COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION
Charlie Mae Moore Brown, Deceased, Inter Vivos Trust
O.C. No. 1435 IV of 2003
Control No. 031815 and No. 032301

O P I N I O N

Introduction

The central issue presented by the Petition for Declaratory Judgment filed by Janettarose Greene is whether the assets of decedent Charlie Mae Moore Brown were transferred to a Revocable Trust through the Trust Agreement and an Assignment she executed approximately three weeks before her death. Ironically, according to the attorney who drafted these documents, his intent was to create a simplified mechanism for estate planning. Unfortunately, the failure of either the decedent or her attorney to track down her considerable assets, check the relevant documentation and execute change of beneficiary forms resulted in a record that even at this point is complex and incomplete.[1] As a consequence, it is necessary to examine the record and relevant precedent to determine which assets fall within the Trust and which do not. In so doing, the other issues raised by petitioner as to the alleged resignation of Tamara Brown Douglass as Trustee and the nonsuits will also be addressed.

Procedural History

Charlie Mae Moore Brown died on July 18, 2003. On August 28, 2003, Janettarose L. Greene, as successor trustee of the Charlie Mae Moore Brown Revocable Trust

[1] The decedent's two children—and primary beneficiaries of the Trust—oppose the transfer of assets to the Trust. See Respondents' 11/3/2003 Answer to the Petition for Declaratory Judgment. Their opposition seems to flow from a concern about attorney and trustee fees. See, e.g., 11/16/2004 Hearing Transcript (hereinafter "N.T.") at 109. That issue, however, is not presently before this court.

("Trust") filed a Petition for Declaratory Judgment seeking a determination of the following issues:

- Prior to her death, Charlie Mae Moore Brown validly created a Trust Agreement dated June 23, 2003;
- Charlie Mae Moore Brown designated herself as trustee under this agreement;
- One of the two successor trustees named in the trust agreement, Tamara Michelle Brown Douglass, resigned by default as Trustee, leaving the petitioner Janettarose Green as the sole Trustee of the Trust;
- Title of all of Charlie Mae Moore Browns "assets of every kind, including but not limited to real property, personal property, and policies of every kind" passed to the Trust.[2]

In response to this petition, citations were directed to the individual parties in interest which included Charlie's two children, Tamara Michelle Brown Douglass ("Tamara" or "Douglass") and Samuel Joseph Brown, IV ("Samuel). Citations were also issued to various entities that controlled the decedent's assets: the Philadelphia Board of Education; Aetna Life Insurance Company, PNC Bank, N.A., Sovereign Bank, Lincoln Investment Planning Inc. and the Public School Employees' Retirement System. The decree awarding the citations required these parties "to show cause why each should not be required to turn over possession and control of" any of Charlie Mae Moore Brown's assets to the successor trustee of her trust: Janettarose Greene.[3] Answers were filed to this petition by the various parties.[4] In addition, Charlie's children filed a petition seeking a

[2] See Proposed Final Decree, 8/28/2003 Petition for Declaratory Judgment.
[3] Decree dated September 16, 2003.
[4] The Public School Employees' Retirement System ("PSERS") denied that the assignment executed by Charlie Mae Brown served as a change of beneficiary for the assets ($572.86) in decedent's account with the Public School Employees' Retirement System; it asserted that the Public School Employees' Retirement Code, 24 Pa.C.S. §8101 requires payment to the last named beneficiary on file with PSERS. It therefore paid the total amount of $572.86 to the Estate of Charlie Mae Brown on September 4, 2003. PSER 11/3/2003 Answer. Lincoln Investment Planning, Inc., which is holding several 403B and IRA accounts in the name of Charlie Mae Brown in the amounts of $18,190.42, states that it will pay those funds as ordered by this court. Lincoln 11/7/2003 Answer. Sovereign Bank, which held two joint accounts listing Charlie Mae Brown or Tamara Brown Douglass or Samuel J. Brown, IV, in its Answer

citation directed against Janettarose Greene to show cause why she should not be required to transfer title to 629 East Wadworth Avenue Philadelphia, Pennsylvania, to the Estate of Charlie Mae Moore Brown.

Conferences were held and discovery was conducted. Greene's claims relating to Charlie's assets with the Public School Employees' Retirement System ("PSERS") were heard by the Public School Employees' Retirement Board which affirmed the hearing examiner's denial of Greene's demand that the assets in Charlie's retirement account be turned over to the Trust where the PSERS Nomination of Beneficiaries form on file at the time of Charlie's death designated her two children, Tamara and Samuel, each as 50% beneficiaries of the assets in her retirement account.[5]

A hearing was held before this court on November 16, 2004, after which the parties were instructed by order dated November 18, 2004 to file a stipulation as to each of the assets in dispute accompanied by the relevant insurance policies, bank regulations, and motor vehicle regulations. Upon the filing of the stipulation, each party was given an opportunity to file memoranda of law.[6] Based on this record, the following facts were established.

Factual Background

Prior to her death on July 18, 2003, Charlie Mae Moore Brown on June 23, 2003 met with attorney Joel Luber, who prepared three documents for her while she was a

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takes the position that the assets in the accounts belong to the surviving joint owners and not to the Trust. Sovereign Bank 10/30/2003 Answer. The School District of Philadelphia filed a "non-contesting" Answer in which it notes that it is not the custodian of any retirement benefits that might be due to the decedent although it concedes that the decedent may be entitled to termination pay in excess of $5,000 and requests the court's direction as to whom to pay the wages, salary or employee benefits pursuant to 20 Pa.C.S.A. § 3101(a). School District of Philadelphia 11/3/2003 Answer.

[5] The hearing officer noted that the Nomination of Beneficiaries form on file with PSERS at the time of Charlie's death designated Tamara Brown Douglass and Samuel J. Brown IV, each as 50% principal beneficiaries of the decedent's retirement account with PSERS. See Ex. R-4. Findings of Fact, Opinion of the Hearing Officer dated July 23, 2004, ¶ 9.

[6] 11/16/2004 N.T. at 130-132.

patient in the University of Pennsylvania hospital. According to the petitioner, Charlie signed three documents on June 23, 2003: a Revocable Trust Agreement dated June 23, 2003 (hereinafter "Trust"), a "blanket" Assignment dated June 23, 2003 (hereinafter "Assignment"), and a Power of Attorney designating Charlie's two children.[7]

Joel Luber testified that he became involved in these matters on or about June 20, 2003 when he received both a telephone call and e-mail from Janettarose Greene, whom he characterized as "a very close friend" of Charlie Mae Moore Brown.[8] Ms. Greene indicated that Charlie was in the hospital and very eager for estate planning. The e-mail from Ms. Greene outlined Charlie's heirs, her assets, and her intended disposition of assets upon her death. Ex. P-1.

After receiving this information from Ms. Greene, Luber testified that he called Charlie directly by phone at the University of Pennsylvania Hospital. He subsequently prepared three documents which Charlie signed on Monday, June 23rd in her hospital room.[9]

The Revocable Trust Agreement signed by Ms. Brown provides for a Revocable Trust during her lifetime. It states that "[s]imultaneously with the execution of this Agreement, Charlie transfers and delivers to herself as trustee, the assets described in the annexed Schedule A."[10] The attached "Schedule A" lists only "one dollar ($1.00)." The Trust Agreement states that Charlie was both the Grantor and initial Trustee. The Trust document designates Tamara and Janettarose Greene as successor trustees should Charlie

[7] Petition for Declaratory Judgment, ¶¶ 2-3.
[8] 11/16/2004 N.T. at 8.
[9] 11/16/2004 N.T. at 8-12.
[10] Ex. P-2, 6/23/2003 Trust Agreement, ¶ Introduction.

die or become disabled.[11] The Trustees were authorized during Charlie's lifetime to distribute all or any of the income to Charlie as was advisable in their discretion. The trustees were also authorized to distribute all or any of the principal to Charlie which they deemed advisable.[12]

Article II of the Trust provides for the allocation of assets upon Charlie's death. Each surviving grandchild was to receive $5,000. A scholarship fund in the amount of $10,000 was to be distributed to the Oxford Presbyterian Church. The loans of Charlie's daughter, Tamara, incurred to attend college or graduate school were to be repaid. Finally, the balance of the remaining assets were to be distributed "into separate and equal shares for Charlie's children, Tamara and Samuel Joseph Brown, IV."[13]

In addition to preparing this Trust Agreement, Luber testified that he prepared an Assignment and "the plan was to have all of Charlie Mae Moore Brown's assets transferred into the trust….In other words, every asset that she owned was to be titled and/or paid to or transferred into that trust vehicle, which would be used for purposes of administration, avoiding the entire necessity of any probate proceeding."[14] Luber characterized the assignment as a "blanket assignment" that would also "be treated as a change of beneficiary for every non probate asset which would potentially require a change of beneficiary form."[15] The Assignment provides:

> FOR VALUE RECEIVED, the undersigned, Charlie Mae Moore Brown, conveys to herself, as Trustee of the Charlie Mae Moore Brown Revocable Trust dated June 23, 2003 (the "Trust"), all of her right, title and interest in and to assets of every kind, including but not limited to real property, tangible personal property, securities, expectancies, inheritances, and other intangible personal property, and

[11] Ex. P-2, 6/23/2003 Trust Agreement, Article VI, Section A, 3.
[12] Ex. P-2, 6/23/2003 Trust Agreement, Article I, Sections C & D.
[13] Ex. P-2, 6/23/2003 Trust Agreement, Article II, Section A, para. 4.
[14] 11/16/2004 N.T. at 15. See Ex. P-3.
[15] 11/16/2004 N.T. at 15.

> anything else which may be the subject of ownership, and hereby designates the Trust as beneficiary of all "policies" of every kind, as defined therein, regardless of whether the form of beneficiary designation otherwise required by the payor of such benefits is executed by me at any time after the date of this Assignment.[16]

Finally, Luber prepared a power of attorney designating both of Charlie's children as "attorneys in fact or agents to handle her affairs for her."[17] Significantly, Luber noted that with the durable power of attorney, "we have a document which allows both of her children to handle any follow-up items that I had to take care of, which I knew that I was going to have to take care of."[18]

After signing those documents, Charlie contacted Luber again the next day to request a change, adding the provision that would pay off any of Tamara's student loans. Luber stated that he simply removed the page and replaced it with the new provisions "without changing the signature page."[19]

Luber followed up his meeting with a letter dated June 26, 2003.[20] In that letter, he cautioned that it was necessary to execute additional documents to transfer the various assets into the Trust:

> I am enclosing herein a copy of the Revocable Trust you created on June 23, which also incorporates those revisions you requested during our telephone conversation on June 25 and the "blanket" Assignment you executed transferring all of your assets into the Trust. I have kept the original of both documents in my files. Notwithstanding the Assignment, as I indicated to you, many of the assets, e.g. real estate and insurance/retirement-type assets, require separate documentation to formally transfer the same into your Trust. Thus, I will need to prepare a deed or deeds) to transfer your home (and the New Jersey property) into the Trust, and to procure the appropriate change of beneficiary forms from the insurance company and/or payors of retirement benefits. Ex. P-5.

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[16] Ex. P-3.
[17] 11/16/2004 N.T. at 16.
[18] 11/16/2004 N.T. at 17.
[19] 11/26/2004 N.T. at 23-24.
[20] See Ex. P-5.

The petitioner concedes that "[u]nfortunately, between June 23, 2003 and July 17, 2003 [the date prior to Charlie's death], neither decedent nor Luber was able to notify the various custodians of her assets and other depository institutions of the fact that Decedent had transferred title to, and/or designated as her beneficiary, the Trust pursuant to the Assignment."[21] This was because Luber had gone on vacation on July 10th and did not return until July 20,th two days after Charlie's death. He thereafter attempted to contact Tamara so that she might serve as successor trustee. When she failed to respond to those initiatives, "Greene directed Luber" to warn Tamara that if she did not respond she would be deemed "disabled" and hence "resigned" as successor trustee.[22] When no response was received by August 15, 2003, "Greene was advised by Luber that she was the sole successor trustee of the Trust."[23]

Prior to this correspondence from Luber, Charlie's two children, Tamara and Samuel, had applied for Letters of Administration to serve as co-administrators of the Estate of Charlie Mae Moore Brown. Luber filed a caveat with the Philadelphia County Register of Wills, but it was returned to him on August 13, 2003. On August 26, 2003, Luber recorded the Assignment together with a Deed of Confirmation dated August 7, 2003. He also recorded a deed that was executed by Jannettarose Greene, Trustee, as Grantor, to Jannettarose Greene, Trustee, as Grantee. The deed contained a detailed description of the property located at 629 E. Wadsworth Avenue in Philadelphia.[24]

[21] Petitioner's Memorandum at 2.
[22] Petitioner's Memorandum at 3 & Ex. R-3.
[23] Petitioner's Memorandum at 3.
[24] Petitioner's Memorandum at 3-4 & Ex. P-3 & Ex. P-8.

Legal Analysis

An Action seeking a declaratory judgment is governed by the Declaratory Judgments Act, 42 Pa.C.S.A. §§ 7531 et seq. Under section 7533 of that Act, a fiduciary or trustee may seek a declaration of certain legal rights or relations:

> Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.
> 42 Pa.C.S. § 7533

The Act is broad in scope and is liberally construed but there are limitations. There must, for instance, be an actual controversy and a plaintiff seeking a declaratory judgment must establish an interest that is "direct, substantial and present." Bromwell, Personal Representative of the Estate of Elizabeth Bromwell, 716 A.2d 667, 670 (Pa. Super. 1998). Orphans' courts commonly render declaratory judgments where appropriate when "a declaratory decree would expedite the administration of the estate and avoid protracted litigation." Lowell Estate, 9 Fid. Rep. 235,237 (Tioga Cty. O.C. 1959)(declaratory judgment to determine whether bonds found in safety deposit box belonged to decedent's estate or his widow). In such cases, a declaratory judgment may be based on the petition, answer, hearing and any relevant documents. See, e.g., Herr Estate, 9 Fid. Rep. 414, 415 (Lancaster Cty. O.C. 1959), decree as modified aff'd, 400 Pa. 90, 161 A.2d 32 (1960).

It is well established that no particular form of words is necessary to express the intention to create a trust. In fact, the intention to create a trust may be expressed orally,

in writing or by conduct but with language or conduct that is clear and unambiguous. Bair v. Snyder County State Bank, 314 Pa. 85, 89, 171 A. 274, 275 (1934). In addition to intention, a Trust cannot be formed without a trust res. As the Pennsylvania Supreme Court observed in Bair, " [i]n analyzing a situation to determine the presence or absence of a trust, second in importance only to the manifested intention of the settlor to create a trust is the presence of a trust res—specific, segregated, earmarked property or interests therein." Id., 314 Pa. at 90, 171 A. at 275-76. In fact, "a trust without a res is impossible." Id. , 314 Pa. at 91, 171 A. at 276. In analyzing whether a valid trust exists, courts must therefore determine whether there has been a complete delivery of the trust res to the trustee. Smith Estate, 18 Fid. Rep. 481, 488 (Allegheny Cty. O.C. 1968), aff'd on different grounds, 435 Pa. 258, 256 A.2d 130 (1969). Delivery, either active or constructive, must be "of a nature sufficient not only to divest the donor of all dominion over the property but also invest the donee with complete control over the subject matter of the gift." Kerwin Estate, 371 Pa. 147, 159, 89 A.2d 332, 338 (1952).

In the present case, the critical issue is whether there was delivery of the assets of Charlie Mae Moore Brown to the Trust executed on June 23, 2003. Although the petitioner raises as a threshold issue the validity of the Trust Agreement executed by Charlie Mae Moore Brown on June 23, 2003,[25] a review of the record suggests that this issue is not in dispute based on the Respondents' memorandum and evidence presented at the hearing. Instead, the respondents Tamara and Samuel Brown focus on the validity or effectiveness of the blanket assignment to transfer Charlie's various assets into that trust.[26] Admittedly, the respondents suggest certain irregularities in the execution of the

[25] Petitioner's Memorandum at 5.
[26] See Respondents' 6/13/2005 Memorandum at 4-16.

Trust, noting, for instance, that neither the Trust nor the Assignment were signed before any witnesses other than Luber, the attorney who drafted them.[27] In addition, in their answer to the declaratory judgment petition, the respondents assert that Charlie lacked the capacity to sign the trust due to her incapacity in the hospital where she was under medication.[28] Nonetheless, at the hearing the respondents did not present any evidence—medical or otherwise—of Charlie's alleged incapacity other than the testimony of her attorney, Mr. Luber.[29] It is therefore necessary to focus clearly on the main issue pending between the parties: the effectiveness of the blanket Assignment to transfer Charlie's assets into the Trust.

In determining whether assets have been conveyed to a trust, courts have engaged in careful analysis of the nature of the particular assets, the requirements to assure its transfer and whether those actions were taken to assure delivery to the trust. See, e.g., McClements v. McClements, 411 Pa. 257, 191 A.2d 814 (1963)(The transfer of the registration of stock ownership on the books of the corporation in this case constituted sufficient legal delivery to a trust res); In re Refiore, 160 Pa. Super. 305, 310, 50 A.2d 523, 525-26 (1947)(No trust was created where there was no delivery of assets consisting of postal savings certificates, money or stock certificates pursuant to the applicable statutory provisions); Bair v. Snyder County, 314 Pa. at 90-92, 171 A. at 275-77(No trust was created where certificate of deposits and/or checks were not clearly segregated as trust res); McCune Estate, 3 Fid. Rep. 2d 95, 107-08 (Allegheny Cty. O.C. 1983)(Although settlor manifested intent to create a trust, she was also required-- but failed-- to make delivery of stock assets to the trust and to "segregate specific ear-

[27] Respondents' 6/13/2005 Memorandum at 2.
[28] Respondents' 11/3/2003 Answer to Petition for Declaratory Judgment, ¶ 1.
[29] 11/16/2004 N.T. at 131-32.

marked property as passing into trust corpus"); Smith Estate, 18 Fid. Rep. at 490 (Even though a bank denominated as trustee was holding decedent's securities, there was no trust res where decedent failed to clearly indicate that those securities had been delivered to the bank as trustee). Determining whether adequate delivery of assets has occurred requires a careful case by case and even asset by asset analysis. Ash Trust, 20 Fid. Rep. 353, 357, 48 Pa. D. & C. 2d 629 (Phila. Cty. O.C. 1969)(analyzing facts to determine adequacy of transfer of stock to trust after setting forth the preferred method for doing so).

In resolving this issue, both parties necessarily focus not on the broad issue of the Assignment's general enforceability but rather on its enforceability as to each particular asset. They agree that Charlie's assets can be divided into four broad categories:

1) Tangible Personal Property which includes furnishings in the residence and two automobiles;
2) Intangible Personal Property: four bank accounts;
3) Real Estate: the residence and the Egg Harbor Land, and;
4) Non-Probate assets: the IRA and 403(b) accounts with Lincoln, Life Insurance Properties, retirement death benefits from the School District of Pennsylvania, and the PSERS retirement account. [30]

Tangible Personal Property

Furnishings in the Residence

Petitioner Greene maintains that the furnishings in Charlie Mae Moore Brown's residence were conveyed by the June 23, 2003 Assignment and thus are assets of the Trust. She further asserts that the Respondents concede this issue in their Answer to the declaratory judgment petition.[31] Petitioner's assertion is borne out by analysis of the

[30] Petitioner's Memorandum at 8-9; Respondents' 6/13/2005 Memorandum at 4-5. The Respondents state that there were three jointly held bank accounts. Id.
[31] Petitioner's Memorandum at 9.

Respondents' Answer to the Declaratory Judgment petition. In paragraph 14, for instance, Respondents state: "Furthermore, to the extent that the Trust Agreement is valid, Respondents contend that the Assignment failed to lawfully transfer title in all assets but tangible personal property."[32] They repeat this exception as to tangible personal property in paragraph 16 of their Answer. Since Respondents in their memorandum characterize the furnishings in decedent's residence as tangible personal property,[33] by admission the furnishings in the residence are Trust assets.

The Two Automobiles

In their joint stipulation of facts, the parties agree that among Ms. Brown's assets were two automobiles: a 1995 Ford Contour and a 1997 Ford Contour Sport. The respondents maintain that the assignment did not legally transfer decedent's vehicles to the trust because of a failure to comply with 75 Pa.C.S. §1111 by executing a Certificate of Title in the name of the Trust.[34] Section 1111 provides:

> (a) DUTY OF TRANSFEROR – In the event of the sale or transfer of the ownership of a vehicle within this Commonwealth, the owner shall execute an assignment and warranty of title to the transferee in the space provided in the certificate or as the department prescribes, sworn to before a notary public or other officer empowered to administer oaths or verified by a wholesale vehicle auction licensed by the State Board of Vehicle Manufacturers, Dealers and Salespersons, or its employee, or an issuing agent who is licensed as a vehicle dealer by the State Board of Vehicle Manufacturers, Dealers and Salespersons, or its employee, and deliver the certificate to the transferee at the time of the delivery of the vehicle.
> 75 Pa.C.S. §1111(a).

Section 1111 further places a duty on the transferee:

> (b) DUTY OF TRANSFEREE – Except as otherwise provided in section 1113 (relating to transfer to or from manufacturer or dealer) the transferee shall,

[32] Respondents' Answer to Petition for Declaratory Judgment, ¶14.
[33] Respondents' 6/13/2005 Memorandum at 4-5. The Respondents list only 2 items as "tangible personal property:" the furnishings and the two automobiles. Disposition of the automobiles raises different issues as discussed below.
[34] Respondents' 6/13/2005 Memorandum at 5.

> within ten days of the assignment or reassignment of the certificate of title, apply for a new title by presenting to the department the properly completed certificate of title, sworn to before a notary public or other officer empowered to administer oaths, or verified before an issuing agent who is licensed as a vehicle dealer by the State Board of Vehicle Manufacturers, Dealers and Salespersons, or its employee, and accompanied by such forms as the department may require.
> 75 Pa.C.S. § 1111(b).

Ms. Greene argues, however, that under Pennsylvania precedent the failure of the decedent to sign the certificates of title prior to her death is not determinative of the ownership of the vehicles. To support this argument, she cites two cases that deal with the transfer of title of an automobile by a sale in terms of the Uniform Commercial code provisions for the transfer of title. See, e.g. In re Hennessy, 343 Pa. Super 293, 494 A.2d 853 (1985)(Even though plaintiff did not have certificate of title to a truck that was stolen, he was deemed the rightful owner based on evidence of his purchase of the truck); Hadid v. Budget Rent-A-Car, 22 Pa. D & C 3d 349, 354 (Lehigh Cty. Common Pleas 1982)("It is well settled that the certificate of title is not conclusive evidence of ownership of a motor vehicle"). Petitioner also invokes a case focusing on the validity of an inter vivos gift of a car by a husband to his wife in Thompson v. Thompson, 16 Pa. D & C 3d 778 (Del. Cty. Common Pleas 1981). Although the husband in Thompson retained the certificate of title in his name, the court concluded the gift was valid based on testimony of five witnesses to the husband's presentation of the keys to his wife. The evidence of donative intent and possession of the car by the wife, the court concluded, overcame any presumption of ownership created by the certificate of title. Thompson, 16 Pa. D & C 3d at 781-82. Under Pennsylvania law, therefore, a certificate of title is evidence of the ownership of an automobile, but it is not conclusive and can be overcome by other evidence.

In battling over the failure to execute a certificate of title in the name of the Trust for either vehicle, the parties miss an extremely significant detail. Neither acknowledges that the Certificate of Title for the 1995 Ford lists a name in addition to Charlie Mae Moore Brown as a record owner of that vehicle. In fact, two names are listed as registered owners: Charlie Mae Brown and Samuel J. Brown. The certificate is attached to the parties' stipulation as Exhibit E. No certificate of title was submitted as to the other vehicle, the 1997 Ford Contour. The inclusion of Samuel Brown's name on the certificate of title as a registered owner for the 1995 Ford is significant on various scores. It creates a presumption that Samuel Brown is an owner of the 1995 Ford so that his ownership cannot be divested by a unilateral act of Ms. Brown absent evidence to the contrary. It is also a strong indication of Ms. Brown's intent that he remain as its owner. In these circumstances, the failure of the decedent or her agents to adhere to 75 Pa.C.S. section 1111 to clarify this issue of title is fatal to the claims of the Trustee that the 1995 Ford is a Trust asset.

No ruling can be rendered as to the title of the 1997 Ford Contour Spirit because its Certificate of Title was not attached to the parties' stipulation. If this 1997 Ford Contour Spirit was in joint names, this court would, for reasons expressed above, award ownership to the surviving co-owner. If the certificate of title is in Ms. Brown's name alone, ownership of the vehicle would be with the Trust based upon Ms. Brown's donative intent evidenced by the June 23, 2003 Assignment. See Ex. P-3.

Intangible Personal Property

According to the parties' memoranda and stipulation of facts, the intangible personal property of Charlie Mae Brown includes the following four bank accounts:

Sovereign Bank Account No.0040272933	$2,399.00
Sovereign Bank Account No. 0304283112	$ 206.97
PNC Bank Account No. 83-8521-7438	$ 120.74
Freedom Credit Union Bank Account No. 073079	$ 749.20

The Sovereign Bank Accounts

A key issue in determining whether the Sovereign Bank Accounts are assets of the Trust relates to their nature and whether or not they were joint accounts. During the November 16, 2004 hearing, petitioner did not present any evidence as to the nature of the two Sovereign Bank accounts at issue.[35] The only testimony on this issue at the hearing came from a cross-examination of attorney Luber by counsel for Sovereign. In that testimony, Luber conceded that prior to Charlie Mae Brown's death, he had failed to ascertain either her account numbers or the nature of those accounts. He did not know the balance in those accounts. He did not know in July 2003 that they were joint accounts in the names of Charlie's children, Samuel and Tamara although "I believe I did find that out."[36] Finally, he conceded that he had not communicated with Sovereign bank prior to Charlie Brown's death.[37] Towards the end of the hearing, Sovereign made a motion for entry of a non-suit based on the petitioner's failure to present any evidence to support the allegation in her petition that Sovereign acted improperly. This court granted that motion based on the record presented.

Ms. Greene now argues that this nonsuit is in error. Her argument on this general issue of the nonsuit is unpersuasive in the absence of any evidence as to the Sovereign

[35] See 11/16/2004 N.T. at 82-84.
[36] 11/16/2004 N.T. at 83.
[37] 11/16/2004 N.T. at 83-84.

accounts at the hearing. As to one point, however, Ms. Greene is correct. A letter dated August 20, 2003 from a staff attorney for Sovereign Bank that was attached as Exhibit F to the Petition for Declaratory Judgment should be considered as part of the record.[38] That letter, rather than supporting Ms. Greene's arguments, further buttresses the grant of a nonsuit on behalf of Sovereign Bank.

In the letter dated August 20, 2003 that petitioner attached as Exhibit F, a staff attorney for Sovereign Bank states that the two relevant accounts at Sovereign were titled as joint accounts with rights of survivorship.[39] Moreover, in its answer to the petition, Sovereign Bank identified the two accounts more specifically as Account number 0304283112, which was titled as Charlie Mae Brown or Tamara Brown Douglass or Samuel J. Brown, IV, and account number 0040272933, which was titled as Tamara Brown Douglass or Charlie Mae Brown or Samuel J. Brown IV. Because these were joint accounts, Sovereign took the position that upon the death of Charlie Mae Brown on July 18, 2003, the funds belonged to the surviving joint owners, Tamara Brown or Samuel Brown.[40]

The joint stipulation of the parties likewise identified the relevant Sovereign accounts as Account Number 0040272933 and number 0304283112. Although the stipulation does not address the nature of those accounts, the record supports the conclusion that the two Sovereign accounts were joint accounts based on the following: (1) petitioner's attachment of Exhibit F to her petition for declaratory relief; (2) uncontradicted bank records attached to Sovereign's Answer as Exhibit A; (3)

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[38] Petitioner's Memorandum at 39-40.
[39] 8/28/2003 Petition for Declaratory Judgment, Ex. F.
[40] See Sovereign's 10/30/2003 Answer, ¶4.

petitioner's ostensible concession of this point in her memorandum of law,[41] and; (4) Luber's evasive admission that he believed he did find out that the accounts were joint.[42]

Since the two Sovereign accounts were joint accounts, Chapter 63 of the Probate, Estates and Fiduciaries Code controls. As the Pennsylvania Superior Court has explained, prior to enactment of Chapter 63, common law principles were invoked to determine property rights among parties to multiple party accounts. The signatures of all parties to a joint bank account were deemed prima facie evidence that the party funding the account intended to make an inter vivos gift to the other joint tenants. The burden then shifted to the contestant to rebut that presumption by clear and convincing evidence. Estate of Meyers, 434 Pa. Super. 165, 169-70, 642 A.2d 525, 527 (1994).

This issue is now controlled by statute. Section 6304 provides:

> (a) JOINT ACCOUNT. – Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account was created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under 6303 (relating to ownership during lifetime) augmented by an equal per capita share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties. 20 Pa.C.S.A. § 6304(a)(emphasis added).

These provisions "wrought far-reaching changes in the law regarding joint bank accounts." Id., 434 Pa. Super. at 170, 642 A.2d at 527. As the Meyers court observed:

> As to the ownership of funds held in a joint account, the statute favors the surviving party over the estate of the decedent. By 20 Pa.C.S. §6304, the legislature has created a statutory presumption that survivorship rights are intended when a joint account is created. This presumption can only be overcome by clear and convincing evidence of a contrary intent.
> Estate of Meyers, 434 Pa. Super. at 171, 642 A.2d at 528.

[41] Petitioner's Memorandum of Law at 11.
[42] 11/16/2004 N.T. at 83.

Significantly, the "burden of establishing a contrary intent is on the party who opposes the presumption of survivorship." Id. In the instant case, at the time of Charlie Mae Moore Brown's death on July 18, 2005, the two joint Sovereign accounts became the property of the surviving co-owners Tamara Brown Douglass and Samuel J. Brown. They cannot be claimed as trust assets.

This result is in accord with the Sovereign Bank documents attached to the parties' Stipulation of Facts as Exhibit J. The Sovereign Bank Personal Deposit Account Agreement ("SBPDAA") provides under the heading "Joint Accounts" that "[a]ll owners of a joint Account are joint tenants with right of survivorship" and "[o]n the death of a joint owner, the funds in the account belong to the surviving joint owner."[43] The SBPDAA further provides that "[t]he assignment of a checking Account is prohibited and will not be recognized by us. Savings, money market savings and certificate of deposit Accounts are not negotiable and not transferable except on our books."[44] Finally, the Sovereign Bank Personal Deposit Account Agreement sets forth specific procedures for changing or closing an account:

> You may close your account at any time by visiting one of our Community Banking Offices or in writing. If you notify us in writing your signature on your letter must be notified. You must tell us that you are closing your Account. Merely withdrawing all the funds in your account does not automatically close your Account. We reserve the right to require such documents, authorizations or identifications as we may reasonably deem necessary or appropriate before we close your account.[45]

Petitioner argues that the Assignment manifested an intent to close the account and reopen it in the name of the trust. She also invokes 20 Pa.C.S.§ 6303, which provides that a "joint account belongs, during the lifetime of all parties, to the parties in

[43] SBPDAA at 1-2.
[44] SBPDAA at 14.
[45] SBPDAA at 14.

proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent" to support her claim that the decedent had the right to withdraw her funds during her lifetime.[46] This argument, however, misses and obscures the key point at issue. There is no dispute that Charlie Mae Moore Brown—or her agents—could have transferred the Sovereign accounts to her trust during her lifetime. But Luber--her attorney—concedes that neither he nor anyone else made that attempt until after her death.[47] Under these facts, the Trust cannot claim the Sovereign accounts as assets.

The PNC Bank Account

The parties stipulate that PNC Bank Account Number 83-8521-7438 in the amount of $120.74 was among Charlie Brown's assets but the exact nature of that account has not been documented. PNC, in contrast to Sovereign Bank, did not file an Answer to Ms. Greene' petition. Although Samuel Brown testified at the hearing that the PNC account was a joint account,[48] no supporting documentation was presented. Instead, the parties submit "PNC's Branch Policies and Procedures" as Exhibit K to their stipulation for resolution of this issue. That document sets forth procedures, inter alia, for adding a name or changing the name to an account. To add a name to an account, a new account registration and agreement form signed by all accountholders must be

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[46] See Petitioner's Memorandum at 12 (emphasis added)(citing 20 Pa.C.S. §6303 and Wilhelm v. Wilhelm, 441 Pa. Super. 230, 657 A.2d 34 (1995). Petitioner cavalierly suggests that decedent was the sole contributor to these accounts without any reference to the record by merely stating "and there is no reason to believe nor was there any evidence to support otherwise." Id. In addition, Wilhelm v. Wilhelm has no relevance to the key issue raised by the instant case since in Wilhelm the court focused on whether a joint tenant who contributed all the funds into a joint account could withdraw money from the joint account during his lifetime and not on the effect of the death of a joint party on the right of survivorship in a joint account.

[47] 11/16/2004 N.T. at 84-85; see also Petitioner's Memorandum at 2 ("Unfortunately, between June 23, 2003 and July 17, 2003, neither Decedent nor Luber was able to notify the various custodians of her assets and other depository institutions of the fact that Decedent had transferred title to, and/or designated as her beneficiary, the Trust pursuant to the Assignment").

[48] 11/16/2004 N.T. at 113.

submitted. To change or remove a beneficiary, it is necessary to "submit a service/maintenance request for client maintenance," and then, it is necessary to obtain a new account registration and agreement form.[49] There is no evidence that any of these steps were taken to transfer the PNC account into the Trust.[50] Hence, it cannot be claimed as a Trust asset.

Freedom Credit Union Bank Account

The final bank account that the parties stipulate to as an asset belonging to Charlie Mae Moore Brown is a Freedom Credit Union Bank Account Number 073079 in the amount of $749.20. They present as Exhibit L a Freedom Credit Union Tentative Trust Application which requires the applicant to set forth such information as the trustee's name, the beneficiary, birthdates and social security numbers. The petitioner admits that she did not even know of this account until testimony by Brown at the hearing,[51] thereby acknowledging no attempts were made to transfer it to the trust res. Although she blithely concludes that "this Court can readily conclude that the Assignment, when delivered to Freedom Credit Union, will satisfy any internal policy or procedure that it was Decedent's intent, as of June 123,2003, (sic) to transfer her account to (close and reopen the account in the name of) her Trust, "[52] this misses the point. Despite the alleged intent, there was no delivery of this Freedom Credit Union account to the Trust. Courts are quite clear that "it is well recognized that delivery is essential to the

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[49] Ex. K, Stipulation.

[50] See Petitioner's Memorandum of Law at 13. Petitioner does not claim to have complied with any of these requirements, but merely states that "PNC Bank was contacted by Luber shortly after Decedent's death to advise them of the transfer of ownership of the account." Id. No written documentation in support is presented other than attorney time references beginning after Ms. Moore's death on July 31. See Ex. R-1. Moreover, when testifying about the entities he contacted regarding Charlie's assets, Luber did not mention the PNC account specifically. See 11/16/2004 N.T. at 32.

[51] Petitioner's Memorandum at 14.

[52] Petitioner's Memorandum at 14.

consummation of the creation of a trust and until that is done the transaction remains imperfect and is unenforceable." In re Refior, 160 Pa. Super. at 311, 50 A.2d at 526 (1947). Under this standard, the Freedom Credit Union Account is not a trust asset.

Real Estate

According to the parties' stipulation, Charlie Mae Moore Brown's assets included two pieces of real estate: (1) a Philadelphia Residence with an approximate value of $197,000 located at 629 E. Wadsworth Avenue and (2) New Jersey property with an approximate value of $50,000 located at 3418 Amherst Drive, Egg Harbor Township. The petitioner maintains that these properties were transferred to the Trust on June 23, 2003 with the execution of the Trust Agreement and the Assignment.[53] She notes that on August 26, 2003, her attorney Luber recorded the Assignment together with a Deed of Confirmation, conveying the Residence to herself as Grantee and in her capacity as Trustee of the Trust in the Recorder of Deeds Office of Philadelphia.[54]

The Respondents deny that the decedent's real property was legally transferred to the Trust in both their answer to Ms. Greene's petition and in a petition they subsequently filed to compel transfer of the real property to the Estate of Charlie Mae Moore Brown.[55] As a threshold issue, the jurisdiction of this court to resolve this dispute as to title of realty should be briefly addressed. This issue was considered in Zima Estate, 9 Fid. Rep. 676 (Luzerne Cty. O.C. 1959), involving a declaratory judgment action as to the validity of real estate in the estate of a decedent. That court cited Anderson on Declaratory

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[53] Petition for Declaratory Judgment, ¶¶ 10 & 16.
[54] Petitioner's Memorandum at 4. See also Ex. P-8.
[55] See Respondent's 11/3/03 Answer, ¶10. In their petition to compel transfer of the real property, the respondents assert that title of the property should pass through the Estate rather than through the Trust. They also assert that when Greene transferred title to the property of the trust, at "no time did she have the consent or permission of the co-trustee, Douglass, to transfer title. 11/7/03 Petition to Transfer Title to Real Estate, ¶ 8.

Judgments for the proposition that a declaratory judgment action may appropriately function analogously to an action to quiet title. Id. at 679. Moreover, 20 Pa.C.S.A. § 711(3) gives the Orphans' Court mandatory jurisdiction over "the administration and distribution of real and personal property of inter vivos trusts."

According to the Respondents, the central issue in the instant case is "whether the Assignment and subsequent deed comply with the statute of frauds."[56] They both stipulate that Ms. Brown's assets consisted of her Philadelphia residence and the Egg Harbor, New Jersey property. A critical first step in claiming the Egg Harbor property as a Trust asset, however, is establishing Charlie Mae Moore Brown's title to that property. Unfortunately, the documents attached to the parties' stipulation fall short of establishing this threshold fact. They concede that they were unable to locate a deed for the property at 3418 Amherst Drive, Egg Harbor, and instead present an abstract of that deed. That abstract, however, lists Ocean View Land Development Company, Inc. as Grantor and William Brice and Louise Brice, as grantees. Although the parties stipulate that this property was inherited by Charlie Brown,[57] they present no documentation whatsoever to establish this inheritance. Hence, a ruling as to the title of this property lacks the requisite record.

The remaining issue as to the real estate, therefore, is whether the Assignment and deed satisfy the statute of frauds so that Charlie's interest in her Philadelphia residence was conveyed to the Trust. Although oral trusts are enforceable, trusts involving real estate must be in writing in compliance with the Statute of Frauds. Estate of Dotterrer,

[56] Respondents' 6/13/2005 Memorandum at 9. The petitioner's rambling analysis of the real estate issue focuses initially on the inapplicability of 21 P.S. § 951. Petitioner's Memorandum at 15. That issue, however, is not raised by the respondents.

[57] Stipulation, ¶ 6 and Ex. F.

397 Pa. Super. 103, 106, 579 A.2d 952, 954 (1990). For example, the Statute of Frauds relating to declarations of trusts and conveyance of land provides:

> All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, and all grants and assignments thereof, shall be manifested by writing, signed by the party holding the title thereof, or by his last will in writing, or else to be void; Provided, That where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by implication or construction of law, or be transferred or extinguished by act or operation of law, then and in any case such trust or confidence shall be of the like force and effect as if this act had not been passed.
> 33 P.S. § 2 (Purdons 2005). See also 33 P.S. § 1 (estates in land not to be assigned except by writing).

Unfortunately, the Dotterrer court observed, the "Statute of Frauds contains no directive as to what writing constitutes a sufficient memorandum, but prior decisions have established that to satisfy the statute, the memorandum need only contain a sufficient statement of the terms of the agreement and the signature of the grantor." Id.

In the instant case, both the June 23, 2003 Assignment and Trust Agreement were signed by Charlie Mae Moore Brown thereby satisfying one key requirement of the Statute of Frauds. The June 23rd Assignment further provides that "Charlie Mae Moore Brown, conveys to herself as Trustee of the Charlie Mae Moore Brown Revocable Trust dated June 23, 2003 (the "Trust"), all of her right, title and interest in and to assets of every kind, including but not limited to real property…."[58] The Respondents concede that "[b]oth parties acknowledge that Decedent owned two pieces of real estate, her Residence and the Egg Harbor land."[59] Even though the June 23rd assignment explicitly states that it conveys to Charlie Mae Moore Brown, as trustee of her Trust, "all" of her "title" to her "real estate," Respondents nonetheless argue that the assignment does not satisfy the Statute of Frauds "because it does not sufficiently describe the number or

[58] June 23, 2003 Assignment, Ex. B to the 8/23/2003 Petition for Declaratory Judgment.
[59] Respondents' 6/13/05 Memorandum at 9.

location of either the Residence or the Egg Harbor land."[60] Their argument, however, is undermined by the precedent they invoke. They cite, for instance, Shaw v. Cornman, 271 Pa. 260, 114 A. 632 (1921) for the general proposition that under Pennsylvania law the description of realty must be specific. In Shaw, however, the Pennsylvania Supreme Court concluded that the description of the property as the land "you now occupy" was sufficient to satisfy the Statute of Frauds even as it observed more generally that in agreements for the sale of land the "description should be clear enough to enable a surveyor to locate the land with certainty." In explaining its conclusion, the Shaw court noted that the property at issue "had been occupied by defendants under a lease from decedent for some time and it was the only land so leased." Id., 271 Pa. at 264, 114 A. at 634. The land was thus easily identified by virtue of its possession. Similarly, the assignment by Charlie Brown references all of her real property, which was easily identifiable by her possession as evidenced by the parties' stipulation.

Respondents also cite Hammer & Dauler v. McEldowney, 46 Pa. 334 (Pa. 1863), which they characterize as finding a writing unenforceable because of the absence of street numbers and property descriptions. While this is true, the court also emphasized that the writing regarding the sale of houses on Smithfield street failed "to disclose to whom they belonged at the date of the alleged contract…" Id., 46 Pa. at 336. See Ranney v. Byers, 219 Pa. 332, 339, 68 A. 971, 974 (1908)(the reference to "houses on Smithfield Street" failed to disclose any particular lot").

In the third case cited by respondents, Barnes v. Rea, 219 Pa. 287, 68 A.839 (1908), the court concluded that a writing seeking to convey "thirty-nine acres, more or less, of coal underlying a certain tract of land in Cumberland township" was not

[60] Respondents' 6/13/2005 Memorandum at 9.

sufficient under the Statute of Fraud for failure to call the tract by any name or "giving any adjoining owners or fixing any natural boundaries, or designating in any manner by reference to deed, will, warrant, number, source of title, or in any other manner what tract of land was intended to be conveyed." Id., 219 Pa at 296, 68 A. at 842. Although the Barnes case ostensibly focused on the conveyance of a discrete piece of property, and hence necessitated quite specific descriptive language, the assignment by Charlie Brown was for all her property.

A case that is much more on point is Suchan v. Swope, 357 Pa. 16, 53 A.2d 116 (1947). In Suchan, the Pennsylvania Supreme Court concluded that the reference to "my farm" sufficed to satisfy the statute of frauds for specific performance of a contract for the sale of land. In so doing, it emphasized that "our reports are replete with cases in [61]which specific performance was granted, declarations of trust held valid or other relief granted, where the description of the property was not more definite or detailed than that in the present instance." Id., 53 A.2d at 118 (citing cases).[62] Under these precedents, therefore, Charlie Brown's reference to her real estate would satisfy the statute of frauds. Since Charlie was alive at the time the assignment was executed, there would have been constructive delivery of this interest in real property to her as trustee of the June 23, 2003 Trust. Moreover, the Assignment and a deed were subsequently recorded with a detailed description of the property.[63]

This liberal interpretation of Ms. Brown's reference to her "real estate" to effectuate her intent is supported by the well established principle that in "interpreting a

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[61] See, e.g., Restatement (Second) of Trusts , § 32(m)("If the owner of property declares himself trustee of the property a transfer of the property is neither necessary nor appropriate").
[62] See also Smith & Fleck's Appeal, 69 Pa. 474, 480 (1872)(real property was sufficiently described as "said land is all that piece bought of Rose by Thomas Smith and Porter Fleck").
[63] Ex. P-3 and P-8.

trust instrument, the intent of the settlor is paramount and if that intent is not contrary to law it must prevail." Estate of Catherine Taylor, 361 Pa. Super. 395, 398, 522 A.2d 641, 642 (1987). See also Wolters Estate, 359 Pa. 520, 525, 59 A.2d 147, 149 (1948)("the intention of the creator of a trust is the guide primarily to be followed in interpreting the intended effect of the indenture"). Moreover, the Pennsylvania Supreme Court has emphasized that a factor to consider in analyzing the adequacy of a description of land is "whether all the parties interested in the trust know the property, the subject matter involved." Ranney v. Byers, 219 Pa. 332, 335, 68 A. 971, 972 (1908). In light of the parties' stipulation that Ms. Brown's real property included her Philadelphia residence, the expressed intent in the June 23rd Assignment to convey all her real property to the Trust must as a matter of common sense be given effect.

A related—but significant—issue is whether the deed that was recorded by Janettarose L. Greene is accurate and valid. The Respondents in their separate petition to compel transfer of title note that on August 7, 2003 Ms. Greene transferred title to the Philadelphia property to the Trust without the consent of the co-trustee.[64] In fact, the parties were unable to stipulate as to the proper deed for the Philadelphia residence at 629 E. Wadsworth Avenue. Ms. Greene asserts that the deed at exhibit H is valid when it provides in relevant parts as follows:

> BETWEEN Janettarose Greene, Trustee of the Charlie Mae Moore Brown Revocable Trust Created Under Agreement dated June 23, 2003 (hereinafter called the "Grantor"), of the one part, and
>
> Janettarose Greene, Trustee of the Charlie Mae Moore Brown Revocable Trust Created Under Agreement dated June 23, 2003 (hereinafter called the "Grantee"), of the other part,

[64] See 11/7/2003 Petition to Transfer Title.

> WHEREAS, by Trust Agreement dated June 23, 2003, Charlie Mae Moore Brown created the Charlie Mae Moore Brown Revocable Trust (the "Trust"); and
>
> WHEREAS, by Assignment dated June 23, 2003, Charlie Mae Moore Brown did convey to herself as Trustee of the Trust, all of her right, title and interest in and to all of her assets of every kind, including but not limited to, real property; and
>
> WHEREAS, on July 18, 2003, without executing a formal Deed to confirm the transfer of her real estate to the Trust made by said Assignment, Charlie Mae Moore Brown died.
>
> NOW, THEREFORE, WITNESSETH that the said Grantor, as successor Trustee of the Trust, in order to confirm the transfer of that certain real property more fully described on Schedule "A" attached hereto and made a part hereof, made by Charlie Mae Moore Brown to herself as Trustee of the Trust, by Assignment dated June 23, 2003, a copy of which is attached as Schedule "B" and made a part hereof, for and in consideration of the sum of One ($1.00) Dollar lawful money of the United States of America, unto her well and truly paid by the said Grantee, at or before the sealing and delivery hereof, the receipt of whereof is hereby acknowledged, granted, bargained and sold, released and confirmed, and by these presents, grant bargain and sell, release and confirm unto the said Grantee, their successors and assigns.[65]

What is significant about this deed is its reference solely to Janettarose Greene as Trustee of the Charlie Mae Moore Brown Revocable Trust created under Agreement dated June 23, 2003. That Trust Agreement, however, named two successor co-trustees to serve after Charlie's death: Janettarose Greene and Tamara Brown Douglass.[66] On its face, therefore, the deed is invalid for failure to include Tamara's name and signature.[67] In naming Tamara as a successor co-trustee (as well as one of the primary beneficiaries of the Trust), Charlie Brown clearly intended that Tamara should play a significant role in the administration of the Trust and hence of the Philadelphia property. In accord with

[65] Stipulation, Exhibit H.
[66] Ex. P-2, Trust Agreement, Art. VI, Section A, 3.
[67] The respondents in their petition to compel the transfer of title seek an order compelling Ms. Greene to transfer title of the Residence to the Estate. Because this court concludes that the assignment sufficed to transfer title to the Trust, this particular relief cannot be granted.

this intent, the deed is stricken so that a new deed may be filed reflecting the two co-trustees of the Trust.

Petitioner argues at length that Tamara Douglass should be deemed disabled under the provisions of the Trust Agreement, resulting in her effective resignation as successor co-trustee. The reason for this claim is Tamara's refusal to respond to "repeated inquiries from Luber and Greene as to whether she was prepared to act as a successor co-trustee" as well as her application for letters of administration for the decedent's estate.[68] More specifically, petitioner references attorney Luber's letter to Tamara dated August 12, 2003, which stated that the Trust was "effectively a substitute for a Last Will and Testament." Ex. R-3. Luber went on to inform Tamara that he had been advised that after her mother's funeral she had been admitted to Friend's Hospital due to a health condition. He then asserted that at "this point in time, Janettarose can no longer wait for you to appear and/or decide whether you have any interest in serving as a Trustee of your mother's Trust." Ex. R-3. He then told Tamara that her "actions to date fall within the definition of disability as set forth in the Trust and thus you have effectively resigned as trustee of the Trust." Luber concluded that if he did not hear from Tamara by 5:00 p.m on August 15, "we will proceed with the administration of your mother's Trust as if you have resigned." Ex. R-3.

This letter, instead of "documenting" Tamara's "disability" and "resignation" as Trustee, as petitioner suggests, is heavy-handed and bullying when seen in the context of all the facts of this case. First, Luber met with Charlie Mae Brown on June 23, 2003 after being summoned to do so by Greene. On that date, Ms. Brown executed the Trust, Assignment and Powers of Attorney naming her two children. Luber left for vacation on

[68] Petitioner's Memorandum at 33.

July 10, without making any effort to transfer her assets to the Trust.[69] Charlie died on July 18, 2003, and upon returning from vacation on July 20, 2003, Luber began contacting "all of the custodians and third parties holding Decedent's assets to inform them of the Trust and Assignment."[70] On August 13, 2005, Luber learned that Letters of Administration had been issued to Tamara and Samuel Brown after they filed their application on August 6, 2003.[71] Although petitioner characterizes Tamara's application for letters of administration as evidence of her resignation as trustee, this assertion is unconvincing especially in light of the provisions of the Trust Agreement that make provisions for distributions to the Estate and its Executors.[72] If the Trust Agreement recognizes the existence of Charlie's estate, Tamara cannot be faulted for seeking to represent it.

The August 12, 2003 letter, therefore, did not serve to remove Tamara as Trustee, though it undoubtedly helped inflame the animosity evidenced by the present dispute. It was clearly the settlor's intent to have Tamara serve in the administration of her Trust. Moreover, Tamara and Samuel Joseph Brown IV were designated as the beneficiaries of the remaining assets in the Trust after allocations of $5,000 to each of Charlie's grandchildren, the $10,000 Scholarship Fund and Tamara's loan repayments. If Ms. Greene seeks to have Tamara removed as a co-trustee, she must file a formal petition to do so. On the present record, the self-serving letter of her counsel does not suffice.

[69] 11/16/2004 N.T. at 29.
[70] Petitioner's Memorandum at 3.
[71] Petitioner's Memorandum at 3-4.
[72] Ex. P-2, Trust Agreement, Article IV, Section A.

Nonprobate Assets

The parties identify four kinds of non probate assets of Charlie Mae Moore Brown: three separate life insurance policies, an IRA and 403(b)(7) retirement account with Lincoln Investment Planning serving as custodian, a retirement account administered by PSERS and termination pay receivable from the School District of Philadelphia.[73] Because the issues raised by these assets vary, they will be analyzed separately.

Life Insurance Policies, IRA Account and 403(b)(7) Retirement Account With Lincoln Investment Planning

The parties agree that under Pennsylvania law, to change the beneficiaries of life insurance policies, it is necessary to follow the procedures set forth by an insurance policy or to comply substantially with those requirements .[74] A key case invoked by both parties is Carruthers v. $21,000, 290 Pa. Super. 54, 434 A.2d 125 (1981), in which the Pennsylvania Superior Court concluded that a holographic will stating the decedent's intent to change the beneficiary of his insurance policies did not suffice to change the beneficiary. The court noted that the insurance policies required written notice to the insurer. In Carruthers, the decedent made no effort to change the beneficiary on his life insurance policies in the three months between writing his holographic will and his death. Although the intent of an insured will be given effect in Pennsylvania if "he does all that he reasonably can under the circumstances to comply with the terms of the policy which permit a change of beneficiary," there was no evidence in Carruthers that the decedent made any attempt to effect the change in the policies. Moreover, the court emphasized

[73] Petitioner's Memorandum at 22; Respondent's 6/13/2005 Memorandum at 10.
[74] Petitioner's Memorandum at 22; Respondents' 6/13/2005 Memorandum at 11.

that the decedent was aware of the need to change the policies since he had done so on prior occasions.

These same principles apply to IRA accounts. See, e.g. Estate of Eugene Golas, 2000 Pa. Super. 122, 751 A.2d 229, 231 (2000)(citing Carruthers). In Golas, however, the Superior Court concluded that the decedent had succeeded in changing the beneficiaries of his IRA account by substantial compliance. In Golas, the decedent executed two change of beneficiary forms for a savings account and life insurance policy while executing his will. He then called his IRA broker and informed him over the phone that he wished to change the beneficiary of his IRA plan. When he was informed that he could not do so over the phone, he requested a change of beneficiary form. The broker told him how to change the designation of the beneficiary to his estate. The decedent was then admitted to the hospital, and once again called his broker for a change of beneficiary form which he was assured would be mailed out to him, but he died before he had received or executed the change of beneficiary form.

Under these facts, the court analyzed whether "the intent of the insured" should be given effect "if he does all that he reasonably can under the circumstances to comply with the terms of the policy which permit a change of beneficiary." Id., 751 A.2d at 231. First the court considered whether the insured had demonstrated the intent to change the beneficiary. Next it analyzed whether "the actions of this decedent, under the facts of this particular case, constitute "substantial compliance." Id., 751 A.2d at 232. In so doing, it found guidance in federal precedent as well as cases from other states applying this principle to conclude that "where a decedent had executed a change in beneficiary form or equivalent writing but some ministerial act by the insurance company was not

completed through no fault of the decedent, effect would be given to the intent of the policyholder and the change in beneficiary was valid." Id., 751 A.2d at 232. Applying these principles to the facts in Golas, the court concluded both that the decedent had the clear intent to change the beneficiary of his IRA account and that he had done everything he possibly could to formally comply with proscribed procedure for changing beneficiaries. Under both Golas and Carruthers, therefore, it is necessary to analyze both the decedent's intent to change beneficiaries as well as the subsequent actions taken by the decedent to effectuate this intent as required by the relevant policies.

In the instant case, the parties made the following stipulations as to the three insurance policies at issue:

Aetna Life Insurance Policy

The parties stipulate that the Aetna Life Insurance Policy (for $25,000) provides that "Life Insurance may not be assigned" and that beneficiaries may be changed by filing a written request at the headquarters of the insured's employer or at Aetna's Home Office.[75]

North American Life Insurance Policy

The North American Life Insurance policy (with net proceeds of $138,762.84) provides that the owner may be changed by absolute assignment as set forth in paragraph 3.33. That paragraph provides: "We are bound by an Assignment only if we receive the original Assignment, or a certified copy, at our Administrative Office and it is recorded by Us." Paragraph 3.35 deals with a change in beneficiary, and provides that the insurer

[75] Stipulation, ¶ 1. See also Ex. A.

"must receive Written Notice informing Us of the change. Upon receipt and acceptance a change takes effect as of the date the Written Notice was signed."[76]

Surety Life Insurance Policy

Finally, the Surety Life Insurance Policy with Net Proceeds of $49,181.73 provides that the owner or beneficiary may be changed while the insured is alive. The insured can make a change by writing to the insurer. The policy further provides that a policy could be assigned but no assignment is binding unless it is written and filed with the insurer.[77]

In her June 23, 2003 Assignment, Charlie Mae Moore Brown designated her Trust "as beneficiary of all 'policies' of every kind, as defined therein, regardless of whether the form of beneficiary designation otherwise required by the payor of such benefits is executed by me at any time after the date of this Assignment."[78] With this inclusion of all policies of every kind into her trust, Ms. Brown expressed her general intent to transfer her three insurance policies to the Trust. The question remains, however, whether she substantially complied with the requirements of the various policies to transfer that interest. See, e.g. Golas, 751 A.2d at 232(where it is clear that decedent intended to change the beneficiary of his IRA, "[w]e next decide whether the actions of this decedent, under the facts of this particular case, constitute 'substantial compliance'"). There is no evidence on record that prior to her death Charlie Mae Moore Brown made any effort whatsoever to notify the insurers of her intent to change the beneficiary of her policies to her trust. This is particularly significant since-- like the decedent in Carruthers-- she can be charged with knowledge of the necessity for documenting this

[76] Stipulation, ¶ 2. See Ex. B.
[77] Stipulation, ¶ 3. See Ex. C
[78] Ex. P-3.

change based on the June 26, 2003 letter from attorney Luber. In that June 26 letter, Luber alerted Charlie to the necessity of executing additional forms to effectuate a change of beneficiary for her insurance policies and IRA account/retirement:

> I am enclosing herein a photocopy of the Revocable Trust you created on June 23, which also incorporates those revisions you requested during our telephone conversation on June 25, and the 'blanket' Assignment you executed transferring all of your assets into the Trust. I have kept both the original or both documents in my files. Notwithstanding the Assignment, as I indicated to you, many of your assets, e.g., real estate and insurance/retirement type assets, require separate documentation to formally transfer the same into your Trust. Thus I will need to prepare a deed (or deeds) to transfer your home (and the New Jersey property) into the Trust and to procure the appropriate change of beneficiary forms from the insurance company and/or the payors of retirement benefits. Ex. P-5 (emphasis added).

In addition, in her memorandum petitioner acknowledges the general requirements necessary to change the beneficiaries of insurance policies and IRA accounts:

> Without repeating verbatim herein all of the applicable policy/plan provisions included in the Stipulation, the general requirements for each are practically the same, i.e., that Decedent notify the company of her desire to change her beneficiary, complete a form, and submit that to the company custodian. Of particular note with respect to the three insurance policies, (i) no particular form is required; and (ii) the change takes effect as of the date the request/notice is signed, not when it is received by the company.[79]

Petitioner, however, failed to present any evidence that any kind of form or written notice was given to the three insurance companies by Charlie Brown, her agents, or her attorney. Somewhat cavalierly, the petitioner concedes:

> The only issue left for consideration, then, is which entities received notice of the existence of the Assignment and Trust Agreement (and as stated above it is not relevant that any such notice may have been received after Decedent's date of death). Luber testified at the Hearing that upon his return to his office on July 21, 2003, and continuing thereafter, he began to contact all persons and entities he knew had custody or control of assets owned by, or payable on the account of the death of Decedent. (Transcript at p. 32). Luber's knowledge, at that time,

[79] Petitioners' Memorandum at 22.

> consisted primarily of those entities identified in the initial e-mail communication he received from Greene (P-1). Those entities included the School District of Pennsylvania, Lincoln, PSERS and the Banks. P-1 also mentions "Sharity Life?", which turned out to be Surety Life Insurance Company. The record is not clear as to when Luber learned of Aetna Life Insurance Company policy, but certainly no later than July 29, 2003, as there is an entry in Luber's time records (R-1) of a telephone call to Aetna on this date. Luber's records also confirm communications with Lincoln (through Tom Watkins) as early as July 29, 2003. Therefore, the only company with whom there is no specific record of communication is North American Company for Life and Health Insurance.[80]

Petitioner thus admits that there is no specific "record of communication " with North American Company for Life and Health Insurance. It is thus clear that the North American policy was not transferred to the Trust. As proof of communication of the change of beneficiary to Aetna and Surety Life Insurance, petitioner relies on notations on Luber's time sheet (R-1) and notes scribbled on an e-mail from Janetta Rose Greene dated June 20, 2003 —a date prior to the execution of the Trust and Assignment. Neither of these exhibits is satisfactory proof of substantial compliance with the stipulated requirements of Aetna (i.e. no assignments, filing written request on Aetna forms)[81] or Surety (i.e. change by writing to us)[82] to change the beneficiary of a life insurance policy since there is no evidence on record or in the Stipulation of any written notice to the insurer by Ms. Brown, her agents or her attorney.

Petitioner nonetheless asserts that the record supports the conclusion that Charlie Brown substantially complied with the policy provisions in designating the Trust as beneficiary and cites numerous cases from other jurisdictions. These cases, however, support the contrary conclusion that the failure of Ms. Brown to make any effort whatsoever to execute change of beneficiary forms or directly contact the insurers cannot

[80] Petitioner's Memorandum at 25. If Luber's knowledge of assets is limited to those identified in Greene's e-mail, there was no mention of the Aetna policy. See Ex. P-1.
[81] Stipulation, ¶1.
[82] Stipulation, ¶3 and Ex. C.

be construed as substantial compliance. See, e.g. Metropolitan Life Insurance Co. v. Bush, 154 F.3d 1149 (10th Cir. 1998)(where decedent executed a change of beneficiary form but it was faxed to an arguably incorrect office the beneficiaries were nonetheless changed); Phoenix Mutual Life Insurance Co. v. Adams, 30 F.3d 554 (1994)(where decedent executed a change of beneficiary form but failed to fill in the name of the new beneficiary, court found substantial compliance when decedent subsequently called agent to make this change and agent memorialized this with a note to himself); Connecticut General Life Insurance Co. v. Gulley, 668 F.2d 325 (7th Cir. 1982)(where decedent executed a change of beneficiary form in front of witnesses and left it with his daughter, court found substantial compliance where daughter mailed the form to decedent's employer 2 days after his sudden death); First Capital Life Insurance Co. v. AAA Communications, Inc., 906 F. Supp. 1546 (N.D. Ga. 1995)(under federal common law, owner of life insurance policy substantially complied with the requirements to change a beneficiary where it completed a designation form and sent it back to the insurer after the insured's death); IDS Life Insurance Co. v. Estate of Groshong, 112 Idaho 847, 736 P.2d 1301 (1987)(where decedent executed change of beneficiary form before two witnesses, one of whom was an agent of the insurance company, court found substantial compliance even though these forms not returned to the home office); Prudential Insurance Co. v. Bannister, 448 F. Supp. 807 (W.D. Pa. 1978)(where decedent executed and returned change of beneficiary form to local office prior to his death, there was substantial compliance even though insured failed to return policy as required by insurer). In each of these cases, the decedent—unlike Charlie Brown—had requested and completed change of beneficiary forms.

Lincoln IRA and 403(b)(7) Accounts

These general principles apply as well to the Lincoln IRA and 403(b)(7) accounts. The parties' stipulation notes that paragraph 5.5 covering "Designation of Beneficiary" for the 403(b)(7) Account provides:

> Each participant may, by written notice filed with the Custodian and in a form acceptable to the Custodian, designate a Beneficiary or Beneficiaries to receive the Participant's benefit at the Participant's death. Such designation may be changed or revised from time to time by written instrument filed with the custodian.
> Stipulation, ¶ 11, Ex. M, ¶5.5 (emphasis added).

Lincoln Investment Planning, Inc., in its Answer to the Petition for Declaratory Judgment stated that it was holding several 403B and IRA accounts in the name of Charlie Mae Brown. In completing a Retirement Solutions Account Application for the 403B account on September 16, 1999, Ms. Brown listed her beneficiaries as Samuel J. Brown, IV and Tamara M. Brown-Douglass.[83] It also noted that Ms. Brown in filling out an IRA Solution Account Application on October 2, 2001, designated the beneficiaries of the IRA Accounts as Samuel J. Brown and Tamara Brown-Douglass.[84]

The IRA custodial Agreement provides that at the death of the depositor, "the balance in the account shall be paid to the Beneficiary or Beneficiaries designated by the Depositor on a beneficiary designation form acceptable to and filed with the custodian. The Depositor may change the Beneficiary or Beneficiaries at any time by filing a new beneficiary designation form with the Custodian."[85] The vague testimony by Luber as to the steps he took after Charlie's death to give notice of the assignment makes no mention

[83] Lincoln Investment Planning 11/7/2003 Answer ¶3 & Ex. B.
[84] Id., ¶ 4 & Ex. C.
[85] Stipulation, ¶ 11.

of any written notice but rather relies on time sheets of telephone calls.[86] Consequently, the Lincoln IRA and 403(b)(7) accounts are not Trust assets.

Public School Retirement Pension

The parties also identify a Public School Retirement Pension in the amount of $673,368.54 as an asset belonging to Charlie Mae Brown. The Public School Employees Retirement System("PSERS") filed an answer to the petition for declaratory judgment in which it denied that the June 23, 2003 Assignment executed by decedent served as a change of beneficiary for the assets in Ms. Brown's account with the PSER. More significantly, PSERS properly asserts that the proper procedure for resolving this issue is through the Public School Employees' Retirement Board, an independent administrative board of the Commonwealth of Pennsylvania charged with the administration of the retirement system under 24 Pa.C.S. §§8501 et seq.[87] The Declaratory Judgment Act provides that "relief shall not be available under this subchapter with respect to any proceeding within the exclusive jurisdiction of a tribunal other than a court." 42 Pa.C.S. §7541(c). Here the Public School Employees' Retirement Board has exercised its jurisdiction, and in reviewing the record, ruled against the petitioner in concluding that the assignment did not change the beneficiary of Charlie's Public School Retirement Pension. Ex. R-4.

Philadelphia Public School Termination Pay Receivable

Finally, in their stipulation, the parties appear to assert a claim to $22,757.02 in public school termination pay due to Charlie Mae Moore Brown. They provide no

[86] See, e.g., 11/16/2004 N.T. at 32.

[87] In fact, it appears as if Ms. Greene first approached this Board for an administrative hearing on this issue in which she requested a determination that decedent's retirement account should be distributed to the Trust. See R-4, Findings of Fact, ¶32

documentation of any kind to support this claim in their stipulation nor did they present any evidence concerning it at the November 16, 2004 hearing. Consequently, there is no basis for making a ruling as to this claim.[88]

Based on these considerations, this court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. On June 23, 2003, Charlie Mae Moore Brown executed three documents: a Trust Agreement Creating the Charlie Mae Moore Brown Revocable Trust ; an Assignment, and; a Durable Power of Attorney naming her two children, Tamara Michelle Douglass and Samuel Joseph Brown, IV as her agents.

2. The Revocable Trust named Charlie Mae Moore Brown as the initial trustee, and upon her death, designates Tamara Michelle Douglass and Janettarose Greene as successor trustees. Trust, Art. VI, Sec. A, ¶¶ 1 & 3.

3. The following assets fall within the Trust executed by Charlie Mae Moore Brown:

    a. Furnishings in Ms. Brown's Philadelphia Residence;
    b. The Philadelphia Residence of Charlie Mae Moore Brown located at 629 E. Wadsworth Avenue

4. The following assets are not within the Trust created by Charlie Mae Moore Brown:
    a. Two Sovereign Bank Accounts No. 0040272933 and No. 0304283112
    b. PNC Bank Account No. 83-8521-7438
    c. Freedom Credit Union Bank Account No. 073079
    d. Aetna Life Insurance Policy
    e. Surety Life Insurance Policy
    f. North American Life Insurance Policy
    g. Lincoln IRA and 403(b)(7) Accounts
    h. 1995 Ford Contour

5. Insufficient documentation was provided to determine the title of the following:
    a. Egg Harbor Property at 3418 Amherst Drive in New Jersey.
    b. 1997 Ford Contour Sport
    c. Termination pay allegedly due from the School District of Philadelphia

[88] See 11/16/2004 N.T. at 104-106 (Nonsuit granted as to claim against School District for termination pay).

6. The claim as to the Public School Pension administered by the Public School Employees' Retirement System (PSERS) has been submitted for review to the Public School Employee's Retirement Board which under 24 Pa.C.S. §8501 et seq. is charged with administration of the retirement system and is thus the forum with jurisdiction over this claim.

7. The deed for the Philadelphia Residence of Charlie Mae Moore Brown located at 629 E. Wadsworth Avenue and recorded in the Philadelphia Department of Records as Document No. 50743956 is stricken from the record for failure to include the names of both co-trustees of the Trust.

8. The present record does not support petitioner's claim that Tamara Michelle Douglass had resigned as Co-trustee of the Charlie Mae Moore Brown Revocable Trust as set forth in Luber's August 12, 2003 letter.

9. The nonsuits that were entered during the hearing as to Sovereign Bank and the School District are supported by the record and were properly entered.

BY THE COURT:

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John W. Herron, J.