COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION
O.C. No. 1855 AP of 2002
Control No. 031823
Estate of Benedict J. LaCorte, Deceased

OPINION

Introduction

A Will that was executed by Benedict LaCorte on August 1, 2001 ("August 2001 Will") is being challenged by various relatives on two different theories that are set forth in two different petitions: a November 2002 Petition and a June 2003 Petition. By the November 2002 Petition, the decedent's sister, Marie Hartsough, and other relatives challenged the August 2001 Will by invoking a prior March 24, 1998 Will that bequeathed, inter alia, to Ms. Hartsough the residue of Benedict's estate. Decedent's children likewise sought to join in that Petition but for the reasons set forth below, this court in a May 30, 2003 opinion ruled that they lacked standing to do so. The two children thereafter assigned their interests to Christopher Hartsough who filed a petition in June 2003 ("June 2003 Petition") to assert their interests as intestate heirs.

Edna M. Whalen LaCorte, the Executrix and Beneficiary under the August 2001 Will, filed preliminary objections to the June 2003 Petition. For the reasons set forth below, these preliminary objections are sustained and the June 2003 petition is Dismissed. Under the analysis of the Pennsylvania Superior Court in the Estate of Luongo, 2003 Pa. Super. 171, 823 A.2d 942 (2003), app.denied, 2003 WL22827630 (Pa. 2003), the June 2003 Petition fails to establish the standing of Benedict's children, John Bruce LaCorte and Deborah Banfe, as aggrieved intestate heirs.

Factual Background

On June 5, 2002, the Register of Wills of Philadelphia County entered a decree that admitted to probate the August 1, 2001 Will ("August 2001 Will") of Benedict LaCorte, who died on May 1, 2002. Letters Testamentary were granted to Edna Whalen LaCorte, the decedent's wife. Several months later, on November 1, 2002, Marie Hartsough, the decedent's sister, filed a petition (the "November 2002 Petition) for citation sur appeal from the probate of the Will of her brother, Benedict J. LaCorte ("decedent"). The petition alleged, inter alia, that the August 2001 Will was invalid because of undue influence by Edna LaCorte and because of decedent's lack of testamentary capacity due to his mental impairment by senile dementia of the Alzheimer's type from May 2001 until his death. It also asserted that the marriage between Benedict and Edna Whalen LaCorte on July 1, 2001 was invalid as the result of undue influence[1] and the lack of Benedict LaCorte's capacity to marry.[2] Finally, the November 2002 Petition challenged a deed dated September 18, 2001 asserting that it was invalid for the same reasons.

The November 2002 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 invoked 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

1 See November 2002 Petition, ¶ 49. The petitioners eventually abandoned this challenge to the marriage based on a theory of undue influence.

2 See November 2002 Petition, ¶ 42. This claim that the marriage is invalid due to lack of capacity remains. See Estate of Benedict LaCorte, O.C. No. 1855 AP of 2002, slip op. at 8-9 (Phila. Orphans' Court May 30, 2003).

$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,[3] or if she predeceased, to the decedent's children and nephews. At the time this will was executed, petitioner alleged the decedent's assets totaled $1,400,000. See November 2002 Petition ¶ 8.

Under the terms of the August 1, 2001 Will that is being challenged, Marie, Thomas and Christopher Hartsough were no longer named as beneficiaries. In contrast, the bequests to the decedent's children, Deborah Banfe and John Bruce LaCorte were increased from $10,000 each in the March 1998 Will to $50, 000 each in the August 2001 Will.

Edna LaCorte subsequently filed preliminary objections to the November 2002 petition. These objections were sustained in part and overruled in part as set forth in this Court's Order and Opinion dated May 30, 2003. In one of her objections, Ms. LaCorte objected that the decedent's son and daughter, John Bruce LaCorte and Deborah Banfe, lacked standing to challenge the validity of the August 2001 Will. Essentially, Ms. LaCorte argued that decedent's children could not 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 was invoked in their petition. Ms. LaCorte also asserted that the March 24, 1998 Will was revoked by a later July 30, 1998 Will. The petitioners, however, responded that the alleged revocation is not of record and that as a practical matter the July 30,

3 See November 2002 Petition, ¶ 5 & Ex. A.

1998 Will is entirely consistent with the March 24, 1998 Will.[4] For instance, under either the March or July 1998 Will the decedent's children were to receive $10,000.[5]

Upon analysis of the precedent presented by the parties, this court concluded in a May 30, 2003 opinion that the decedent's two children did lack standing to challenge the August 2001 Will and that their claims should be dismissed without prejudice to file an amended petition within 20 days of the May 30, 2003 order. This order was subsequently amended for the sole purpose of setting a response date for Ms. Whalen to file an Answer to the claims remaining in the November 2002 Petition. Because the rationale set forth in the May 30, 2003 opinion for dismissing the claims of Deborah Banfe ("Deborah") and John Bruce LaCorte ("John") for lack of standing is of potential relevance to the presently pending preliminary objections, it will be reiterated in this opinion.

B. The November 2002 Petition Failed to Set Forth Facts to Establish the Standing of John Bruce LaCorte and Deborah Banfe

Under 20 Pa.C.S.A. section 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)(appellants who lacked standing under the intestate statute lacked standing to challenge the will at issue). More recently, the Superior Court has

4 See Petitioners' 2/11/03 Memorandum at 8, n.2.

5 A copy of the July 30, 1998 Will was attached as Ex. D to Respondent Edith Whalen's Memorandum in support

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. 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." Estate of Luongo, 2003 Pa. Super. 171, 823 A.2d 942, 954 (2003). Similarly, in analyzing the preliminary objections to the November 2002 Petition, this court concluded that 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 (or July 1998 Will) that they previously invoked, the decedent's children could not show that they are aggrieved and hence would lack standing under 20 Pa. C.S.A. § 908(a). See Estate

---

of Preliminary Objections.

of Luongo, 823 A.2d at 958 ("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 did 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 conceded, "those facts, standing alone, might support Whalen's argument."[6]

They asserted, however, that the decedents' children have standing based on a purported fact that Ms. Whalen brought to this court's attention in her preliminary objections: she asserted that on June 8, 2001, Benedict LaCorte tore up his July 1998 Will with the intent to revoke it.[7] As the petitioners explained:

> 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 were, however, several problems with this argument from the procedural perspective of the preliminary objections. First, this alleged basis for standing on behalf of decedents' children was 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'

6 Petitioner's 2/11/03 Memorandum at 9.
7 See 1/2/2003 Preliminary Objections, ¶ 8.

Court Rule 3.4(a)(3). Since statutory standing is a jurisdictional issue, it was essential that the petition set forth facts to establish standing. The petition filed on November 1, 2002 did not set forth facts establishing the standing of petitioners John Bruce LaCorte and Deborah Banfe as intestate heirs. However, because the Petitioners outlined facts in their memorandum that might potentially cure this defect, this court granted leave to them to file an amended petition within 20 days of the May 30, 2003 order. See generally Harley Davidson Motor Co., Inc. v. Hartman, 296 Pa. Super. 37, 42, 442 A.2d 284, 286 (1982). Moreover, the petitioners' general legal argument that the decedent's children would be intestate heirs if they established the destruction of the July 1998 Will in June 2001 as well as the invalidity of the August 2001 Will seemed straightforward and in accord with common sense. In analyzing this argument, however, it was necessary to focus more clearly on the subtleties of the Superior Court's opinion in Estate of Luongo. That precedent dictates a more complex analysis of the record in this case, compelling this court to dismiss the petition of John and Deborah for lack of standing as intestate heirs.

C. The Petition Filed by Christopher Hartsough as assignee of the Interests of Deborah Banfe and John Bruce LaCorte Must Be Dismissed Because Deborah and John Lack Standing Under the Analysis of Estate of Luongo Due to the Difficulty in Proving Their Status as Intestate Heirs Where There are Prior Wills Granting Them Smaller Bequests Than They Would Receive Under the August 2001 Will That They Challenge

On June 30, 2003, Christopher Hartsough, as assignee of the interests of Deborah Banfe and John Bruce LaCorte filed a Petition for Citation Sur Appeal from Probate and other Relief.[8] Edna Whalen responded to this petition by filing preliminary objections, asserting, inter alia,

8 Ms. Hartsough attached as Ex. I statements by Deborah Banfe and John Bruce LaCorte that they had assigned any rights they might have in the intestate estate or under the July 1998 Will of Benedict LaCorte to Christopher Hartsough in exchange for valuable consideration as set forth in a family agreement among John Bruce LaCorte, Deborah Banfe, Marie Hartsough, Christopher Hartsough, and Thomas Hartsough. That agreement, however, was

that the June 30, 2003 Petition should be dismissed for following reasons: (1) it was untimely under 20 Pa.C.S.A. section 908(a), thereby obviating subject matter jurisdiction; (2) it was as in violation of this court's order of May 30, 2003 because it was untimely filed by an improper party, and (3) it failed to set forth facts establishing the standing of Christopher Hartsough.[9]

It is well established that "preliminary objections which result in the dismissal of a cause of action should be sustained only in cases that are [so] 'clear and free from doubt' that the plaintiff will be unable to prove legally sufficient facts to establish any right of relief." Montanya v. McGonegal, 757 A.2d 947, 950 (Pa. Super. 2000)(citations omitted). Because the facts alleged in the June 2003 Petition fail to establish the standing of Deborah Banfe and John Bruce LaCorte, the strict standard for granting a preliminary objection is met and is dispositive. It is therefore not necessary to address the other objections asserted.

The June 2003 Petition filed by Mr. Hartsough essentially recapitulates the facts and allegations of the November 2002 petition. There are, however, certain differences. First, the June 2003 petition is filed in the name of Christopher Hartsough, as assignee of the interests of Deborah Banfe and John Bruce LaCorte. In contrast to the initial petition, the June 2003 petition references not only the March 24, 1998 Will and July 15, 1996 Will, but also a July 30, 1998 Will. All of these Wills, the petition alleges, are consistent. See 6/30/03 Petition, ¶¶ 6-7. Finally, the June 2003 petition contains the following new averrals, ostensibly to establish the standing of Deborah Banfe and John Bruce LaCorte as intestate heirs if the challenged August 1, 2001 Will were deemed invalid:

36. On June 8, 2001, Decedent purported to revoke his July 30, 1998 Will by destroying

---

not attached to the June 2003 Petition.

9 See 8/29/03 Preliminary Objections ¶¶ 18-22 and Memorandum of Law.

a copy of the same.

37. Between June 8, 2001 and August 1, 2001, Decedent was intestate. 6/30/03 Petition, ¶¶ 36-37.

Although paragraph 37 asserts the bald legal conclusion that Benedict LaCorte was intestate between June 8, 2001 and August 1, 2001, ostensibly because of the "purported" revocation of his July 30, 1998 Will described in paragraph 36 of the June 2003 Petition, there are other paragraphs in the Petition that undermine this assertion as to the alleged intestacy of Benedict LaCorte. Specifically, the June 2003 Petition acknowledges two Wills prior to the July 30, 1998 Will. In paragraph 5, the petitioner states that "Decedent executed a Will on March 24, 1998." Similarly, in paragraph 7, the petitioner states that the Decedent had executed a Will on July 15, 1996. While the petitioner may conveniently ignore the significance of these prior Wills in seeking to establish the status of John Bruce LaCorte and Deborah Banfe as intestate heirs, under the analysis of the Pennsylvania Superior Court in Estate of Luongo, 203 Pa.Super. 171, 823 A.2d 942 (2003), this court may not. Moreover, the alleged revocation of the July 1998 Will occurred at a time—June 2001—when petitioners allege that Benedict LaCorte's mental condition was severely impaired by senile dementia[10] so that this revocation would potentially be subject to the same challenge as against the August 2001 Will.

The Luongo court emphasized that "[a]scertaining the standing of heirs at law to contest a current will becomes more complex when there are prior wills in existence." Id., 823 A.2d at 955. Establishing that a person challenging a will has standing is of critical concern, the Luongo court cautioned, because when a statute such as section 908 creates a cause of action and designates who may sue, "the issue of standing becomes interwoven with that of subject matter

jurisdiction." Id., 823 A.2d at 953. Consequently, "Standing becomes a jurisdictional prerequisite to an action, [and] can be raised at any time, by any party, or by the court *sua sponte*. Id., 823 A.2d at 953-54 (emphasis added).

In her preliminary objections to the June 2003 Petition, Ms Whalen raised the issue of lack of standing but she did so as to Christopher Hartsough rather than as to Deborah and John as intestate heirs of the Will of Benedict LaCorte under the theory proffered by Mr. Hartsough. As the petitioner suggests, however, these differences are more formal than substantive and Mr. Hartsough's standing is derivative to the standing of John and Deborah.[11] According to Mr. Hartsough's more general intestacy argument, if Benedict LaCorte destroyed his July 1998 Will by tearing it up in June 2001, then at that point until the execution of the challenged August 2001 Will, the intestacy law would have provided his children "far more than the specific bequests under any of Decedent's Wills."[12] This argument, however, fails to grapple with the implications of the two wills Benedict LaCorte executed prior to his July 1998 Will which are acknowledged in the June 2003 petition. In fact, these prior wills dated March 24, 1998 and June 15, 1996 are inextricable elements of the present record. Not only does the June 2003 Petition specifically reference these prior wills, but copies are attached to the Petition. See June 2003 Petition ¶¶ 5-7, Exs. A & C. The June 2003 Petition nonetheless skirts the significance of these prior wills and ostensibly seeks to establish the standing of Deborah and John as intestate heirs based on the allegations that on June 8, 2001, Decedent "purported to revoke" his July 30, 1998 Will by destroying it so that between June 8,

---

10 See June 2001 Petition, ¶ 45.

11 Petitioner argues, for instance, that "Christopher, as John and Deborah's assignee, stands in their shoes." Petitioner's 9/18/03 Memorandum at 4 (citing Ammon v. McCloskey, 440 Pa. Super. 251, 655 A.2d 549 (1995)). As the Ammon court observed: "it is clear that the assignee stands in the shoes of the assignor and does not pursue the case in the assignee's own right." Id., 655 A.2d at 552.

12 See Petitioner's 9/18/03 Memorandum at 2 (quoting prior memorandum).

2001 and August 1, 2001, Decedent was intestate. See June 2003 Petition ¶¶ 36-37.

These allegations of the June 2003 Petition and the attached prior wills therefore compel analysis of the entire factual record, especially because under Pennsylvania law, the issue of standing under Section 908 implicates subject matter jurisdiction and may be raised *sua sponte* by a court. Estate of Briskman, 202 Pa. Super. 287, 808 A.2d 928, 933 (Pa. Super. 2002). As the Luongo court cautioned, a "will contestant's standing to appeal from a decree of probate turns delicately on the specific facts and circumstances of the matter at hand." Estate of Luongo, 823 A.2d at 955. The prior wills in the instant case are significant because both the March 24, 1998 Will and the July 15, 1996 Will gave Deborah and John a specific monetary bequest of $10,000 which is less than the specific bequest of $50,000 they would receive under the August 2001 Will they are challenging.[13] Under the analysis of the Estate of Luongo, the existence of these wills present formidable obstacles to establishing their claims as aggrieved intestate heirs.

The Superior Court's complicated and subtle analysis of the standing issue in the Estate of Luongo is instructive because of the similar factual issue: whether a child of the decedent could establish standing as an aggrieved intestate heir to challenge a current will where there were two prior wills under which he received nothing (or less).[14] In Luongo, the son of the decedent challenged a March 17, 1995 Will ("1995 Will") on the grounds, inter alia, of undue influence.

---

13 Both the July 30, 1998 will and the March 24, 1998 will further provided that if Marie Hartsough predeceased, the residue would go to decedent's children and two nephews. Obviously, Ms. Hartsough survived the decedent so this provision is inoperative. Under the July 1996 will, if Marie Hartsough predeceased, the residue would go to her children.

14 The Luongo court's analysis was necessarily complicated because the appellant set forth 2 different theories for standing. Under one theory, he challenged the validity of his father's will in its entirety. The court concluded that under this challenge, the appellant lacked standing. This holding is applicable as to the instant case. See Luongo, 823 A.2d at 958 ("Accordingly, we hold that Appellant has no standing to set aside the **whole** of Decedent's 1995 will because Appellant cannot show how his pecuniary interest in the Decedent's estate has been aggrieved by the probate of the 1995 will in its entirety"). The appellant did have standing, however, on the basis of his alternate theory under which he challenged the validity of only the residuary clause in his father's will. Id., 823 A.2d at 959.

Under the terms of the 1995 Will, the son was bequeathed a specific monetary bequest with the residue left to decedent's longtime companion; under two prior wills of 1987 and 1983, the son received no specific monetary bequest. Instead, under those wills, the entire estate was granted to the decedent's companion. The 1995 Will, however, specifically revoked the previous wills. Id., 823 A.2d at 949.

The son's standing to contest the 1995 Will in Luongo was challenged, ostensibly because he could not show that his interests were aggrieved by the 1995 Will since he obtained more under it than under the two prior wills. Although the Superior Court ultimately concluded that the son had standing, it did so on the limited argument he presented relating to an attack on the validity of the bequest of the residuary estate.[15] On the larger question that is relevant to the instant case, that is the son's standing to challenge the entire 1995 Will, the Superior Court concluded:

> We are in agreement with the Orphan's 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.[16]

---

15 See Id., 823 A.2d at 953, 958-59 (describing the limited scope of the Luongo holding).

16 Estate of Luongo, 823 A.2d at 958. In reaching this conclusion, the Luongo court recognized the potential applicability of the doctrine of dependent relative revocation. Id., 823 A.2d at 957-58. The Pennsylvania Supreme Court in In re Braun Estate, 358 Pa. 271, 56 A.2d 201 (1948) defined this doctrine as follows:

> Where the act of destruction (of a will) is connected with the making of another will, so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, such will be the legal effect of the transaction; and therefore, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation fails also, and the original will remains in force. Id., 358 Pa. at 275, 56 A.2d at 203 (quoting Jarman on Wills, 7th Ed.)

The Supreme Court explained this doctrine more simply when it observed that cases applying the doctrine of dependent relative revocation "hold that where a testamentary disposition fails because of a defect in the instrument itself its revocation clause is inoperative." Estate of Shelly, 484 Pa. 322, 330, 399 A.2d 98, 102 (1979).

The facts of a particular case are critical in determining the applicability of this doctrine. Compare Estate of Shelly, 484 Pa. 322, 399 A.2d 98 (1979); In re Braun's Estate, 358 Pa. 271, 56 A.2d 201 (1948)(***applying the doctrine)*** with Estate of Holt, 405 Pa. 244, 174 A.2d 874 (1961); In re McClure's Estate, 309 Pa. 370, 165 A. 24 (1933)(***refusing to apply the doctrine***).

A key factual distinction is that in the instant case, Benedict LaCorte purportedly destroyed the July 30, 1998 Will and then executed the August 2001 Will—at a time when he allegedly suffered from Alzheimer's and undue influence from Edna LaCorte. See June 2003 Petition, ¶ 45. The revocation of the July 1998 Will and the

As to the argument that the son could establish standing as an intestate heir, the Superior Court concluded: "The practical possibility that Appellant could reach more of Decedent's estate through a challenge to the whole of Decedent's 1995 will is virtually nil on the facts averred, due to the existence of the prior wills. Accordingly, we hold that Appellant has no standing to set aside the **whole** of Decedent's 1995 will because Appellant cannot show how his pecuniary interest in Decedent's estate has been aggrieved by the probate of the 1995 will in its entirety." Id., 823 A.2d at 958 (emphasis in original)(citations omitted).

Similarly, in the instant case, Benedict LaCorte bequeathed more to his two children in the August 2001 Will that they are challenging than he allocated to them in three prior wills. Even if it is established that the July 1998 will was destroyed by Benedict LaCorte on June 8, 2001 and then replaced by the August 1, 2001 Will that is ultimately deemed invalid due to undue influence, the Luongo court suggests this would not suffice to establish Deborah and John as aggrieved intestate heirs because of the existence of the prior March 1998 and July 1996 wills. See Luongo, 823 A.2d at 958.

Hence, to prove their status as intestate heirs, John and Deborah would have to establish the invalidity of two prior wills. When faced with a similar factual pattern involving a son challenging a current will that gave him more than he would receive under two prior wills, the Luongo court concluded that his chance of establishing standing as an aggrieved intestate heir "is virtually nil on the facts averred." Luongo, 823 A.2d at 958. As other courts have emphasized, the interest asserted

---

execution of the August 1, 2001 Will would thus suffer from the same intrinsic defects. Under the analysis of Luongo, the act of revocation would either be ineffective or relate only to the July 1998 Will, leaving the March 1998 Will in effect, if the August 2001 Will is deemed invalid for intrinsic reasons. Moreover, lurking in the background is the even earlier July 1996 Will. The obstacles facing John and Deborah in proving their status as intestate heirs are thus substantial and not "realistic," under the test stated in Luongo..

when maintaining a will contest must be "substantial, direct, and immediate to confer standing." Estate of Briskman, 808 A.2d at 933. Based on the present record, the claims of Deborah and John are neither direct nor immediate.

Conclusion

For these reasons, the Petition filed on June 30, 2003 by Christopher Hartsough, as assignee of the interests of Deborah Banfe and John Bruce LaCorte is DISMISSED WITH PREJUDICE.

Date: _____ BY THE COURT:

_____
John W. Herron