

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION
O. C. No. 1681 AP of 2004
Estate of Elnora Cooper, Deceased
Control No. 042019

O P I N I O N

Introduction

In his appeal from a decree by the Register of Wills granting letters of administration to Leah Miller and Karen D. Whiting, the grandson of decedent Elnora Cooper raises the issue of whether decedent's unexecuted will should have been admitted to probate instead of the decree admitting the Estate of Elnora Cooper as an intestate estate. Alternatively, the respondents pose the issue as whether an unexecuted will should prevail over the law of intestacy. For the reasons set forth below, the appeal is dismissed.

Factual Background

Anthony Miller, the grandson of decedent Elnora Cooper, filed a petition to appeal a September 8, 2004 Decree by the Register of Wills granting letters of administration to Leah Q. Miller and Karen D. Whiting. Elnora Cooper died on July 29, 2004. The petitioner asserts that around February 2004—several months before her death-- Ms. Cooper had asked her attorney, Dennis L. Citron, to draft her Last Will and Testament. Mr. Citron subsequently drafted a will for Elnora Cooper, and “intended on securing Decedent’s execution of said Will shortly after it was drafted.”¹ The petitioner concedes, however, that Ms. Cooper died “before she was able to execute her will.”²

1 9/29/04 Petition at ¶ 5.

2 Id. at ¶6. Petitioner attached a copy of this unsigned will as Exhibit B.

On September 8, 2004, the Philadelphia Register of Wills granted letters of administration to Leah Q. Miller and Karen Whiting. The petitioner contends, however, that the unexecuted will contains the decedent's true intent and should have been admitted to probated. There is nothing on record to suggest that he has raised that issue with the Register of Wills. The respondents Leah Miller and Karen Whiting take a contrary position in their answer to the petition. In addition, they filed a motion for judgment on the pleadings which argues that because the will proffered by petitioner was unexecuted, the law of intestacy governs and the appeal from the Register of Wills should be denied. The petitioner has failed to respond to this motion.

Legal Analysis

Respective Roles of the Register of Wills and Orphans' Court

A. Standard of Review by Orphans' Court of Appeals from the Grant of Letters of Administration by the Register of Wills

The respondents in their motion have leapt to the substantive issue of the validity of Elnora Cooper's will without addressing certain procedural first principles. The Register of Wills has the duty of granting letters of administration to the person entitled to those letters. Martin Estate, 5 Pa. D & C. 4th 421, 425 (Phila. O. C. 1990). The Register of Wills also has the authority to revoke letters of administration that were improvidently granted. The PEF code provides, for instance, that in cases where there is no will, the "register may revoke letters of administration granted by him whenever it appears that the person to whom the letters were granted is not entitled thereto." 20 Pa.C.S.A. § 3181(a). When a beneficiary is dissatisfied by the grant of letters of administration by the Register of Wills, the proper procedure is to raise that issue in a

direct proceeding before the Register. If the Register rules against him, he may then appeal that adverse ruling to the orphans' court. Chambers v. Bash, Jr., 30 Fid. Rep. 456, 458-59 (Beaver Cty. Ct. Common Pleas 1980).

In granting or revoking letters of administration, the Register is acting in a quasi judicial capacity. Hence, when his ruling is appealed, the orphans' court's authority is limited to a review of "his discretion as that of an inferior judicial officer." Phillip's Estate, 293 Pa. 351, 355, 143 A. 9, 10 (1928). Pennsylvania courts caution that in such cases the matter at issue is not to be tried de novo. Instead, the burden is on the petitioner to show an abuse of discretion by the Register. Martin Estate, 5 Pa. D & C. 4th at 425. See also Simmon's –Carton Estate, 63 Bucks L. Rep. 52, 57 (Bucks Cty. O.C. 1993) ("We recognize that our scope of review is limited to an abuse of discretion). As the Pennsylvania Supreme Court explained, while an appeal from the grant of letters of administration by the Register "brings the matter complained of before the Orphans' Court de novo, that court does not, strictly speaking, act originally but is confined to a review of the discretion exercised by an inferior judicial officer." McMurray's Estate, 256 Pa. 233, 236, 100 A. 798, 799 (1917).

Typically, the record of the Register consists of the Register's decree, decedent's death certificate, the petition and the notice of appeal. Martin Estate, 5 Pa. D & C. 4th at 423. The record of the Register of Wills in the instant case consists solely of a petition for grant of letters of administration by Leah Miller and Karen Whiting with a filing date of September 8, 2004, a decree dated September 8, 2004 granting letters of administration to Leah Miller and Karen Whiting, and a death certificate for Elnora Cooper. Nothing in this record indicates that the Register was presented with the issue of whether the letters of administration should be revoked in light of decedent's

unexecuted will. Under the previously cited precedent, therefore, this issue is not part of the record subject to review by this court. On these grounds alone, the appeal cannot be sustained.

Even assuming that this issue had been presented to the Register, petitioner fails to present any challenge to the respondents' arguments that because Ms. Cooper did not sign the proffered will—which is thus unexecuted—it has no legal validity and cannot be enforced. As the respondents emphasize, the PEF code requires that a will be signed at the end. 20 Pa.C.S.A. 2502. There is, moreover, an abundance of precedent that affirms this requirement. Sciutti Estate, 371 Pa. 536, 538, 92 A.2d 188, 189 (1952) (“An unsigned document in the form of a will cannot be probated”). See also In re Browns' Estate, 347 Pa. 244, 2 A.2d (1943); Dietterich's Estate, 127 Pa. Super. 315, 323, 193 A. 158, 161-62 (1937).

The typical challenge to the Register's grant of letters of administration is that he failed to appoint the proper person within a class prescribed by statute. See, e.g., 20 Pa.C.S. A. §3155 (b); McMurray's Estate, 256 Pa. 233, 100 A. 798 (1917); In re Estate of Emanuel Neidig, 183 Pa. 492, 38 A. 1033 (1898). In the instant case, in contrast, the issue properly framed is whether the Register abused his discretion by not concluding that the unexecuted will should have been admitted to probate and hence control over the law of intestacy. Since the petitioner concedes that the will was unsigned and unexecuted, he has presented an issue uniquely of law. Pauline Ruoff's Appeal, 26 Pa. 219 (1856) (where testamentary paper was not signed by decedent, the “rule prescribed by statute is imperative in this case”).

Based on the record presented, this court concludes that it would not be an abuse of discretion for the Register to grant letters of administration to Leah Miller and Karen Whiting despite

decedent's unexecuted will. In so doing, the court is deciding not whether the proffered will is valid but whether the petitioner has made a prima facie case that might require the Register to open probate.

B. Standard of Review for Appeals From Decrees Entering a Will into Probate Where There Are After-Discovered Wills or Codicils

There is another line a precedent dealing more specifically with after-discovered wills or codicils. The majority of these cases are not exactly on point, however, since typically they arise where the Register has admitted a will to probate and then a subsequent will or codicil is discovered. See, e.g., Crawford v. Schooley, 217 Pa. 429, 66 A. 743 (1907)(after discovered will); Kline Estate, 54 Berks Cty. Rep. 171 (Berks Cty. O.C. 1962)(after discovered codicil).

Section 3138 of the PEF code provides that if a later will or codicil is discovered, the Register of Wills shall have the power to open the probate record if the subsequent document is "submitted to the register for probate within three months of the testator's death but after" probate of an earlier instrument. 20 Pa.C.S.A. §3138. After this three month period, however, the Register of Wills has no power to revoke the decree of probate or letters testamentary. Rather, the proper procedure is for the party asserting the subsequent will to file an appeal to the Orphans' Court. The scope of review of the Orphans' Court, however, is limited: "Upon appeal, the Orphans' Court, having no original jurisdiction of probate, may not determine finally the validity of the later writing, but upon prima facie proof thereof will open the decree of probate and remit the record for proof and hearing before the Register." Kline Estate, 54 Berks Cty. Rep. at 176. See also Estate of Boland, 99 Pa. Super. 321, 1930 Pa. Super LEXIS 330 (1930). To establish a prima facie case, the petitioner must "prove by two witnesses the execution of the paper produced." Crawford v. Schooley, 217 Pa. at 433, 66 A.

at 745; Kline Estate, 54 Berks Cty. Rep. 176 (1962). He must also establish the testamentary nature of the writing and that it was executed after the probated will. Seixas Estate, 12 Fid. Rep. 2d 1,3 (Phila. O.C. 1990). Once this prima facie case is established, the orphans' court may then open up the decree of probate and direct the petitioner to present the record to the Register for ultimate determination of the paper's validity since the Orphans' Court lacks original jurisdiction as to the probate of wills. Crawford v. Schooley, 217 Pa. at 434, 66 A. at 745. In the instant case, the petitioner is unable to make out the prima facie case of "execution of the paper produced" since he concedes as a matter of law that the will was not executed.

The recent case Jeness Estate, 15 Fid. Rep. 2d 149 (Erie Cty. O.C. 1995) is more on point since it deals with a challenge to the Register's grant of letters of administration based on an after discovered will. The Erie County Orphans' Court in Jeness Estate sets forth a slightly different standard which would nonetheless support the conclusion that the present appeal should be dismissed. In Jeness Estate,³ the Orphans' Court actually addressed the issue of the validity of the after discovered will, but in so doing it noted that the initial burden is on the proponent of the will to establish proper execution. In the present case, however, the petitioner concedes the will was not executed. Hence, even under the Jeness approach, the petitioner's admission that the will he is

³ In Jeness Estate, the Orphans' Court concluded that the proffered will was valid and should be admitted to probate. The letters of administration were vacated. Other courts, however, take a more restricted approach, noting that in reviewing a register's admission of a will to probate where the appeal is based on an after discovered will, the Orphans' Court cannot direct that the after discovered will be admitted to probate. Rather, "on appeal, the orphan's court cannot direct that a later writing be admitted to probate. We can only, if we find it to be testamentary, open the decree of probate and remit the record for proof and hearing before the register." Martin Will, 11 Fid. Rep. 606, 608-09 (Lancaster Cty. O.C. 1961). In Seixas Estate, 12 Fid. Rep. 2d 1, 2 (Phila. O.C. 1990), Judge Pawelec likewise emphasized the limited scope of review where an appeal is premised on an after discovered will (i.e. whether the petitioner makes presents prima evidence of execution by 2 witnesses, testamentary nature and subsequent execution). Consequently, issues such as lack of testamentary capacity relating to the after discovered will would first be presented before the Register and then, if necessary, appealed to the Orphans' Court.

proffering was unexecuted is fatal to his appeal.

Date: _____

BY THE COURT:

John W. Herron, J.