COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Trust Established Under the Will of Peter Hallahan,
Deceased
For the Benefit of Edmund P. Hallahan, Jr. and
John W. Hallahan, both now deceased

No. 153 ST of 1922
Control No. 062705

Sur Third and Interim Account of Wachovia Bank, N.A., (formerly First Union National Bank, Successor by Merger to the Fidelity Bank), Surviving Trustee

The account was called for audit 2 February 2006 **Before: Herron, J.**
6 March 2006

Counsel appeared as follows:
Michelle Hong, Esquire
Carolyn M. Hayward, Esquire
Alan Weissberger, Esquire, for the Accountant

ADJUDICATION

Peter Hallahan died on June 4, 1921. His Will dated May 22, 1920, as amended by an April 11, 1921 codicil, was probated by the Philadelphia Register of Wills on June 9, 1921. In Article THIRTEENTH, Walter J. Hallahan and the Fidelity Trust Company were appointed Executors. In Article TENTH, Peter Hallahan provided that one third of the residue of his Estate was to be held in trust by his executors for his son, Edmund Hallahan. That trust is the focus of this Adjudication.

By adjudication dated March 10, 1922, this one-third residuary estate was awarded to Walter Hallahan and the Fidelity Bank and Fidelity- Philadelphia Trust Company, as Trustees. Walter Hallahan, co-trustee, died on January 12, 1931. The accountant, Wachovia Bank, is the surviving trustee. On January 4, 2006, it filed a third and interim account for the period

November 22, 1978 through November 30, 2005. The reason for filing the account is the death of the testator's grandson, John Hallahan, who died without natural children but with stepchildren he adopted after they had attained majority.

According to the accountant, Pennsylvania Transfer Inheritance Tax was paid in the following amounts: $13,144.84 on September 21, 1921; $285.03 on June 29, 1922; $476.56 on September 5, 1922 and $10.58 on May 11, 1939. A Charitable Gift Clearance Certificate was submitted by the Attorney General of the Commonwealth of Pennsylvania, as parens patriae, stating that the Attorney General has no objection to the account based on the facts contained in the Notice.

In his May 22, 1920 Will as amended by the April 11, 1921 codicil, Peter Hallahan provided that the residue of his estate should be distributed so that one-third should go to his son Walter Hallahan, one third to his son Charles Hallahan with the remaining third to his Executors to hold in TRUST with the net income to be paid to his son Edmund Hallahan throughout his natural life. Upon Edmund's death, the income was to be paid to his children who were living at the time of the testator's death. If any child should subsequently die leaving issue, then "such issue to take his, her or their parent's share." The trust was to continue for 21 years after the death of Edmund Hallahan's last surviving child who was alive at the time of Peter Hallahan's death. After 21 years, the principal was to be paid to Edmund Hallahan's grandchildren or great grandchildren per capita or if there is no surviving issue then the principal is to be paid to the Roman Catholic Archbishop of the Diocese of Philadelphia.

When Edmund Hallahan died on August 11, 1948, he left three children who had been living at the time of the Peter Hallahan's death. Those children were Audrey Becker, who died

December 10, 1976, leaving no issue; Edmund P. Hallahan, Jr. who died August 12, 2001, and was survived by two children (Colleen Phillips and Patrick Hallahan), and John W. Hallahan, who died on May 16, 2005, without natural children. The accountant notes that John Hallahan did, however, leave several surviving stepchildren: Lora Lee Gibson, Keran Yates and Anthony Dillard. A question for adjudication has been raised by one of these individuals, Lora Lee Gibson, who maintains that John Hallahan married Angela May Hallahan in 1972, and then nine years later adopted four of Angela's adult children: David Dillard, Keran Yates, Anthony Dillard and Lora Lee Gibson. A fifth child, Bonna Bock, chose not to participate in the adoption. John Hallahan and Angela May Hallahan remained married for 32 years until Angela's death on October 5, 2004. John Hallahan died seven months later on May 16, 2005.[1]

The accountant, wishing to avoid the appearance of a conflict of interest among the beneficiaries, did not take a position as to whether the income paid to John Hallahan prior to his death should now be distributed in equal shares to his three surviving adopted children (i.e. Keran Yates, Anthony Dillard and Lora Lee Gibson) or whether that income should be distributed instead in equal shares to John Hallahan's niece Colleen Phillips and nephew Patrick Hallahan. None of the parties in interest made an entry of appearance, filed a claim or objection nor did they request a hearing.

The Audit Papers for the February 6, 2006 and March 6, 2006 Audits contain a copy of a Decree of Adoption issued by the court of the Eighth Judicial District of Nevada, "In the Matter of the Petition for Adoption of the Adults David H. Dillard, Keran D. Yates, Anthony

1 4/5/2006 Accountant's Supplement to Adjudication at 3.

Dillard and Lora Lee Gibson.[2] This decree of adoption dated July 14, 1981 states:

> This matter coming on for hearing before the Court on the 14 day of July 1981, upon the Petition and Agreement for Adoption of JOHN W. HALLAHAN, DAVID H. DILLARD, KERAN D. YATES, ANTHONY DILLARD and LORA LEE GIBSON, Petitioners DAVID H. DILLARD, KERAN YATES and ANTHONY DILLARD being present in Court and being represented by JAMES B. GIBSON, Esq., and the presence of Petitioner LAURA LEE GIBSON and JOHN W. HALLAHAN having been waived and JAMES B. GIBSON, Esq. appearing in their behalf; the appearing Petitioners having been examined under oath, and the Spouse's Consent to Adoption of all Petitioners herein and of ANGELLA MAY HALLAHAN, natural mother of Petitioners, having been filed herein, and the Court previously having entered its Order waiving and dispensing with an investigation and report of the State Welfare Department, and finding all documents in all respects proper, and finding that all of the allegations of said Petition are true; and it further appearing to the satisfaction of the Court that the best interests of all concerned will be promoted by said adoption in that the said JOHN W. HALLAHAN is married to the natural mother of Petitioners, ANGELA MAY HALLAHAN, and that the said JOHN W. HALLAHAN now maintains the relationship of father and children with Petitioners; and that there has been a full compliance with NRS 127.220 and 127.310, inclusive.
>
> NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the said adults, DAVID H. DILLARD, KERAN D. YATES, ANTHONY DILLARD and LORA LEE GIBSON, Petitioners herein, are hereby declared to be adopted by JOHN W. HALLAHAN, and that Petitioners shall be henceforth regarded and treated as JOHN W. HALLAHAN'S natural children and have all the lawful rights of his own children, including the rights of support, protection and inheritance.
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> See March 6, 2006 Audit Papers

An "exemplification certificate" dated February 7, 2006 was submitted with this decree, stating that "as of this date, this Decree of Adoption has not been amended or appealed." See March 6, 2006 Audit Papers.

The accountant also submitted the following letter from John Hallahan's nephew, Peter Hallahan, who wrote:

> Re: Estate of Peter T. Hallahan
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> My name is Patrick William Hallahan and I have concerns about my grandfather's trust/will. I have been informed that there are four stepchildren (that I in

2 The adoption decree that presently appears among the February Audit Papers has a coversheet indicating that it was faxed directly to the court.

57 years, have never even heard of) contesting the will.

I feel that as a blood related Hallahan it should be divided between my sister and myself, as did my grandfather say in his will. I'm sorry I can't be there in person, but illness prevents me. Thank you for your time.

Pat Hallahan
See February 6, 2006 Audit Papers

The common law in Pennsylvania did not recognize adoption until the enactment of a statute in 1855. Tafel Estate, 339 Pa. 442, 446, 296 A.2d 797, 799 (1972). Consequently, under Pennsylvania law, courts begin the analysis of an adopted child's right to inheritance by focusing on the statute in effect at the date of the testator's death. If the statute does not resolve the issue, the court then focuses on relevant case law. Estate of Kauffman, 352 Pa. Super. 1, 3, 506 A.2d 951, 952 (1986). Since the decedent Peter Hallahan died on June 4, 1921, the statute in effect was the Wills Act of June 7, 1917, P.L. 403, § 16(b), 20 P.S. Chap. 2, App. § 228. See Ashurst's Estate, 133 Pa. Super. 526, 528-29, 3 A.2d 218, 219 (1938). That statute provided in relevant part:

> (b) Whenever in any will a bequest or devise shall be made to the child or children of any person other than the testator, without naming such child or children, such bequest or devise shall be construed to include any adopted child or children of such other person who were adopted before the date of the will, unless a contrary intention shall appear in the will.
> Ashurst's Estate, 133 Pa. Super. at 528, 3 A.2d at 527 (quoting Section 16 of the Wills Act of 1917).

In 1972, this section of the Wills Act of 1917 was the focus of a plurality decision by the Pennsylvania Supreme Court in Tafel Estate, 449 Pa. 442, 445, 296 A.2d 797, 799 (1972), when it decided to change the prior rule of construction for wills to hold that "in the absence of any testamentary language demonstrating the intent of the testator, it should be *presumed* that the testator intended to include adopted children" when referring generally to children. This rule of

construction, however, was limited to where the adoptee was a minor at the time of adoption. Id., 449 Pa. at 454, 296 A.2d at 803.

A majority of the Pennsylvania Supreme Court followed Tafel in the Estate of Sykes, which held "that where a testator has not clearly expressed his intention to limit inheritance under his will to individuals of blood descent, it is presumed that he intended to include adopted children as beneficiaries of a bequest to 'issue.'" Estate of Sykes, 477 Pa. at 26, 383 A.2d 921. In Sykes, where the status of minor children adopted four years after the death of a testator was at issue, the Supreme Court embraced the presumption that the "testator intended to include children by adoption as well as by blood descent when he directed that the corpus should pass to the 'issue'" of his daughter. This conclusion, the court emphasized, "'reflects the feeling and attitude of the average man that adopted children are as much a part of the family as are natural children.'" Id., 477 Pa. at 260, 383 A.2d at 923.

The Sykes court did not address the issue of whether this presumption would also apply to individuals adopted after obtaining the age of majority. It did note, however, that in Tafel, a plurality of the court concluded that this presumption only applied where "the bequest was to 'children' who had been adopted during their minority.[3] Moreover, the statutory Rules of Interpretation of wills in the PEF code, 20 Pa.C.S.A. § 2514(7) distinguishes between adoptions occurring during minority and majority:

> **Adopted children.—**In construing paragraphs (9), (10) and (11) of this section, relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, any adopted person shall be considered the child of his adopting parent or parents, except that, in construing the will of a testator who is not the adopting parent, an adopted person shall not be considered the child of his of his adopting parent or parents unless the adoption occurred during the adopted person's

3 Estate of Sykes, 477 Pa. at 262 n.4, 383 A.2d at 924 n.4.

minority or reflected an earlier parent-child relationship that existed during the child's minority. 20 Pa.C.S. § 2514(7)(emphasis added).

The precise issue of whether the presumption that an adopted child should be considered as a natural child for purposes of a bequest should apply equally where the adopted person was not a minor was addressed by the Superior Court in Estate of Ketcham, 343 Pa. Super. 534, 495 A.2d 594 (1985). In Ketcham, a testator left the residue of her estate in trust for her three children, providing that upon the death of a child, that share of income was to be paid to the child's issue. One of the testator's children adopted a two year old child, while another child, at the age of 85, adopted a 56 year old woman. The Superior Court in Ketcham concluded that the minor adoptee could take under the will, while the adult adoptee could not. It reasoned that the presumption applied as to the person adopted as a minor, but not to the adult adoptee where the sole purpose for the adoption of that 56 year old woman was to secure an inheritance. In explaining this result, the court noted that the adult's adoption only took place after the testatrix's daughter learned the law had been changed to permit inheritance by adoptees. To permit a person adopted under such circumstances, the Ketcham court emphasized, was a "blatant attempt to rewrite the testatrix's will" to provide for a gift in default of a natural child. Estate of Ketcham, 343 Pa. Super. at 540, 495 A.2d at 597.

Similarly, a year later the Superior Court refused to apply the presumption that a 35 year old woman was a child of the adopting parent when construing the will of a testator who was not the adopting parent. The court noted that the record did not indicate that a parent-child relationship existed between the adopting parent and the 35 year old adoptee during the adoptee's minority. In addition, the will did not disclose whether the testator intended to include adult adoptees within the definition of children. The court thus resorted to the "canons of

interpretation," noting that there were two conflicting policies: the policy that an adopted child should have the same rights as a natural child and the policy that a legatee not be allowed to rewrite a will by adoption. Noting that the record did not disclose the motives underlying the adoption of the 35 year old, the court held "that without any showing of a parent-child relationship existing during an adoptee's minority, a person adopted during majority may not be presumptively considered to be a 'child' of the adoptive parent when construing the will of a testator who has died and whose will becomes effective prior to the time of the adult adoption." Estate of Kauffman, 352 Pa. Super. at 13, 506 A.2d at 956. Finally, in Estate of Goal, 380 Pa. Super. 219, 551 A.2d 309 (1988), the Superior court again concluded that a person adopted at the age of 47 could not be presumed to be the "issue" of the adopting parent where the adoption was for the purpose of securing the adoptee's inheritance as established by the record of the adopting parent's discussions with a trust officer and where there was no record of a parent-child relationship during the adoptee's minority.

In the instant case, Lora Lee Gibson, as an adoptee, simply forwarded to the accountant and faxed to the court a decree of adoption from the Nevada Eight Judicial District Court to support her claim to the income previously paid to John Hallahan. That decree, however, is ambivalent as to her claim under the controlling case law since it suggests, inter alia, that the adoption had the purpose of securing an inheritance. The decree contains bald language, for instance, that "the best interests of all concerned will be promoted by" the adoption of David Dillard, Keran Yates, Anthony Dillard and Lora Lee Gibson" in that the said JOHN W. HALLAHAN is married to the natural mother of Petitioners ANGELA MAY HALLAHAN, and that the said JOHN W. HALLAHAN now maintains the relationship of father and children with

Petitioners."[4] Yet the decree also provides that the adoption would secure the rights of the adoptees to an "inheritance."

In light of the reluctance of such precedent as Estate of Kauffman, Estate of Goal and Estate of Ketcham to extend the presumption of Tafel to those who are adopted as adults, the adult adoptees in this case had the burden of establishing that they had a parent-child relationship with John Hallahan during the period of their minority and that their adoption was not effected to secure an inheritance. See, e.g., Estate of Kauffman, 352 Pa. Super. at 10, 506 A.2d at 955("However, where no parent-child exists and the adoption is effectuated to secure an inheritance, it would not be logical to presume that the testator would have intended the adoptee to be included"). The record presented, however, does not satisfy either requirement. Nor does it support an award of the share of income formerly distributed to John W. Hallahan to the stepchildren adopted as adults.

The accountant requests waiver of the appointment of a Guardian and Trustee ad Litem. It asserts that the interests of minors and unborn beneficiaries are adequately represented by those persons who are sui juris with similar interests. This request is granted.

The accountant states that written notice of the audit has been given to all parties of interest. In addition, the accountant will be required to send a copy of this adjudication to all parties in interest.

No objections were filed. According to the Account for the period November 22, 1978 through November 30, 2005, the balance of principal before distribution is $ 369,442.86 while the balance of income before distribution is $75,334.15 for a total of $ 444,777.01. This sum,

4 March 6, 2006 Audit Papers, July 14, 1981 Decree of Adoption,

composed as stated in the account, plus income received since the filing thereof and subject to distributions already properly made or transfer inheritance tax which may be due, is awarded as set forth in the accountants' supplemental memorandum:

**Income**

| Proposed Distributee(s) | Amount/Proportion |
|---|---|
| To May 16, 2005: | |
| Personal Representative of the Estate of John W. Hallahan | ½ |
| Colleen Phillips | ¼ |
| Patrick W. Hallahan | ¼ |
| From May 16, 2005: | |
| Colleen Phillips | 1/2 |
| Patrick Hallahan | 1/2 |

**Principal**

| | |
|---|---|
| Wachovia Bank, N.A., as Trustee for the uses and purposes of the Trust | 100% |

Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this _____ day of JULY 2007, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C.

Rule 7.1.A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

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John W. Herron, J.