

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

Conservatorship of the Person and Estate of
LAURA SNOW AUSTON HUME.

JOHN S. WILLIAMS, as Public Guardian,
etc.,

Petitioner and Respondent,

v.

WILLIAM SNOW HUME,

Objector and Appellant.

G036141

(Super. Ct. No. A219294)

**ORDER DENYING REHEARING
AND MODIFYING OPINION;
NO CHANGE IN JUDGMENT**

The petition for rehearing is DENIED. The mere fact that the opinion may have new discussed authority (in this case, Evidence Code section 500) bearing on an issue otherwise briefed by the parties (in this case, the allocation of the burden of proof as regards objections to appraisals pursuant to Probate Code section 2614) does not mean that the authority constitutes a new “issue” as the term is used in Government Code

section 68081. Otherwise, no court could ever write an opinion that addressed relevant, salient authorities on an issue just because the parties, for whatever reason, might not have mentioned those authorities in their briefs.

The petition for rehearing, however, does convince us that the opinion, as currently drafted, may be too broad in seeming to encompass objections to accountings, as distinct from what is precisely at issue in this case, which is objections to appraisals pursuant to Probate Code section 2614. Accordingly, the slip opinion, filed June 29, 2006, is hereby modified as follows:

1. In the very first paragraph of slip opinion, substitute “inventories and appraisals” and “inventory and appraisal” where the phrases “inventories and accountings” and “inventory and accounting” now appear.

2. In footnote 1 of the opinion, substitute “in footnote 9 below” for “in the text of the opinion.” And in footnote 9, insert “(c)” after the quotation marks in the third paragraph, so that it reads “(c) The court shall determine”

3. In the last paragraph on page 3, substitute “inventories and appraisals” for the word “accountings” in the first sentence, and substitute “inventories and appraisals” where “accountings and inventories” now appear in the second sentence. In the final sentence of that paragraph at the top of page 4, substitute “appraisals” for “accountings.”

4. In the first full paragraph on page 4, substitute “inventories and appraisals” where the phrase “inventories and accountings” appear in the first two sentences. Do the same thing for the next paragraph as well, and, in the same paragraph on page 5, substitute the word “appraisals” where the word “accountings” appears.

5. In the first full paragraph on page 5, substitute the word “appraisal” for the word “accounting” wherever it appears.

6. In the last paragraph at the bottom of page 6, substitute “appraisal already filed” for “account already filed.”

Additionally, the opinion should be modified to include the following four paragraphs, to be inserted between the last paragraph on page 6 and the beginning of part II of the opinion that begins on page 7:

William Snow Hume also directs our attention to two other statutes, sections 1044 and 8906. Section 1044 is merely one sentence: “The petitioner or other party affirming is the plaintiff and the party objecting or responding is the defendant.” The statute confirms our analysis: Courts construing the statute’s predecessors have looked at it functionally, assigning the role of “plaintiff” to the party seeking to upset the status quo. (See *Estate of J. M. Wooten* (1880) 56 Cal. 322, 325 [assigning role of “plaintiff” to guardian of minor child who sought revocation of letters of administration then held by half brother]; *Slosberg v. Municipal Court of the City of Los Angeles* (1950) 101 Cal.App.2d 238, 241 [assigning role of plaintiff to New York resident who initiated OSC to include certain clothing in inventory, in part based on predecessor to section 1044 and in part because she “set in motion the particular proceeding involved”].)

Section 8906, subdivision (d), explicitly states that as regards appraisals of property in conjunction with the final distribution of a decedent’s estate, the burden of proof is on the person objecting to the appraisal -- the statute does explicitly what we have concluded section 2614 does implicitly. (Section 8906, subdivision (d) states: “The person objecting to the appraisal has the burden of proof.”) And like section 2614, subdivision (c), subdivision (e) of section 8906 poses disincentives against filing frivolous objections.

Does section 8906 confirm, or cast doubt on, our conclusion that the burden is on the objector to an appraisal in the guardianship context? It certainly shows that the Legislature knows how to explicitly assign the burden of proof in appraisal and objection contexts and explicitly put it on the objector if it wants to. On the one hand, one can posit that by making the burden explicit in section 8906, the Legislature may have been varying the rule that would otherwise be the case if there was no mention of the burden. On the other hand, it shows a Legislative inclination to assign the burden to the objector in other appraisal contexts, and particularly in the analogous situation where the objector

runs the risk of some monetary penalty (penalty in the generic sense) for a frivolous objection. It is enough to say that our conclusion concerning section 2614 is perfectly consonant with section 8906, and surely offends no structural policy contained in section 8906.

Finally, in a petition for rehearing, William Snow Hume cites a number of cases which he claims imposed the burden of proof on guardians. The cases are inapposite, though, because they all involved expenditures, not appraisals. (See *Guardianship of Vucinich* (1935) 3 Cal.2d 235 [guardian failed to provide receipts in support of his claim for child support reimbursement]; *In re Guardianship of Cookingham* (1955) 45 Cal.2d 367 [objection to guardian's failure to obtain court approval for costs associated with defending the guardianship]; *In re Moore's Estate* (1891) 88 Cal. 1 [objection to guardian having exceeded amount approved by court for home repairs]; *In re Barreiro's Estate* (1932) 125 Cal.App. 752 [executor had duty to justify fees paid to foreign attorney].)

None of the modifications set forth in this order affect the judgment.

SILLS, P.J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.