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## CASE NOTE

### AN EXTENSION OF PROBATE JURISDICTION: ESTATE OF BAGLIONE (CAL. 1966)

#### INTRODUCTION

Although the California superior court is a court of general jurisdiction,<sup>1</sup> its probate jurisdiction is limited and special, having only the scope given by the California Probate Code.<sup>2</sup> But the probate court is still the superior court and if its judgments and orders are made within its proper sphere, they are protected by the same presumptions on collateral attack and given the same dignity on appeal as any other judgment of the superior court.<sup>3</sup>

One effect of this jurisdictional limitation is the general rule that the superior court, sitting in probate, is without power to determine title to property asserted by parties not in privity with the estate, that is, claiming adversely to it.<sup>4</sup> The rationale is that the probate court's function is settlement of the estate and not resolution of controversies between the estate and strangers, the determination of which is the function of a court of general jurisdiction.<sup>5</sup>

However, there are several exceptions to this general rule regarding those claiming adversely to the estate.<sup>6</sup> These exceptions are based upon sufficient connection or privity between the pending probate and the controversy at issue. The scope of this note is to examine this rule with the exceptions engrafted upon it and the effects of the recent case of the *Estate of Baglione*.<sup>7</sup>

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<sup>1</sup> CAL. CONST. art. VI, § 5. The superior court has *original* jurisdiction in all civil cases and proceedings except those otherwise provided for and those in which jurisdiction is given by law to municipal or justice courts.

<sup>2</sup> *McPike v. Superior Court*, 220 Cal. 254, 30 P.2d 17 (1934); The California Constitution does not confer on the probate court jurisdiction over *all* matters of a decedent's estate; but *only* as to those matters which the statutes direct. *Bush v. Lindsey*, 44 Cal. 121, 125 (1872). See generally 13 CAL. JUR. 2d *Courts* § 10 (1954).

<sup>3</sup> CAL. PROB. CODE. §§ 302, 1220; *Estate of Kay*, 30 Cal. 2d 215, 220, 181 P.2d 1 (1947); *Estate of Ryder*, 141 Cal. 366, 74 Pac. 993 (1903).

<sup>4</sup> *Central Bank v. Superior Court*, 45 Cal. 2d 10, 14, 285 P.2d 906 (1955); *Schlyen v. Schlyen*, 43 Cal. 2d 361, 372, 273 P.2d 897 (1954). Privity with the estate in this context means sufficient connection with the probate proceeding so that the alleged claim may be said to come through probate and not against it.

<sup>5</sup> *Central Bank v. Superior Court*, 45 Cal. 2d 10, 15, 285 P.2d 906, 908-09 (1955).

<sup>6</sup> There are four exceptions to the general rule of no jurisdiction: (1) The court has jurisdiction over a controversy between the representative and the estate. (2) It has jurisdiction over a surviving wife's claim to community property. CAL. PROB. CODE § 202. (3) It may determine title to property acquired during the probate proceedings. (4) It may determine the validity of an assignment of an heir, legatee or devisee, and hence also determine the right of the assignee to distribution. CAL. PROB. CODE § 1020.

<sup>7</sup> *Estate of Baglione*, 65 A.C. 189, 417 P.2d 683, 53 Cal. Rptr. 139 (1966).

## BACKGROUND

Sufficient privity to sustain the probate court's jurisdiction may arise out of the relationship of the parties to the controversy. It is well established by California case law that when the representative of the estate makes a claim in his individual capacity against the estate or against other beneficiaries of the estate, then the probate court has jurisdiction over the controversy.<sup>8</sup>

The main reason for this exception is simply that the determination of such controversies is a necessary incident to the proper settlement of the estate. Since there is privity between all parties to the controversy, arising out of the nature of the relationship between the parties and estate, a judgment made in probate would bind all parties interested in the estate.<sup>9</sup> But a judgment made outside of the probate court would bind only those actually joined therein. Thus, giving the probate court power to determine a representative's claim prevents needless multiplicity of suits and results in a conservation of time in administering the estate.

This exception only applies when the representative is claiming in his individual capacity. If he claims on behalf of a third party, then the probate court has no jurisdiction over the dispute. But the court's jurisdiction is not lost if the estate's representative resigns or is removed prior to the settlement of his accounts.<sup>10</sup>

Sufficient privity may also arise out of the nature of the claim to the estate. A probate court has jurisdiction to determine title to property which both parties concede to have been acquired by the claimant during the probate proceedings.<sup>11</sup> An example of such a situation is where a distributee has received property of the estate under a decree which is afterwards set aside.

The probate court can also determine the claims of a surviving wife to her share of the community property on the rationale that a surviving wife's share of community property comes to her through probate<sup>12</sup> so that her claim is in privity with the estate. But a surviving husband's claim to his share of the community property is adverse to the estate as his share does not pass through the probate proceedings because it vests in him without administration.<sup>13</sup> Hence, the superior court, in the exercise of its general jurisdiction, is the proper

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<sup>8</sup> Estate of Helm, 6 Cal. App. 2d 752, 45 P.2d 250 (1935); Bauer v. Bauer, 201 Cal. 267, 256 Pac. 820 (1927).

<sup>9</sup> CAL. PROB. CODE § 931.

<sup>10</sup> Waterland v. Superior Court, 15 Cal. 2d 34, 98 P.2d 211 (1940).

<sup>11</sup> Central Bank v. Superior Court, 45 Cal. 2d 10, 16, 285 P.2d 906 (1955).

<sup>12</sup> See CAL. PROB. CODE § 202.

<sup>13</sup> Estate of Kurt, 83 Cal. App. 2d 681, 189 P.2d 528 (1948).

tribunal to determine the extent of the surviving husband's share of the community property.<sup>14</sup> However, this rule does not apply if the husband is also the representative of the estate.<sup>15</sup>

In *Woods v. Security First Nat'l Bank*,<sup>16</sup> the California Supreme Court recognized a third exception based both upon the nature of the claim and the claimant's relationship to the estate. When a party asserts a substantive right in property or in assets as an heir, legatee or devisee and thereby successfully invokes the jurisdiction of a probate court, that court may also determine any additional claims that he has against those in privity with the estate in the same property.<sup>17</sup>

In the *Woods* case the surviving husband brought an action to recover property from his wife's executor on the ground of an alleged oral contract converting the wife's separate property into community property. The husband had filed a petition to determine heirship claiming that he was an heir of his deceased wife since he was mentioned in her will, although excluded in a codicil, both executed prior to marriage. Hence he properly invoked the jurisdiction of the probate court under California Probate Code section 1080.<sup>18</sup> But the probate court refused to determine the issue of heirship or his rights to the property under the contract upon the reasoning that a husband's claim to community property is adverse to the estate and not in privity with it. Thus the court was following the general rule that even if the probate code grants jurisdiction, it is lost by the presence of an adverse claim.

However, the California Supreme Court reversed, stating that the husband asserting himself as an heir was claiming through the estate and not adversely to it. Since the husband had invoked the probate court's jurisdiction under section 1080, "The fact that the petition also sought to have the entire estate declared to be community property did not oust the court sitting in probate of jurisdiction to determine the question of heirship."<sup>19</sup> Thus, the *Woods* case establishes precedent by holding that an adverse claim does not divest the probate court of jurisdiction. *Woods* qualifies the general rule, that the probate court lacks jurisdiction to try title to an estate when asserted by a stranger, by presenting a situation where

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<sup>14</sup> Estate of Stone, 170 Cal. App. 2d 533, 339 P.2d 220 (1959).

<sup>15</sup> Bauer v. Bauer, 201 Cal. 267, 256 Pac. 820 (1927).

<sup>16</sup> Woods v. Security First Nat'l Bank, 46 Cal. 2d 697, 299 P.2d 657 (1956).

<sup>17</sup> *Id.* at 704, 299 P.2d at 660-61.

<sup>18</sup> CAL. PROB. CODE § 1080 provides that "any person claiming to be an heir of the decedent or entitled to distribution of the estate or any part thereof may file a petition setting forth his claim or reason and praying that the court [probate court] determine who are entitled to distribution of the estate."

<sup>19</sup> 46 Cal. 2d at 704, 299 P.2d at 660-61.

the probate court can determine a husband's contractual claim to his wife's estate.

Since the *Woods* case, the state of the law regarding the probate court's jurisdiction of adverse claims to an estate has become confused. In *Sieroty v. Silver*,<sup>20</sup> a widow was found to be entitled to half of the proceeds of a life insurance policy on community property principles. She also made a claim to the entire proceeds on a contractual basis. The superior court, not sitting in probate, was held to be the proper court to determine any rights under the alleged contract. And similarly in *Smith v. Smith*,<sup>21</sup> the probate court was found not to have jurisdiction to determine any contractual rights to property claimed by a surviving husband, even though he had invoked the probate court's jurisdiction by a petition to determine heirship since he was a devisee under his wife's will to the extent that he took a life estate in her property.

In neither *Sieroty* nor *Smith* did the court discuss the *Woods* case which could have been relied upon, despite the presence of an adverse claim, to give the probate court continuing jurisdiction as the claimants in those cases had initially invoked the probate court's jurisdiction.<sup>22</sup> Thus *Woods* holds that if the surviving spouse invokes probate jurisdiction, it is not lost if that spouse also presents an adverse contractual claim against the estate. Both *Sieroty* and *Smith* hold that the probate jurisdiction is lost by the presence of the adverse claim.<sup>23</sup> Hence, there is conflicting case authority concerning a probate court's jurisdiction to determine contractual claims that are adverse to an estate. Against this conflicting background, the *Estate of Baglione*<sup>24</sup> was decided.

#### EFFECT OF BAGLIONE

In the *Baglione* case, a widow brought an action to determine heirship and a claim to half of a certain piece of property in her

<sup>20</sup> *Sieroty v. Silver*, 58 Cal. 2d 799, 26 Cal. Rptr. 635, 376 P.2d 563 (1962).

<sup>21</sup> *Smith v. Smith*, 220 Cal. App. 2d 30, 33 Cal. Rptr. 559 (1963).

<sup>22</sup> In the *Sieroty* case the wife had invoked the jurisdiction of the probate court by claiming the proceeds of a life insurance policy as community property, acting under CAL. PROB. CODE § 202. In *Smith* the husband filed a petition to determine heirship pursuant to CAL. PROB. CODE § 1080.

<sup>23</sup> In *Sieroty* the court stated that "the widow claimed that the entire proceeds constituted her separate property. Accordingly, she was claiming adversely to the estate, not in privity with it; . . . the superior court would not have had jurisdiction to decide the claim." 58 Cal. 2d at 802, 376 P.2d at 565.

In *Smith* the court said that "the appellant is not in privity with the estate, and his claims under the alleged oral agreement are hostile and adverse to the estate. A long line of cases has firmly established the rule that the court, sitting in probate, has no jurisdiction to determine disputes between the representative of the estate and those persons not in privity to the proceedings." 220 Cal. App. 2d at 33-34, 33 Cal. Rptr. at 561.

<sup>24</sup> *Estate of Baglione*, 65 A.C. 189, 417 P.2d 683, 53 Cal. Rptr. 139 (1966).

husband's estate on the basis that it was community property. By alternative argument she claimed all the property by virtue of an alleged oral contract between her and her husband by which the survivor was to take all property acquired during the marriage. The probate court decided that the widow was entitled to her community share of the property, but refused to determine if any rights existed under the oral contract. The widow appealed contending that the superior court, sitting in probate, misconstrued the extent of its powers and should have also decided whether there was an agreement and if so what rights were created by it.

The California Supreme Court thus faced the problem of defining the extent of a probate court's jurisdiction to determine heirship and the widow's claim to her community share of the estate,<sup>25</sup> and also, in the same proceeding, the widow's adverse contractual claim against the estate. The gist of the problem facing the court was how to treat the widow's adverse claim in light of cases holding that such a claim is not within the probate court's jurisdiction.

The starting point for the *Baglione* court's decision was the exception in *Woods*. The court, speaking through Chief Justice Traynor, said:

When a party invokes the jurisdiction of a court sitting in probate by asserting a substantive right in a particular piece of property or in certain assets as an heir, legatee, or devisee, he may also obtain a judgment in that court determining any additional claims that he asserts against those in privity with the estate in the same property.<sup>26</sup>

The court then combined the *Woods* exception with the decision of *Estate of Cover*<sup>27</sup> which held that "when it [the probate court] has jurisdiction of the subject matter of a case . . . it has power to hear and determine, in the mode provided by law, all questions of law and fact, the determination of which is ancillary to a proper judgment in such case."<sup>28</sup> The probate court has this ancillary jurisdiction because it is an incident of its general equitable powers. Thus the *Baglione* court decided that once the probate court had determined that Marie Baglione had an interest in the property subject to probate, it should have also determined all other interests she had under the oral contract in the same property. The court's rationale was the same as that in *Woods*: once the probate court has proper, *i.e.*, statutory, jurisdiction over the estate, it should determine the entire controversy in order to conserve the time and money of all involved and to prevent multiplicity of suits. *Baglione*, therefore, overruled

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<sup>25</sup> CAL. PROB. CODE §§ 202, 1080.

<sup>26</sup> 65 A.C. at 193, 417 P.2d at 687, 53 Cal. Rptr. at 143.

<sup>27</sup> *Estate of Cover*, 188 Cal. 133, 204 Pac. 533 (1922).

<sup>28</sup> *Id.* at 139, 204 Pac. at 586. Ancillary is used merely to mean necessary.

contra reasoning in *Sieroty* and *Smith*,<sup>29</sup> both which held that the probate court had no jurisdiction to determine any alleged contractual rights even though it was decided that the claimants had interests subject to probate.

The holding of *Estate of Cover*, that the probate court has power to determine all questions of law and fact which are necessary to a proper judgment, is limited by the phrase "in the mode provided by law."<sup>30</sup> Since the earlier California case law<sup>31</sup> and the recent decisions of *Sieroty* and *Smith* deny the probate court the power to determine title to property where asserted by strangers,<sup>32</sup> the *Estate of Cover* could not alone solve the issue presented by *Baglione*, that is, a stranger's claim to the estate. Therefore, the *Baglione* court had to rely also upon *Woods* to give the probate court the necessary jurisdiction to determine Marie Baglione's rights under the oral contract.

As already noted, a surviving husband's claim to community property is considered adverse to the estate because his interests vest without administration.<sup>33</sup> On the other hand, a surviving wife's claim to community property is in privity with the estate as her community share comes to her through probate.<sup>34</sup> This distinction has no effect upon the *Baglione* holding provided that the husband can, in some way, invoke probate jurisdiction initially. Then, a husband's claim to community property would merely be treated as any other adverse claim and could be adjudicated in the probate court, as ancillary to its proper jurisdiction.

### CONCLUSION

The result of the *Baglione* case is a clarification and extension of the probate court's jurisdiction. In addition to the so-called "privity" exceptions already mentioned, the probate court, by reason of *Baglione*, has power to determine a stranger's claim to property if such a determination is necessary and proper to a complete judgment, but only if the stranger's claim and relationship bear a particular relation to the estate.

In the *Baglione* and *Woods* cases, the claimants were the surviving spouses and the claims were based upon alleged contracts

<sup>29</sup> 65 A.C. at 194, 417 P.2d at 687, 53 Cal. Rptr. at 143.

<sup>30</sup> 188 Cal. at 139, 204 Pac. at 586.

<sup>31</sup> Central Bank v. Superior Court, 45 Cal. 2d 10, 14, 285 P.2d 906, 908 (1955); Schlyen v. Schlyen, 43 Cal. 2d 361, 372, 273 P.2d 897, 903 (1954).

<sup>32</sup> Strangers are those claiming adversely to the estate or taking by will or the laws of succession. Estate of Harris, 9 Cal. 2d 649, 72 P.2d 873 (1937).

<sup>33</sup> Estate of Kurt, 83 Cal. App. 2d 681, 189 P.2d 528 (1948).

<sup>34</sup> CAL. PROB. CODE § 202.

entered into by the spouses during the existence of the marriage. Thus, the effect of *Baglione* could be limited to situations involving a surviving spouse's contractual claim to the decedent's estate, *i.e.*, limited to its facts.

If, however, the courts do not limit the application of the *Baglione* decision, then the extent of the probate court's jurisdiction could be considerably extended. In a literal reading, *Baglione* seems to hold that if one initially invokes the jurisdiction of the probate court, then that court can, through its equitable powers,<sup>35</sup> determine title to property, regardless of the adverse nature of the claim or the claimant's relationship to the estate: "[A] superior court sitting in probate that has jurisdiction over one aspect of a claim to certain property can determine all aspects of the claim."<sup>36</sup> Logically then, once the husband has properly invoked the jurisdiction of the probate court, the court could decide his community property rights despite the adverse interest limitation imposed by earlier cases.

Similarly if a wife is vested with title to her husband's estate by right of survivorship under a joint tenancy deed, she could first invoke the jurisdiction of the probate court by claiming a community property interest and then ask that the probate court quiet title in her against any claims of her deceased husband's heirs. Read without limitation, *Baglione* would require the probate court to entertain her suit.

The California Supreme Court appears to have resolved the ambiguity of one aspect of probate jurisdiction. To limit *Baglione* to its facts would serve only to promote multicentricity of suits and the wasting of time and money. When a party is before the probate court for one reason, any controversy related to the estate should also be litigated.

*Robert J. Pitman*

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<sup>35</sup> 65 A.C. at 194, 417 P.2d at 688, 53 Cal. Rptr. at 144.

<sup>36</sup> *Ibid.*

