COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

O.C. No. 1855 AP of 2002
Control No. 030023

Estate of Benedict J. LaCorte, Deceased

OPINION

Introduction

Presently before this court are the various preliminary objections by respondent, Edna M. Whalen LaCorte, Executrix of the Will of Benedict J. LaCorte, to the Petition for Citation Sur Appeal from Probate that was filed by Petitioner Marie Hartsough, and joined by Christopher Hartsough, Thomas Hartsough, Deborah Banfe, Megan Banfe, Peter Banfe, John Bruce LaCorte, Desiree LaCorte and John LaCorte (collectively the "petitioners"). For the reasons set forth below, these objections are sustained in part and overruled in part.

Factual Background

On November 1, 2002, Marie Hartsough filed a petition for citation sur appeal from the probate of the will of her brother, Benedict J. LaCorte ("decedent"). According to her petition, Benjamin LaCorte died May 1, 2002 at the age of 83. On June 5, 2002, his will dated August 1, 2001 was probated by the Register of Wills of Philadelphia County and Letters Testamentary were granted to Edna M. Whalen LaCorte, who was the decedent's wife. The petition asserts, inter alia, that the August 1, 2001 Will was obtained by respondent's undue influence over the decedent. It also asserts that the marriage between Benedict and Edna Whalen LaCorte on July 1,

2001 was also invalid as the result of undue influence[1] and the lack of Benedict LaCorte's capacity to marry.[2] Finally, the Petition challenges a deed dated September 18, 2001.

The petition was joined by decedent's two children, John Bruce LaCorte and Deborah Banfe as well as by his grandchildren John LaCorte, Desiree LaCorte, Megan Banfe and Peter Banfe. In addition, decedent's nephews Christopher Hartsough and Thomas Hartsough joined in the petition. In challenging the validity of the August 1, 2001 Will, the petitioners invoke a Will decedent executed on March 24, 1998 in which he gave cash bequests of $10,000 to each of his children (John Bruce LaCorte and Deborah Banfe) and cash bequests of $100,000 to each of his grandchildren (John LaCorte, Desiree LaCorte, Megan Banfe and Peter Banfe). Decedent also bequeathed $10,000 to each of his nephews (Christopher Hartsough and Thomas Hartsough). The March 24, 1998 Will gave a specific bequest of $50,000 to respondent, Edna Whalen, with the entire residue of the estate given to Marie Hartsough, decedent's sister.[3] At the time this will was executed, petitioner alleges the decedent's assets totaled $1,400,000.[4]

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[1] See Petition ¶ 49.

[2] See Petition ¶42.

[3] See Petition ¶ 5 & Ex. A.

[4] See Petition ¶ 8.

The Petitioner alleges that in 1998 respondent Edna Whalen LaCorte, who was 29 years younger than decedent, resided with him at 109 Gorman Street, in Philadelphia. The petition asserts that the decedent depended upon the respondent to assist him in his financial activities as well as his daily living activities. It also asserts that decedent was fearful of losing respondent's assistance and she manipulated that fear.[5] As early as 2000, the petition alleges, the decedent was failing mentally, as evidenced by memory loss, disorientation and confusion. It further asserts that during the period from May 2001 until his death, Benjamin LaCorte "was severely impaired by senile dementia of the Alzheimer's type" and "as a result he lacked capacity to dispose of his assets by inter vivos transfer or by Will and lacked capacity to marry."[6] On June 1, 2001, decedent and respondent were married. On August 1, 2001, the decedent executed the Will that is the subject of petitioners' challenge. Under the terms of the August 1, 2001 Will, all personal effects and insurance policies were given to Edna Whalen LaCorte. The entire residue of the estate was also bequeathed to her. The August 1, 2001 will made specific cash bequests of $50,000 to each of Benjamin LaCorte's children, John B. LaCorte and Deborah Banfe.[7] Thus, under the August 1, 2001 Will, decedent's sister, petitioner Marie Hartsough, no longer received the residue of the Estate and decedent's grandchildren and nephews no longer were given specific cash bequests. Decedent's children (John B. LaCorte and Deborah Banfe), however,

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[5] See Petition ¶¶ 11-12.

[6] See Petition ¶ 42.

[7] See Petition ¶ 35 Ex. E.

were designated to receive larger cash bequests of $50,000 rather than $10,000.

Legal Analysis

A. The Present Petition Fails to Set Forth Facts that Would Give Decedent's Children Standing

The respondent Edna LaCorte raised numerous objections to the petition, several of which the parties essentially resolved by agreement. Ms. LaCorte objected, for instance, that the Citation was not served on her personally as a beneficiary, thereby depriving this court of personal jurisdiction as to her. She therefore asserts that the petition should be dismissed for failure to join an indispensable party. The petitioners have agreed that this court should order the issuance of an alias citation.[8] In addition, Ms. LaCorte raised objections as to the theories under which petitioners challenge her marriage as invalid. After additional briefing, however, the petitioners have agreed not to assert the claim that the marriage is invalid due to undue influence. As discussed below, the claim will proceed instead solely on a theory that Benedict LaCorte lacked the capacity to marry.

[8] See Petitioners' 2/11/03 Memorandum at 7. Although this court issued a preliminary decree on November 15, 2002 for the issuance of a citation directed to Edna M. Whalen LaCorte, both individually and as executrix, through an apparent clerical error the Clerk's office did not issue a citation directed to Ms. LaCorte in her individual capacity.

An objection that persists, however, is Ms. LaCorte's objection that decedent's son and daughter, John Bruce LaCorte and Deborah Banfe, lack standing. According to Ms. LaCorte the decedent's children cannot establish that their interests would be aggrieved by virtue of the August 1, 2001 Will because under that Will they would each receive a larger bequest (i.e. $50,000) than under the March 1998 will that is invoked in their petition. Under the March 1998 Will, both of decedent's children were to receive a specific bequest of $10,000. Ms. LaCorte also asserts that the March 24, 1998 was revoked by a later July 30, 1998 Will. The petitioners, however, argue that the alleged revocation is not of record and that as a practical matter the July 30, 1998 Will is entirely consistent with the March 24, 1998 Will.[9] More specifically, under either the March or July 1998 Will the decedent's children were to receive $10,000,[10] while under the August 2001 Will they were to receive $50,000.

Under 20 Pa.C.S.A. §908(a) "[a]ny party in interest who is aggrieved by a decree of the register" may appeal that decree to the Orphans' Court within one year. As the Pennsylvania Superior Court has observed a "party is aggrieved and therefore has standing when the party is directly and adversely affected by a judgment, decree or order and has some pecuniary interest which is thereby injuriously affected." Estate of Seasongood, 320 Pa. Super. 565, 569, 467 A.2d 857, 859 (1983). More recently, the Superior Court has emphasized that "the clear and unambiguous language of the statute permits a party to appeal a Register's decision only if the party has an **interest** that has been **aggrieved.** Estate of Briskman, 808 A.2d 928, 932-33 (Pa.

[9] See Petitioners' 2/11/03 Memorandum at 8, n.2.

[10] A copy of the July 30, 1998 Will is attached as Exhibit D to Respondent Edith Whalen's Preliminary Objections.

Super. 2002)(emphasis in original). The issue of standing premised on a statute, the Briskman court emphasized, is intertwined with subject matter jurisdiction and as such is a "jurisdictional prerequisite." Id., 808 A.2d 933.

The necessity that a petitioner be "aggrieved" by a decree of the register as a prerequisite for standing for an appeal is demonstrated by In re Knecht's Estate, 341 Pa. 292, 19 A.2d 111(Pa. 1941). In Knecht, the Pennsylvania Supreme Court concluded that a husband lacked standing to appeal the decision of the register of wills to admit to probate a will dated April 30, 1937 and a codicil dated April 23, 1940 in favor of a 1939 will because he would receive the same interest under either scenario. Id., 341 Pa. at 298, 19 A.2d at 114. Hence, his interests were not aggrieved. As the Superior Court more recently observed, the Knecht case stands for the proposition that "a surviving spouse who would receive the same benefit in the estate regardless of which will is probated has no standing to set aside probate of one will in favor of another will." Luongo v. Luongo, 2003 WL 1993343 at *6 (Pa. Super. May 1,2003). Similarly, where, as in the present case, decedent's children would receive a greater interest under the August 1, 2001 Will that they are challenging than they would receive under the March 24, 1998 Will that they are invoking, the decedent's children cannot show that they are aggrieved and hence would lack standing under 20 Pa. C.S.A. § 908(a). See Luongo v. Luongo, at *10 ("We are in agreement with the Orphans' court on this point, that Appellant has no standing to contest probate of the whole of Decedent's 1995 Will, where there is still in existence Decedent's two prior wills, because Appellant received more under the 1995 will than he would have received under either the 1987 will or the 1983 will").

Significantly, the petitioners do not dispute that the decedent's children would lack

standing if they were to receive more under the August 2001 will than under the March or July 1998 wills. As they concede, "those facts, standing alone, might support Whalen's argument."[11]

They assert, however, that the decedents' children have standing by virtue of a fact that petitioner brought to this court's attention: the June 2001 revocation. As the petitioners explain:

> That event destroys Whalen's fourth objection because assuming (a) that the revocation was proper, (b) that the August 2001 Will resulted from undue influence, then (c) Decedent would have died intestate. And, if Decedent died intestate, then intestacy law would provide the children with far more than the specific bequests under any of Decedent's Wills. As a result, if Whalen truly believes that the June 2001 revocation was proper, she must concede that the children have standing because the children would have recovered far more in an intestacy than they did under any prior, or subsequent, Will. Petitioners' 2/11/2003 Memorandum at 9.

There are several problems with this argument from the procedural perspective of the preliminary objections. First, this alleged basis for standing on behalf of decedents' children is set forth in a memorandum of law, and not in the petition. Orphans' Court Rule 3.4 prescribes that a petition shall set forth "a concise statement of the facts relied upon to justify the relief desired, together with the citation of any Act of Assembly relied upon." Pa. Orphans' Court Rule 3.4(a)(3). Since statutory standing is a jurisdictional issue, it is essential that the petition set forth facts to establish standing. The present petition does not set forth facts establishing the standing of petitioners John Bruce LaCorte and Deborah Banfe. Petitioners, however, have outlined facts in the memorandum to cure this defect. Courts have concluded that where there is a reasonable possibility that amendment could cure a defect in pleading, leave to amend the complaint should be granted. Harley Davidson Motor Co., Inc. v. Hartman, 296 Pa. Super. 37, 42, 442 A.2d 284, 286 (1982). Moreover, under Pa.R.C.P. 1033, a complaint may be amended to

[11] Petitioners' 2/11/03 Memorandum at 9.

conform with new evidence offered or admitted. Consequently, the preliminary objections of Ms. LaCorte are sustained as to these two petitioners without prejudice to their right to file an amended petition within twenty (20) days to set forth the facts that would establish their standing.

B. The Claim that the LaCorte Marriage Is Invalid Because of Undue Influence Is Stricken Because Only a Party to a Marriage May Seek Annulment Based on Undue Influence

The Petitioners allege that the marriage between Benedict LaCorte and Edna Whalen LaCorte on June 1, 2001 was invalid for two reasons. First, they allege that the marriage was invalid because at that time Benedict LaCorte lacked the capacity to marry because of his impaired mental condition. See Petition ¶ 42. Second, they allege that the marriage was invalid because of the undue influence respondent exerted over Benedict LaCorte. See Petition ¶ 49. The respondent filed preliminary objections asserting that the claim of undue influence is not viable as a grounds for invalidating a marriage where it is not raised by a party to that marriage. After additional briefing on this issue, the petitioners concede that under 23 Pa.C.S.A. ¶ 3305 a challenge to a marriage based on "undue influence" may not be brought if either party has died.[12] They therefore withdrew their challenge to the marriage based on undue influence.[13] There still remains, however, the challenge to the marriage based on Benedict LaCorte's lack of capacity under 23 Pa.C.S.A. § 3304 which provides, in relevant part:

> (a) General Rule - Where there has been no confirmation by cohabitation following the removal of an impediment, the supposed or alleged marriage of a person shall be deemed

[12] Section 3305 sets forth the grounds for annulment of "voidable" marriages which would include those marriages where "one party was induced to enter into the marriage due to fraud, duress, coercion or force attributable to the other party. . . ." 23 Pa.C.S.A. §3305(a)(5).

[13] Petitioners' 5/16/2003 Memorandum at 2 n.1.

void in the following cases:

> (3) Where either party to such marriage was incapable of consenting by reason of insanity or serious mental disorder or otherwise lacked capacity to consent or did not intend to consent to the marriage.

23 Pa. C.S.A.§ 3304(a)(3).

This section also provides that the invalidity of the marriage may "be declared in any collateral proceeding." Moreover, in contrast to Section 3305, there is no limitation in Section 3304 either that such annulment may be sought only by a party to the marriage or that such an attack may not be launched if "either party has died." See, e.g., 23 Pa.C.S.A. § 3305(b)(limiting challenges to "voidable" marriages to actions brought by parties to the marriage where neither party has died). Therefore, petitioners' claim that the marriage between Edith Whalen and Benedict LaCorte was invalid due to his lack of capacity shall proceed to a factual determination.[14]

C. Petitioners' Allegations as to the Claim of Undue Influence Suffice to Withstand the Respondent's Demurrer

The Respondent argues that the petition fails to set forth legally sufficient claims of incapacity or undue influence and should thus be dismissed. When considering preliminary objections in nature of a demurrer, the issues must be resolved solely on the basis of the pleadings. Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999). A court should consider all well-pleaded material facts in a complaint as true as well as all reasonable inferences that can be drawn from those facts. Bower v. Bower, 531 Pa. 54, 57, 611 A.2d 181, 182 (1992). A

[14] Respondent in her supplemental memorandum states that she "is not claiming that Petitioner lacks standing to challenge the marriage on the theory of lack of capacity." Respondent's 5/16/2993 Memorandum at 4.

demurrer can be sustained only when it is clear from the face of the complaint or petition that the claims may not be sustained. Mellon Bank, N.A. v. Fabinyi, 437 Pa. Super. 559, 567-68, 650 A.2d 895, 899 (1994). Courts have cautioned that a demurrer may be sustained only where the plaintiff has clearly failed to state a claim upon relief may be granted. A demurrer should be overruled if there is any doubt concerning the adequacy of the claim. Phil-Mar Atlantic, Inc. v. York Street, 389 Pa. Super. 297, 301, 566 A.2d 1253, 1254 (1989).

Respondent suggests that the petitioners assert two theories in challenging the August 1, 2001 will, the marriage between Benedict and Edna LaCorte and the deed transfer: (1) that decedent lacked capacity as to each transaction, and (2) that these acts were the result of undue influence. According to respondent, the petition fails to set forth facts that establish these claims.[15] In response, the petitioners deny that they seek relief for testamentary incapacity. Instead, they assert that they have framed viable claims for undue influence and marital incapacity.[16]

Both parties agree that undue influence may be established by either direct or indirect evidence. In cases where there is no evidence that the decedent testator suffered from weakened intellect, those contesting the will must prove undue influence which "is sufficient to void a will. There must be imprisonment of the body or mind, frauds, or threats or misrepresentations, or circumstances of inordinate flattery or physical or moral coercion to such a degree as to prejudice the mind of the testator, or destroy his free agency, or to operate as a present restraint upon him in the making of a will." In re Quein's Estate, 361 Pa. 133, 145, 62 A.2d 909, 915

[15] See Respondent's 1/2/2003 Memorandum at 13.

[16] Petitioners' 2/11/2003 Response, ¶ 11.

(1949)(citations omitted). See also Tredinnick, "Presumptions and the Burden of Proof in Orphan's Court Litigation," 7 Fiduciary Reporter 2d 102 (1986). Where there is no direct evidence of undue influence, it may be shown through circumstantial evidence. To do so, the contestant must establish that "(1) when the will was executed the testator was of weakened intellect, and (2) that a person in a confidential relationship with the testator (3) receives a substantial benefit under the will." Estate of Ziel, 467 Pa. 531, 541, 359 A.2d 728, 734 (1976).

Petitioners assert that the petition alleges direct undue influence with the allegations that Whalen lied to decedent, threatened to leave decedent and made misrepresentations regarding Mrs. Hartsough and Christopher Hartsough.[17] These allegations, however, do not rise to level of destroying decedent's free agency and thus, alone, would not be grounds for overruling the demurrer.

[17] Petitioners' 2/11/2003 Memorandum at 14.

Nonetheless, there are allegations in the petition that would meet the three-pronged standard for showing indirect undue influence. To show that Benedict LaCorte suffered from weakened intellect, the petition alleges that he suffered from a senile dementia of the Alzheimer's type, he could not remember how respondent's name was placed on the safe deposit box, he could not remember how to get to his sister's house which was near to his home, and he asked on June 2, 2000 where his wife was at time when he had been divorced from his first wife for 30 years and had not yet married the respondent.[18] In Burns v. Kabboul, 407 Pa. Super. 289, 308, 595 A.2d 1153, 1163 (1991), app. denied, 529 Pa. 655, 604 A.2d 247 (1992), the Superior Court noted that the "weakened intellect" that must be shown to establish undue influence in a will contest need not amount to testamentary incapacity. In fact, in Burns, the evidence of weakened intellect focused on medical evidence as to whether the testator suffered from Alzheimer's at the time he executed the will in question. The court noted that after hearing conflicting evidence on this issue, the trial court concluded that the decedent was suffering from a weakened intellect. The appellate court, finding adequate evidence to support this conclusion, concluded there was no abuse of discretion. Burns, 407 Pa. Super. 308, 595 A.2d at 1163. The instant petition's allegations suffice therefore to withstand the demurrer as to the claim of Benedict LaCorte's weakened intellect.

Petitioners next argue that they have adequately alleged a confidential relationship between the decedent and respondent. A confidential relationship exists "when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is

[18] See Petition ¶¶ 42, 16, 39, 38.

an overmastering influence, or, on the other, weakness, dependency or trust justifia y resposed." Estate of Thompson, 387 Pa. 82, 88, 126 A.2d 740, 744 (1956). Significantly, whether a confidential relationship exists may be either a question of law or of fact. Estate of Thompson, 387 Pa. at 88, 126 A.2d at 744. See also Butler v. Butler, 464 Pa. 522, 347 A.2d 477 (1975)(analyzing confidential relationship in the context of imposing a constructive trust upon entireties' property).

In the instant case, petitioners alleged that the respondent lived with the decedent and cared for him. She helped him not only with his daily activities but with his private financial affairs by balancing his checkbook, paying bills and taking him to the bank. She allegedly had her name placed on his safe deposit bank. She also allegedly influenced decedent to terminate the power of attorney that he had granted to Christopher Hartsough. Whether these allegations can be proved, of course, remains to be determined. They suffice, however, to withstand the challenge of a demurrer.

D. Petitioners' Allegations of Undue Influence Are Sufficiently Specific to Enable Respondent to Prepare Her Defense

Finally, respondent asserts that the petition fails to state specific facts to support the claim of undue influence. In evaluating whether a pleading is sufficiently specific, the question is "whether the pleading is sufficiently clear to enable the defendant to prepare his defense." Paz v. Com., Dept. of Corrections, 135 Pa. Com. 162, 170, 580 A.2d 452, 456 (1990), app.denied, 532 Pa. 652, 615 A.2d 341 (1992). Pennsylvania Orphans' Court Rule 3.4(a)(3) requires petitions to set forth "a concise statement of the facts relied upon to justify the relief desired...." It is not enough to set forth "mere conclusory allegations in the pleadings without supporting factual allegations." Dorfman v. Pa. Social Services Union, 752 A.2d 933, 936 (2000), app.denied, 532

Pa. 652, 615 A.2d 341 (1992).

As previously discussed, petitioners have set forth facts concerning the decedent's alleged weakened intellect, his confidential relationship with the respondent and the respondent's alleged undue influence. The respondent is correct, however, that the petition refers to a July 15, 1996 will but that document is not attached with no explanation for the failure to do so.[19] A copy of the July 15, 1996 Will referenced in the petition shall be filed by praecipe.

Date: _____ BY THE COURT:

John W. Herron, J.

[19] See Petition ¶ 6.