IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
ORPHANS' COURT DIVISION

In Re: The Estate of Raheem D. Johnson, Deceased	:	1329 AP 2004
	:	Control No. 041589

O P I N I O N

O'Keefe, Adm. J. **September 13, 2005**

In this case we are asked to decide an appeal from a decree of the Register of Wills of Philadelphia County which appointed an adult decedent's half siblings, Ms. Tiesha Robinson and Mr. Davey Robinson as co-administrators of the decedent's estate over the objection of decedent's surviving mother, Ms. Eileen Johnson. This Court sustains the appeal of the Ms. Eileen Johnson, vacates the letters granted to Ms. Tiesha Robinson and Mr. Davey Robinson, and directs the register to grant letters to Ms. Eileen Johnson.

Facts and Procedural History

Evidence of record establishes that the decedent died intestate on June 27, 2003 at age 26 and left no spouse or issue. The decedent's mother, Ms. Eileen Johnson[1] ("Ms. Johnson"), survived him, as did his half-siblings, Ms. Tiesha Robinson and Mr. Davey Robinson. Ms. Johnson petitioned for Letters of Administration. On November 24, 2003, the half-siblings filed a Caveat to the issuance of letter of administration to Ms. Johnson, alleging that Ms. Johnson had forfeited her right to administer and inherit the estate *inter alia*, by virtue of her desertion of the decedent, 20 Pa. C.S.A. §2106(b)(1). The Register of Wills held a conference on December 19, 2003, and a hearing on May 5, 2004 before Honorable John F. Raimondi, Esquire. On July 22, 2004 the Register of Wills sustained the Caveat and authorized issuance of Letters of Administration to Ms. Tiesha Robinson and Mr. Davey Robinson upon their compliance with the Probate Code; Decree of Register issued August 26, 2004 granting letters of administration to the half siblings. Ms. Johnson appealed to Orphans' Court on August 4, 2004. This Court held a

[1] Decedent's father has not appeared in the litigation over administration of the decedent's estate.

conference on November 8, 2004, and took evidence at a hearing on February 17, 2005.

Legal Analysis

The Register of Wills has the exclusive jurisdiction over the grant of letters of administration, 20 Pa. C.S.A §901, and the selection of the person who is initially granted letters of administration is normally within the province of the Register. 20 Pa. C.S.A §711(12) and 901. Where a Register's choice is disputed, that dispute may be submitted on appeal to the Orphans' Court. 20 Pa. C.S.A §908 (1); Brokans v. Melnick, 391 Pa. Super. 21, 569 A.2d 1373 (Pa. Super. 1989); the remedy for any person aggrieved by the Register's decision is an appeal to the Orphans' Court. 20 Pa. C.S.A §711(18). The Orphans' Court has exclusive power over appeals from actions of the county registers of wills, pursuant to 20 Pa. Cons. Stat. § 711(12), Estate of Keefauver, 359 Pa. Super. 336, 518 A.2d 1263 (Pa. Super 1986). See In re: Estate of Thomas Klink, 1999 Pa. Super. 309, 743 A.2d 482_(Pa. Super. 1999).

Through the interwoven application of 20 Pa. Cons. Stat. Ann. § 3155(b), 20 Pa. Cons. Stat. Ann. § 2103, and 20 Pa. Cons. Stat. Ann. § 2106, not only are the half-siblings inferior to Ms. Johnson under intestacy, but the half-siblings lack standing to nominate an administrator for the instant estate. Reamer's Estate, 315 Pa. 148, 172 A. 655 (1934)(one who has no financial interest in an intestate estate has no standing to nominate an administrator for it); In re Friese's Estate, 176 A. 225 (1934).

Section 20 Pa.C.S. § 3155, "Persons entitled", controls the grant of letters of administration when a decedent dies intestate.

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(b) LETTERS OF ADMINISTRATION.-- Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

(1) Those entitled to the residuary estate under the will.

(2) The surviving spouse.

(3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.

(4) The principal creditors of the decedent at the time of his death.

(5) Other fit persons.

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20 Pa. Cons. Stat. Ann. § 3155(b) (2005).

Rights are thus created by statute which designates priorities among various persons or classes entitled to a right of administration. These priorities are based on nearness of relationship to the intestate decedent and extent of the interest in the decedent's estate; on the general theory that persons who have the greatest interest in the estate due to their entitlement to take the net estate are presumed to be most interested in protecting the estate and maximizing its worth.

Pursuant to 20 Pa. Cons. Stat. Ann. § 3155(b), letters of administration are properly granted, except for good cause shown, to those entitled to take under intestacy where as in here, the decedent left no will. "[T]he Register may not lightly set aside any one within the class entitled and prefer one in a remoter class or stranger." In re Friese's Estate, 317 Pa. 96, 176 A. 225 (1934). Necessarily, we must ascertain priority or preference as to the proper person to administer the estate by looking to the intestacy provisions of the Decedents, Estates and Fiduciaries Code, 20 Pa. C.S.A. § 101 et seq., and to Section 20 Pa.C.S. § 2103 "Share of other than surviving spouse":

The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall pass in the following order:

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(2) PARENTS. --If no issue survives the decedent, then to the parents or parent of the decedent.

(3) BROTHERS, SISTERS, OR THEIR ISSUE. --If no parent survives the decedent, then to the issue of each of the decedent's parents.

* * *

20 Pa. Cons. Stat. Ann. § 2103 (2005)

Here, it was undisputed that there was no spouse or issue. Clearly a parent, Ms. Johnson is of a superior class to siblings. Nevertheless, in the instant case, the half siblings contend that because Ms. Johnson deserted the decedent when he was a minor,

another statute, 20 Pa. Cons. Stat. Ann. § 2106 "Forfeiture" upsets Ms. Johnson's rights. Hence, the underlying issue of forfeiture of the right to take the estate, although not before this Court on Ms. Johnson's appeal from the Register, must be addressed in that context.

> § 2106. Forfeiture
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> (b) PARENT'S SHARE.-- Any parent who, for one year or upwards previous to the death of the parent's minor or dependent child, has:
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> (1) failed to perform the duty to support the minor or dependent child or who, for one year, has deserted the minor or dependent child; or
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> (2) been convicted of one of the following offenses under Title 18:
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> section 4303 (relating to concealing death of child); section 4304 (relating to endangering welfare of children); section 6312 (relating to sexual abuse of children); or an equivalent crime under Federal law or the law of another state involving his or her child;
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> shall have no right or interest under this chapter in the real or personal estate of the minor or dependent child. The determination under paragraph (1) shall be made by the court after considering the quality, nature and extent of the parent's contact with the child and the physical, emotional and financial support provided to the child.
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20 Pa. Cons. Stat. Ann. § 2106 (2005).

Our Superior Court has recently considered whether the Forfeiture Statute applies where the decedent is an adult as opposed to a minor and conclusively stated that it did not. "We hold that where the decedent is not a "minor or dependent child" at the time of death, the forfeiture provisions of § 2106(b) are inapplicable. To the extent that In re Krempasky's Estate (No. 2), 1997 WL 267773, 17 Fiduc. Rep. 2d 89 (Pa. Com. Pl. 1997), holds otherwise, it is expressly disapproved". In re Kistner, 2004 PA Super 352, 858 A.2d 1226 (Pa. Super. 2004).

In Kistner, the adult decedent's mother filed a petition for forfeiture under 20 Pa. C.S.A. § 2106(b)(1), alleging that the decedent's father had failed to perform his duty to

support the decedent while she was a minor and therefore, was not entitled to share in the proceeds of her estate. Although the dispute was between two beneficiaries of the same class, and the instant dispute is between beneficiaries of different class, with the half siblings falling into the class entitled (5) Other fit persons, 20 Pa. Cons. Stat. Ann. § 3155(b), and the Kistner dispute centered on support not abandonment, the Kistner court's extensive analysis of the applicability of the forfeiture statute relative to an adult decedent's estate as opposed to a minor's estate and its broad language is both relative to and controlling of the instant case. Kistner, 2004 PA Super 352, 858 A.2d 1226.

The Kistner Court reasoned:

> The purpose of the forfeiture statute is to prevent a parent, who has failed to carry out his or her duty of support, from gaining a "windfall" from a minor child's death. In addition, the statute protects minor or dependent children who are not legally competent to effectuate a will (see ***Moyer, supra*** at 211-212: "Perhaps a court might also ask the question, 'If this child had understood the significance of inheritance, who would he have chosen as his heir? '"). These considerations are not applicable where, as here, the Decedent was 58 years old. The alleged violations of Father's duty of care and support toward Decedent contained in Mother's petition occurred over 40 years prior to Decedent's death. If Decedent believed Father failed to perform his duty to support her as a minor child, or had deserted her, she could have executed a last will and testament disposing of her estate accordingly.

Kistner, 2004 PA Super 352, 858 A.2d 1226, 1229, citing **In re Estate of Moyer**, 2000 PA Super 227, 758 A.2d 206, 211 (Pa. Super. 2000).

Here, as in Kistner, the behavior complained of occurred during the decedent's minority. The half-siblings allege numerous instances of abandonment ovr a period spanning years by the mother toward the decedent. The Court took extensive evidence on same and notes that the half-siblings have persuasively portrayed Ms. Johnson as a woman who lacked basic parental concern for the decedent during his childhood, and further notes Ms. Johnson's own acknowledgement of her prior extensive drug addiction during the decedent's growing up years. Poor a mother as she was, and indeed, she was, and as sad the story of Raheem's early years, it is of no moment today because the mother's abandonment of the decedent during his minority does not trigger the Forfeiture

statute and cannot be the basis to displace Ms. Johnson from her rightful position as administrator.

Thus, the Forfeiture statute does not control the instant situation because the decedent died when he was an adult, not a minor and the abandonment occurred when he was a minor to whom the duty ran. For an adult decedent our legislature has not seen fit to write the Forfeiture statute in such a way as to do justice as the half siblings desire; it was the minor's interest, not an adult decedent's interest that was sought to be protected by the language of the Forfeiture statute. Accordingly, because the decedent in the instant case was 26, forfeiture is inapplicable to the case at bar.

Further, the Court notes that inheritance is not before this Court as it was in Kistner, and the Court does not sua sponte decide that issue. Today, we apply Kistner to hold that the allegations of forfeiture do not knock Ms. Johnson out of her rightful place as administrator because our decedent, like the decedent in Kistner, was a *sui juris* adult, and had other means available to strip his mother of her ability to exercise her parental role upon his death had he so chosen. Had the decedent, a competent adult, wished to exclude his mother from inheriting his estate or from administering his estate upon his death, either due to her ill treatment of him when he was a minor or for any other reason, he was legally entitled to contract and was free to appoint an executor and execute a last will and testament to dispose of his estate.

To complete its analysis, this Court reviewed the half-siblings' allegations that Ms. Johnson is neither competent nor capable or otherwise suited to administer her late son's estate and further that she has a hostile interest to the estate. Such allegations are without merit.

As opined at the start of our analysis, the half siblings have no standing to assert Ms. Johnson is unsuited to administer the estate as they have no stake in the estate. Reamer's Estate, 315 Pa. 148. A review of the case law supports the general rule that "[a]ppointees as administrators must not possess any of the disqualifying characteristics" such as insolvency, non-residence, conviction of crime, or hostile interest to the estate, Friese's Estate, 317 Pa. 96, 176 A. 225 (1934) However, based upon a review of evidence of record, the Court finds that Ms. Johnson hired two law firms, indicating her awareness of her obligation to both investigate recovery for liability for her son's death, and to

properly handle his estate and matters pertaining to his home and assets. Accordingly, she had indicated her awareness of her duty to prosecute all claims to which the estate may be entitled as well as her capability to administer the estate to the satisfaction of this Court. Further, Ms. Johnson has finally achieved in her adulthood the type of stability that she was unable to offer the decedent during his childhood; Ms. Johnson has remained in the same residence for seven years, held the same employment for over a decade, and has not had a substance abuse problem all during that lengthy time. Accordingly, she does not fit the profile established by Friese's Estate, 317 Pa. 96, to call for her disqualification as administrator. There is no hostile circumstance as between Ms. Johnson and the estate and her interests are aligned with, not opposed to, the best interests of the estate. While anyone reading the transcript would likely be seared by the heat of the palpable ill will between Ms. Johnson and the surviving family members, this ill will does not alter the preferred statutory right in Ms. Johnson or elevate the half-siblings in litigation with Ms. Johnson out of their inferior statutory class to administer the decedent's estate.

Conclusion

In sum, following Kistner, 2004 PA Super 352, we hold that forfeiture is not applicable to the case at bar. After due consideration by the court, argument and the filing of briefs, the court is of the opinion that the Register of Wills abused its discretion in its appointment of the decedent's half siblings, Ms. Tiesha Robinson and Mr. Davey Robinson as co-administrators of the estate. Accordingly, this Court sustains the appeal of the Ms. Eileen Johnson, vacates the letters granted to Ms. Tiesha Robinson and Mr. Davey Robinson, and directs the register to grant letters to Ms. Eileen Johnson.

BY THE COURT:

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O'KEEFE, ADM. J.