

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Betty Jean Bell, Deceased
O.C. No. 1028 DE of 2010
Control No. 101848

OPINION

By Order entered March 14, 2011, a hearing was scheduled and held on April 20, 2011 to consider “whether Lisa Bell (“Respondent”) shall be evicted from the premises” and to address other forms of relief requested by Petitioner, Rodney Bell (“Petitioner”). For reasons stated herein below, the Court orders eviction and denies Respondent’s request to stay the Order pending appeal upon Respondent’s refusal to either post bond or to pay fair market rental for her occupancy of the premises during the period of any such appeal.

The facts are not in dispute. The premises located at 7141 Louise Road, Philadelphia, Pennsylvania was owned by Roscoe Bell, Jr. and Betty Bell, husband and wife. Roscoe Bell, Jr. predeceased Betty Bell, who died intestate on June 22, 2004. She was survived by her son, Petitioner, and her daughter, Respondent. She was also survived by a step-daughter, Karen Hollinger, however, she is not an intestate heir.¹

On July 14, 2004, Respondent applied for Letters of Administration (Exhibit P-2) which were granted. Following the death of Betty Bell, Petitioner resided in the premises for a year at which time Respondent also moved into the premises. A dispute arose between the two and Petitioner stopped residing in the premises a year or so later. Respondent has continued to reside in the premises and all efforts by the parties thereafter to divide their mother’s estate have failed.

Procedural History

On July 1, 2010, Petitioner filed a Petition for Citation requesting, inter alia, that Respondent should be ordered to file an account, be removed as Administrator, turn over all assets of the estate to a successor, be surcharged, disciplined and any other form of relief deemed appropriate.

¹ In her Answer to the Petition, Ms. Bell concedes that she and Rodney Bell are the only heirs at law of Betty Jean Bell, Deceased. see 8/31/10 Answer, ¶6

On August 3, 2010 Respondent filed an answer denying the factual averments but admitting the estate remains unsettled and that she continues to reside in the premises.

After repeated efforts to schedule an informal conference failed, the attorneys and their clients were ordered to attend a conference with the Court on February 8, 2011. Petitioner, his counsel and Respondent's counsel appeared. Respondent did not appear as ordered. see Order dated January 24, 2011. An Order was entered following the conference, removing Respondent as Administrator and ordering her to file an account.

Discussion

It is beyond dispute that both Petitioner and Respondent own a one-half interest in the premises, the most significant asset of the estate valued by Respondent in 2004 at approximately \$41,500. see Exhibit P-2. Unfortunately, the parties cannot agree upon a fair market value, cannot agree on a realtor and cannot fashion any resolution to the dispute over possession of the premises. Petitioner claims he was thrown out of the premises by Respondent, who in turn argues that she had to obtain a Protection from Abuse Order against her brother. The ill-will and disharmony between the two at the hearing, as well as between their counsel, was palpable.

In these circumstances this Court orders partition of the premises and, upon sale, will appoint a Master to recommend disposition of the proceeds.

At the conclusion of the proceedings, Respondent asked for a stay of any eviction which was denied upon the refusal to post any bond during an appeal or pay fair market rental during such appeal.

Respondent opposes eviction and advised the Court that any Order of eviction would be appealed. Respondent's counsel has stated: "Ms. Bell (Respondent) understands and appreciates the fact that a partition is in order but desires to keep the family residence as part of the family legacy." see March 10, 2011 letter of Robert L. Simmons attached hereto and made a part hereof. When Ms. Bell was specifically asked if she would be willing to pay fair market rent to avoid eviction and reside in the premises up until its sale, she refused to pay any rent whatsoever. Moreover, as a practical matter, the presence of an unwilling seller in the house can only frustrate reasonable efforts to market the premises and is certain to complicate and hinder efforts to market the property and obtain fair value. Accordingly, eviction in these circumstances is just

and fair, however, a generous period of time is granted to Respondent in order to both ease the transition in relocating elsewhere and/or permit a last opportunity to compromise the dispute with Petitioner.

A contemporaneous Order for partition and eviction within 90 days shall issue. This is an interim Order while this Court retains jurisdiction to consider any objections filed to the Account filed by Respondent, as well as, considers the Petitioner's other requests for relief.

Date: April 20, 2011

BY THE COURT:

John W. Herron, J.

Neil E. Jokelson, Esquire
Robert L. Simmons, Esquire