



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.

1A Louis Brosi, Sr. (Trust)

Case No. 07CEPR01213

Atty David M. Gilmore and Ryan M. Janisse (for Cindy Snow Henry – Beneficiary – Petitioner)

Atty Armo, Lance (for Robert Snow)

Atty Paul Franco (for Louis Brosi, III)

Atty Wilson, Joshua G. (of Bakersfield, for Louis Brosi, Jr.)

Notice of Motion and Motion to Compel Performance Under Settlement Agreement

CINDY SNOW HENRY, Trust beneficiary, filed Notice of Motion and Motion to Compel Performance Under Settlement Agreement on 3-15-11.

The petition seeks to have the court order **LOUIS BROSI, III** carry out the acts necessary to partition the property into three parcels anticipated and directed by the settlement reached 3-5-09.

LOUIS BROSI, JR. filed Opposition on 4-28-11 stating that new issues have arisen since the settlement.

Minute Order 1-2-13: Mr. Wilson is appearing as counsel for Louis Brosi, Jr. Counsel requests a continuance. The Court sets a Settlement Conference for 2/4/13. Parties are directed to submit their settlement conference briefs along with courtesy copies for the Court by 1/30/13. Mr. Wilson is directed to submit any further objections by 1/30/13. The Court indicates to all counsel that it will entertain any order presented upon consent of the parties. Mr. Franco is directed to submit an order prior to 2/4/13 for the purpose of expediting the County process. Continued to 2-4-13 at 10:30am in Dept 303. Set on 2-4-13 at 10:30am in Dept 303 for Settlement Conference Re: Issue of Removing Louis Brosi, Jr.

NEEDS/PROBLEMS/COMMENTS:

Page 1A: Ms. Henry's Motion filed 3-15-11
Page 1B: Court Trial (Previously: Status Conference Re: Lot Split & Related Matters)
Page 1C: Ms. Henry's Petition filed 11-5-12
Page 1D: Settlement Conference Re: Issue of Removing Louis Brosi, Jr. (per Min Order 1-2-13 of Cindy Henry's Motion filed 3-15-11, Page 1A)

Note: CINDY SNOW HENRY filed a new Petition to Remove Trustee; Appoint Public Administrator as Trustee; Require Trustee Correct Title; and Compel Trustee to Account on 11-5-12 (Page 1C).

1. The Court may require updated information regarding whether Petitioner intends to pursue a ruling on this petition with reference to the new petition filed 11-5-12.

Cont. from 121012,
010213, 020413,
030413, 031213,
041813, 051713

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| Aff.Sub.Wit. | |
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| Not.Cred. | |
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| Objections | |
| Video Receipt | |
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| Citation | |
| FTB Notice | |

Reviewed by: skc

Reviewed on: 6-25-13

Updates:

Recommendation:

File 1A - Brosi

1A

1B Louis Brosi, Sr. (Trust)

Case No. 07CEPR01213

Atty David M. Gilmore and Ryan M. Janisse (for Cindy Snow Henry – Beneficiary – Petitioner)

Atty Armo, Lance (for Robert Snow)

Atty Paul Franco (for Louis Brosi, III)

Atty Wilson, Joshua G. (of Bakersfield, for Louis Brosi, Jr.)

Court Trial (Previously: Status Conference Re: Lot Split & Related Matters)

| | | |
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| | | NEEDS/PROBLEMS/COMMENTS: <u>Note: This matter is set for Court Trial pursuant to Minute Order 12-10-12.</u> (Examiner kept this matter's place as "B" page to keep matters in order.) <u>Minute Order 12-10-12</u> <u>(Continued Status Conference Re: Lot Split & Related Matters):</u> Mr. Franco informs the Court that the issues have been resolved and the map has been filed with the County. Matter set for Court Trial on 1/2/13. The Court directs all counsel to file their briefs by 12/20/12. |
| Set on 121012, 010213, 020413, 030413, 031213, 041813, 051713 | | |
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| | | Reviewed by: skc |
| | | Reviewed on: 6-25-13 |
| | | Updates: |
| | | Recommendation: |
| | | File 1B - Brosi |

1B

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Louis Brosi, Sr. (Trust)

David M. Gilmore and Ryan M. Janisse (for Cindy Snow Henry – Beneficiary – Petitioner)
Armo, Lance (for Robert Snow)
Paul Franco (for Louis Brosi, III)
Wilson, Joshua G. (of Bakersfield, for Louis Brosi, Jr.)

Case No. 07CEPR01213

Petition to Remove Trustee; to Appoint Public Administrator as Trustee; to Require Trustee Correct Title; and to Compel Trustee to Account [Prob. C. 17200, 15642]

| | | | | | | | | | | | | | |
|---|------------|---|---|--------------|-----|--------------|---------|----------|--|-----------------|--|------|------------|
| | | CINDY SNOW HENRY , Trust beneficiary, is Petitioner. | NEEDS/PROBLEMS/COMMENTS: <u>Note:</u> See Pages 1A (Continued hearing on Notice of Motion and Motion to Compel Performance under Settlement Agreement) and 1B (Court Trial re: Status of Lot Split and Related Matters). 1. Petitioner requests appointment of Public Administrator as Successor Trustee; however, it does not appear that the Public Administrator and County Counsel were sent Notice of Hearing or that an acceptance of trust has been signed pursuant to Probate Code §15600. | | | | | | | | | | |
| | | Petitioner states: | | | | | | | | | | | |
| Cont. from 010213, 020413, 030413, 031213, 041813, 051713 | | Background: The Testamentary Trust of Louis Brosi Sr., was created under Louis Brosi's last will and testament. Louis Brosi, Jr., is designated as the trustee of the trust. Petitioner Cindy Snow Henry is a beneficiary. On 3-5-09, the parties entered into a Settlement Agreement recited into the record for the Court; however, there is no settlement document independent of the transcript, attached. | <table border="1"> <tr><td>Reviewed by:</td><td>skc</td></tr> <tr><td>Reviewed on:</td><td>6-25-13</td></tr> <tr><td>Updates:</td><td></td></tr> <tr><td>Recommendation:</td><td></td></tr> <tr><td>File</td><td>1C - Brosi</td></tr> </table> | Reviewed by: | skc | Reviewed on: | 6-25-13 | Updates: | | Recommendation: | | File | 1C - Brosi |
| Reviewed by: | skc | | | | | | | | | | | | |
| Reviewed on: | 6-25-13 | | | | | | | | | | | | |
| Updates: | | | | | | | | | | | | | |
| Recommendation: | | | | | | | | | | | | | |
| File | 1C - Brosi | | | | | | | | | | | | |
| Aff.Sub.Wit. | | <p>Petitioner states the trustee has taken no action to comply with the Settlement Agreement or otherwise administer the trust since its entry. Instead, he has taken active steps to interfere with the Settlement Agreement, including, without limitation, trying to stop the efforts of Louis Brosi, III, to have the property split into three equal parcels as provided in the Settlement Agreement. The Court entered an order to enjoin that interference. In addition, the trustee has taken no steps in more than 3½ years to provide any inventory or accounting or taken steps to comply with the terms of the trust.</p> <p>He resides on the trust property without rent for his exclusive use and enjoyment of the property, and has provided no accounting or other information to the beneficiaries. He is utilizing trust property to run a commercial nursery for his own personal benefit and boarding horses on the property. See Exhibits 2 and 3 (photos).</p> <p>Petitioner states that on 9-30-11, a deed was recorded (attached) whereby the trustee, in his individual capacity, transfers the trust property to his minor granddaughter, Ashlyn Brosi. The trustee has represented at various times that he would rescind or otherwise correct the deed, but has not.</p> <p style="text-align: center;"><u>SEE ADDITIONAL PAGES</u></p> | | | | | | | | | | | |
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1C

Petitioner states the trustee is required to be represented by counsel: No person can appear in Court for another person unless the person is an active member of the State Bar. Cal. B&P Code §6125.

The Trustee is not represented by counsel at this time. Petitioner states "a trust is not a legal personality and the trustee is the proper person to sue or be sued on behalf of a trust. However, a trustee's duties in connection with his or her office do not include the right to present argument in *propia persona* in courts of the state, because in this capacity such trustee would be representing the interests of others and would therefore be engaged in the unauthorized practice of law. *Ziegler v. Nickel*, (1998) 64 Cal.App.4th 545, 548."

Petitioner states the trustee has cycled through numerous attorneys in this matter and alleges that he fires his counsel as means to further delay trust administration. As of the filing of this petition, the trustee is representing himself in *propia persona*. Such representation constitutes the unauthorized practice of law in California and is improper.

Petitioner seeks an order removing trustee on grounds that he refuses to retain counsel to represent the interests of others as beneficiaries of the trust as required by law, in addition to his repeated failures to perform his duties as trustee.

[Examiner's Update: Pursuant to Substitution of Attorney filed 12-10-12, the trustee is now represented by Joshua G. Wilson of Darling & Wilson, Bakersfield, CA.]

Petitioner requests order removing trustee for breach of trust and appointing Public Administrator as successor trustee. Petitioner states the court's inherent authority to suspend a trustee's powers and remove for cause (cites provided). A trustee has a duty to take reasonable steps to preserve trust property; however, he has purportedly transferred the trust property to his minor granddaughter. Transferring trust property to an individual who is to a beneficiary does not preserve trust property and is a violation of the trustee's fiduciary duty, and was done to avoid complying with the trust.

Petitioner states the trustee has a duty to not use or deal with trust property for his own benefit per §16004(a), but is currently residing rent-free and running two different businesses for his own personal profit on trust property, and transferred trust property to his granddaughter. All of these actions constitute violation of trust terms and his fiduciary duties, and trustee's duty to avoid conflicts of interest. He is engaged in self-dealing and no effort is made to account for his actions.

Petitioner also states hostility between the trustee and beneficiaries is good cause for removal (cite provided). The trustee's behavior towards all beneficiaries is hostile and has resulted in a contentious trust administration. Removal is also appropriate for his refusal to take any action to close the trust or account, and ignores the direction of the court. He has utterly and completely failed to act as trustee.

For the foregoing reasons, Petitioner requests the Court order the trustee's removal and appoint the Public Administrator as successor trustee.

Petitioner further requests the trustee be personally sanctioned for his actions. All of his actions are in bad faith as his stated goal is to avoid complying with the terms of the trust.

Petitioner states the trustee bears costs of removal and should bear his own attorney fees (cites provided).

SEE ADDITIONAL PAGES

Petitioner requests order compelling account. In addition to removal of the trustee, Petitioner requests the Court order him to account for his actions from the date of the Settlement Agreement (March 2009) through present.

Petitioner anticipates the trustee will argue he has no duty to account because accounting was waived in 2009'; however, this argument is fallacious because the waiver, if effective at all, is only as to events to the date of settlement. Since then, he has done nothing to administer the trust, violated numerous fiduciary duties, used the property for free, and ran at least two businesses on the property without accounting to beneficiaries.

Petitioner states the trustee should be surcharged for his undue gain for such breaches.

Petitioner prays for an Order as follows:

1. Removing Louis Brosi, Jr., as trustee of the Testamentary Trust of Louis Brosi, Sr.
2. Ordering Louis Brosi, Jr., account for his actions as trustee in the manner prescribed in Probate Code §1060-1064 from March of 2009 through the present;
3. Appointing the Public Administrator as successor trustee of the trust;
4. Ordering Louis Brosi, Jr., bear his own costs and attorney fees for defense of this action; Ordering Louis Brosi, Jr., retitle the Trust property in the name of the trust; and
5. For all other orders the Court deems just and proper.

Opposition filed 12-20-12 by Louis C. Brosi, III, states Mrs. Snow waived accounting in the Stella Brosi Estate and her undivided one-half of the western-most parcel is all that she will receive from the trust. In other words, Mrs. Snow has released all claims known and unknown against the trust and has waived an accounting.

The Court is familiar with the long sorted history of this family and this litigation, and is also aware that there have been allegations by all parties amongst each other, and against Mrs. Henry specifically, about causing delays. Over the last 12 months, significant progress has been made toward division of the property. Louis C. Brosi, III has been performing all of the division work as obligated under the Settlement Agreement. At this time, a tentative parcel map has been filed with the County of Fresno and the various public entities have begun their work towards approving the division and finalizing the map.

It has been too long in this process to remove Mr. Brosi as trustee now. Mrs. Henry is the only person advocating for his removal. Louis C. Brosi, III and Doris Brosi are against any such removal.

Objector states there is simply no basis for the removal. Mrs. Henry is not to receive any other money, land or benefit from the trust under the settlement agreement, so her request for accounting and the lack thereof as basis for removal is simply nonsensical. Her parcel has been cleared and no nursery, horse boarding or living by Mr. Brosi is happening on her expected parcel. The accounting is waived under the settlement agreement, so that is further reason why this is not a basis for removal.

It is understood Mr. Brosi is in the process of having title to the trust property reinstated.

If the genesis of Mrs. Henry's complaint is delays in administration, she hasn't seen anything if Mr. Brosi is removed and the public administrator is appointed. In fact, the public administrator was already previously appointed in this case, but was removed as part of the settlement. The parties are too close to the property being divided. He should not be removed at all. He is currently represented by counsel.

While Mr. Brosi's removal is objected to, if for any reason he should be removed, Objector requests DORIS BROSI be appointed trustee in his place.

Second Amended Petition for: (1) Removal of Mary M. Davis as Executor of the Estate; (2) Compelling Account and Report of Administration of Estate; (3) Appointment of Lynette Lucille Duston and Warren Leslie Davis as Successor Co-Executors of Estate.
 [Probate Code §§8420, 8421, 8500, 8501, 8502, 8800, 8804, 10950, 12200, 12204, and 12205]

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| DOD: 7-9-10 | LYNETTE LUCILLE DUSTON and WARREN LESLIE DAVIS , Daughter and Son of the Decedent, are Petitioners. | NEEDS/PROBLEMS/COMMENTS: |
| | On 10-18-10, Decedent's Will dated 12-7-04 was admitted to probate and MARY M. DAVIS , Surviving Spouse, was appointed Executor with Full IAEA without bond on 10-18-10. Letters issued on 10-19-10. | <p>UPDATE: First and Final Account and Report of Executor and Petition For Its Settlement; For Allowance of Ordinary Executor Commissions, Ordinary and Extraordinary Attorneys' Fees and For Final Distribution filed 6-14-13 is set for hearing on 7-29-13.</p> <p>Reviewed by: skc</p> <p>Reviewed on: 6-25-13</p> <p>Updates:</p> <p>Recommendation: File 2A - Davis</p> |
| Cont. from 012213, 030813, 051013 | <p>Petitioners state more than 18 months have elapsed since Letters were issued and Mary has neither filed an account nor report of status of administration. Petitioners object to the continuation of Mary as the personal representative and seek to remove her as executor for the following reasons:</p> <ul style="list-style-type: none"> • §8502(c). Mary has wrongfully neglected the estate, or has long neglected to perform any act as personal representative. <p>On 3-17-11, a substitution of attorney was filed in the proceeding. From that date until the original petition for removal was filed on 6-26-12, there had been no court action taken in this matter. Since then, the only action taken was to file another substitution of attorney and oppose the petition for removal.</p> <ul style="list-style-type: none"> • §8804(b). Mary has failed to file an inventory and appraisal within the prescribed time. • §12200. Mary has failed to render a report of the status of the administration. • §8502(a). Mary has wasted, embezzled, mismanaged, and committed a fraud on the estate. Mary has, <i>inter alia</i>, admitted during a deposition that she had liquidated assets of the Decedent's estate which were specific bequests to one of the Petitioners to pay for her attorneys' fees and costs in her two civil actions against Petitioners. • §8502(b). Mary is incapable of properly executing the duties of her office, or is otherwise not qualified for appointment as personal representative. Mary is 86 years old and has made claims for elder abuse in a lawsuit she filed against one of the Petitioners and has made representations that she is susceptible to undue influence. <p>Petitioners cite authority in addition to the statutory references above regarding the Court's power to remove a personal representative for other cause, for example, adverse interest or hostile acts, and state removal of Mary as executor is necessary to protect the Decedent's estate and its heirs.</p> | |
| <input type="checkbox"/> Aff.Sub.Wit. | | |
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| <input type="checkbox"/> PTC | | |
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| <u>SEE ADDITIONAL PAGES</u> | | |

Page 2

Petitioners state it is also proper for this Court to order Mary to account which shall include both a financial statement and report of administration of the estate, and specifically show the condition of the estate. Furthermore, it is proper for the Court to reduce compensation of Mary and her attorneys by an appropriate amount.

Petitioners state they are entitled to appointment as personal representatives of the estate because they were nominated as successor co-executors in the event Mary shall for any reason fail to qualify or cease to act as executor.

It is hereby requested that this Court appoint Petitioners as successor co-executors to serve without bond and with full IAEA.

Petitioners pray as follows:

1. That citation issue to Mary M. Davis to show cause why she should not be removed as personal representative;
2. The Court forthwith suspend the powers of Mary M. Davis as personal representative and revoke the Letters issued 10-18-10;
3. For an order to appoint Petitioners as personal representatives with Full IAEA without bond;
4. For an order that Mary M. Davis file an account of the administration in accordance with Probate Code § 10900 and specify a reasonable time within which the account must be filed, which Petitioners suggest should be no later than 60 days from the date of her removal;
5. For an order that Mary M. Davis surrender all property in her possession belonging to the estate of the Decedent to the duly appointed and qualified successor co-executors;
6. For attorney's fees and costs of suit incurred herein; and
7. For such other orders and further relief as the Court deems just and proper.

SEE ADDITIONAL PAGES

Mary M. Davis' Fourth Report of Status of Administration of Estate filed 5-6-13 states: The Final I&A was filed concurrently with this status report. Executor has retained Robert L. Sullivan of McCormick Barstow to associate in as co-counsel with Farley Law Firm to assist with the filing and account and any final matters to close the estate.

Since the last status hearing, two new issues requiring the Court's assistance have emerged:

1. **Deposition:** In the recently settled partnership litigation against Executor, Executor was subjected to a grueling deposition by Petitioners' counsel, Dias Law Firm. As such, the anticipation of another deposition has been the source of anxiety and stress to the Executor.

Although Executor and counsel do not contest Petitioners' right to depose Executor, in an effort to shield Executor from improper and unnecessary stress and inquiries, counsel has sought to narrow the parameters of the deposition, without success. Correspondence attached.

Contrary to Petitioners' assertions that Executor is seeking to avoid her deposition, Executor seeks to narrow the scope of her deposition to disallow Peittioners' fishing expedition and inquiries that are irrelevant and premature. The Executor's deposition after the filing of an account and report, barring inquiries into incompetency and those matters better directed to the accountant, would serve to effectuate a more orderly, productive, and cost effective deposition. Executor respectfully requests the Court's determination accordingly.

2. **Antiques:** I&A Partial #2 filed 2-13-13 includes Decedent's one-half community property interest in an antique table and chair and other furniture, furnishings and personal effects for a total of \$15,000 (\$7,500 to Decedent's interest). Petitioner contend that the I&A does not adequately describe and account for these items. After correspondence, and although Executor believes the I&A adequately includes these items, Executor is in the process of retaining the services of an appraiser to inventory and appraise the antiques, which is expected the last week of June 2013. Therefore, until the Supplemental I&A can be submitted to the Probate Referee and appraisal is complete, a final account cannot be filed.

Executor therefore respectfully states that good cause exists to:

- 1) Extend the time to file an account to a date after receipt of the Supplemental I&A;
- 2) Disallow inquiries at Executor's deposition regarding, seeking to determine, and otherwise addressing, mentioning, or referring to the Executor's competency, pending further order of the Court;
- 3) Disallow inquiries regarding the legal services rendered to the Executor pending further order of the Court; and
- 4) The Executor's deposition is to be scheduled to a date after the filing of the account and report in this matter.

UPDATE: First and Final Account and Report of Executor and Petition For Its Settlement; For Allowance of Ordinary Executor Commissions, Ordinary and Extraordinary Attorneys' Fees and For Final Distribution filed 6-14-13 is set for hearing on 7-29-13.

Atty Sanoian, Joanne (for Carl Hawk – Conservator)

Atty Rindlisbacher, Curtis D. (Court Appointed for Conservatee)

Probate Status Hearing Re: Failure to File Inventory and Appraisal; Failure to File First Account

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| Age: 51 | <p>CARL HAWK, husband, was appointed Conservator of the Person and Estate on 10/27/11.</p> <p>Letters of Conservatorship were issued on 10/28/11.</p> <p>Inventory & Appraisal was due in March 2012.</p> <p>The First Account was due in October 2012.</p> <p>Status Hearing Report filed 06/20/13 states: The conservatee is to receive a profit sharing distribution from her previous employment at Simonian Packing Company. No distributions have been made to the conservatee as of yet and the conservator has been informed that there is an ongoing investigation by the Department of Labor arising from complaints with the profit sharing plan. Eric Tristan, investigator with the Department of Labor stated on 06/20/13 that the investigation is still on-going. He further indicated that it is a large investigation involving numerous parties, but that he is hopeful it will resolve soon. As the investigation is still ongoing, the conservator has still not been able to take possessions of any assets of the conservatorship estate and therefore is unable to file an Inventory & Appraisal or Accounting. A continuance of 90 days is requested.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>CONTINUED FROM 02/20/13</p> <ol style="list-style-type: none"> 1. Need Inventory & Appraisal. 2. Need First Account and Report of Conservator. |
| DOB: 06/10/61 | | |
| Cont. from 022213 | | |
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| Inventory <input checked="" type="checkbox"/> | | |
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| | <p>Reviewed by: JF</p> <p>Reviewed on: 06/25/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 3 - Hawk</p> | |

Petition of Beneficiary to Remove Successor Co-Trustees, Appoint Temporary Successor Trustee, and for Payment of Attorneys' Fees and Costs (Probate Code 15642, 16000, 16002, 16003, 16004, 16006, 16007, 16009, 16060, 16062, 17200, 17206)

| | | |
|--|---|---|
| Frank K. Ishii DOD: 11-10-93 | GERALD ISHII , Beneficiary and Co-Trustee, is Petitioner. | NEEDS/PROBLEMS/COMMENTS: |
| Lily Y. Ishii DOD: 3-7-05 | Petitioner states he and LESLIE ISHII (Respondent) were named successor co-trustees of the ISHII FAMILY TRUST DATED 3-3-92 (the "Trust") . The Trust consisted of interests in 8 parcels of real property, stocks, bonds, securities, cash, and other assets in Prudential-Bache Securities, and 300 shares of common stock in Frank K. Ishii & Sons, Inc. , a California corporation owned by the Settlor. | Continued from 7-2-12, 7-27-12, 8-31-12, 9-27-12, 11-26-12, 1-14-13, 2-25-13, 3-29-13, 5-17-13 |
| Cont. from 070212, 072712, 083112, 092712, 112612, 011413, 022513, 032913, 051713 | At the death of Frank K. Ishii on 11-10-93, two irrevocable and one revocable sub-trusts were created: | See Page 3 for details. |
| <input type="checkbox"/> Aff.Sub.Wit. | <ul style="list-style-type: none"> • The FRANK K. ISHII TRUST • The ISHII FAMILY MARITAL DEDUCTION TRUST • The ISHII FAMILY SUVIVOR'S TRUST (revocable) | |
| <input checked="" type="checkbox"/> Verified | On 3-15-95, Lily Ishii , individually and as Trustee of the Trust, assigned a 36.44% interest to the FRANK K. ISHII TRUST , a 13.56% interest to the ISHII FAMILY MARITAL DEDUCTION TRUST , and a 50% interest to the ISHII FAMILY SUVIVOR'S TRUST of the assets listed on Exhibit F, including accrued rent payable from the corporation of \$105,548 as of 11-10-93, a receivable due from the corporation of \$26,089 as of 11-10-93, and a proprietorship known as Lily's Hair Stylists consisting of furniture and fixtures, cash, supplies, inventory and goodwill. | Reviewed by: skc |
| <input type="checkbox"/> Inventory | Lily Ishii died on 3-7-05 and he and LESLIE ISHII (Respondent) became Co-Trustees. | Reviewed on: 6-25-13 |
| <input type="checkbox"/> PTC | Pursuant to Section 5.02 of the Trust, the three sub-trusts were to be combined on the death of the surviving settlor and certain distribution was to occur: | Updates: |
| <input type="checkbox"/> Not.Cred. | <ul style="list-style-type: none"> • \$75,000.00 to Sharon J. Shoji (daughter) • One-half of the remaining balance to Gerald • One-half of the remaining balance to Leslie | Recommendation: |
| <input checked="" type="checkbox"/> Notice of Hrg | As to the corporation: Petitioner and Leslie each hold 300 shares individually and the Trust holds 300 shares. Petitioner and Leslie as individuals and as Co-Trustees may vote an equal number of shares, but have been in a deadlock as to the operation of the corporation since approx. 2007. As such, the corporation's status has become suspended with many tax liabilities remaining outstanding, which continues to decrease the value of the corporation. | File 4A - Ishii |
| <input checked="" type="checkbox"/> Aff.Mail w | SEE PAGE 2 | |
| <input type="checkbox"/> Aff.Pub. | | |
| <input type="checkbox"/> Sp.Ntc. | | |
| <input type="checkbox"/> Pers.Serv. | | |
| <input type="checkbox"/> Conf. Screen | | |
| <input type="checkbox"/> Letters | | |
| <input type="checkbox"/> Duties/Supp | | |
| <input type="checkbox"/> Objections | | |
| <input type="checkbox"/> Video Receipt | | |
| <input type="checkbox"/> CI Report | | |
| <input type="checkbox"/> 9202 | | |
| <input type="checkbox"/> Order X | | |
| <input type="checkbox"/> Aff. Posting | | |
| <input type="checkbox"/> Status Rpt | | |
| <input type="checkbox"/> UCCJEA | | |
| <input type="checkbox"/> Citation | | |
| <input type="checkbox"/> FTB Notice | | |

PAGE 2

A meeting of the directors of the corporation was noticed on 6-3-10 by Gerald, who is secretary; however, the meeting did not occur because Leslie found the principal place of business of the corporation to be an inconvenient meeting location, although it is approx. one mile from her home. No meetings have occurred since. Because the corporation is one-third owned by the trust, the deadlock between the Co-Trustees is impairing the administration of the Trust and causing trust assets to lose value.

Petitioner requests that the Court remove both Co-Trustees of the Trust and subtrusts because due to hostility and lack of cooperation among Co-Trustees, administration of the Trust and sub-trusts continue to be impaired and trust assets neglected. Probate Code §§ 15642(a)(3), 17200(b)(10). The Trust does not appoint a successor trustee in the event of removal; rather, it provides only the manner of successor appointments should one of the two become unable to perform. Petitioner requests appointment of **BRUCK BICKEL** as Successor Trustee with compensation to be approved by the Court. Mr. Bickel consents to act. Petitioner requests appointment without bond for one year to allow the corporate affairs to be brought to order, with authority to apply for an extension by Mr. Bickel should the corporate affairs remain unresolved and the Trust assets undistributed. Petitioner believes this appointment is in the best interests of the Trust and sub-trusts, and those persons interested in the Trust estate.

Petitioner requests that:

- 1. The Court temporarily and partially remove Gerald Ishii and Leslie Ishii as Co-Trustees of the ISHII FAMILY TRUST DATED 3-3-92;**
- 2. The Court appoint Bruce Bickel as temporary Successor Trustee to serve without bond for a period of one year, with the ability of Mr. Bickell to petition the Court for additional time should the corporate affairs remain deadlocked;**
- 3. The Court award reasonable compensation to the temporary Successor Trustee;**
- 4. The Co-Trustees to deliver the Trust assets to the temporary Successor Trustee within 30 days after issuance of an Order;**
- 5. The Court order Leslie Ishii to file an accounting with the Court detailing their respective acts as Co-Trustees no later than four weeks after the Court makes its order;**
- 6. The Court order Petitioner's attorneys' fees in the amount of \$1,000.00 and costs advanced to be paid to such attorneys directly from the Trust, to be charged 100% to income, and paid within 10 days after the Court makes its order; and**
- 7. Such further orders as the Court deems proper.**

Objection of LESLIE ISHII states this probate proceeding is not the proper forum or vehicle to resolve such corporate issues. This lawsuit is premature at best and legally inapposite to the issues it proposes to resolve at worst. The corporation is deadlocked; however, the instant petition filed as a trust proceeding does not request any form of relief that will serve to end the shareholders' deadlock and restore the corporation to operational status. Specifically, the appointment of a neutral third party trustee will not resolve any issues with regard to the operation of the corporation. While a trustee may have the right to vote shares of stock held in trust, a trustee's paramount duty is to distribute trust property pursuant to the terms of the trust instrument. Here, the trust instrument requires the residue be distributed one-half each to Petitioner and Respondent. If a neutral third party trustee is appointed, he will be obligated to distribute the shares held in trust accordingly, not to vote the shares, and, in effect run the business of the corporation.

Respondent has no objection to the immediate equal distribution of the shares of the corporation currently held in trust. In the likely event that said distribution does not resolve the deadlock, however, Petitioner's only recourse will be to file a lawsuit for involuntary dissolution in the unlimited civil department of the Superior Court.

SEE PAGE 3

PAGE 3

Respondent requests that the Court issue an order requiring the Co-Trustees to immediately distribute 150 shares of Frank K. Ishii & Sons, Inc., each to Petitioner and Respondent, and for reasonable attorneys' fees and costs incurred herein.

Alternatively, Respondent requests the Court issue an order removing Petitioner and Respondent as Co-Trustees, but only as to their fiduciary ownership of the Trust's 300 shares of Frank K. Ishii & Sons, Inc.; appointing Bruce Bickel as temporary successor trustee without bond solely for the purpose of administering the Trust's 300 shares of Frank K. Ishii & Sons, Inc.; authorizing Mr. Bickel to petition to continue to serve should it be in the best interests of the beneficiaries or the affairs of the corporation that he remain in such role; awarding reasonable compensation to the temporary Successor Trustee; requiring the Co-Trustees to deliver the shares of Frank K. Ishii & Sons, Inc., to the temporary Successor Trustee by a date certain; for reasonable attorneys' fees and costs incurred herein; and for any and all other relief the Court deems just and proper.

Status Report filed 1-7-13 by Attorney Fanucchi states further continuance is needed. Gerald Ishii maintains his brother Leslie is wasting the vineyard known as Candy Ranch by inappropriately pruning, tying, tilling, chemical control, and irrigating control which has diminished the value of the realty.

Status Report filed 1-9-13 by Attorney Burnside states inquiry has been made to Les' accountant Jim Horn whether he has any documents in his possession regarding the expenses Les incurred to operate the Candy Ranch, but Mr. Horn has been unable to review his files due to his year-end workload. Counsel will follow up this week.

Status Report filed 2-19-13 by Attorney Fanucchi states Gerald Ishii is unable to accept or reject what has been presented to date and has forwarded information to his accountant. Further continuance is needed.

Status Report filed 2-19-13 by Attorney Burnside states the accountants had to reschedule their meeting and further continuance is needed.

Minute Order 5-17-13: Ms. Burnside advises the Court that they have resolved a few things and are making progress. Ms. Burnside further advises that the CPSs are still trying to get together.

Status Conference

| | | |
|---|--|--|
| Frank K. Ishii DOD: 11-10-93 | GERALD ISHII , Beneficiary and Co-Trustee, filed the petition at Page 6A on 5-17-12. | NEEDS/PROBLEMS/COMMENTS: |
| Lily Y. Ishii DOD: 3-7-05 | LESLIE ISHII , Beneficiary and Co-Trustee, filed an objection on 6-21-12. | Note: See Page 4A for details of the petition and file to date. |
| Cont. from 032913, 051713 | Hearings have been continued since 7-2-12 (8 total, including this hearing). | |
| Aff.Sub.Wit. | At the last hearing on 2-25-13, counsel requested continuance and in addition to continuing the petition at 6A, the Court set this additional status hearing. | Reviewed by: skc |
| Verified | As of 3-22-12, both attorneys have filed status reports requesting additional time to resolve the issues. | Reviewed on: 6-25-13 |
| Inventory | Status Report filed 6-25-13 by Attorney Burnside (not verified by Co-Trustee Leslie Ishii) states the parties and attorneys met on 4-19-13 to view the ranch, vines, and equipment and were able to reach agreement on certain matters. Additionally, the parties resolved an issue concerning certain funds of Frank K. Ishii & Sons, Inc., being held by Allied Grape Growers. | Updates: 6-26-13 |
| PTC | \$214,000.00 was authorized to be disbursed to Attorney Fanucchi's client trust account pending resolution of the remaining issues regarding Les' accounting of his operation of the Candy Ranch. Although final resolution is not yet reached, the parties have been able to resolve a number of the issues and anticipate being able to resolve the balance of the issues as the parties, their counsel, and accountants continue to work together. Therefore, further continuance of the status hearing is requested. | Recommendation: |
| Not.Cred. | | File 4B - Ishii |
| 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 | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |

Atty Dowling, Michael; Burnside, Leigh; Matlak, Steven; of Dowling Aaron (for Petitioner Barbara L. Pearson, Successor Trustee)

Atty Werner, David D., Field, Stefanie; of Gresham Savage Nolan & Tilden, Riverside (for Objector Tracy Spreier, Beneficiary)

Status Conference

| | | |
|-----------------------------------|--|---|
| Frank DOD: 8/15/2006 | <p>BARBARA L. PEARSON, Trustors' daughter, Trust Beneficiary and Successor Trustee of the LABREE FAMILY TRUST dated 4/13/1981, filed on 10/5/2012 a Petition for Settlement of First Account and Report of Trustee of the LaBree Family Trust, which was set for hearing on 11/29/2012.</p> <p>TRACY SPREIER, Trustors' daughter and Trust Beneficiary, filed on 11/16/2012 Objections to the Petition for Settlement of First Account and Report of Trustee of the LaBree Family Trust, alleging self-dealing and breach of fiduciary duties by the Trustee.</p> <p>Joint Status Report filed 6/19/2013 states:</p> <ul style="list-style-type: none"> Ms. Spreier's <i>Objection</i> to Ms. Pearson's <i>Petition</i> contains objections to: (a) the inclusion in the accounting of a diamond ring that Ms. Spreier received from the deceased Co-Settlor, Roberta LaBree, prior to Ms. LaBree's death; (b) the alleged value of said diamond ring and Ms. Pearson's reliance on an appraisal; (c) Ms. Pearson's payment, from Trust funds, for an appraisal of certain real property that had been gifted by the deceased Co-Settlor, Roberta LaBree, to her three daughters in 2010; (d) Ms. Pearson's payment for an appraisal of Trust real property that she ultimately decided not to use in valuing the real property; (e) Ms. Pearson's liquidation of certain Trust investments; (f) Ms. Pearson's use of Trust funds to pay for expenses related to Roberta LaBree's funeral; (g) the compensation received by Ms. Pearson for services provided by her as Successor Trustee; and (h) the compensation paid by Ms. Pearson to her attorneys, Dowling Aaron, Inc., for services provided by the firm to Ms. Pearson as Successor Trustee; <p align="center">~Please see additional page~</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Page 5B is the <i>Petition for Settlement of First Account and Report of Trustee of the LaBree Family Trust</i>.</p> <p>Page 7 is the related matter of the <i>Frank H. Labree Irrevocable Trust</i> (12CEPR00893.)</p> <p>Continued from 5/10/2013. <i>Minute Order</i> states Mr. Werner is appearing via conference call. Ms. Burnside advises the Court that they are making progress and she believes counsel will continue to meet and confer in an effort to resolve this matter. Matter continued to 6/28/2013.</p> <p>Note: <i>Joint Status Report</i> filed 6/19/2013 indicates the deposition of a former caregiver of Decedent is scheduled for 7/26/2013 in Bullhead City, Arizona.</p> |
| Roberta DOD: 3/25/2012 | | |
| Cont. from 011813, 032213, 051013 | | |
| Aff.Sub.Wit. | | |
| ✓ Verified | | |
| Inventory | | |
| PTC | | |
| ✓ Status Rep | | |
| Notice of Hrg | | |
| ✓ Aff.Mail W / | | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
| Duties/S | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| Reviewed by: LEG | | |
| Reviewed on: 6/21/13 | | |
| Updates: | | |
| Recommendation: | | |
| File 5A - LaBree | | |

Joint Status Report filed 6/19/2013, continued:

- On 11/14/2012, Ms. Pearson filed a Declaration in which she detailed the services provided by her during the account period and for which she has requested compensation of **\$25,055.50**;
- On 11/26/2012, Ms. Pearson filed a Reply addressing many of the issues raised in the Objection;
- On 12/14/2012, Ms. Pearson's attorneys filed a Declaration detailing the services provided by them on behalf of Ms. Pearson;
- On 1/15/2013, Ms. Pearson filed a further Declaration detailing the services provided by her and for which she has already received compensation in the amount of **\$14,302.50**;
- As a result of the additional information provided by Petitioner's attorneys, and as a result of some discussions regarding the matters, some of the issues have been able to be resolved on an informal basis at this time;
- In furtherance of her written objections to the remaining issues pertaining to the accounting, Ms. Spreier served written discovery on Ms. Pearson, to which Ms. Pearson provided responses and produced documents;
- Counsel for Ms. Spreier, David Werner, is in the process of reviewing the responses and documentation provided by Ms. Pearson;
- Ms. Pearson has noticed the deposition of one of the Decedent's caregivers in Arizona, **DONNA PAYNE**, scheduled for **7/26/2013** in Bullhead City, Arizona; Ms. Pearson believes the caregiver may have information related to the disputed diamond ring;
- In the meantime, the attorneys for the parties expect to continue to meet and confer with regard to the remaining issues, as appropriate and as the matter progresses, in order to determine whether there is a basis upon which the matters that remain at issue can be resolved between themselves.

Atty Dowling, Michael; Burnside, Leigh; Matlak, Steven; of Dowling Aaron (for Petitioner Barbara L. Pearson, Successor Trustee)
 Atty Werner, David D., Field, Stefanie; of Gresham Savage Nolan & Tilden, Riverside (for Objector Tracy Spreier, Beneficiary)

Petition for Settlement of First Account and Report of Trustee of the LaBree Family Trust; and Approval of Trustee Fees [Cal. Prob. C. 1064(a), 17200, 17200(b)(5), CRC., Rule 7.902]

| | | | |
|--|---|--|---|
| Frank DOD: 8/15/2006 | BARBARA L. PEARSON , Trustors' daughter, Trust Beneficiary and Successor Trustee of the LABREE FAMILY TRUST , is Petitioner. | | <p>NEEDS/PROBLEMS/ COMMENTS:</p> <p><u>Continued from 5/10/2013.</u> Minute Order states Mr. Werner is appearing via conference call. Matter continued to 6/28/2013.</p> <p>Note: Additional notes pages originally prepared for this Petition have been omitted.</p> |
| Roberta DOD: 3/25/2012 | Account period: 3/25/2011 – 2/29/2012 | | |
| Cont. from 112912, 011813, 032213, 051013 | Accounting - \$1,735,662.68 Beginning POH - \$1,627,499.40 Ending POH - \$1,563,236.09 (\$1,899,065.77 is cash; cash balance exceeds ending property on hand balance due to negative \$518,182.00 amount held in constructive trust by Trustee for the benefit of the Frank H. LaBree Exemption Trust.) | | |
| Aff.Sub.Wit. | | Trustee - \$25,066.50 (per Declaration filed 11/14/2012 containing itemization for 294.90 hours @ \$85.00/hour. NOTE: Trustee has previously been paid compensation of \$14,302.50 (not itemized) from the Trust for this account period without court order per Trust terms entitling Trustee to reasonable compensation for services rendered as Trustee;) | |
| ✓ Verified | | Attorney - \$53,312.30 (paid) (to Dowling Aaron & Keeler/Dowling Aaron, as listed in Disbursements schedule; not itemized other than for legal fees) | |
| Inventory | | Accountant - \$1,405.00 (paid) (to Erickson & Assoc., CPAs, as itemized in Disbursements schedule; Petitioner is employed by Erickson & Assoc.) | |
| PTC | | | |
| Not.Cred. | | | |
| ✓ Notice of Hrg | | | |
| ✓ Aff.Mail | W / | | |
| 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 | | | |
| <p>Petitioner states:</p> <ul style="list-style-type: none"> ROBERTA LABREE and FRANK H. LABREE, Jr., created the LABREE FAMILY TRUST on 4/13/1981, as amended on 5/2/1984, and as amended in full on 12/20/1991, and were the original co-trustees until Frank's death on 8/15/2006, when Roberta became the sole Trustee, and the Trust served as the Survivor's Trust for Roberta; | | | <p>Reviewed by: LEG</p> <p>Reviewed on: 6/21/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 5B - LaBree</p> |

Atty Salazar, Steven F

Atty Bagdasarian, Gary G.

Status Hearing Re: Settlement Agreement

| | | |
|---------------|--|---|
| Age: | | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p style="text-align: center;"><u>OFF CALENDAR</u></p> <p>Agreement approved 6-25-13</p> |
| DOD: | | |
| | | |
| | | |
| Cont. from | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
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| Notice of Hrg | | |
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| Aff.Pub. | | |
| Sp.Ntc. | | |
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| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | | Reviewed by: skc |
| | | Reviewed on: 6-25-13 |
| | | Updates: |
| | | Recommendation: |
| | | File 6 – Thomas |

Atty Dowling, Michael; Burnside, Leigh; Matlak, Steven; of Dowling Aaron (for Petitioner Barbara L. Pearson, Successor Trustee)

Atty Werner, David D., Field, Stefanie; of Gresham Savage Nolan & Tilden, Riverside (for Objector Tracy Spreier, Beneficiary)

Status Conference

| | | | | |
|-----------------------------------|--|---|---|---|
| Frank DOD: 8/15/2006 | <p>BARBARA L. PEARSON, Trustor's daughter, Trust Beneficiary and Successor Trustee of the FRANK H. LABREE IRREVOCABLE TRUST, filed on 10/5/2012 a <i>Petition for Settlement of First Account and Report of Trustee of the Frank H. LaBree Irrevocable Trust</i>, which was set for hearing on 11/29/2012.</p> <p>TRACY SPREIER, Trustor's daughter and Trust Beneficiary, filed on 11/16/2012 an <i>Objection to the Petition for Settlement of First Account and Report of Trustee</i>, alleging self-dealing and breach of fiduciary duties by the Trustee.</p> <p>Joint Status Report filed 6/19/2013 states:</p> <ul style="list-style-type: none"> Ms. Spreier's <i>Objections to the Petition for Settlement of the First Account of Trustee</i> consist of: (a) Ms. Pearson's reduction of the interest rate of 2 loans she made from the Trust, one loan to herself and one loan to her daughter, SHANNON BADELLA; (b) Ms. Pearson's travel expenses in the amount of \$1,379.84; and (c) lack of an explanation as to why Ms. Pearson did not collect any trustee compensation for 2010 or 2011; Ms. Pearson filed a Reply on 11/26/2012, addressing the issues raised in the objection; Since the filing of Ms. Pearson's Reply, the attorneys for the parties have engaged in discussions regarding the items at issue; Additionally, Ms. Spreier served written discovery on Ms. Pearson, and Ms. Pearson responded to the discovery and produced documents; Ms. Pearson is willing to submit the matter of the Petition and the Objection thereto to the Court for adjudication without a contested hearing; In the meantime, Objector's attorneys are evaluating the responses to the written discovery that was propounded; Objector TRACY SPREIER requests that the Court make a determination after a contested hearing, if the matter is not able to be resolved between the parties through their attorneys. | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Page 7B</u> is the <i>Petition for Settlement of First Account and Report of Trustee of the LaBree Family Trust</i>.</p> <p>Continued from 5/10/2013. Minute Order states Mr. Werner is appearing via conference call. Ms. Burnside advises the Court that they are making progress and she believes counsel will continue to meet and confer in an effort to resolve this matter. Matter continued to 6/28/2013.</p> | | |
| Roberta DOD: 3/25/2012 | | | | |
| | | | | |
| Cont. from 011813, 032213, 051013 | | | | |
| Aff.Sub.Wit. | | | | |
| ✓ Verified | | | | |
| Inventory | | | | |
| PTC | | | | |
| ✓ Status Rep | | | | |
| Notc of Hrg | | | | |
| ✓ Aff.Mail | | | W | / |
| Aff.Pub. | | | | |
| Sp.Ntc. | | | | |
| Pers.Serv. | | | | |
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| CI Report | | | | |
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| Order | | | | |
| Aff. Posting | | | | |
| Status Rpt | | | | |
| UCCJEA | | | | |
| Citation | | | | |
| FTB Notice | | | | |
| | | Reviewed by: LEG | | |
| | | Reviewed on: 6/21/13 | | |
| | | Updates: | | |
| | | Recommendation: | | |
| | | File 7A - LaBree | | |

Atty Dowling, Michael; Burnside, Leigh; Matlak, Steven; of Dowling Aaron (for Petitioner Barbara L. Pearson, Successor Trustee)

Atty Werner, David D., Field, Stefanie; of Gresham Savage Nolan & Tilden, Riverside (for Objector Tracy Spreier, Beneficiary)

Petition for Settlement of First Account and Report of Trustee of the Frank H. LaBree Irrevocable Trust Dated March 26, 1992 [Cal. Prob. C. 1064(a), 17200, 17200(b)(5), CRC., Rule 7.902]

| | | |
|---|--|--|
| Frank DOD: 8/15/2006 | BARBARA L. PEARSON , Trustor's daughter, Trust Beneficiary and Successor Trustee of the FRANK H. LABREE IRREVOCABLE TRUST , is Petitioner. | NEEDS/PROBLEMS/ COMMENTS: |
| Roberta DOD: 3/25/2012 | | |
| Cont. from 112912, 011813, 032213, 051013 | Account period: 10/10/2008 – 12/31/2011 | <p>Continued from 5/10/2013. Minute Order states Mr. Werner is appearing via conference call. Matter continued to 6/28/2013.</p> <p>Note: Additional notes pages originally prepared for this <i>Petition</i> have been omitted.</p> |
| Aff.Sub.Wit. | Accounting - \$456,694.10 | |
| ✓ Verified | Beginning POH - \$421,894.79 | |
| Inventory | Ending POH - \$423,435.60 (\$334,115.35 is cash) | |
| PTC | Trustee (Initial) - \$3,510.00 (services prior to 10/10/2008 for initial Trustee, paid to Law Offices of Earl O. Bender) | |
| Not.Cred. | Trustee (Current) - \$600.00 (paid) | |
| ✓ Notice of Hrg | Trustee Costs - \$1,379.84 (paid) (reimbursement of 2010 travel expense) | |
| ✓ Aff.Mail W / | Attorney - <i>Not requested</i> | |
| Aff.Pub. | Accountant - \$615.00 (paid) (to Erickson & Assoc., CPAs, as itemized in Disbursements schedule; Petitioner is employed by Erickson & Assoc.) | |
| Sp.Ntc. | Petitioner states: | |
| Pers.Serv. | <ul style="list-style-type: none"> FRANK H. LABREE, Jr., created the FRANK H. LABREE IRREVOCABLE TRUST on 3/26/1992, which was funded initially by a life insurance policy on Frank (copy of Trust Agreement attached as Exhibit A); The initial Trustee was EARL O. BENDER, who resigned on 10/9/2008, and Petitioner succeeded as trustee; Petitioner is a resident of Auberry, California; | |
| Conf. Screen | | |
| Letters | | |
| Duties/Supp | | |
| ✓ Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order X | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | | Reviewed by: LEG |
| | | Reviewed on: 6/21/13 |
| | | Updates: |
| | | Recommendation: |
| | | File 7B – Labree |

Atty Wright, Janet L (for Petitioner, Jeremy Felmus)

Atty Keeler, William ((for Petitioner, Jeremy Felmus)

Atty Poochigian, Mark S. (for Proposed Conservatee Mark T. Felmus)

Petition for Appointment of Temporary Conservatorship of the Estate

| | | | | | | | | |
|--|--|---|--|---|-----------------------------|-----------------|------------------------|-------------------------|
| Age: 62 years | | <u>Temporary Expired on 3/29/13</u> | | NEEDS/PROBLEMS/COMMENTS: Continued from 4/26/13. Court Investigator Advised Rights on 2/11/13. 1. Letters of Temporary Conservatorship have not issued. | | | | |
| | | JEREMY FELMUS , son, is petitioner and requests the PUBLIC GUARDIAN be appointed as conservator of the estate. | | | | | | |
| Cont. from 022113, 030813, 032013, 032913, 042613 | | <u>Estimated value of the estate:</u> | | | | | | |
| | | Personal property - \$500,000.00 | | | | | | |
| | | Annual income - \$228,000.00 | | | | | | |
| | | Total - \$728,000.00 | | | | | | |
| <input type="checkbox"/> Aff.Sub.Wit. | | Petitioner states is 62 years old. For the past 3-4 years the proposed conservatee has had daily caregiving to assist him with is Activities of Daily living, including assisting him with bathing, dressing, meal preparation, transportation, supervision and administration of his medications. In late 2011, the proposed conservatee met his 47 year old, on again/off again girlfriend Jamie Piearcy. Petitioner believes that since that time Ms. Piearcy has engaged in a pattern of conduct designed to isolate the proposed conservatee from Petitioner and Petitioner's wife, Jessica, in order take advantage of his cognitive state for her personal financial gain to the unconscionable detriment of the proposed conservatee, including changing the locks on the proposed conservatee's home to prevent the Petitioner from checking on his father, discouraging or prohibiting contact between the Petitioner and the proposed conservatee, prohibiting the proposed conservatee from golfing at Copper River Country Club because that is where Mrs. Piearcy's spouse plays golf, taking over management of the proposed conservatee's finances, unduly influencing the proposed conservatee to transfer a 1/2 interest in his personal residence to her, unduly influencing the proposed conservatee to assign or allow Ms. Piearcy to collect his beneficial interest in a life insurance policy in the amount of \$500,000.00 and influencing the proposed conservatee to change his legal representation regarding his estate planning matters. | | | | | | |
| <input checked="" type="checkbox"/> Verified | | | | | | | | |
| <input type="checkbox"/> Inventory | | | | | | | | |
| <input type="checkbox"/> PTC | | | | | | | | |
| <input type="checkbox"/> Not.Cred. | | | | | | | | |
| <input checked="" type="checkbox"/> Notice of Hrg | | | | | | | | |
| <input checked="" type="checkbox"/> Aff.Mail W/ | | | | | | | | |
| <input type="checkbox"/> Aff.Pub. | | | | | | | | |
| <input type="checkbox"/> Sp.Ntc. | | | | | | | | |
| <input checked="" type="checkbox"/> Pers.Serv. W/ | | | | | | | | |
| <input type="checkbox"/> Conf. Screen | | | | | | | | |
| <input type="checkbox"/> Letters X | | | | | | | | |
| <input type="checkbox"/> Duties/Sup p | | | | | | | | |
| <input type="checkbox"/> Objections | | | | | | | | |
| <input type="checkbox"/> Video Receipt | | | | | | | | |
| <input checked="" type="checkbox"/> CI Report | | | | | | | | |
| <input type="checkbox"/> 9202 | | | | | | | | |
| <input type="checkbox"/> Order X | | | | | | | | |
| <input type="checkbox"/> Aff. Posting | | | | | | | | |
| <input type="checkbox"/> Status Rpt | | | | | | | | |
| <input type="checkbox"/> UCCJEA | | | | | | | | |
| <input type="checkbox"/> Citation | | | | | | | | |
| <input type="checkbox"/> FTB Notice | | | | | | | | |
| Please see additional page | | | | | | | | |
| <table border="1" style="width: 100%;"> <tr> <td>Reviewed by: KT</td> </tr> <tr> <td>Reviewed on: 6/24/13</td> </tr> <tr> <td>Updates:</td> </tr> <tr> <td>Recommendation:</td> </tr> <tr> <td>File 8A - Felmus</td> </tr> </table> | | | | Reviewed by: KT | Reviewed on: 6/24/13 | Updates: | Recommendation: | File 8A - Felmus |
| Reviewed by: KT | | | | | | | | |
| Reviewed on: 6/24/13 | | | | | | | | |
| Updates: | | | | | | | | |
| Recommendation: | | | | | | | | |
| File 8A - Felmus | | | | | | | | |

Objections to Petition for Appointment of Temporary Conservator filed 2/20/13 by Proposed Conservatee Mark T. Felmus states appointment of a conservator of the estate is unnecessary because Objector is completely able to manage his own financial resources and resist fraud and undue influence.

The appointment of the Public Guardian as conservator of the estate is not in the best interests of the proposed conservatee. To the extent that the court determines that a conservator of the estate should be appointed, Objector hereby nominates Jamie Piearcy as such conservator of his estate, and if the court determines that a different conservator of the estate should be appointed, Objector hereby reserves the right to nominate another conservator of the estate that would be in the best interest of the proposed conservatee.

Objector alleges this is a straightforward case of a son not approving of his father's fiancée and nothing more. There is nothing in this case that suggests the need for a conservatorship.

Dr. Felmus's personal treating physician, Patrick A. Golden, M.D. and his longtime psychiatrist, Dwight D. Sievert, M.D., both have expressed their willingness to assist him in defending against the conservatorship petition. Dr. Sievert and Dr. Golden have both completed a Capacity Declaration, in which neither doctor indicated any apparent impairment in Dr. Felmus's mental functions.

Objector states the Petitions for Appointment of Temporary and Permanent Conservatorship are largely focused upon two transactions, i.e. (i) the transfer of a ½ interest in Dr. Felmus's residence to Ms. Piearcy, and (ii) the assignment of the proceeds of a life insurance policy payable to Dr. Felmus to Ms. Piearcy. It was entirely within Dr. Felmus's right to enter into these transactions which he has very reasonable explanations:

- A. On or about 8/27/12 Dr. Felmus conveyed an undivided ½ interest in his residence to Ms. Piearcy. This was entirely within Dr. Felmus's right. Dr. Felmus has explained that he was aware of his own mortality, and was concerned that if he died, Jeremy would "fight [Ms. Piearcy] for the residence. Dr. Felmus's concern in this area was apparently well placed given Jeremy's subsequent filing of the conservatorship petitions.
- B. After Dr. Felmus's mother died in November 2012, the trustee of her inter vivos revocable trust indicated that he wanted to use the proceeds of the life insurance policy – of which Dr. Felmus was the owner and sole beneficiary – to pay estate taxes owing as a result of his mother's death. Dr. Felmus was concerned that the Trustee would attempt to take control of those funds, so Dr. Felmus assigned the proceeds from such policy to Ms. Piearcy. Again, Dr. Felmus's concern was well placed, as the trustee apparently told the court investigator that "only the [the trustee] should have been able to claim the insurance policy on Dr. Felmus's behalf."

Dr. Felmus having established a revocable trust, and having executed a Durable Power of Attorney, establishment of a conservatorship of his estate is not the least restrictive alternative needed for the protection of the conservatee, such that no conservatorship should be granted.

Please see additional page

Objections to Petition for Appointment of Temporary Conservator (faxed copy, original to follow) filed by Proposed Conservatee Mark T. Felmus (continued):

Objector hereby demands a jury trial on all issues triable by a jury.

Objector requests that:

1. The Petition of Jeremy Felmus for appointment of a conservator of the estate of Mark T. Felmus be denied.
2. The Petition of Jeremy Felmus for the appointment of the Fresno County Public Guardian as conservator of the estate of Mark T. Felmus be denied.

Supplemental Declaration of Jeremy Felmus in Support of Petition for Appointment of Temporary Conservatorship of the Estate filed on 2/20/13.

Court Investigator Samantha Henson's Report filed on 2/13/13

Order appointing Temporary Conservator dated 2/7/13 contains additional orders as follows:

- All Durable Powers of Attorney executed by Mark T. Felmus nominating Jamie Piercy as his agent or attorney in fact are revoked.
- The Conservator of the Estate has the power to inquire as to the status of the payment under Lincoln National Life Insurance Company life insurance policy insuring the life of Ruth Felmus owned by Mark T. Felmus, to take the following actions:
 1. If the proceeds are still held by Lincoln National, to either request distribution to the Conservator of the Estate on behalf of Mark T. Felmus and hold them for the proposed conservatee's benefit; or
 2. If the proceeds have been collected, to take all necessary actions to obtain possession and control of the proceeds.
- Any assignment of the insurance proceeds from Lincoln National Life Insurance Company life insurance policy owned by Mark T. Felmus to another, including without limitation, Jamie Piercy, is invalid or void.
- The proposed conservatee's transfer of a ½ interest in the proposed conservatee's personal residence to Jamie Piercy is void and 100% ownership is returned to the name of Mark T. Felmus.

Order After Hearing February 21, 2013 amends the Ex Parte Order dated 2/7/13 as follows:

- The Fresno County Public Guardian shall take no action to void or invalidate the Conservatee's transfer of a ½ interest in the proposed conservatee's residence at 2555 W. Bluff.
- The Fresno County Public Guardian shall record its Letters of Temporary Conservatorship in the chain of title regarding the 2555 W. Bluff property.
- There shall be no distribution of the life insurance proceeds held by Lincoln National Life Insurance Company regarding the policy insuring the life of Ruth Felmus and owned by Mark T. Felmus until further order of the court.
- Until further Order of the Court, the Fresno County Public Guardian shall take no action to marshal the Conservatee's monthly Social Security, disability or pension income.
- Until further Order of the Court, the Temporary Conservatee, shall not make any gifts to anyone of any new assets received by him, including but not limited to, by gift, inheritance, or distribution from a trust or other account or asset funded by Ruth Felmus, during the period the Court order is in effect. Nothing in this paragraph shall preclude the Temporary Conservatee from making gifts from income received by him in the normal course, such as from the Temporary Conservatee's monthly income, retirement, and disability payments.

Minute order from 3/29/13 states, Mr. Keeler advises the court that Mr. Poochigian has put together some proposed documents. All court is directed to respond to Mr. Poochigian's proposed documents by 4/3/13. Matter continued to 4/26/13. The court directs counsel to meet and confer before the next hearing.

Motion for Reconsideration of Order Granting Temporary Conservatorship

| | | |
|--|--|---|
| Age: 62 years | MARK T. FELMUS , conservatee, is petitioner. | NEEDS/PROBLEMS/COMMENTS: Continued from 4/26/13. |
| | JEREMY FELMUS , conservatee's son, filed a petition for appointment of the PUBLIC GUARDIAN as temporary conservator of the Estate. Letters to expire on 2/21/13. | |
| | On 2/7/13 the Court granted the Petition ex parte. | |
| Cont. from 022113, 030813, 032013, 032913, 042613 | | |
| <input type="checkbox"/> Aff.Sub.Wit. | | |
| <input type="checkbox"/> Verified | 2/13/13 MARK T. FELMUS filed a Motion for Reconsideration of the Order Granting the Temporary Conservatorship and Advancing the Hearing and Shortening Time for Notice. | |
| <input type="checkbox"/> Inventory | | |
| <input type="checkbox"/> PTC | | |
| <input type="checkbox"/> Not.Cred. | | |
| <input checked="" type="checkbox"/> Notice of Hrg | Order dated 2/13/13 states: | |
| <input checked="" type="checkbox"/> Aff.Mail W/ | The Ex Parte Application for Order Advancing the Hearing and Shortening Time on Motion for Reconsideration is granted as follows: | |
| <input type="checkbox"/> Aff.Pub. | 1. The Motion for Reconsideration of Order Granting Temporary Conservatorship filed on 2/13/13 by Mark T. Felmus shall be heard on 2/21/13 at 9:00 a.m. in Dept. 303m concomitantly with the Petition for Appointment of Temporary Conservator filed on 2/6/13 by Jeremy Felmus. | |
| <input type="checkbox"/> Sp.Ntc. | 2. Notice of the Motion for Reconsideration of Order Granting Temporary Conservatorship shall be served on all interested parties 5 days prior to the 2/21/13 advanced hearing date. | |
| <input type="checkbox"/> Pers.Serv. | 3. Order Appointing Temporary Conservator of the Estate granted ex parte on 2/7/13 remains in effect until the hearing on 2/21/13. | |
| <input type="checkbox"/> Conf. Screen | | |
| <input type="checkbox"/> Letters | | |
| <input type="checkbox"/> Duties/Supp | | |
| <input type="checkbox"/> Objections | | |
| <input type="checkbox"/> Video Receipt | | |
| <input type="checkbox"/> CI Report | | |
| <input type="checkbox"/> 9202 | | |
| <input type="checkbox"/> Order | | |
| <input type="checkbox"/> Aff. Posting | | |
| <input type="checkbox"/> Status Rpt | | |
| <input type="checkbox"/> UCCJEA | | |
| <input type="checkbox"/> Citation | | |
| <input type="checkbox"/> FTB Notice | Petitioner's Opposition to Conservatee's Ex Parte Application for an Order Advancing the Hearing and Shortening Time for Notice filed on 2/13/13 requests that the court deny the Conservatee's motion and allow the hearing occurring on 2/21/13 to occur as originally scheduled. | |
| | | Reviewed by: KT |
| | | Reviewed on: 6/24/13 |
| | | Updates: |
| | | Recommendation: |
| | | File 8B - Felmus |

8C Mark T. Felmus (CONS/E)
 Atty Wright, Janet L (for Petitioner, Jeremy Felmus)
 Atty Keeler, William ((for Petitioner, Jeremy Felmus)
 Atty Poochigian, Mark S. (for Proposed Conservatee Mark T. Felmus)

Case No. 13CEPR00104

Petition for Appointment of Probate Conservator of the Estate (Prob. C. 1820, 1821, 2680-2682)

| | | | | |
|-------------------------------------|---------------|--|--|--|
| Age: 62 years | | <u>Temporary Expired on 3/29/13</u> | | NEEDS/PROBLEMS/ COMMENTS: Continued from 4/26/2013. Court Investigator Advised Rights on 3/13/13. 1. Need Letters |
| | | JEREMY FELMUS , son, is petitioner and requests the PUBLIC GUARDIAN be appointed as conservator of the estate. | | |
| Cont. from 032913, 042613 | | <u>Estimated value of the estate:</u> Personal property - \$500,000.00 Annual income - \$228,000.00 Total - \$728,000.00 | | |
| <input type="checkbox"/> | Aff.Sub.Wit. | | | |
| <input checked="" type="checkbox"/> | Verified | | | |
| <input type="checkbox"/> | Inventory | | | |
| <input type="checkbox"/> | PTC | | | |
| <input type="checkbox"/> | Not.Cred. | | | |
| <input checked="" type="checkbox"/> | Notice of Hrg | | | |
| <input checked="" type="checkbox"/> | Aff.Mail | W/ | | |
| <input type="checkbox"/> | Aff.Pub. | | | |
| <input type="checkbox"/> | Sp.Ntc. | | | |
| <input type="checkbox"/> | Pers.Serv. | | | |
| <input type="checkbox"/> | Conf. Screen | | | |
| <input type="checkbox"/> | Letters | | | |
| <input type="checkbox"/> | Duties/Supp | | | |
| <input type="checkbox"/> | Objections | | | |
| <input type="checkbox"/> | Video Receipt | | | |
| <input checked="" type="checkbox"/> | CI Report | | | |
| <input type="checkbox"/> | 9202 | | | |
| <input checked="" type="checkbox"/> | Order | | | |
| <input type="checkbox"/> | Aff. Posting | | | |
| <input type="checkbox"/> | Status Rpt | | | |
| <input type="checkbox"/> | UCCJEA | | | |
| <input checked="" type="checkbox"/> | Citation | | | |
| <input type="checkbox"/> | FTB Notice | | | |
| Please see additional page | | | | |
| Reviewed by: KT | | | | |
| Reviewed on: 6/24/13 | | | | |
| Updates: | | | | |
| Recommendation: | | | | |
| File 8C - Felmus | | | | |

Objections to Petition for Appointment of Temporary Conservator filed 2/20/13 by Proposed Conservatee Mark T. Felmus states appointment of a conservator of the estate is unnecessary because Objector is completely able to manage his own financial resources and resist fraud and undue influence.

The appointment of the Public Guardian as conservator of the estate is not in the best interests of the proposed conservatee. To the extent that the court determines that a conservator of the estate should be appointed, Objector hereby nominates Jamie Pearcy as such conservator of his estate, and if the court determines that a different conservator of the estate should be appointed, Objector hereby reserves the right to nominate another conservator of the estate that would be in the best interest of the proposed conservatee.

Objector alleges this is a straightforward case of a son not approving of his father's fiancée and nothing more. There is nothing in this case that suggests the need for a conservatorship.

Dr. Felmus's personal treating physician, Patrick A. Golden, M.D. and his longtime psychiatrist, Dwight D. Sievert, M.D., both have expressed their willingness to assist him in defending against the conservatorship petition. Dr. Sievert and Dr. Golden have both completed a Capacity Declaration, in which neither doctor indicated any apparent impairment in Dr. Felmus's mental functions.

Objector states the Petitions for Appointment of Temporary and Permanent Conservatorship are largely focused upon two transactions, i.e. (i) the transfer of a ½ interest in Dr. Felmus's residence to Ms. Pearcy, and (ii) the assignment of the proceeds of a life insurance policy payable to Dr. Felmus to Ms. Pearcy. It was entirely within Dr. Felmus's right to enter into these transactions which he has very reasonable explanations:

- C. On or about 8/27/12 Dr. Felmus conveyed an undivided ½ interest in his residence to Ms. Pearcy. This was entirely within Dr. Felmus's right. Dr. Felmus has explained that he was aware of his own mortality, and was concerned that if he died, Jeremy would "fight [Ms. Pearcy] for the residence. Dr. Felmus's concern in this area was apparently well placed given Jeremy's subsequent filing of the conservatorship petitions.
- D. After Dr. Felmus's mother died in November 2012, the trustee of her inter vivos revocable trust indicated that he wanted to use the proceeds of the life insurance policy – of which Dr. Felmus was the owner and sole beneficiary – to pay estate taxes owing as a result of his mother's death. Dr. Felmus was concerned that the Trustee would attempt to take control of those funds, so Dr. Felmus assigned the proceeds from such policy to Ms. Pearcy. Again, Dr. Felmus's concern was well placed, as the trustee apparently told the court investigator that "only the [the trustee] should have been able to claim the insurance policy on Dr. Felmus's behalf."

Dr. Felmus having established a revocable trust, and having executed a Durable Power of Attorney, establishment of a conservatorship of his estate is not the least restrictive alternative needed for the protection of the conservatee, such that no conservatorship should be granted.

Please see additional page

Objections to Petition for Appointment of Temporary Conservator (faxed copy, original to follow) filed by Proposed Conservatee Mark T. Felmus (continued):

Objector hereby demands a jury trial on all issues triable by a jury.

Objector requests that:

3. The Petition of Jeremy Felmus for appointment of a conservator of the estate of Mark T. Felmus be denied.
4. The Petition of Jeremy Felmus for the appointment of the Fresno County Public Guardian as conservator of the estate of Mark T. Felmus be denied.

Supplemental Declaration of Jeremy Felmus in Support of Petition for Appointment of Temporary Conservatorship of the Estate filed on 2/20/13.

Court Investigator Samantha Henson's Report filed on 3/14/13

Order appointing Temporary Conservator dated 2/7/13 contains additional orders as follows:

- All Durable Powers of Attorney executed by Mark T. Felmus nominating Jamie Piercy as his agent or attorney in fact are revoked.
- The Conservator of the Estate has the power to inquire as to the status of the payment under Lincoln National Life Insurance Company life insurance policy insuring the life of Ruth Felmus owned by Mark T. Felmus, to take the following actions:
 3. If the proceeds are still held by Lincoln National, to either request distribution to the Conservator of the Estate on behalf of Mark T. Felmus and hold them for the proposed conservatee's benefit; or
 4. If the proceeds have been collected, to take all necessary actions to obtain possession and control of the proceeds.
- Any assignment of the insurance proceeds from Lincoln National Life Insurance Company life insurance policy owned by Mark T. Felmus to another, including without limitation, Jamie Piercy, is invalid or void.
- The proposed conservatee's transfer of a ½ interest in the proposed conservatee's personal residence to Jamie Piercy is void and 100% ownership is returned to the name of Mark T. Felmus.

Please see additional page

Order After Hearing February 21, 2013 amends the Ex Parte Order dated 2/7/13 as follows:

- The Fresno County Public Guardian shall take no action to void or invalidate the Conservatee's transfer of a ½ interest in the proposed conservatee's residence at 2555 W. Bluff.
- The Fresno County Public Guardian shall record its Letters of Temporary Conservatorship in the chain of title regarding the 2555 W. Bluff property.
- There shall be no distribution of the life insurance proceeds held by Lincoln National Life Insurance Company regarding the policy insuring the life of Ruth Felmus and owned by Mark T. Felmus until further order of the court.
- Until further Order of the Court, the Fresno County Public Guardian shall take no action to marshal the Conservatee's monthly Social Security, disability or pension income.
- Until further Order of the Court, the Temporary Conservatee, shall not make any gifts to anyone of any new assets received by him, including but not limited to, by gift, inheritance, or distribution from a trust or other account or asset funded by Ruth Felmus, during the period the Court order is in effect. Nothing in this paragraph shall preclude the Temporary Conservatee from making gifts from income received by him in the normal course, such as from the Temporary Conservatee's monthly income, retirement, and disability payments.

| | | |
|----------------------|--|---------------------------------|
| Age: 62 years | JEREMY FELMUS , son, petitioned to have the PUBLIC GUARDIAN appointed as conservator of the estate of his father, MARK T. FELMUS . | NEEDS/PROBLEMS/COMMENTS: |
| | On 2/7/2003 the court appointed the PUBLIC GUARDIAN (ex parte) as temporary Conservator of the estate. | |
| Cont. from | MARK T. FELMUS , conservatee, filed a Motion for Reconsideration of Order Granting Temporary Conservatorship. | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | Minute Order dated 4/26/2013 on the Hearing re: Conclusion of this matter/Settlement Conference set this status hearing. Mr. Poochigian informed the court that he just received a draft of the document. | |
| Notice of Hrg | | |
| Aff.Mail | Third Joint Status Report filed on 6/24/2013. Status Report states that over the last 60 days the parties have exchanged several drafts of settlement documents and engaged in informal discussions concerning possible settlement solutions and discussed settlement terms appropriate to same. | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | Additionally, on 5/30/2013, the parties and their respective attorneys met in the offices of Wright & Johnson in an attempt to work through some of the remaining settlement issues. Mr. Poochigian thereafter sent a revised set of settlement documents to counsel for Petitioner, which included the proposed provisions for which an agreement had been reached. After review with the Trustee of the Ruth Felmus Trust, whose cooperation would be required with respect to several provisions of the settlement, Mr. Keeler transmitted revised settlement documents to Mr. Poochigian on 6/13/2013. | |
| Duties/Supp | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | Counsel conferred by telephone on 6/24/2013, regarding the outstanding issues. It is unclear whether an agreement as to all remaining terms will be reached before the June 28 th hearing. | Reviewed by: KT |
| Status Rpt | | Reviewed on: 6/24/2013 |
| UCCJEA | | Updates: |
| Citation | | Recommendation: |
| FTB Notice | Counsel is presently hopeful that the final terms of the settlement can be resolved, however, Court assistance may be needed to resolve the final terms. A the status hearing counsel expects to request (i) setting the underlying petition for trial, and (ii) the scheduling of a settlement conference at which the Court may be able to assist with the remaining issues. | File 8D – Felmus |

Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 1821, 2680-2682)

| | | | | | |
|-------------------------------------|----------------------|---|--|---|----|
| Age: 77 | | <u>NO TEMPORARY ORDERS</u> | | NEEDS/PROBLEMS/COMMENTS: Court Investigator Advised Rights on 03/19/2013. Voting Rights Affected Need Minute Order Minute Order of 04/18/2013: The Court directs counsel to cure the defects noted in the examiner notes. The following issues still remain: 1. Need video receipt for conservator pursuant to Local Rule 7.158(A). | |
| | | COLLIN BRYANT , son, is petitioner and requests appointment as Conservator of the person, with medical consent and dementia powers. | | | |
| Cont. from 041813, 050813 | | Declaration of Patrick A. Golden, M.D. 04/06/2013 , supports request for dementia powers and medical consent powers. | | | |
| <input type="checkbox"/> | Aff.Sub.Wit. | | | | |
| <input checked="" type="checkbox"/> | Verified | Voting Rights Affected. | | | |
| <input type="checkbox"/> | Inventory | | | | |
| <input type="checkbox"/> | PTC | | | | |
| <input type="checkbox"/> | Not.Cred. | | | | |
| <input checked="" type="checkbox"/> | Notice of Hrg | Petitioner states: the proposed conservatee has been diagnosed with dementia and has active visual and auditory hallucinations. She has wandered from her residence and other places and has been taken to the hospital. She has been found yelling and knocking on doors in her neighborhood. Mrs. Bryant has a "friend" by the name of John Gormly, who apparently visits regularly. The extent of his involvement with her day to day activities is unknown. Petitioner is fearful that his mother may be exposed to dangerous circumstances given her dementia and impaired cognitive functioning. Petitioner states that it may be necessary at some time in the future to move Mrs. Bryant into a secure facility for her protection and well-being. | | | |
| <input checked="" type="checkbox"/> | Aff.Mail | | | | w/ |
| <input type="checkbox"/> | Aff.Pub. | | | | |
| <input type="checkbox"/> | Sp.Ntc. | | | | |
| <input type="checkbox"/> | Pers.Serv. | | | | |
| <input checked="" type="checkbox"/> | Conf. Screen | | | | |
| <input checked="" type="checkbox"/> | Letters | | | | |
| <input checked="" type="checkbox"/> | Duties/Supp | | | | |
| <input type="checkbox"/> | Objections | | | | |
| <input type="checkbox"/> | Video Receipt | | | | x |
| <input checked="" type="checkbox"/> | CI Report | Report to the Court filed by Attorney Fannucchi on 05/09/2013 states having met with Collin Bryant, Richard Bryant, Joanne Sanoian, Allaire Bryant and John Ghormley it is recommended that the petition be granted, and the petition have a condition as follows, "John Ghormley is to continue to have visitation privileges." | | | |
| <input type="checkbox"/> | 9202 | | | | |
| <input checked="" type="checkbox"/> | Order | | | | |
| <input type="checkbox"/> | Aff. Posting | | | | |
| <input type="checkbox"/> | Status Rpt | Court Investigator Julie Negrete's Report filed 04/11/2013. | | | |
| <input type="checkbox"/> | UCCJEA | | | | |
| <input type="checkbox"/> | Citation | | | | |
| <input type="checkbox"/> | FTB Notice | | | | |
| | | | | Reviewed by: LV | |
| | | | | Reviewed on: 06/26/2013 | |
| | | | | Updates: | |
| | | | | Recommendation: | |
| | | | | File 9 - Bryant | |

| | | |
|--------------------------|--|---|
| Age: 41 | PEGGY NEUENSCHWANDER , mother, was appointed as Limited Conservator of the Person on 12/23/92. | NEEDS/PROBLEMS/COMMENTS: <p style="text-align: center;"><u>OFF CALENDAR</u> Petition for Termination of Limited Conservatorship filed 06/20/13 and set for hearing on 08/05/13</p> <p><u>CONTINUED FROM 05/17/13</u> Minute Order from 05/17/13 states: Ms. Amador is appearing specially for attorney Glen Gates. Matter is continued to 06/28/13. The Court advises counsel that it will entertain a petition for termination with the appropriate certificate of mailing.</p> <p>As of 06/25/13, nothing further has been filed in this matter.</p> |
| | Court Investigator Charlotte Bien filed a report on 04/12/13. the limited conservatorship. | |
| Cont. from 051713 | Notice of Status Hearing filed 04/10/13 set this matter for a status hearing. | |
| Aff.Sub.Wit. | Clerk's Certificate of Mailing filed 04/10/13 states that the Notice of Status Hearing was mailed to Sylvia E. Neuenschwander, Brian Neuenschwander, Peggy David, and Glen Gates on 04/10/13. | |
| Verified | | |
| 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 | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | | Reviewed by: JF |
| | | Reviewed on: 06/25/13 |
| | | Updates: 06/26/13 |
| | | Recommendation: |
| | | File 10 – Neuenschwander |

| | | |
|----------------------|--|---|
| DOD: 11-15-04 | | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p style="text-align: center;"><u>OFF CALENDAR</u></p> <p>Receipt filed 4-30-13, First and Final Account filed 6-14-13 is set for hearing 7-22-13.</p> |
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| | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| 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 | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | | Reviewed by: skc |
| | | Reviewed on: 6-25-13 |
| | | Updates: |
| | | Recommendation: |
| | | File 11A – Delgado |

Probate Status Hearing Re: Filing of a Final Inventory and Appraisal; Failure to File a First Account or Petition for Final Distribution [Prob. C. 12200, et seq.]

| | | |
|-----------------------|---|---------------------------------|
| DOD: 2/15/2008 | <p>DOROTHY SALWASSER was appointed Administrator on 5/6/2013 with full authority and without bond.</p> <p>Inventory and Appraisal, partial no. 1 was filed on 10/27/2008 with a value of \$1,778,350.00.</p> <p>This status hearing was set for the filing of a final inventory and appraisal and for failure to file a first account or petition for final distribution.</p> <p>Status Report filed on 6/6/2013 states the Decedent's estate consists of primarily a 1/3 interest in the Walter Salwasser 1995 Family Trust. The Trust and the estate of the Decedent's father were involved in protracted litigation related to the administration of the trust estate, probate estate and the assets thereof, which litigation has since been resolved.</p> <p>The Administrator is currently working to obtain information regarding a few outstanding assets, and ten will prepare and file an updated inventory and appraisal. A petition for final distribution is already drafted and will be finalized once the inventory and appraisal is completed.</p> <p>Administrator reasonably believes that she can have the inventory and appraisal and a petition for final distribution filed with the Court well within 90 days.</p> | NEEDS/PROBLEMS/COMMENTS: |
| Cont. from | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
| Notice of Hrg | | |
| Aff.Mail | | |
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| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
| Duties/Supp | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 Order | | |
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| Citation | | |
| FTB Notice | | |
| | | Reviewed by: KT |
| | | Reviewed on: 6/24/2013 |
| | | Updates: |
| | | Recommendation: |
| | | File 13 - Salwasser |

| | | |
|----------------------------------|---|---------------------------------|
| DOD: 1/8/2009 | JAMES L. ELDER was appointed Executor with Full IAEA without bond and Letters issued on 3-3-09. | NEEDS/PROBLEMS/COMMENTS: |
| Cont. from 030113, 032913 | Final Inventory and Appraisal filed 2-22-11 reflects a total estate value of \$205,337.78, including \$66,337.78 cash and real property in Fresno and Tulare Counties. | |
| Aff.Sub.Wit. | MANUEL N. VIERRA , former attorney for Executor James L. Elder petitioned the court to be relieved as counsel. On 12/11/12 the court granted attorney Vierra's request and set a status hearing for the possible removal of the executor for failure to proceed timely with the estate. | Reviewed by: KT |
| Verified | Minute Order dated 1/15/13 states disclosure given by the Court regarding Fresno State University. Mr. Elder informs the Court that he has been unable to obtain counsel. The court accepts James Elder's resignation and appoints the Public Administrator. | Reviewed on: 6/24/2013 |
| Inventory | Letters issued to the Public Administrator on 1/31/13. | Updates: |
| PTC | Status Report of the Public Administrator filed 6/14/13 states Deputy Noe Jimenez has been in touch with Mr. Elder, the former Administrator of the estate, who is cooperating. Deputy Noe Jimenez has received a check in the amount of \$5,000.00 from Mr. Elder, and Mr. Elder informed him that another will be coming. Deputy Jimenez needs an accounting from him. It is difficult because Mr. Elder is a pastor and has responsibilities to his church. The Public Administrator requests the next status hearing be set no sooner than 6 months from the date of this hearing. | Recommendation: |
| Not.Cred. | Note: Decedent's will dated 12-10-08 devises specific personal property items to various charities and/or organizations, and devises the residue of the estate to the Fresno State University Foundation. | File 14 - Jaquay |
| Notice of Hrg | | |
| Aff.Mail | | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
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Probate Status Hearing Re: Failure to File a First Account or Petition for Final Distribution [Prob. C. 12200, et seq.]

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|------------------------|--|--|
| DOD: 12/10/2010 | <p>LAWRENCE M. LOWE was appointed Executor, with full IAEA authority and without bond on 6/2/2011.</p> <p>Letters issued on 6/2/2011.</p> <p>Inventory and Appraisal filed on 3/6/12 showing an estate valued at \$765,111.17</p> <p>This status hearing was set for the filing of the First Account or Petition for Final Distribution.</p> <p>Status Report filed on 6/26/13 states In February 2013 Mr. Fanucchi's office requested that the Executor provide financial documents regarding the estate. In March 2013 the attorney's office requested the Executor send a check to the probate referee for his services. To date, that has not been paid. In March 2013, again, the attorney's office requested information regarding the assets of the estate. The attorney's office advised the executor by letter of his presence being required at the Status Hearing on 6/28/2013. As of this date, the attorney's office has not received any documentation from the Executor so that the final accounting can be prepared.</p> <p>There was a specific bequest of jewelry to the decedent's granddaughter which has not been made by the Executor, and which he has been advised by the granddaughter was stolen from his home. This jewelry was previously in a safe deposit box kept by the decedent. Counsel was unaware of the theft until contacted by the granddaughter in the past two weeks.</p> <p>There were specific bequests of \$10,000 cash to each of the decedent's two grandchildren which have not been made by the Executor after procedures under the Probate Code have been followed by counsel.</p> <p style="text-align: center;">Please see additional page</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <ol style="list-style-type: none"> 1. Declaration of Attorney, Edward Fanucchi, states the status report was sent to the Executor requesting he verify the Status Report. The report has not been returned to the office of counsel, and the Executor has not made any response thereto. Counsel is unable to file the Report as verified. - <i>It appears that the status hearing should be verified by the person making the report. Therefore, it appears that Mr. Fanucchi should verify the Status Report pursuant to Probate Code §1021.</i> 2. Proof of service of the Status Report was not signed or dated. <p>Reviewed by: KT</p> <p>Reviewed on: 6/24/2013</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 15 – Lowe</p> |
| Cont. from | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
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| Notice of Hrg | | |
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| 9202 Order | | |
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| Status Rpt | | |
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| Citation | | |
| FTB Notice | | |

Status Report continued:

Counsel is unable to prepare a final accounting without documentation that has been requested and which has not been provided by the Executor.

Counsel has not had contact from the Executor or response to multiple requests for documentation, other than to be advised that the Executor has not been able to obtain, or the bank made a mistake, or other reasons for the documentation not having been provided for preparation of the final accounting. Counsel has no information on the current status of disbursements, bank balances or location of assets.

Status Hearing Re: Filing of the Inventory and Appraisal; Filing of First Account and/or Petition for Final Distribution

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|--------------------------|---|--|
| DOD: 6-9-11 | <p>JANETTE COURTNEY, was appointed Executor with Full IAEA without bond and Letters issued on 9-15-11.</p> <p>Inventory and Appraisal Partial No. 1 filed 2-13-13 included commercial real property valued at \$250,000.00, which was sold pursuant to Order Confirming Sale of Real Property.</p> <p>At hearing on 2-25-13, the Court set status hearing for 4-8-13 for the filing of the Final Inventory and Appraisal, filing of the first account, and/or petition for final distribution.</p> <p>On 4-8-13, the Court continued this status hearing to 6-28-13.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order 4-8-13: Mr. Keeler and Mr. Ivy are appearing via conference call. Mr. Ivy is directed to file a fully executed agreement with the court. Matter is set for Status Hearing on 5/24/13 regarding the settlement agreement and the dismissal. If the agreement and dismissal are filed by 5/24/13, no appearance will be necessary. The status hearing regarding the inventory and appraisal is continued to 6/28/13 for appearance by Mr. Neilson only. Set on 5/24/13 @ 9:00 a.m. Dept. 303 for: Status Hearing Re: Settlement Agreement and Dismissal</p> <p>Note: Full and Complete Settlement Agreement and Mutual Release of All Claims filed 4-11-13, and dismissal of petition filed by Dennis L. Thomas on 12-19-11 was entered on 5-1-13.</p> <ol style="list-style-type: none"> 1. Need Final I&A. 2. Need First Account or Petition for Final Distribution pursuant to Probate Code §12200, or written status report pursuant to Local Rule 7.5. |
| Cont. from 040813 | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
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| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | Reviewed by: skc | |
| | Reviewed on: 6-25-13 | |
| | Updates: | |
| | Recommendation: | |
| | File 16 - Drummond | |

Atty Wright, Janet L. (for Doreta Ruth Whitten – Petitioner)

Atty Keeler, William (for Doreta Ruth Whitten – Petitioner)

Atty Sanoian, Joanne (for Diane M. Myers – Respondent)

Status Hearing Re: Settlement Agreement

| | | |
|-------------------------------|--|---|
| Goldie Myers DOD: 04/20/98 | DORETA RUTH WHITTEN, successor trustee, filed a Petition for Determination and Clarification of Trust Terms on 02/28/13. | NEEDS/PROBLEMS/COMMENTS: As of 06/25/13, nothing further has been filed in this matter. 1. Need status update. |
| Arthur Myers DOD: 03/25/11 | | |
| | On 04/11/13, Diane M. Myers , Respondent, filed an Opposition to Petition for Determination and Clarification of Trust Terms. | |
| Cont. from | <p>Minute Order from hearing on 04/15/13 states: The Court sets the matter for Settlement Conference on 06/03/13. Counsel is directed to submit their settlement conference statement along with courtesy copies for the Court by 05/28/13. Matter is set for Court trial on 06/28/13 with a one day estimate.</p> <p>Minute Order from Settlement Conference held on 06/03/13 states: Parties reach a settlement agreement as fully set forth on the record by Mr. Keeler. Parties agree to bear their own attorney's fees and costs. Parties further agree that this Court will retain jurisdiction to enforce the agreement. The Court indicates for the record that this is a resolution of all disputed claims. Upon inquiry by the Court, each party individually agrees to the terms and conditions of the settlement agreement. Payment per the agreement to be made to Ms. Sanoian's office within 5 days after the execution of the agreement. Mr. Keeler is directed to prepare the agreement for circulation to the parties within 30 days. The Court orders that Ms. Sanoian be provided a list of all accounts and assets with their values. Matter set for Status Hearing on 06/28/13. If all documents are signed by 06/28/13, no appearance will be necessary. The trial date of 06/28/13 is vacated.</p> | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
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| Letters | | |
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| Citation | | |
| FTB Notice | | |
| | | Reviewed by: JF |
| | | Reviewed on: 06/25/13 |
| | | Updates: |
| | | Recommendation: |
| | | File 17 – Myers |

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| Colin (age 2 yrs) | Dr. Lawrence W. Schlak, Maternal Grandfather, was appointed Guardian on 1-3-13. | NEEDS/PROBLEMS/COMMENTS: |
| Kali (8 months) | | |
| | At hearing on 1-3-13, the Court set this status hearing for Dr. Schlak to establish guardianship in Missouri. The Court also made orders for visitation. See Minute Order for details. | <u>Continued from 3-7-13, 3-28-13, 4-26-13</u> |
| | | |
| Cont. from 030713, 032813, 042613 | On 3-20-13, Carol Schmock, Paternal Grandmother, filed a Declaration. Ms. Schmock states there has been no communication from the guardian Lawrence Schlak and he says they are not allowed to talk to Genevieve [mother]. If this is so, how are they supposed to stay in touch with the children and visit them if he will not communicate with us? Ms. Schmock states they needed two forms of ID to get Kali insured on Colin's [father's] insurance, but Mr. Schlak did not respond to the email. Fortunately the mother was able to get them what they needed, otherwise Kali would not have insurance. There has to be communication. Ms. Schmock has no intention of walking away from her grandchildren. | Minute Order 4-26-13: Dr. Lawrence Schlak is appearing via CourtCall. Dr. Schlak informs the Court that a hearing date has not been set in Missouri. Matter continued to 6/28/13. Carol Schmock and Dr. Lawrence Schlak are ordered to discuss reasonable visits and times. Continued to: 6/28/13. |
| Aff.Sub.Wit. | | |
| Verified | At hearing on 3-7-13, the matter was continued to 3-28-13 and the Court ordered that copies of all documents filed in Missouri be submitted no later than 3-21-13. | UPDATE: On 4-29-13, Dr. Schlak filed a Declaration with file-stamped copies of the Missouri guardianship filing. |
| Inventory | | |
| PTC | At hearing on 3-28-13, Dr. Schlak provided Missouri case numbers on the record, and the Court again ordered that copies be filed in this case within one week. Re Visitation: | Examiner's Note: Dr. Schlak has filed proof of Guardianship proceedings commenced in Jackson County, Missouri, which meets the requirements of Probate Code §2352. Any further matters relating to guardianship, including visitation, etc., should be addressed in the new Missouri case(s) 13P8-PR00173 (Colin) and 13P8-PR00174 (Kali). |
| Not.Cred. | | |
| Notice of Hrg | Minute Order 3-28-13 states: Dr. Schlak objects to the visitation. The Court orders that supervised visitation with the father begin on 4/4/13. Said visitation is to extend for a period of fourteen days which shall include the date that visitation is to commence. Visits shall be supervised by Carol Schmock. Mr. Fearnside's clients agree that housing for the period of visitation will not be an issue. Carol Schmock is ordered to communicate with Dr. Schlak to coordinate the delivery and return of the children to the guardian. The Court orders that the children not be removed from the county in which visitation will be taking place. Parties are ordered not to speak ill of one another around the children. Set on 4/26/13 at 9:00am in Dept. 303 for Status Hearing Re: Establishing Guardianship in Missouri. | Reviewed by: skc |
| Aff.Mail | | |
| Aff.Pub. | Reviewed on: 6-25-13 | |
| Sp.Ntc. | | |
| Pers.Serv. | Updates: | |
| Conf. Screen | | |
| Letters | Recommendation: | |
| Duties/Supp | | |
| Objections | File 18 - Schmock | |
| Video Receipt | | |
| CI Report | | |
| 9202 Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |

20A 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. | NEEDS/PROBLEMS/COMMENTS: |
| Rose DOD: 01/27/12 | O'BAR and CHERYL M. BLACK , daughters, are | CONTINUED FROM 06/21/13 As of 06/25/13, nothing further has been filed in this matter. |
| Cont. from 031813, 051713, 062113 | Petitioners state: | 1. 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. |
| 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"). | 2. 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. |
| ✓ Verified | 2. Steven M. Anderson, also a son of the decedent's, is trustee of the Trust and also a beneficiary of the Trust. | 3. Need Order. |
| Inventory | 3. Steven Anderson was appointed successor trustee of the Trust following the deaths of the settlors. | 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. |
| 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. | Reviewed by: JF |
| 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. | Reviewed on: 06/25/13 |
| ✓ 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. | Updates: |
| ✓ 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. | Recommendation: |
| Aff.Pub. | Continued on Page 2 | File 20A - Anderson |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
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| FTB Notice | | |

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 to 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 bugs 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.

Continued on Page 3

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 tool 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.

Respondent's Opposition to Petition for (1) Neglect; (2) Financial Elder Abuse; (3) Recovery of Estate Property; and (4) Removal of Trustee for Breach of Trust filed 03/18/13 by Steven Anderson and Ida Anderson admits some facts of the Petition, denies the allegations in the Petition and asserts the following affirmative defenses:

1. Petitioners fail to state facts sufficient to constitute any grounds for the relief requested in their Petition.
2. Petitioners' claims are barred by the applicable statute of limitations.
3. Petitioners lack standing to seek the relief requested in their Petition.
4. Petitioners are barred by the doctrine of unclean hands.
5. Petitioners are barred by the doctrine of laches.
6. Respondents allege that at no time during his lifetime was George Anderson suffering from any form of dementia. In fact, throughout his lifetime, George Anderson had excellent memory function and was aware of his surroundings.
7. Respondents allege that George and Rose Anderson voluntarily paid Respondents and other caregivers to care for them so that they could remain in their own home.

Continued on Page 5

8. Respondents allege that Petitioners have committed acts of perjury in stating that the contents of the Petition are true and correct and that they are within their own personal knowledge.
9. Respondents allege that Petitioners' claims are in bad faith and with the sole intent of extorting money from Respondents and that in doing so, Petitioners are acting with recklessness, oppression, fraud and/or malice.
10. Respondents allege that all assets belonging to the George H. Anderson and Rose M. Anderson Revocable Living Trust remain titled in the name of the trust and have not been distributed or improperly used by Respondents.
11. Respondents allege that at no time has Steven Anderson failed or refused to provide an accounting for the trust during the time period he has acted as trustee nor has he in any way breached his duties and/or responsibilities as trustee under the trust.

Respondent's pray for an Order as follows:

1. Denying Petitioners' Petition;
2. That Petitioners take nothing by way of their Petition; and
3. That Petitioners be ordered to reimburse Respondents for all reasonable costs of suit herein incurred, including all attorney's fees and costs.

20B 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)

Status Hearing

| | | |
|---------------------------|--|---|
| George DOD:01/21/12 | <p>GEORGE H. ANDERSON, JR., son, BARBARA J. O'BAR and CHERYL M. BLACK, daughters, filed a Petition for (1) Neglect; (2) Financial Elder Abuse; (3) Recovery of Estate Property; and (4) Removal of Trustee for Breach of Trust on 01/30/13.</p> <p>STEVEN ANDERSON, son, and IDA ANDERSON, daughter-in-law, filed an Objection to the Petition on 03/28/13.</p> <p>Minute Order from hearing on 03/28/13 set this matter for a status hearing.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>CONTINUED FROM 06/21/13</p> <p>Minute Order from 05/17/13 states: Ms. Cunningham informs the Court that the parties participated in mediation and reached a resolution, but an agreement still needs to be executed.</p> <p>As of 06/25/13, nothing further has been filed in this matter.</p> <p>1. Need status update.</p> |
| Rose DOD: 01/27/12 | | |
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| Cont. from 051713, 062113 | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| 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 | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | Reviewed by: JF | |
| | Reviewed on: 06/25/13 | |
| | Updates: | |
| | Recommendation: | |
| | File 20B – Anderson | |

20B