Carilli (PR12620).** Before the Court this day is the initial hearing on petitioner's application to establish a general conservatorship over the person and estate of his elderly father. According to petitioner, the primary concern is that he believes his father is "substantially unable to manage his own financial resources or resist fraud or undue influence." §1801(b). To support this, petitioner must provide "knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts." §1821(a)(2). Petitioner must demonstrate the need by clear and convincing evidence (§1801(e)), and cannot rely solely on "isolated incidents of negligence or improvidence" (§1801(b)). In addition, because "it is the intent of the Legislature to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible" (§1800(b)), lesser alternatives (like a POA) must be considered when the primary focus involves financial vulnerability. Court investigator has already been appointed. Per §1471(a)(1), if conservatee does not already plan to retain counsel, "the court shall, at or before the time of the hearing, appoint the public defender or private counsel." Likely to select private counsel from panel.

1:30 p.m.

9. **In re Starr Special Needs Trust (PR12583).** Before the Court this day is the date for argument (if any) on a petition for instructions regarding Medi-Cal's request to be reimbursed $475,155.96 from what remains in decedent's special needs trust. Both sides previously agreed to submit this matter for summary resolution based on traditional Law & Motion briefing without the benefit of live witness testimony (§1022) or the right to assert objections (§1043) or new evidence (§1046) at the hearing itself.

   Anita Starr (hereinafter "Anita") died intestate on 02/22/2016. Her only child (Heather) and Heather's friend (Michael) were appointed by the court to serve as co-administrators of Anita's estate, which was initially appraised at $805,893.89. After satisfying a number of creditor claims, and covering statutory fees, Heather was entitled to receive $18,976.04 in cash and real property valued at $800,000. On 12/09/2019, in advance of the hearing on the order for distribution, Heather asked the probate court in San Joaquin County to direct her inheritance into a special needs trust she intended to establish as part of that probate proceeding. There are no probate notes or minute orders suggesting that the Director of Health Care Services received

notice (see §3611) or that (1) Heather has a qualifying disability; (2) that she is likely to have special needs that will not be met without the trust; (3) that the trust res will not exceed the amount that appears reasonably necessary to meet her special needs; (4) that the trust complies with CRC 7.903; and (5) most importantly, that when the trust is no longer needed, the trust res will be subject to government claims for reimbursement of benefits paid. See Probate Code §§ 3604-3605. A post-game review of the trust instrument suggests that it would have passed muster at the time, so for present purposes it is appropriate to proceed as if the special needs trust itself was properly established.

Heather died 07/25/2022. She had a will that left everything to Michael. On 10/25/2022, Michael filed a by-pass petition here in Tuolumne County to succeed to Heather's 50% interest in APN 056-150-016-000. See PR12184. (Michael owned the other half as a tenant in common.) At the time of filing, Michael confirmed that the gross value of Heather's probate estate did not exceed $184,500 (see §13100). This portion, as will be evident shortly, was not available for statutory reimbursement because Heather was under 55.

As the name suggests, a special needs trust is used to set aside assets to pay for the special medical needs of a severely disabled beneficiary. The purpose of a special needs trust is to enhance the beneficiary's quality of life through the purchase of additional goods and services that are not covered or adequately provided by government programs. Assets held in a special needs trust are exempted from the list of available assets impacting program eligibility, which enables an individual with access to a sizable estate to continue eligibility for things like Medi-Cal. See 42 USC §1396p(d)(4)(A), and 22 CCR §50489.9(a). When a first-party special needs trust is established under Probate Code §§ 3604 *et seq*, it is generally understood that the trust res will be subject to government claims for reimbursement once the trust purpose no longer remains (ie, the beneficiary recovers or dies). There are various exceptions to the reimbursement rules, which the parties address in their briefs.

Although the parties debate the meaning of various statutory subsections in 42 USC §1396p, there is in fact only one subsection which actually creates the right for reimbursement. That subsection is 42 USC §1396p(b)(1)(B), which provides in pertinent part as follows:

> "in the case of an individual who was 55 years of age or older when the individual received medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services, or any items or services under the State plan."

The rest of 42 USC §1396p deals mostly with eligibility and collection. Since there is no debating the fact that the trust beneficiary in this instance (Heather) was below the age of 55 when she received medical assistance, it seems rather plain to this Court that respondent has no *statutory* right to reimbursement against her probate estate (PR12184) or trust.

But that does not end the inquiry. Buried within the pages of §1396p is a separate provision dealing with special needs trusts, which provides in pertinent part as follows:

> "a trust containing the assets of an individual under age 65 who is disabled and which is established for the benefit of such individual" shall not be considered when "determining an individual's eligibility for, or amount of, benefits under a State plan" so long as "the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter." 42 USC §1396p(d)(4)(A).

At first blush, it is easy to see why some casual readers might be confused as to why these two subsections exist in the same statute given that they have little to do with one another. In fact, even sophisticated readers – like Eliot Fishman, Director of the Department of Health & Human Services – notes that the two provisions "are separate and distinct" from one another. See Memo dtd 01/06/2015. Had the drafters of §1396p intended to create a "regular" reimbursement right in subsection (b), and a "super-sized" reimbursement right in subsection (d), it would have been more helpful to lead subsection (d) with "*the limits set forth in subsection (b)* shall not apply to any of the following trusts" rather than "*this subsection* shall not apply to any of the following trusts."

What is subsection (d)(4)(A)? It is the codification of a condition precedent, a contractual agreement between the government and a trust settlor, that the government will continue providing valuable services in exchange for a testamentary bequest. It is, in effect, no different from those promissory estoppel cases in which one party detrimentally relies on a promise from another to enrich them via testamentary transfer. See, *e.g., Smith v. Myers* (2024) 103 Cal.App.5th 586, 598-599; *Estate of Ziegler* (2010) 187 Cal.App.4th 1357, 1366; *McMackin v. Ehrheart* (2011) 194 Cal.App.4th 128, 131; *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 555; *Embree v. Embree* (2004) 125 Cal.App.4th 487, 490; *Estate of Housley* (1997) 56 Cal.App.4th 342, 350. In this case, Michael (trustee) and Heather (settlor and beneficiary) made a promise to the Department of Health Care Services that they would make the trust res available for reimbursement for Medi-Cal expenses after Heather died so long as the Department agreed not to view the trust res as income and deem Heather ineligible for benefits. That promise was in writing (excerpted below for ease of absorption), signed by both Heather and Michael before a notary public:

> "This Trust is established under operation of law and as authorized at 42 U.S.C. 1396p(d)(4)(A) and § 1917(d)(4)(A) of the Social Security Act. Consistent with the requirements of governing law, any assets remaining in the Trust upon Heather Starr's death, or earlier termination, shall first be used to reimburse the Department of Health Services of the State of California for medical assistance paid on her behalf during the administration of this Trust and any agency of any other state which provided

> assistance to Heather Starr and is authorized by prevailing law to obtain reimbursement. It is the intent of this instrument that this Trust shall not be construed as an available resource to the beneficiary by reason of the provisions of Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. §1396p(d)(4)(A)) and Section 205 of the Foster Care Independence Act of 1999 (42 U.S.C. §1382(b)). In order to comply with the foregoing, the Trustee is hereby directed that on the death of Heather Starr or other termination of the Trust, the Department of Health Services, or other appropriate Medicaid agency, shall receive all assets remaining in the Trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal or other state's Medicaid equivalent. If the beneficiary receives Medicaid benefits from more than one state during the term of the Trust, the Trustee shall pay to each state its proportionate share of the Medicaid benefits paid by all states on behalf of the beneficiary."

The promise seems rather unequivocal. Nevertheless, Michael now takes the position that his written promise, and the Department's detrimental reliance thereon, are of no import because *Shewry v. Arnold* (2004) 125 Cal.App.4th 186, gives him an out. In that case, the Court of Appeal found that the Department may not be reimbursed from the assets of a special needs trust upon the beneficiary's death if the sole recipient of the beneficiary's estate is an adult disabled child. The Court based its reasoning primarily on W&I Code §14009.5(b)(2)(B)(iii) – which provides in pertinent part that the Department "shall not claim" reimbursement from any source when the Medi-Cal recipient leaves behind "a surviving child who is disabled." The Court identified the same anomaly noted by this Court, to wit: the failure of the drafters to make plain their intention with putting §1396p(b) and §1396p(d) so close together, and yet so far apart conceptually.

Michael does not claim to be Heather's adult disabled son. Michael claims that *Shewry's* engrafting of subsection (b) onto subsection (d) means that he can use any of the subsection (b) limits, to wit: the requirement that reimbursement begin at age 55.

If *Shewry* stood alone in the world, this Court might have some difficulty justifying its promissory estoppel theory. However, *Shewry* has not been well-received. See, *e.g., Riverside County Public Guardian v. Snukst* (2022) 73 Cal.App.5th 753 , 756; *Gonzales v. City National Bank* (2019) 36 Cal.App.5th 734, 743-744; *Herting v. State Dept. of Health Care Services* (2015) 235 Cal.App.4th 607, 612; *Conservatorship of Kane* (2006) 137 Cal.App.4th 400, 405-408; *Belshé v. Hope* (1995) 33 Cal.App.4th 161, 163–165. Yes, there is that unfortunate verbiage in Probate Code §3605(b) describing the res from a decommissioned special needs trust as "part of the beneficiary's estate" and impliedly subject to the §14009.5(b) limits on recipient estates, but is that not just another drafting imperfection?

Parties to discuss.

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4:00 p.m.

10. County of Tuolumne v. Randle (FL16502). In-chambers child interviews.