

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Betty Mae Schofield, Deceased
No. 639 DE of 2008
Control No. 082954

Sur account entitled First and Final Account of Hiawatha Peterkin, Administrator

The account was called for audit November 3, 2008 By: **HERRON, J.**
Counsel appeared as follows:

Peter Klenk, Esquire - for the Accountant
Kathleen A. Maloles, Esquire – for the Accountant
Lawrence J. Avallone, Esquire – for the Objectant

ADJUDICATION

Betty Mae Schofield died intestate on August 30, 2007. She was survived by two daughters, Diedra J. Lewis Opfermann and Fabienne A. Clark as well as by a son, Michel Schofield. Letters of Administration were granted to her long-time companion, Hiawatha Peterkin, on November 1, 2007. On September 24, 2008, Mr. Peterkin filed an account of his administration of the Estate of Betty Mae Schofield, deceased. Objections were filed to that account on November 4, 2008 by Diedra Opfermann concerning distribution of proceeds from the sale of real property located at 5221 Wissahickon Avenue in Philadelphia as well as such issues as attorney and administration fees.

A conference was scheduled for November 18, 2008, after which this court issued a decree dated November 20, 2008 requiring the Administrator to file an account “for all funds in the estate in response to objection 10.” Mr. Peterkin filed the amended accounts on December 22, 2008 and on January 15, 2009. The central issue raised by this account is whether Hiawatha Peterkin has a valid claim to the proceeds from the sale of the 5221 Wissahickon property under a purchase money resulting trust or a constructive trust.

I. Legal Analysis

A. Procedural Background

A hearing was held on March 24, 2009 to consider this issue. In her objections, Diedra Opfermann noted that the decedent's three children, as her sole heirs, had all executed a renunciation of their respective rights to administer their mother's estate in favor of "a long time family friend, Hiawatha Peterkin."¹ According to the objectant, decedent's only major asset was the 5221 Wissahickon property, which was sold on November 16, 2007 for \$185,000 resulting in net proceeds for the estate of \$141,628.53.² She maintains that all of the heirs agreed that Hiawatha Peterkin should share one-quarter of these proceeds with them because of his long standing relationship with their deceased mother and his assistance in settling her estate. Under this agreement, each of these four persons would then be entitled to approximately \$35,000. Instead of distributing a one-quarter share of the proceeds to each of decedent's heirs, however, Mr. Peterkin distributed \$8,000 to Ms. Opfermann, \$5,000 to Michel Schofield, and \$35,000 to Fabienne Clark.³

At the commencement of the March 24, 2009 hearing, counsel for both parties agreed that the accountant had the heavy burden of proving a purchase money resulting trust or constructive trust. If he succeeded in meeting his burden, the remaining objections need not be considered.⁴

B. Findings of Fact

The accountant, Hiawatha Peterkin, was the sole witness presented by either side. He

1 11/04/08 Objections, ¶¶ 3-4.

2 11/04/08 Objections, ¶ 6.

3 11/04/08 Objections, ¶¶ 7 & 10.

4 In her objections, Ms. Opfermann maintained, inter alia, that administration and legal fees were not documented or itemized, the distribution amounts were not proper and the accounting of proceeds from the sale of 5221 Wissahickon Avenue were incorrect. 11/04/08 Objections, ¶¶ 13 and thereafter.

testified that he had known Betty Mae Schofield, whom he characterized as his girl friend, for 46 years. They had decided to live together around 1978 and he purchased a home at 5221 Wissahickon Avenue. He recalled that the property cost around \$39,000 and that he personally paid cash for the down payment of approximately \$3,900 with his own money because Betty had no money. His testimony was unequivocal that he paid all the costs for the property including the down payment, the maintenance and improvement expenses. Nonetheless, Betty Schofield's name was the sole name on the deed. Mr. Peterkin explained that this was because at the time his credit was bad. In any event, he moved into the property in 1980, and remained there until 2004. Over the course of years, he renovated and repaired the property, transforming it from a duplex into a triplex. He testified that he did all the work and paid for all the supplies himself, while Betty made no financial contributions to the property.

The accountant testified as well that he maintained a joint bank account with Betty Schofield, which he used to pay expenses such as water bills for the property. Exs. P-2 and P-3. According to Mr. Peterkin, he had always intended that the property would be retitled to include his name. In fact, around 1984 or 1985, Betty had consulted with an attorney to prepare a deed for the property that listed both Betty Schofield and Hiawatha Peterkin as joint owners, although this deed was never recorded or signed. Ex. P-4. Not until after Betty died did Hiawatha learn that hers was the sole name on the deed.

The accountant also owned real property in Bradford County jointly with Betty Schofield, which he had purchased for \$38,900. Ex. P-5. Betty contributed no money to the purchase of this property. Mr. Peterkin testified that he sold the Bradford county property in September 2004 for a gross amount of \$42,822.06, or a net amount of \$38,664.78 after expenses.

Ex. P-6. This sum, the accountant stated, he then used to pay off the mortgage on the 5221 Wissahickon property in October 2004. Ex. P-8. After Betty died in August 2007, he sold the property in November 2007 for a gross sum of \$185,254.62 with a net amount of \$141,628.53. Ex. P-9. He testified that he gave various sums of money to Betty's three children even though he believed these gifts had been his money which he gave out of his "heart." Ex. P-10. Nonetheless, he steadfastly maintained, he had paid for the 5221 Wissahickon property and done all the renovation and maintenance work himself.

The testimony of Hiawatha Peterkin as to the sums he spent in purchasing and maintaining the 5221 Wissahickon property was totally credible, straightforward—and unrebutted by any contrary testimony. The objectant elected not to present any witnesses whatsoever. Based on this record, this court concluded that Hiawatha Peterkin had met his burden of establishing a purchase money resulting trust based on the following legal conclusions.

C. Legal Conclusion

It is well established that a party seeking to establish a resulting trust "must present evidence that is clear, direct, precise and convincing." Estate of Gadiparthi, 158 Pa. Comm. 537, 546, 632 A.2d 942, 947 (1993), citing Chambersburg Trust Co. v. Eichelberger, 403 Pa. Super. 199, 588 A.2d 549 (1991). See also Neill v. Reilly Estate, 32 Pa. D. & C. 4th 241, 251-52 (Bucks Cty. 1996)(To establish a resulting trust, the evidence must be "clear and direct, precise, convincing and be of a high probative value"). A purchase money resulting trust can be found "in favor of the person who paid the purchase price, when the transfer of property is made to one person and the purchase price is paid by another." Fenderson v. Fenderson, 454 Pa. Super. 412, 422, 685 A.2d 600, 604 (1996), app. denied, 548 Pa. 670, 698 A.2d 594 (1997). There are three requirements for the finding

of a purchase price resulting trust: ‘(1) the transfer is made to one person and the purchase price is paid by another; (2) the payor does not have the intention that no resulting trust shall arise; (3) the transferee is not the natural object of the transferor’s bounty.’ Id., 454 Pa. Super. at 422, 685 A.2d at 605, citing Fitzpatrick v. Fitzpatrick, 346 Pa. 202, 29 A.2d 790 (1943).

By his highly credible, unrebutted testimony, Hiawatha Peterkin met the high burden of proof and satisfied the three requirements for a resulting trust. It was undisputed that Mr. Peterkin paid for the purchase—and subsequent maintenance—of the 5221 Wissahickon property. No evidence whatsoever was presented as to any contribution by Betty Mae Schofield under whom the three intestate heirs would claim title to that property. Mr. Peterkin’s testimony also satisfied the second requirement for establishing a resulting trust: he clearly had no intention that no resulting trust would arise. He testified that he always had the intention that the 5221 Wissahickon property would be retitled in his name and he presented a deed manifesting that intent which Betty had requested her attorney to prepare. See Ex. P-4. The preparation of this deed in the joint names of Betty and Mr. Peterkin also goes to the third requirement that the transferee not be the natural object of the transferor’s bounty. Although Mr. Peterkin repeatedly referred to Betty Schofield as his girl friend, they could not be married because he was married to another woman. Because the parties were neither married nor related, Ms. Schofield was not the natural object of Mr. Peterkin’s bounty. A resulting trust therefore arose in Mr. Peterkin’s favor and he is entitled to the entire amount of the proceeds still remaining from the sale of the 5221 Wissahickon property. Since the issue of the gifts to decedent’s three children was not raised, they shall be entitled to keep the sums previously distributed to them.

II. Conclusion

In the petition accompanying his first account, the Accountant states that Pennsylvania Transfer Inheritance and Estate Tax was paid in the amount of \$ 26,856.13 on or around November 16, 2007 for the interest passing to Hiawatha Peterkin, as beneficiary of a purchase money resulting trust from the sale of the real property located at 5221 Wissahickon Avenue.

According to the Account filed on September 24, 2008 for the period November 1, 2007 through September 24, 2008, the total balance of principal before distribution is \$128,267.53 and the balance of income before distribution is 0 for a total of \$128,267.53. This sum, composed as stated in the Account, plus income received since the filing thereof, subject to distributions already properly made and subject to any additional transfer inheritance tax as may be due and assessed, is awarded as set forth in the Statement of Proposed Distribution as follows:

Income

N/A

Principal

Hiawatha Peterkin, Beneficiary of
Purchase Money Resulting Trust

100% of remaining proceeds from sale
of 5221 Wissahickon Avenue Property
after unchallenged gifts to decedent's
three children

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this ____ day of March 2009, the accounts are confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the

issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

John W. Herron, J.