

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION  
O.C. No. 138 DE  
of 2006  
Estate of Benjamin Glassman, Deceased  
Control No. 063563

OPINION

Introduction

Petitioner Yetta Glassman, who had been married to decedent Benjamin Glassman for more than 30 years, has filed a notice of her intention to seek an elective share of her husband's estate pursuant to 20 Pa. § 2203. The decedent's two sons, Joel and Norman Glassman, in response filed preliminary objections asserting that this court lacks subject matter jurisdiction because decedent was not domiciled in Pennsylvania and because decedent did not own any property in his own name. In addition, respondents assert that this court lacks in personam jurisdiction over them.

The preliminary objections raise issues of fact both as to subject matter jurisdiction and in personam jurisdiction over the respondents. For the reasons set forth below, the issues raised as to subject matter jurisdiction will be deferred, pending a hearing on that issue, if it is first established that this court has in personam jurisdiction over Joel and Norman Glassman. The parties will therefore be required to provide additional evidence "by depositions, written interrogatories or other discovery" on the threshold issue of in personam jurisdiction as to respondents Joel and Norman Glassman. Stern v. Prudential Financial Inc., 2003 Pa. Super. 421, 836 A.2d 953, 955 (2003)

Procedural History

On January 31, 2006, Petitioner Yetta Glassman filed notice of her intention to seek her elective share of the estate of her deceased husband, Benjamin Glassman. She subsequently filed a petition for a citation directed against Joel and Norman Glassman, decedent's sons, to show cause why they should not be required to pay petitioner \$260,000, as her elective share of the estate pursuant to 20 Pa.C.S. § 2203(a)(4) and (6). The petitioner maintains that she and her husband, Benjamin Glassman, were married on February 11, 1974 and resided at 7901 Henry Avenue, Philadelphia for nearly thirty two years. Approximately seven months prior to his death on December 29, 2005, Benjamin Glassman was admitted to an assisted living facility, Freedom Inn, in Scottsdale, Arizona. Mrs. Glassman accompanied her husband to the assisted living facility and remained with him until his death. She is currently staying with her son, Elliott Goldenberg, in Delray Beach, Florida.<sup>1</sup>

Benjamin Glassman executed a will dated June 8, 1993, which left the residue of his estate to his two sons, Joel and Norman Glassman. Joel Glassman was appointed as executor,<sup>2</sup> but petitioner believes that no letters testamentary have been granted. She believes that her husband's assets consisted of investment accounts with The Vanguard Group and Merrill Lynch as well as checking and savings accounts with Bank of America and Citizens Bank, with an approximate value of \$780,000. All of these assets, she believes, were titled jointly with the decedent and his two sons, Norman and Joel Glassman, but all of the assets in the account were contributed by the decedent.<sup>3</sup>

Joel and Norman Glassman ("respondents") filed preliminary objections to the Petition on various grounds. First, they assert lack of subject matter jurisdiction because

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<sup>1</sup> 3/9/2006 Petition at ¶¶ 1-3 & 8; 5/12/2006 Yetta Glassman Memorandum at 3-4.

<sup>2</sup> Ex. A, 3/9/2006 Petition.

<sup>3</sup> 3/9/2006 Petition, ¶¶ 4 & 6.

decedent's domicile was in Scottsdale, Arizona. Next they aver that the Orphans' Court lacks jurisdiction over decedent's estate because he did not own real or personal property in his own name on the date of his death. They also raise a demurrer on the dual grounds that petitioner did not allege that Benjamin Glassman died domiciled in Pennsylvania and that the petition fails to set forth a claim upon which relief can be granted. Finally, they assert that this court lacks in personam jurisdiction over them because they reside and work in Arizona.<sup>4</sup>

In her answer to these preliminary objections, Mrs. Glassman denies that decedent voluntarily moved to Arizona or intended to change his domicile from Pennsylvania. Second, she denies that decedent owned no property, emphasizing that he had been a joint owner of bank and investment accounts. She argues that jurisdiction is not predicated on decedent's ownership of property; rather she maintains that this court has jurisdiction under PEF code section 2203 because her husband died domiciled in Pennsylvania. These same arguments, she suggests, would defeat respondents' demurrer. Finally, she asserts that this court has jurisdiction over the respondents because they came to Philadelphia in early Spring 2005 to meet with petitioner's son, Elliott Goldenberg, to discuss the possible settlement of their father's estate and to secure their interests in that estate. In so doing, she asserts, they purposely came to Pennsylvania to conduct business before removing their father to Arizona.<sup>5</sup>

### *Legal Analysis*

#### Standard of Review for Preliminary Objections

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<sup>4</sup> 4/25/2006 Preliminary Objections.

<sup>5</sup> 5/12/2006 Yetta Glassman Answer.

Preliminary objections should be granted and a petition dismissed only in the clearest cases where there is no doubt that the petitioner is not entitled to relief. In considering preliminary objections in the nature of a demurrer, all well-pleaded material facts are accepted as true together with all reasonable inferences that may be drawn from those facts. Capital City Lodge v. City of Harrisburg, 138 Pa. Commw. 475, 480, 588 A.2d 584,586-87 (1991). Preliminary objections challenging a court’s in personam jurisdiction frequently raise issues of fact. See, e.g., Laffey v. Lehigh Valley Dairy Coop., 257 Pa. Super 45, 390 A.2d 238 (1978). When preliminary objections raise issues of fact, the parties must be required to provide “additional evidence by depositions, written interrogatories or other discovery.” Stern v. Prudential Financial, Inc., 2003 Pa. Super. 421, 836 A.2d 953, 955 (2003)(citations omitted). See also Greene v. Liebergott, 235 Pa. Super. 475, 477, 344 A.2d 501, 502 (1975). In creating the requisite record to dispose of a question of fact, a court is accorded considerable discretion:

In each case, the Court is to enter an Order appropriate to the decision of the particular questions presented.... Doubtful cases should go to trial and not be disposed of on procedural grounds. This is particularly true if there are intricate factual relations and it is necessary to take evidence to substantiate or disprove the allegations. When preliminary objections and the answer raise an issue requiring the production of extensive evidence the Court may, in its discretion, postpone the disposition of the matter until the trial on the merits. The evidence may then be taken as part of the general trial. Alumbaugh v. Wallace Business Forms, 226 Pa. Super. 511, 515, 313 A.2d 281, 282 (1973), quoting Goodrich-Amram section 1028(c)-3.

The petition filed by Yetta Glassman, the preliminary objections of Joel and Norman Glassman, and Mrs. Glassman’s answer thereto raise the following issues of fact:

(1) whether decedent Benjamin Glassman intended to change his domicile from Philadelphia to Scottsdale, Arizona;

- (2) the exact nature of the joint accounts Benjamin Glassman had entered into with respondents; and
- (3) the nature and extent of respondents' contacts with this forum for the purposes of asserting in personam jurisdiction over them.

**A. The Issue of Whether Benjamin Glassman Changed his Domicile from Pennsylvania to Arizona for the Purposes of 20 Pa. C.S. Section 2203 Requires Additional Evidence**

A surviving spouse's right of election against the estate of a deceased spouse will be determined by the laws of Pennsylvania if the decedent was domiciled in Pennsylvania. 22 Pa. C.S. Section 2203. If the deceased spouse was not domiciled in Pennsylvania, "the rights, if any, of his surviving spouse to an elective share in property in this Commonwealth are governed by the laws of the decedent's domicile at death...." 20 Pa. C.S. Section 2202. If the deceased spouse was domiciled in Pennsylvania, under Section 2203, a surviving spouse has a right to an elective share of one-third of the following property:

§2203. Right of election; resident decedent

(a) PROPERTY SUBJECT TO ELECTION. Except as provided in subsection (c), when a married person domiciled in this Commonwealth dies, his surviving spouse has a right to an elective share of one-third of the following property:

- (1) Property passing from the decedent by will or intestacy.
- (2) Income or use for the remaining life of the spouse of property conveyed by the decedent during the marriage to the extent that the decedent at the time of his death had the use of the property or an interest in or power to withdraw the income thereof.
- (3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.

(4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee....

(6) Property conveyed by the decedent during the marriage and within one year of his death to the extent that the aggregate amount so conveyed to each donee exceeds \$3,000, valued at the time of the conveyance.  
20 Pa.C.S. § 2203(a).

In their preliminary objections, the sons of Benjamin Glassman challenge this court's subject matter jurisdiction by asserting that their father was domiciled in Arizona at the time of his death. They emphasize that seven months before his death, Benjamin Glassman moved to Scottsdale, Arizona. Once there, they aver, he "stated that he would never live anywhere else."<sup>6</sup> As proof of his new domicile, the sons point to the following:

On May 16, 2005, Benjamin Glassman moved into an independent living one bedroom apartment in the Freedom Inn, Scottsdale, Arizona, where he resided until his death;

On May 20, 2005, he gave notice of his termination of his Philadelphia apartment lease effective August 31, 2005;

On July 17, 2005, both Benjamin and Yetta Glassman registered to vote in Maricopa County, Arizona;

On July 18, 2005, Yetta Glassman applied for a disability placard from the Arizona Department of Transportation, Motor Vehicle Department, Phoenix, Arizona; and

All of the belongings of Yetta and Benjamin Glassman were removed from their Philadelphia apartment by the end of August, 2005.<sup>7</sup>

Yetta Glassman presents a very different factual scenario. She and her husband had resided together in Philadelphia since their marriage in 1974. In the spring of 2005, however, Benjamin Glassman was given a devastating diagnosis of metastatic head and

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<sup>6</sup> 4/25/2006 Preliminary Objections, ¶ 2.

<sup>7</sup> 4/25/2006 Preliminary Objections, ¶ 3.

neck cancer. He was told that he had approximately three months to live. Yetta maintains that his two sons were aware of this diagnosis, and despite her protests, decided to move their frail, 90 year old father to Arizona. At that time, Yetta was recovering from a fractured hip and was unable to care personally for her husband, but she had told the respondents that she wished to hire caregivers for herself and her husband. Despite these requests, the respondents removed their father from his home in Philadelphia because “they became aware that if Decedent died domiciled in Arizona, Petitioner’s right to receive a share of Decedent’s estate would be all but eliminated.”<sup>8</sup> Yetta asserts that at no time did her husband intend to become a resident of Arizona. His removal was controlled by his sons. In fact, respondent Norman Glassman traveled to Philadelphia “specifically to remove his father to Arizona.”<sup>9</sup>

More specifically, Yetta denies that her husband ever stated that “he would never live anywhere else” after being removed to Arizona. She notes that her husband had traveled to various places during his lifetime; if he had intended to change his domicile from Philadelphia, it strains credulity that he would have waited until he was 90 and in precarious health. Moreover, when decedent moved to Arizona, he lived in an assisted living facility where he received assistance with all activities of daily living. She further maintains that Benjamin Glassman did not terminate his Philadelphia lease; instead, respondent Joel Glassman terminated the lease. The medical opinion had been that Benjamin would not survive until August, 2005. While Yetta concedes that she joined her husband in Arizona in late May, 2005, she did so only temporarily to be with her husband of 32 years who was dying. She knew that her husband had been given only a

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<sup>8</sup> 5/12/2006 Yetta Glassman Answer at 1-2.

<sup>9</sup> 5/12/2006 Yetta Glassman Answer at 2.

short time to live and she wanted to be with him. Finally, she maintains that one of the respondents took their father to register to vote, but that it had not been a volitional act on his part. She denied that she registered to vote in Arizona, and asserts that neither she nor her husband ever cast a vote in Arizona.<sup>10</sup>

The domicile of an individual is based on both intention and physical presence.

As the Pennsylvania Supreme Court has observed:

The domicile of a person is the place where he has voluntarily fixed his habitation with a present intention to make it either his permanent home or his home for the indefinite future. To effect a change of domicile, there must be a concurrence of the following factors: (a) physical presence in the place where domicile is alleged to have been acquired, and (b) an intention to make it his home without any fixed or certain purpose to return to his former place of abode. Coulter Estate, 406 Pa. 402, 407, 178 A.2d 742, 745 (1965)(citation omitted).

In the present case, Yetta and Benjamin Glassman had resided in Philadelphia for more than 30 years. Courts have cautioned that once such domicile has been established, it “is presumed to continue until another domicile is affirmatively proven.” Estate of McKinley, 461 Pa. 731, 734, 337 A.2d 851, 853 (1975). Moreover, the decedent’s sons have the burden of showing that their father intended to change his domicile since courts emphasize that “the burden of proving a change in domicile rests upon the party asserting it.” In re Coulter, 406 Pa. at 407, 178 A.2d at 754. Accord Obici Estate, 373 Pa. 567, 572, 97 A.2d 49, 51 (1953)(especially where there has been a long established marital domicile, the person asserting change in domicile bears a heavy burden). Significantly, it was only in the final months of his life that Benjamin left Philadelphia after he had been given a devastating medical diagnosis. Pennsylvania courts embrace the “well settled rule that absence from a place of legal residence, for purposes of health or other unavoidable necessity, will not result in loss of that domicile.” Dorrance’s Estate, 309

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<sup>10</sup> 5/12/2006 Yetta Glassman Answer at 3-4.



Pa. 151, 170, 163 A 303, 309 (1932). But, as the Dorrance court exemplified, the determination of domicile depends on a careful analysis of the facts, which are in dispute in the present case. For this reason, testimony or other evidence must be presented on the issue of Benjamin Glassman's domicile.

**B. Respondents' Assertion of Lack of Jurisdiction Because Decedent Did Not Own Real or Personal Property in His Own Name Ignores Pennsylvania Precedent that Joint Bank Accounts are Subject to Spousal Election**

The respondents also claim that this court lacks jurisdiction over the decedent's estate because Benjamin Glassman "owned no real or personal property in his own name at the time of his death."<sup>11</sup>

This is not true, Yetta Glassman responds, because at the time of his death, Benjamin Glassman was the owner of joint bank and investment accounts with the respondents. She maintains that her husband contributed all the funds to those accounts and that he maintained the power at any time to withdraw or convey those funds.<sup>12</sup> These allegations – if established by a factual record – would suffice under both Section 2203(a) and Pennsylvania precedent to establish a right of spousal election. Section 2203(a), for instance, outlines the property of a married person domiciled in Pennsylvania that would be subject to election. Among the property that would be subject to election, Section 2203(a) includes:

- (3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.
- (4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee. 20 Pa. C.S. Section 2203(a) (3) & (4).

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<sup>11</sup> 4/25/2006 Preliminary Objections ¶ 6.

<sup>12</sup> 5/12/2006 Yetta Glassman Answer at 5.

Under 20 Pa. Section 711 (17), the Orphans' Court has jurisdiction to adjudicate "the title to personal property in the possession of the personal representative or registered in the name of the decedent or his nominee, or alleged by the personal representative to have been in the possession of the decedent at the time of his death." As Mrs. Glassman notes, no estate has been raised pursuant to Benjamin Glassman's will, presumably because the respondents did not consider it necessary since the decedent's assets were in joint accounts with them. There is, however, an impressive body of Pennsylvania precedent recognizing the right of a spouse to exercise her claim for her elective share of joint bank accounts held by a deceased spouse with others.

In Lazewski Estate, 18 Fid. Rep. 2d 439 (Allegheny Cty. O.C. 1996), for instance, the Allegheny County Orphans' Court held that a surviving spouse could claim an elective share of a joint bank account with a right of survivorship that his deceased wife had entered into with her daughter. In reaching this conclusion, the Lazewski court engaged in a careful analysis of the interplay of the law relating to joint bank accounts and to a spouse's elective share. It conceded that under the Multi Party Accounts Act, 20 Pa. C.S. Section 6301 et seq. there is a presumption that when a party to a joint account dies, the sums remaining in the account belong to the surviving party rather than to the estate of the deceased account holder. During the parties' lifetime, however, the joint account belongs to all parties in relation to their contribution to the account unless there is clear evidence of a contrary intent.

Because the funds in the account during the parties' lifetime belong to each of them, the court concluded that it could potentially be subject to spousal election under two provisions of the Elective Share of the Surviving Spouse Act: either Section

2203(a)(3) relating to conveyances during the decedent's lifetime, or Section 2203(a)(4) relating to conveyances during decedent's marriage of property with a right of survivorship. Since the account at issue in Lazewski had a right of survivorship, the court concluded that Section 2203(a)(4) was applicable. That section provides "property subject to election" is that "property conveyed by the decedent during the marriage to himself and another or others with a right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee." Lazewski, 18 Fid. Rep. 2d at 440-41 & 444-45.

Applying the statutory provisions to the facts before it, the Lazewski court noted that because the deceased spouse had contributed all of the funds in the joint accounts with her daughter, under Section 6303 of the Multiple Party Accounts Act, the accounts belonged to the deceased spouse during her lifetime. Until her death, the deceased spouse could have withdrawn all of the funds from the account. Consequently, those joint accounts established during the decedent's marriage would be subject to the surviving spouse's right of election. Lazewski, 18 Fid. Rep. 2d at 443-445.

Precedent prior to Lazewski interpreting earlier statutes reach the same general conclusion: a surviving spouse can exercise a right of election against joint accounts his or her deceased spouse maintained with other parties. In Rush Estate, 26 Fid. Rep. 212 (Northampton Cty. O.C. 1976), the Orphans' Court concluded that a husband could elect against a joint bank account with a right of survivorship that his deceased wife held together with her two sons. In so doing, it analyzed Section 6111 of the PEF Code of

1975<sup>13</sup> and cited Kuestner Estate, 26 Fid. Rep. 220, 72 Pa. D. & C. 2d 372 (Phila. O.C. 1976) and Hetrick Estate, 17 Fid. Rep. 317, 42 Pa. D.& C. 2d 582, (Dauphin Cty. O.C. 1967). In Hetrick Estate, the Dauphin County Orphans' Court held that the right of spousal election applied to joint bank accounts with the right of survivorship but not to U.S. EE savings bonds. A key consideration was that under the joint bank account, the deceased spouse had the power to consume or revoke the account up until his death. Hetrick Estate, 17 Fid. Rep. at 321.

Courts have also concluded that the spousal right of election applies to bank accounts a deceased spouse held in trust for another. In Kuestner Estate, Judge Jamison concluded that spousal election applied to a bank account the decedent held in trust for a friend. See Kuestner Estate, 26 Fid. Rep. at 223-29. More recently, the Pennsylvania Superior Court has addressed this issue in the context of contemporary statutes to conclude that under 20 Pa. C.S. Section 2203(a)(3), a surviving wife could assert her elective share against bank accounts her deceased husband created prior to their marriage in trust for decedent's mother. Estate of Inter, 444 Pa. Super. 417, 426-27, 664 A.2d 142, 147 (1995). In so doing, it analyzed the history of prior statutory enactments to assure spouses of a right of election against certain conveyances. Those acts, the Estate of Inter court emphasized, "were enacted to prevent a spouse from defrauding the surviving spouse of his or her marital rights and to confirm a long existing public policy of Pennsylvania to protect a surviving spouse's rights." Id., 444 Pa. Super. at 424, 664 A.2d at 146. With the enactment of Section 2203 after the repeal of Section 6111 in 1978, the Pennsylvania Legislature sought to consolidate the spousal election provisions previously

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<sup>13</sup> 20 Pa. C.S. Section 6111 was the recodification of 20 P.S. Section 301.11. Section 6111 was repealed in 1978 and replaced with 20 Pa. C.S. Section 2203. Estate of Inter, 444 Pa. Super. 417, 425, 664 A.2d 142, 146 (1995).

dispersed throughout the PEF Code. The intent, according to the Official Comment, was “to broaden the property subject to a surviving spouse’s election. Therefore, although the legislature repealed 20 Pa. C.S. Section 6111, the law pertaining to tentative trusts and spousal election was not altered in any significant way” because section 6111 was recodified as section 2203(a)(3). Estate of Inter, 444 Pa. Super. at 425, 664 A.2d at 146.

Pennsylvania precedent would therefore support a surviving spouse’s election against joint bank accounts or accounts held in trust by the deceased spouse for another. Additional facts concerning the accounts at issue in the Glassman dispute are, however, necessary. In her petition, for instance, Mrs. Glassman identifies the property that is subject to her elective share as “investment accounts with The Vanguard Group and Merrill Lynch and checking and savings accounts with Bank of America and Citizens Bank with a total value of which is \$780,000.”<sup>14</sup> Although she believes that these were joint accounts with Norman and Joel Glassman, neither she nor the respondents indicate whether these accounts are located in Pennsylvania. The location, nature<sup>15</sup>, title and exact amounts of these accounts raise factual issues that must be determined at a hearing on the merits.

**C. A Record Must Be Created to Determine Whether This Court Can Exercise In Personam Jurisdiction over Joel and Norman Glassman by Depositions, Written Interrogatories or Other Discovery**

Almost as an afterthought, Joel and Norman Glassman raise as a preliminary objection that this court lacks jurisdiction over their persons. They maintain that they do

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<sup>14</sup> Petition, ¶ 5.

<sup>15</sup> The Pennsylvania Superior Court in Estate of Inter, for instance, did not deviate from the prior precedent of Estate of Korn, 332 Pa. Super. 154, 164, 480 A.2d 1233, 1238 (1984) that a deferred compensation plan is not subject to spousal election. Estate of Inter, 444 Pa. Super. at 425-26, 664 A.2d at 147.

not do any business in Philadelphia, but rather they work and reside in Arizona. As they note, Pennsylvania's long-arm statute, 42 Pa.C.S. § 5322,<sup>16</sup> permits this court to exercise personal jurisdiction over a non-resident defendant to the constitutional limits of the Due Process Clause. Mellon Bank v. Kenneth, 960 F.2d 1217, 1220 (3d Cir. 1992). The United States Supreme Court has set forth a two part analysis of when the exercise of personal jurisdiction accords with due process: (1) whether the nonresident defendant purposefully established "minimum contacts" with the forum; and if so (2) whether the exercise of jurisdiction would comport with traditional notions of fair play and substantial justice. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985). The factors considered to determine whether the exercise of jurisdiction would be fair include "(1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversies, and; (5) the shared interest of the several states in furthering fundamental substantive social policies." Kubik v. Letteri, 532 Pa. 10, 19, 614 A.2d 1110, 1114 (1992)(quoting and adopting the Burger King, 471 U.S. at 477 test).

The respondents properly note that Mrs. Glassman's petition does not aver a single fact "demonstrating that there is any jurisdiction over the Respondents under either the general or specific jurisdictional analysis."<sup>17</sup> In her answer, however, Mrs. Glassman emphasizes that the Pennsylvania long-arm statute provides that a court may exercise

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<sup>16</sup> Pursuant to 42 Pa.C.S. § 5301 et seq., Pennsylvania courts may exercise two types of in personam jurisdiction: general jurisdiction or specific jurisdiction. General jurisdiction is "founded upon a defendant's general activities within the forum evidenced by continuous and systematic contacts with the state." Efford v. The Jockey Club, 796 A.2d 370, 373 (Pa. Super. 2002). Specific jurisdiction, in contrast, is more defined, focusing on particular acts of the defendant that give rise to the cause of action. Id.

<sup>17</sup> 4/25/2006 Respondent's Memorandum of Law at 5.

jurisdiction over a person based on a single act for the purpose of realizing pecuniary benefit. More specifically, that statute provides:

GENERAL RULE – A tribunal of this Commonwealth may exercise personal jurisdiction over a person (or the personal representative of a deceased individual who would be subject to jurisdiction under this subsection if not deceased) who acts directly or by an agent, as to a cause of action or other matter arising from such person:

- (1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:
  - (ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of acts.

42 Pa. C.S. § 5322.

To establish this jurisdictional requirement, Mrs. Glassman argues that the respondents “came to Philadelphia for the express purpose of negotiating a settlement of Petitioner’s rightful claims against her dying husband’s estate.”<sup>18</sup> The respondents, she notes, offered to pay her \$200,000 to settle all of her claims against the estate. They requested her son, Elliott Goldenberg, to have an attorney draft an agreement. When their attorney reviewed that agreement, however, the respondents refused to sign it. She avers that they thereafter purposefully manipulated a change in their father’s domicile to deprive petitioner of her share of the estate.<sup>19</sup>

The respondents filed no response to these claims. While it is true that these allegations relating to in personam jurisdiction did not appear in the petition for a citation, in light of the strong public policy underpinning the spousal right of election, the petitioner shall have twenty (20) days to file an amended petition setting forth facts

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<sup>18</sup> 5/12/2006 Yetta Glassman Memorandum at 7.

<sup>19</sup> 5/12/2006 Yetta Glassman Memorandum at 7.

regarding this court's in personam jurisdiction over the respondents. When a defendant raises a defense of lack of in personam jurisdiction, the plaintiff has the burden of setting forth sufficient facts to justify the exercise of jurisdiction. Graham v. Mach. Dist., 410 Pa. Super. 267, 269, 599 A.2d 984, 985 (1991); Mellon Bank, 960 F.2d at 1223. The parties shall thereafter have an opportunity to conduct discovery for a period of 60 days, if necessary, and they shall then file briefs on this threshold issue. Petitioner's brief shall be due on or before December 1, 2006 and Respondents' brief shall be due 30 days thereafter.

Date: \_\_\_\_\_

BY THE COURT:

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John W. Herron, J.