

Family Law: Probate Crossover Issues in Mediation

By REVA GOETZ

The acrimonious marital dissolution, taking over five years to bring to judgment, is back! Even during a pandemic, it's back.

As a mediator in the areas of family law and probate, I am familiar with addressing complicated and complex situations, but there is one case that has been a bit more challenging than the average case.

In this particular case, the wife withdrew over \$500,000 from a community property bank account on or about the date of separation. At the same time, the husband set up two trusts funded with money from what he alleges is a separate property source, an inheritance. He named a relative as the trustee of his trusts.

Five years after entry of judgment and 10 years after the couple separated, the husband is now in a dispute with the trustee over the distribution of

the assets held in the allegedly separate property trusts. He is asking the trustee to distribute the trust assets to him. The wife is claiming that the trust assets were never disclosed on the husband's declarations of disclosure. She is seeking to have the assets held in the two trusts declared as community property and divided as omitted assets.

The trustee, not knowing to whom the assets should be distributed, has filed an interpleader that is now pending in civil court. The trustee is a neutral party and simply needs instructions on how to proceed.

At mediation, the question is raised addressing the interpleader that is being forced to trial by the judge in the interpleader action. The husband has the burden to prove the assets in his two trusts are his separate property. However,



the trial date on the interpleader is before discovery will be complete.

All counsel agree that the case should not be determined via the interpleader. The issues concern two subject areas: family law and trust administration in probate. The scenario is not as uncommon as one might think.

This is a post-judgment matter, but given that the character of the trust assets is an issue that the family court typically

would address, especially given the omitted asset allegations, the wife asserts that family court is the correct place to address the instant issues.

However, the husband is the beneficiary of his trusts and the trustee is refusing to distribute the assets to the beneficiary. This issue relates to trust administration, so probate court is the appropriate place to determine the outcome and make orders regarding distribution of the assets.

Thus, there are now probate crossover issues.

Mechanically, the husband or the wife must file a pleading in the court where he or she is seeking the relief to which he or she believes he or she is entitled.

California Family Code §2556 provides that the family court retains “continuing jurisdiction” over assets that were previously not disclosed and for which the character those assets has not been adjudicated. Clearly, the wife’s claims fall within this code section. It follows that once the character of the trusts’ assets is determined, the distribution of those assets should fall into place.

Procedurally, there are a couple of ways to approach

the order in which the matters should be heard. To begin with, the interpleader needs to be related to the family law and probate matters. Then the family law matter and the probate matter should be related, and the probate case would be heard in family court. Often, depending on the jurisdiction, a family court judge won’t hear a probate matter and will transfer it back to the probate court for disposition. Another alternative is to stay further proceedings in probate court pending the determination of the character and division of the assets in family court. Once the family court makes its findings and orders, then the probate matter can proceed.

Additional issues are raised by this scenario in family court. Most important, if it is determined that the husband failed to disclose assets, either separate property or community property, during the dissolution process, he may be subject to consequences that include disgorgement of those assets to the wife by either 50% or, in an egregious case, even up to 100%. In addition, he is subject to the requirement that he pay the wife’s attorneys’ fees.

The benefits of mediation in a case like this are too many to count. It provides the parties with an efficient way to resolve issues that may take many months or even years to bring to judgment in the court(s). Also, the parties will likely incur less attorneys’ fees. And the husband, depending on the wife’s inclination to settle these issues, may be able to avoid the penalty provisions of the applicable statutes.

The outcomes of these types of cases, will depend on the individual parties and their willingness to resolve their issues without court intervention and/or process.

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