COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

No. 738 DE of 2007
E-Filing Number 0702160
Control Number 070982

Estate of AMELIA WATSON,
A/K/A
AMELIA M. WATSON, Deceased

OPINION SUR DECREE

Amelia M. Watson died on May 4, 1992, leaving a Will dated June 9, 1983, which was duly probated. The testatrix was unmarried at the time of her death and was survived by her sons, Charles J. Watson and Walter D. Watson.

Letters Testamentary were granted to Charles D. Watson, son of the testatrix and executor named in her Will on March 31, 1993.

By Item FIRST of her Will, a copy of which appears as Exhibit "P-2" in the Record in this matter, the testatrix gave her personal possessions in her house at 9314 Academy Road, Philadelphia to her son, Charles J. Watson.

Item SECOND of the Will pertains to premises 9314 Academy Road, Philadelphia and reads as follows:

> **"SECOND: The house at 9314 Academy Road is not to be sold unless it is so desired by my son, CHARLES J. WATSON. He shall have the right to remain in the house as long as he shall live or so desire to. When and if the house should be sold with the full and complete approval**

of my son, CHARLES D. WATSON, then the proceeds of the sale of the real estate only will be split into two (2) equal shares between my two sons, CHARLES J. WATSON and WALTER D. WATSON."

Item THIRD of the Will pertains to certain bank accounts and reads as follows:

> **"THIRD: Any bank accounts that I have in my possession naming my sons, CHARLES J. WATSON and WALTER D. WATSON, beneficiaries as per the names on the bank accounts are to be split equally between my two sons."**

Item FOURTH of the Will purports to pertain to the possibility that a son of the testatrix might die in her lifetime and reads as follows:

> **"FOURTH: Should either of my sons predecease me, then I give, devise and bequeath all of my estate, of every nature, both real and personal and wheresoever situate, to their heirs per stirpes."**

By Item FIFTH of her Will, the testatrix appointed her son, Charles, to serve as executor of her Will. Should Charles fail to qualify or cease to act as executor, then her son, Walter, is appointed to so act.

The Will does not contain any Item or clause which disposes of the rest, residue and remainder of the estate of the testatrix in the event that both of her sons should be living at the time of her death.

The Will does not contain any Item or clause which confers any powers upon the executor.

On January 25, 1993, Charles and Walter agreed that Charles would renounce his right to administer his mother's estate; that Walter would proceed with the probate of the Will dated June 9, 1993 and that Walter would serve as executor of the

estate.

Charles has continuously occupied his mother's house, at 9314 Academy Road, since the date of her death.

On April 18, 2006, Charles J. Watson signed a Deed whereby he conveyed his interest in premises 9314 Academy Road to Vernon Scott for a stated consideration of one dollar. On April 20, 2006, said Deed was recorded in the Philadelphia Department of Records as Document Number 51422435. A copy of said Deed appears as Exhibit "P-3" in the Record in this matter.

On May 9, 2007, Walter D. Watson filed a Petition in which he avers and alleges that Charles has been in continuous possession of the home since his mother's death; that sufficient assets to maintain the home were not part of the estate; that Charles has permitted the condition of the house to seriously deteriorate thus causing value to diminish; that Vernon Scott lives in the house and has done so for years; that their mother's will does not give anyone other than Charles a right to occupy the house; that Charles lost his rights under Item SECOND of mother's will when he permitted Vernon Scott to live in the home and when he attempted to convey his interest in the house to Vernon; that the Deed from Charles to Vernon is void because only Walter, as Executor, has the authority to convey the House; and that Walter should be allowed to appraise and sell the home. In said Petition, Walter seeks the following Relief: 1) Declaratory Judgment that the Deed from Charles to Vernon is Void, 2) Order allowing an Appraisal with costs split between Charles and Walter, 3) Order allowing Walter to place house on market for sale, 4) Order directing

that the unpaid real estate taxes, unpaid utilities, unpaid insurance and unpaid maintenance be paid by Charles, 5) Order that Charles and Walter share equally in the cost of ordinary and customary expenses of sale.

On August 16, 2007, Charles J. Watson and Vernon Scott filed a Response to Walter's Petition. In their Response, Charles and Vernon aver and allege that Charles has lived in or maintained his residence in the house for forty years; that Charles has never intended to terminate his rights under Item SECOND of his mother's will; that Charles is disabled and is in need of Vernon, his live-in attendant; that the Deed from Charles to Vernon was an "Estate Planning Action" intended to insure that Vernon gets one half of the proceeds of any future sale; that partition would cause extreme hardship and would be unfair; and that his parents wanted Charles to have a Life Estate.

At a Hearing held on the Pleadings in this matter, this Court heard the testimony of Charles Watson, Walter Watson, and Vernon Scott. Charles Watson offered two Exhibits, entered into evidence as "R-1" and "R-2". Walter Watson offered six Exhibits, entered into evidence as "P-1" through "P-6".

Having considered the testimony and Exhibits, I hereby make the following Findings of Fact:

1) Charles J. Watson has rightfully resided in his mother's house since her death. Due to Charles' disabling condition, it was necessary for his caretaker, Vernon Scott, to move into the home with him. This was not a violation of Item SECOND of his mother's will.

2) The utilities and the expenses in the care of the home have been paid by both Charles and Vernon. Currently there are outstanding real

estate taxes, in the amount of less than $1,000.00, which will be paid by Charles and Walter. This was evidenced by tax bills and liens entered as Exhibits P-1 and R-1.

3) Repairs have been made to the home since the death of the testatrix including a new roof, replacing the flooring, repair and replacement of the rear wall, remodeling of the bathroom, replacement of water heater, new windows and repair to ceilings. These were necessary repairs and were paid by Charles and Vernon. The repairs were evidenced by photographs introduced as Exhibit R-2.

4) There are more repairs that are needed, including remodeling of the kitchen, new heating system and the addition of new siding to the home.

5) Charles' signature on the Deed to Vernon was done as an "Estate Planning Action." Charles never meant to lose his interest and Vernon is willing to transfer back the home to the estate.

Having considered all of the testimony and Exhibits, I am convinced that the intent of Amelia Watson, as expressed in her Will, must control the outcome of this litigation between her sons.

Because the testatrix did not dispose of the rest, residue and remainder of her estate, in her Will, I hold that premises 9314 Academy Road passed to her sons, Charles and Walter, as her as her heirs-at-law and next of kin under the intestate laws. However, the interests of Charles and Walter, in said premises, are held under and subject to the provisions of Item SECOND of their mother's Will.

Because Charles and Vernon have indicated that the Deed signed by Charles on April 18, 2006 was intended as a substitute for a Will, and, not for the purpose of depriving Charles of his rights under his mother's Will, I shall enter a Decree which Declares said Deed Null and Void.

As such, Walter's request for partition and sale of the house must be denied. Not only is it unnecessary as the Deed will be set aside, it is contrary to the intent of Amelia Watson as expressed in her Will. In her Will, the testatrix specifically stated that Charles was to remain in the home as long as he wished, he had the sole responsibility to decide when to sell. Therefore, if Charles continues to choose to stay in the property, he has every right to do so. Depriving Charles of this right by partitioning the property is directly against the terms of the Will.

Walter's request for Charles to pay all outstanding real estate taxes must be denied. In *Weizer Estate*, 3 Fiduc.Rep. 2d 342, the court faced similar circumstances where the decedent's will gave his widow the right to occupy the home and was silent as to the expenses. The court stated

> **"we hold that the petitioner as been given a right to occupy the home, as opposed to a life estate, and is not responsible for the real estate taxes theron. The remaining charges partake in the nature of personal expenses or user fees, and should be borne by the petitioner. Hence we hold that petitioner is liable for sewer and water rent, household utilities such as heat, electric and telephone, routine lawn care and general maintenance expenses." 3 Fiduc.Rep. 2d at 345.**

As such, in this case, both Charles and Walter are responsible for the payment of the real estate taxes. The taxes are not personal expenses borne by the occupier of the home, rather the taxes are necessary expenses that must be paid by the estate. Therefore, both Charles and Walter, as the estate beneficiaries, are responsible here.

Walter's request for Charles to pay fire and liability insurance must be denied. As with the findings to the real estate taxes above, fire and liability insurance are not

personal expenses of the person living in the home, they are necessary expenses to protect the home. As such, the estate shall be responsible for these expenses. Thus, both Charles and Walter will be obligated here.

In accordance with the foregoing discussion, I will enter an appropriate Decree.

Dated: _____

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O'KEEFE, ADM. J.

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