



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

8A Estate of George Anderson & Rose Anderson (Trust) Case No. 13CEPR00085

Atty Sullivan, Robert L. (for George H. Anderson, Jr., Barbara J. O'Bar, and Cheryl M. Black – children/Petitioners)

Petition for: (1) Neglect [W&I C. 15610.57]; (2) Financial Elder Abuse [W&I C. 15610.30]; (3) Recovery of Estate Property [Prob. C. 850, et seq.]; (4) Removal of Trustee for Breach [Prob. C. 15642]

George DOD:01/21/12	GEORGE H. ANDERSON, JR. , son, BARBARA J. O'BAR		NEEDS/PROBLEMS/COMMENTS:
Rose DOD: 01/27/12	and CHERYL M. BLACK , daughters, are Petitioners.		
			CONTINUED FROM 03/18/13
Cont. from 031813	Petitioners state:		<ol style="list-style-type: none"> Petition does not include the names and addresses of each person entitled to notice as required by Probate Code 17201. (See also, CA Rules of Court 7.902.) Need supplement to Petition. Need proof of service by mail at least 30 days prior to the hearing to all persons entitled to notice pursuant to Probate Code § 17203. Need Order. <p>Note: A Notice of Hearing with proof of service by mail was filed 03/21/13; however, because the Petition does not list the persons entitled to notice, the Examiner is unable to determine if notice has been sent to all parties as required.</p>
Aff.Sub.Wit.	1. Petitioners are beneficiaries under the terms of the George H. Anderson and Rose M. Anderson Revocable Living Trust dated 05/12/13 (the "Trust").		
✓ Verified	2. Steven M. Anderson, also a son of the decedent's, is trustee of the Trust and also a beneficiary of the Trust.		
Inventory	3. Steven Anderson was appointed successor trustee of the Trust following the deaths of the settlors.		
PTC	4. Under the terms of the Trust, Steven Anderson, George Anderson, Jr., Barbara O'Bar, and Cheryl Black each receive 20% of the Trust assets. The remaining 20% is to be distributed to the settlor's living grandchildren.		
Not.Cred.	5. In approximately 2002, Steven and Ida Anderson (Steve & Ida/Respondents) jointly purchased a piece of property with George & Rose Anderson. Steven and Ida moved onto said property in approximately December 2002 and George and Rose moved onto said property in early 2003. Similar to a duplex, they all lived in one building that was divided into two separate living areas. Steven & Ida lived in 2/3 of the building and George & Rose lived in 1/3 of the building.		
✓ Notice of Hrg	6. Just prior to moving onto the property, Rose was diagnosed with Alzheimer's disease and George also suffered from significant health problems and dementia. Steven & Ida voluntarily began caring for George and Rose after they moved onto the property; however they failed to provide the care that George & Rose required as outlined below.		
✓ Aff.Mail w/	7. First, Respondents failed to ensure that George & Rose were eating properly. Despite repeated requests, Respondents failed to monitor or track George & Rose's meals, causing missed meals and poor nutrition.		
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order	x		
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
Continued on Page 2			Reviewed by: JF Reviewed on: 05/13/13 Updates: Recommendation: File 8A - Anderson

8. Respondents also failed to provide adequate medical care for physical and mental health needs. Specifically, Respondents refused to take Rose to see her doctor, despite a clear need given her deteriorating condition due to Alzheimer's disease. In fact, Respondents altogether failed to take Rose to a single doctor's appointment after 2008 and even missed scheduled appointments with Rose's primary care physician. Similarly, Respondents failed to take George to the doctor or maintain regular doctor visits.
9. Respondents also failed to protect George and Rose from health and safety hazards. Despite assuming the role of caring for George and Rose, Respondents frequently failed to provide adequate protection from hazards. Respondents routinely unplugged their telephone at night in order prevent George & Rose from waking them up, this directly led to injuries to both George and Rose. Rose was injured early one morning and was bleeding profusely. After repeated failed attempts to obtain assistance from the Respondents, George called Barbara O'Bar. By the time Barbara arrived, there was blood all over the house. This was not the only incident where Respondents were unavailable when George and Rose needed their assistance.
10. Respondents also created health and safety hazards within George & Rose's home. Specifically, Respondents kept and maintained live turkeys in George & Rose's garage. Respondents also maintained a live rabbit inside George & Rose's bathroom. As a result, there were animal feces inside George & Rose's home, causing a severe odor and bugs inside the home. The odor and butts were hazardous to George & Rose's health in light of their weakened physical condition.
11. Respondents also failed to assist in providing property hygiene for George & Rose. Both were often visibly filthy and reeked of body odor when Petitioners visited. George was hospitalized on 12/27/11 and the hospital noted that he had "crystals" around his genitals demonstrating an utter and prolonged lack of proper hygiene. During the same hospitalization, George was also found to be severely dehydrated and was believed to have been for approximately 10-14 days. He was also suffering from stage 4 pressure ulcers on his heels, which were so severe; the hospital notified Adult Protective Services ("APS").
12. In December 2011, after APS was notified of George's condition, APS came to the home and investigated Rose's condition as well. At that time, Rose also demonstrated signs of neglect. She was found to have a pressure sore on her tailbone and was also suffering from a bladder infection and ringworm. Ringworm is commonly associated with and transmitted through animal feces, which Respondents failed to clean from George and Rose's home. Further, it was clear that Rose had not been properly bathed and that her hygiene had been severely neglected. Approximately 2 days after the visit from APS, Rose was taken to the Bedford Group, which is a private care home, where she ultimately died. George also died, just weeks after his hospitalization.
13. **First Cause of Action** (Neglect): At all relevant times, George and Rose Anderson were over the age of 65, with George being 94 at the time of his death and Rose being 89. Respondents, having care or custody of George & Rose Anderson both elders under the Welfare and Institutions Code, failed to exercise that degree of care that a reasonable person in a like position would exercise by 1) failing to assist in providing personal hygiene, 2) failing to provide medical care for physical and mental health needs, 3) failing to ensure provision for food, 4) failing to protect from health and safety hazards, and 5) failing to prevent dehydration. As a direct and proximate result of this neglect and physical elder abuse, Decedents suffered damages in an amount according to proof at trial. In addition, Petitioners are entitled to recover punitive damages, and are also entitled to recover remedies provided for in the Welfare & Institutions Code § 15657, including reasonable attorneys' fees and costs.

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14. **Second Cause of Action** (Financial Elder Abuse): For several years prior to Decedent's deaths, Respondents had access to George & Rose's bank account through an ATM card and check book. After gaining access to the bank account, Respondents repeatedly took, appropriated and retained money from George & Rose's account. Despite Respondents' failure to properly care for George & Rose, they routinely paid themselves money from George & Rose's account in order to "compensate" themselves for the care provided. Respondents took, appropriated, and retained said money for a wrongful use and with the intent to defraud George & Rose Anderson. Specifically, Respondents repeatedly withdrew and stole money from Decedent's bank account for their personal gain and without Decedent's knowledge or consent. Petitioners are informed and believe and thereon allege that Respondents wrongfully stole in excess of \$250,000.00 from Decedent's bank account from 2006 until the Decedent's deaths in January 2012. Respondents conduct constituted "financial abuse" within the Welfare & Institutions Code § 15610.30 in that George and Rose were "elders" during the perpetration of the acts of Respondents upon them, and that Respondents took and appropriated Decedent's property in bad faith to a wrongful use and with intent to defraud, and diminished the resources available to Decedents for their care and support during their lifetime. George & Rose were harmed by Respondent's depletion of their assets. As a direct and proximate result of this financial elder abuse, George & Rose Anderson suffered damages in an amount according to proof at trial. In addition, Petitioners are entitled to recover punitive damages, and are also entitled to recover remedies provided for in the Welfare & Institutions Code § 15657.5, including reasonable attorneys' fees and costs.
15. **Third Cause of Action** (Recovery of Property pursuant to Probate Code § 850): Respondent Steven Anderson holds title and possession to property contained within the Anderson Trust, money held in Decedent's bank accounts at the time of their deaths, and any other property, both real and personal, owned by the Decedent's at the time of their deaths, all of which property rightfully belongs to the Trust. Petitioners claim the right to title and possession of the property as beneficiaries of the Trust.
16. **Fourth Cause of Action** (Removal of Trustee): Prior to George and Rose Anderson's deaths, Steven Anderson committed both physical and financial elder abuse upon George & Rose. He also frequently converted Trust assets for his own use and benefit to the detriment of other beneficiaries. Steven Anderson's conduct was hostile and repugnant to the interests of George & Rose, and to the interests of the Trust. As such, Steven Anderson is not fit or qualified to serve as trustee. Additionally, Steven Anderson committed breaches of trust since assuming the role of trustee. Petitioners are informed and believe that Steven has improperly used Trust funds after appointment as trustee in order to pay attorneys' fees that were incurred for his personal benefit and not the benefit of the Trust. He has further demonstrated hostility towards the other beneficiaries and refused to provide an accounting of Trust assets. In so doing, Steven Anderson breached the fiduciary duties owed to the beneficiaries of the Trust. Namely, Steven Anderson violated the following duties: duty of impartiality (Probate Code § 16003); duty not to use or deal with trust property for the trustee's own profit (§ 16004); duty to preserve trust property (§ 16006); duty to inform (§ 16060); and duty to account (§16061).

Petitioners pray for an Order:

ON THE FIRST CAUSE OF ACTION:

- A. For consequential and special damages proximately cause by Respondents' acts of elder abuse and neglect upon Decedents George & Rose Anderson, according to proof at trial;
- B. For Respondents to be deemed to have predeceased George & Rose Anderson for the purposes of inheritance, pursuant to Probate Code § 259;
- C. For punitive damages, according to proof at trial;
- D. For attorneys' fees and costs; and
- E. For any and all further relief as the Court deems just and proper.

Continued on Page 4

ON THE SECOND CAUSE OF ACTION:

- A. For consequential and special damages proximately cause by Respondents' acts of financial elder abuse occasioned upon Decedents George & Rose Anderson, according to proof at trial;
- B. For Respondents to be deemed to have predeceased George & Rose Anderson for the purposes of inheritance, pursuant to Probate Code § 259;
- C. For a constructive trust compelling Respondents to transfer all wrongfully obtained property to the Trust pursuant to Civil Code § 2223 and 2224;
- D. For punitive damages, according to proof at trial;
- E. For a treble award of damages against Respondents pursuant to Civil Code § 3345;
- F. For attorneys' fees and costs; and
- G. For any and all further relief as the Court deems just and proper.

ON THE THIRD CAUSE OF ACTION:

- A. Directing Respondents to transfer to the Trust the property that was wrongfully removed from the Trust and to execute any documents or file any court proceedings necessary in order to fully complete the transfer;
- B. Directing Respondents to immediately deliver possession of to the Trust property that was wrongfully removed from the Trust;
- C. For statutory damages in the amount of twice the amount wrongfully taken by Respondents, pursuant to Probate Code § 859;
- D. For attorneys' fees and costs; and
- E. For any and all further relief as the Court deems just and proper.

ON THE FOURTH CAUSE OF ACTION:

- A. To immediately suspend the powers of the trustee, appoint a temporary trustee or trustees, and compel the trustee to surrender all Trust property to such temporary trustee(s);
- B. To remove the trustee and to appoint a successor trustee or trustees to take possession of the Trust property and administer the Trust;
- C. To compel the trustee to redress his breaches through the payment of monetary damages;
- D. To deny or otherwise reduce the compensation to the trustee;
- E. To impose a constructive trust on property of the Trust which has been wrongfully converted;
- F. To cause proceedings to trace and recover property and proceeds to which the Trust is entitled; and
- G. For any and all further relief as the Court deems just and proper.

Probate Status Hearing Re: Failure to File Seventh Account

		The 6 th Account of BEVERLY MILLER, Mother and Trustee with bond of \$128,000.00 and accounts blocked, was settled on 6-22-11.	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 3-29-13</u>
		The 6 th Account covered through 12-31-10.	
Cont. from 032913		On 2-5-13, the Court set this status hearing for failure to file the 7th account.	<u>Minute Order 3-29-13: Counsel is directed to address the issue of the appointment.</u>
Aff.Sub.Wit.		Status Report filed by Attorney Denning (Unverified) states he is the attorney for MATTHEW MILLER, Successor Trustee. Mr. Miller has been unavailable from 1-25-13 to 3-15-13 while teaching at New York University. The attorney is informed that the trust's accountant will have the information necessary for him to prepare the final accounting by 4-1-13. The trustee will file his final accounting of the trust as soon as possible thereafter but no later than 5-15-13.	<u>As of 5-13-13, nothing further has been filed. The following issue remains:</u>
Verified	X		
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting		1. A Nomination of Successor Trustee signed by Beverly Miller on 11-15-11 nominates Matthew Miller to serve as trustee without bond effective on her death or inability to serve. Matthew Miller accepted the nomination.	
Status Rpt		<u>However, Matthew Miller has not been appointed successor trustee by the Court pursuant to any petition or Probate Code, and bond cannot be waived by nomination.</u>	
UCCJEA		Examiner notes that Court records in the related conservatorship that the beneficiary Alison Miller has passed away, and it further appears that Beverly Miller <i>may have also</i> passed away based on a brief search of available Court records; <u>however, no information regarding these circumstances has been provided to the Court in this trust file.</u>	
Citation		<u>Therefore, need clarification and final account for periods 1-1-11 through date of death, and subsequent period pursuant to Probate Code §2620(b), or petition for appointment of Matthew Miller, or other petition under appropriate authority, with appropriate notice as required.</u>	
FTB Notice		Reviewed by: skc	
		Reviewed on: 5-13-13	
		Updates:	
		Recommendation:	
		File 14 - Miller	

Second Account and Report of Co-Trustees, and Petition for Its Settlement [PC 17200(b)(5) and (9)]

Margaret Mitchell DOD: 9-17-09	SUSAN MITCHELL and ROBERT SMITCAMP, Co-Trustees, are Petitioners.	NEEDS/PROBLEMS/COMMENTS:
William Mitchell DOD: 4-27-11		
Cont. from 041513, 050813	Account period: 10-1-11 through 10-31-12	Note: The following have been filed since the last hearing:
Aff.Sub.Wit.	Accounting: \$ 518,833.66	<ul style="list-style-type: none"> Confidential billings from Caswell Bell and Hillison LLP were submitted 5-9-13 in sealed envelope for <i>in camera</i> review by Judge Oliver, along with Declaration of Attorney Darlene Azevedo Kelly. The Declaration states the bills are confidential and privileged. The sole question to be addressed is whether the bills impermissibly include any fees for services rendered to one or both of the co-trustees in his or her individual capacity, in connection with litigation currently pending between Gail Burson and one or both of the co-trustees, and in which the firm represents one or both of the co-trustees individually. The account reflects attorneys' fees paid of \$12,722.00. The confidential documents filed herein are copies of the bills. Declaration of Tracy A. Agrall, attorney for Gail Burson. Declaration provides information regarding the activity of the trustees during this account period and about additional litigation that may be relevant, including a dissolution action involving Ms. Stonehouse.
✓ Verified	Beginning POH: \$ 509,320.37 (cash plus note receivable)	
Inventory	Ending POH: \$ 55,754.40 (cash plus mineral interests in Nevada County of nominal value)	
PTC	<p>Petitioners state on or about October 2011, the Co-Trustees provided a first accounting to the beneficiaries for the period 4-28-11 through 9-30-11, together with a proposed distribution. All beneficiaries consented to distribution and there are no issues pending regarding that account.</p> <p>Distributions during this account period consisted of cash and note payable to each beneficiary.</p> <p>Petitioners pray for an order:</p> <ol style="list-style-type: none"> Settling, allowing, and approving the Account; Ratifying, confirming and approving all acts and transactions of the Co-Trustees relating to matters reflected in the Account, and For such other and further order or orders as the Court may deem appropriate. <p>Objections were filed 5-2-13 by Gail Burson.</p> <p style="text-align: center;"><u>SEE PAGE 2</u></p>	
✓ Notice of Hrg		
✓ Aff.Mail w		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
✓ Objections		
Video Receipt	Reviewed by: skc	
CI Report	Reviewed on: 5-13-13	
9202	Updates:	
✓ Order	Recommendation:	
Aff. Posting	File 25 - Mitchell	
Status Rpt		
UCCJEA		
Citation		
FTB Notice		

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Objections to Approval of Second Account and Report of Co-Trustees filed 5-2-13 by Gail Burson states:

- The petition fails to disclose the existence of mineral interests.
- The petition alleges fees paid for services were charged one-half to income and one-half to principal when the account shows certain charges are allocated entirely to principal.
- The petition is inconsistent with the Special-Purpose Financial Statements and Supplemental Schedules Complied 10-1-11 to 4-30-12. Objector states the accountant's report provided in July 2012 (the "April Accounting") addresses a portion of the time period in the report currently before the Court. For whatever reason, rather than seeking approval of the April Accounting, an entirely new version is created and presented for approval here that contains material changes.

Specifically, the April Accounting shows disbursements of \$17,000 to each beneficiary. Here, these disbursements are gone, with no explanation. Also, fees paid for services rendered by accountants and attorneys are treated differently.

Objector had been waiting for what was represented to be the "final accounting" for months. An email from trustees indicated that final distributions were expected in May. Objector received answers and requested information to address her concerns for all items except the amount of attorney fees expended.

Objector states the final distributions are now held back with no indication when this matter will be wrapped up. Objector requests the Court set a date for closure of this trust and final disbursement.

- The amount of attorney's fees has not been validated. Objector states the attorney fees since the previous accounting were significantly higher in the April Accounting than in the first accounting. Because the attorneys were also defending one of the co-trustees in a separate litigation matter brought by Objector, it was important to insure that the Trust was not paying for the defense of an individual. The attorney refused to provide records, claiming attorney client privilege. Objector suggested a third party neutral review the entries to determine if they were properly chargeable to the Trust. Objector received no response. Rather, this action of approval of a different accounting was filed four months later.

Objector requests that this Second Account be amended to show the mineral interest as an asset of the trust, an explanation of the allocation of fees and why disbursements are being withheld. Objector renews her request for an examination of the attorney fee records to make sure they are proper charges to the trust, and requests that the Court set a date for a final distribution of assets and closure of the trust.

Note: No order on the Objections was submitted.