

## ESTATE OF DEREIS

10PR7129

### PERSONAL REPRESENTATIVE DEBORAH BURKE'S ORDER TO SHOW CAUSE TO ENFORCE ORDER AFTER HEARING

This matter involves a lengthy dispute about the disposition of the assets of the Estate of Joseph Dereis ("Estate"). Deborah Burke ("Burke") is decedent's daughter and the Personal Representative of the Estate. Steven Dereis ("Steven")<sup>1</sup> is decedent's son and his sons, Austin and Joseph ("Austin" and "Joseph", respectively), are heirs to the Estate. The Estate was administered and closed in December 2012.

In January of 2021, Austin and Joseph filed a complaint against Burke for partition of real property and accounting. In or about 2023, the Probate Court granted Burke's Petition for Subsequent Administration on the grounds that Burke had discovered that Steven may have improperly kept property out of the Estate. Specifically, the probate was reopened to determine if two vehicles, a 1969 Ford Mustang ("1969 Mustang") and a 1965 Ford Mustang ("1965 Mustang") (collectively "Mustangs"), which were in Steven's possession should have been included in the Estate.

On August 21, 2023, the Civil and Probate matters were consolidated. A one-day hearing commenced and on May 17, 2024, the Court entered an Order after Hearing ("Order"). Pursuant to the Order, the Court found that the Mustangs should have been included in the Estate. (Order, ¶ 1.) The Order further stated that the Estate ownership was 25% to Joseph, 25% to Austin and 50% to Burke.

Pursuant to the Order, the Court found that Austin and Joseph had put on expert evidence establishing that the value of the Mustangs at \$10,000 and \$27,000.00. At the conclusion of the trial, the Mustangs were sold at auction conducted by the Court. Burke purchased the 1965 Mustang for \$35,000.00 and Austin purchased the 1969 Mustang for \$5,000.00. (Order ¶ 10.) The Order also found that decedent owned Hot Wheels and silver coin collections that were also properly part of the Estate. Accordingly, the Order provided:

The Court Orders that any persons with any part of the Hot Wheel collection in their possession should turn them over to Burke in her role as the Administrator of the Estate. (Order ¶ 4.)

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<sup>1</sup> Given the common surname among many of the parties, the Court refers to each by their first name. No disrespect is intended.

The Court Orders that any persons with any part of the silver coin collection in their possession should turn them over to be sold for the benefit of the beneficiaries of the Trust (to be distributed 50/25/25 as set forth above.) (Order ¶ 5.)

Now before the Court is an Order to Show Cause to Steven as to why he should not be ordered to comply with the Court's Order. Specifically, a failure to have turned over any Hot Wheels and coins in his possession, and why he should not be found to be in contempt of Court for failing to do so. Steven is also ordered to show cause why he did not return to the Estate the 1965 Mustang in the condition that it was in at the time of the decedent's death, and to reimburse Burke the amount that she paid for the vehicle.

The parties were ordered to submit further briefing but neither party did so. Burke has requested an opportunity to present oral evidence at the hearing; the Court denies this request as the matter is set for a short cause hearing and Burke failed (as directed by the Court) to provide an offer of proof declaration as to this testimony.

## **II. Legal Standard**

Pursuant to Code Civil Procedure section 1209(a)(5), contempt occurs whenever there is "disobedience of any lawful judgment, order, or process of the court." When, as is the case here, the contempt occurs outside of the presence of the Court, "an affidavit shall be presented to the court or judge of the facts constituting the contempt. . . (CCP §1211(a).) Once the affidavit is presented and accepted, the Court may order the offending party to show cause as to why they should not be held in contempt.

"The essential facts to establish contempt for violation of a court order are: 1) the making of the order, 2) knowledge of the order, 3) ability of the respondent to render compliance, and 4) willful disobedience of the order." (*Moore v. Superior Court*, (2020) 57 Cal.App.5th 441, 456.)

## **III. Legal Discussion**

There is no argument that there was the making of an order and that Steven was aware of that Order. The primary issue here is whether Steven has the ability to comply with the order and whether there was willful disobedience of the Order.

## Hot Wheels and Coins

Steven argues that while the Order mandated that any party in possession of the Hot Wheels or coins had to turn them over to the Estate, the Court never found that Steven was in fact in possession of any of those items. Steven also argues that Burke had the opportunity to prove that Steven had possession of certain Hot Wheels during trial and failed to do so. Therefore, Steven argues, Burke cannot now try to prove that Steven has any of the Hot Wheels.

Notably, Steven does not submit any declaration in support of his opposition and he does not deny possessing any of the Hot Wheels. Rather, he submits the declaration of his attorney who argues that it is too late for Burke to try to prove that Steven does in fact own any Hot Wheels. This is insufficient to show that Steven does not have the ability to comply with the Court's Order to turn over any and all Hot Wheels in his possession or control. For this reason, it is also reasonable for the Court to conclude that there is willful disobedience of the Court's Order. The Court in particular is persuaded by the declaration of Annie Mozetti, in conjunction with the letter from DDA Seth Matthews, that Steven removed the hot wheels from the decedent's garage and failed to return them to the estate via personal representative Deborah Burke as per this Court's Order of 5/16/24.

Accordingly, the Court finds Steven in contempt of the Order as it relates to the Hot Wheels. The Court orders that the appropriate sanction against Steven for his willful failure to comply with this Court's 5/16/24 Order is that he pay \$75,000 (\$5 each for 15,000 withheld hot wheels) to the Estate's Personal Representative Deborah Burke by 5:00 p.m. on 1/31/25 to be distributed on the 50/25/25 basis detailed in the Court's Order of 5/16/24.

## Mustang

Steven was also ordered to show cause as to why he did not return the Mustang to the Estate in the condition it was when the decedent died. Burke argues that at the time of the decedent's death, the 1965 Mustang was drivable, meaning that it had wheels and an engine. In support of this, she submits declarations of individuals who allegedly saw the 1965 Mustang before Burke bought it from the Estate. (See e.g. Declaration of Garrett Burke at ¶ 2.)

However, at the time of the trial, Burke did not dispute the valuation of the 1965 Mustang. This valuation was based on the professional evaluation of the 1965 Mustang, which clearly shows that the vehicle was missing substantial components, rendering it "non-operational and non-rolling." (Declaration of Steven E. Springer ("Springer Decl.") ¶

5, Ex. C.) At that time, Burke did not argue, or present evidence, that the 1965 Mustang was in a better condition at the time of the decedent's death. Rather, knowing that the Court had accepted the value of the 1965 Mustang at \$10,000, she chose to bid and purchase the 1965 Mustang for significantly more than that.

Based on the information before it, the Court cannot conclude that Steven violated any Court Order when the 1965 Mustang was provided to Burke in the condition set forth in the appraisal and known to Burke when she purchased the 1965 Mustang.

#### **IV. Conclusion**

The Court finds Steven **IS in contempt of the Order as to the Hot Wheels**. The Court orders that the appropriate sanction against Steven for his willful failure to comply with this Court's 5/16/24 Order is that **he pay \$75,000 (\$5 each for 15,000 withheld hot wheels) to the Estate's Personal Representative Deborah Burke by 5:00 p.m. on 1/31/25 to be distributed on the 50/25/25 basis detailed in the Court's Order of 5/16/24.**

The Court finds Steven is **NOT in contempt of the Order related to the 1965 Mustang**.

In light of this mixed ruling, the Court **DENIES** the request to award Steven's counsel **attorney's fees** as sanctions.

The Clerk shall provide notice of this Ruling to the parties forthwith. Personal Representative Deborah Burke to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.