Department 5 Probate Notes for Friday, May 9, 2025

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8:30 a.m.

1. **Estate of Madrid (PR12308).** No appearance is necessary. The Court, having received and reviewed Counsel's declaration filed 04/24/2025, elects to treat the declaration as a de facto petition under Probate Code §12251 and grant the request to terminate further proceedings based on the representation that no property subject to administration still remains in the estate. However, since the declaration does not appear to have included notice to the interested parties, and notice has not been waived, the personal representative is not yet entitled to discharge, and the bond is not yet ready to be exonerated. Such further proceedings, if any, will need to await a proper request from the petitioner.

2. **Estate of Glasson (PR12626).** No appearance is necessary. This is a petition to admit a will to probate, for IAEA powers, and for Letters Testamentary. A review of the petition and the attached will copy provide this Court sufficient comfort that the will is likely entitled to admission and that petitioner is entitled to the appointment he seeks. However, a few additional items are needed. First, as a nonresident personal representative, petitioner is required to have on file a permanent address statement (§8573). Second, a review of the court file fails to reveal the original of the will, which is required (TCSC Rule 5.12.0). Third, because the attestation within the will is not sufficiently self-proving under §6240, a DE-131 from at least one of the subscribing witnesses will be required. Court will likely continue the hearing 45 days unless counsel can cure the omissions sooner.

3. **Estate of Elam (PR12629).** No appearance is necessary. This is a petition to admit a will to probate, for IAEA powers, and for Letters Testamentary. A review of the petition and the attached will copy provide this Court sufficient comfort that the will is likely entitled to admission and that petitioner is entitled to the appointment he seeks. The Court appreciates counsel's candor regarding the §6110 concerns, and the prospective §6402 acknowledgement regarding intestacy. However, as a nonresident personal representative, petitioner is required to have on file a permanent address statement (§8573). In addition, since the will does not provide a descriptor as to who David is, this Court will need something from him confirming that he has no §6401 rights. Assuming both of these items can be secured in a timely manner, the Court is prepared to proceed and set §§ 8800/12200 review dates. Otherwise, a brief continuance will be required.

4. **In re Whorton Family Trust (PR12624).** Before the Court this day is a petition to declare the whole of APN 132-011-047, including the unmoored Lot #11, to be an asset of the Whorton Family Trust dtd 04/15/91. A trial court may make a transfer of assets into a trust pursuant to §856 if the settlor(s) presently own(s) the asset in question, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence to find by a

preponderance of the evidence that the settlor(s) intended said property to be held in that trust, and failed to make the transfer by mistake, surprise, excusable neglect or innocent omission. See, e.g., *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. Since there is often little objection to a *Heggstad* petition, the quantum of evidence needed to prevail on an unopposed petition is said to be "fairly light" and "just enough to do equity." Tracing the history of the various transfers here permits with relative ease a finding that Warren and Agness must have believed that the five lots (11-15) they acquired in the 1960s on what was to become Third Stret in Riverbank were bound under a single APN because that is how they were identified on the 1965 Notice of Completion. By assigning a single street address and future Accessor's Parcel Number to all five lots, the County all but guaranteed that anyone in their shoes would have understood that a single transfer was all that was needed to move all five lots into the trust, even though Lot 11 was technically part of a separate transfer. Thus, it is clear that Lot 11 should have been an asset of the Whorton Family Trust dtd 04/15/91. However, reading the proposed order informs the Court that petitioner actually wants an order directing the property into the Whorton 2020 Family Trust – which is not necessary if he is just planning to sell the property. Either way, assuming all five lots went into the Whorton Family Trust, they would have then moved in 2006 to the Whorton Marital Trust (which deed describes only lots 12-15). Almost 14 years later, with petitioner now serving as the trustee of the Whorton Marital Trust, a grant deed was executed delivering all five lots to petitioner and his wife as community property. Petitioner's wife died, leaving the whole of the property to petitioner. At this juncture, petitioner should deed the property back to the Whorton Marital Trust and sell the property from there, noting it should have received a step-up in basis following the death of Agness.

5. In re Cuneo's Cameo Trust (PR12613). Before the Court this day is a petition for instructions. Petitioner has supplied this Court with important, additional, information.

When the trust instrument was created in 2013, and fully restated in 2021, the settlor (Richard Fox) reportedly understood that he owned a membership interest in "3471 California Street LLC" – which itself owned real property located in San Francisco. Richard directed that his LLC membership interest, including any dividends, rights and benefits declared at the time of his death) be distributed in equal shares as follows:

20% to Lance;
20% to ~~Westley~~ (later changed to Susan);
20% to Raul for life, remainder to Brock;
20% to Jamie for life, remainder to Ayva;
20% to Ed for life, remainder to Bryant.

Seemingly unbeknownst to Richard, the LLC was disbanded in 2020. Prior thereto, the management of the LLC distributed via grant deed its ownership interest in a two-story commercial building on California Street in San Francisco to the members based on their membership interests. Richard received a 15.2714% interest in the building. The building is designated with street/suite numbers 3471, 3473, and 3475, and currently houses Chandler Property Management in the upstairs "unit."

Richard died testate on 11/30/2023, leaving the Cuneo's Cameo Trust as his sole devisee. By final order of distribution from the probate court in Mariposa County, Richard's 15.2714% of the building was transferred into the trust. Petitioner now awaits direction as to whether that interest is to be distributed as a "Second Distribution" under Para D.2. or as the "Termination Distribution" under Para G. The question turns on whether Richard's gift of his "interest" in the LLC failed because Richard no longer owned a membership interest in the LLC at the time of his passing, or if that gift merely changed form from the intangible LLC to the tangible building the LLC interest converted to.

The doctrine of ademption applies to specific gifts, which involve post-mortem transfers of specifically identifiable items of property. Probate Code §21117(a). Ademption of a specific legacy is the extinction or withdrawal of a legacy in consequence of some act of the testator equivalent to its revocation, or clearly indicative of an intention to revoke. The ademption is effected by the extinction of the thing or fund bequeathed, or by a disposition of it subsequent to the creation of the instrument, which prevents its passing by the instrument, from which it can be presumed that the gift was intended to fail. *Estate of Mason* (1965) 65 Cal.2d 213, 215; *Brown v. Labow* (2007) 157 Cal.App.4th 795, 807; *Estate of Ehrenfels* (1966) 241 Cal.App.2d 215, 218–228. The question is whether the testator intended to give a specific thing and nothing else, or to give the thing or something equivalent, which is often determined by the testator's intent as gleaned from the instrument and any available parol evidence. See *Estate of Buck* (1948) 32 Cal.2d 372, 374.

A limited version of the common law ademption rule is codified at Probate Code §§ 21133 and 21134, and generally provides that the designee of a specific at-death gift is entitled to the fruits of that gift, but not a replacement gift. For example, if the settlor makes a specific gift of property that is sold before the settlor's passing, the designee "has the right to a general pecuniary gift equal to the net sale price of the property" but only if the settlor was "incapacitated" when the specific item was sold. §21134(a). However, these specific statutes were adopted to avoid the harsh effect of an ademption (*Estate of Worthy* (1988) 205 Cal.App.3d 760, 765), not to preempt other bases for finding that no ademption occurred. The caselaw is full of examples of instances in which the settlor/testator made a

specific gift in an instrument, and later did something with the gift to change its form, without giving any indication that the gift itself should be withdrawn. See, *e.g., Estate of Austin* (1980) 113 Cal.App.3d 167 [promissory note to cash equivalent]; *Estate of Creed* (1967) 255 Cal.App.2d 80 [real property converted to corporate stock]; *Estate of Newsome* (1967) 248 Cal.App.2d 712 [real property to traceable cash].

Here, we begin with Probate Code §21120, which provides that "The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative. Preference is to be given to an interpretation of an instrument that will prevent intestacy or failure of a transfer, rather than one that will result in an intestacy or failure of a transfer." Richard was very clear here that he wanted to Lance, Susan, Raul, Jamie, and Ed to enjoy the fruits of his investment in the California Street building – regardless of the form in which that investment took. Yes, it started as an LLC, but Richard did not simply gift an LLC membership, he gifted "all of the membership including dividends, rights and benefits" by the LLC "or its successor" – which in this instance the LLC was "succeeded" by an ordinary non-entity partnership between tenants in common. There is further evidence to support Richard's intent to leave nothing of the LLC behind in the residual Termination paragraph, wherein he provides that "all of the remaining income and principal" shall be distributed to the remaindermen – but since he must have known that the LLC owned real property, the decision to describe only "income and principal" in the residuary clause and not "all of my assets" (for example) informs this Court that Richard believed that he would not have real property to pass to those beneficiaries set forth in Para G. he plainly understood that whatever interest he might have had in the California Street property, that was going to the beneficiaries identified in Para D.2. As such, there is no evidence from which to conclude that Richard intended the LLC gift to fail if the LLC membership was converted into a direct ownership interest in the real property.

All that remains now is the notice issue. Since this Court is not yet assured that this is an uncontested matter, it cannot yet receive in evidence the verified petition and declaration from Attorney Blunt. See Probate Code §1022. There is nothing in the court file indicated that notice of today's hearing was provided to the beneficiaries, most notably those identified in Para G. whose interests might be adversely impacted by this petition. See Probate Code §1042. Without proper notice, this Court cannot conclude that the absence of a response (orally or in writing) is a tacit concession on the merits. See Probate Code §1043. Once the notice and "objection" concerns are resolved, this Court can proceed to officially decide the issue without a formal hearing. See Probate Code §1046. Notice to the parties of their last chance to object, with a hearing date 30 days out, will suffice.

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10:00 a.m.

6. **Conservatorship of Jardine (PR11602).** No appearance is necessary. The Court, having received and reviewed the Third and Final Accounting, concludes that the report and request for allowance can be settled and approved. The Court notes, however, that no probate proceeding has been commenced to permit a "hand-off" of the estate, so discharge of the public guardian may be delayed.

7. **Guardianship of Smith (PR12161).** Before the Court this day is a petition by the biological father for parentage visitation. According to the FL-300 and opposing declaration, bio dad had been absent from the ward's life for a number of years but has made some effort in the past 12 months to reunify. Court will appoint investigator to perform background on father. Parties will be referred to complete online parenting workshop and to attend court mediation before any orders will be made.

8. **Guardianship of Sanguinetti (PR11211).** 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 continues to serve the ward's best interests. Court intends to set an annual review date for September to align with the ward aging out.

9. **Guardianship of Ayala-Baxter (PR12606).** Court awaiting report from investigator and appearance from bio mom before temporary guardianship is converted further.

10. **Guardianship of Quinn (PR12243).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments for both wards, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient for both of the wards, and that the guardian continues to serve their best interests. Court intends to set an annual review date.

11. **Guardianship of Hernandez (PR11351).** Before the Court this day is the initial hearing post-TECO suspending bio mom's visits. Court will require update from CWS and law enforcement regarding allegations in TECO.

12. **Conservatorship of Martin (PR12325).** Court has been waiting for an accounting, and after several hearings, the conservator's attorney just sub'd out of the case. Conservator will need to explain the status of the accounting and whether a conservatorship of the estate is still needed.

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1:30 p.m.

13. **Petition of ADM (CV66845).** Confidential proceeding to change name and issue new vital records; concern regarding out of state recognition.

14. **Marriage of Norton (FL17725).** Day 2 of trial.

15. **Petition of JCRS (CV66988).** Nonconfidential proceeding to change name.