PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Edna Duncan, Deceased
O.C. No. 1910 AP of 2010
Control No. 115072

O P I N I O N

Introduction

The appeal filed by Timothy Vaughn from the Register of Wills decree admitting into probate a writing dated June 15, 2004 as the last will of Edna Duncan raises a critical threshold issue of standing. Petitioner's averred relationship to the decedent is as the grandson of her husband. For the reasons set forth below, his petition fails to set forth any facts that would provide him with the standing necessary to appeal the probate of Edna Duncan's June 15, 2004 will. His petition for a citation and appeal is therefore dismissed.

Background

On December 22, 2010, Timothy Vaughn filed his first petition for a citation directed against H. Walter Early to show cause why Vaughn's appeal of the July 19, 2010 decree of the Register of Wills should not be sustained. That decree entered into probate a writing dated June 15, 2004 as Ms. Duncan's will and granted letters testamentary to her nephew, H. Walter Early, who had been named as executor in the will.[1]

Vaughn's petition averred that his relationship to the decedent was through marriage. He stated that the decedent Edna Duncan had been the second wife of Vaughn's grandfather,[2]

[1] The June15, 2004 writing that was admitted into probate as the last will of Edna Duncan named her nephew, H. Walter Early, as executor, or in case he was unable to serve, named another nephew, Clarence E. Jackson, as executor in his place. The will provided that the residue of Ms. Duncan's estate should go to H. Walter Early, or if he predeceased Ms. Duncan, then to Clarence E. Jackson.

[2] See 12/22/2010 Petition, ¶2; 3/1/2011 Petition, ¶¶ 2-3.

Henry Duncan. There is no factual allegation that petitioner Vaughn had been named as a beneficiary in any prior will of Edna Duncan.

This failure to allege either a direct blood relation as an intestate heir to the decedent or a beneficiary status under a prior will raised a prima facie issue of standing. By decree dated January 12, 2011, therefore, this court dismissed the petition without prejudice to file a new petition that would set forth facts as to petitioner's standing to bring this appeal. On March 1, 2011, Timothy Vaughn filed a second petition which merely reiterates that Vaughn's relationship to the decedent was through her marriage of Vaughn's grandfather.[3] The petition likewise did not aver that Vaughn had been named as a beneficiary in any prior will. Based on the failure of this second petition to set forth facts that would demonstrate petitioner's standing to bring this appeal, it must be dismissed.

Discussion

As a general rule, a party seeking to challenge the probate of a decedent's will must have standing. Estate of Sidlow, 374 Pa.Super. 624, 628, 543 A.2d 1143, 1146 (1988). The right to appeal in a will contest is statutory as set forth in 20 Pa.C.S. § 908. See Estate of Luongo, 2003 Pa. Super. 171, 823 A.2d 942, 953 (2003). Section 908 of the PEF code requires that a person seeking to appeal from a decree of the Register of Wills must be a party in interest who is aggrieved by that decree:

> § 908 Appeals
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> (a) WHEN ALLOWED.- Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree; Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

[3] See 3/1/2011 Petition, ¶¶ 2-3.

20 Pa.C.S. § 908(a)

To establish standing as an aggrieved party, an appellant must be "directly and adversely affected by a judgment, decree or order" with "some pecuniary interest that is thereby injuriously affected." Estate of Seasongood, 320 Pa. Super. 565, 568-69, 467 A.2d 857, 859 (1983). As a threshold issue, a "contestant to the validity of a will does not have standing to do so unless he can prove he would be entitled to participate in the decedent's estate if the will before the court is proved invalid." Estate of Luongo, 823 A2.d at 954 (citing In re Ash's Estate, 351 Pa. 317, 41 A.2d 620 (1945)). Consequently, petitioner would have to aver either that he is an intestate heir of decedent Edna Duncan, or that he was named in a prior will that would come into effect if the June 15, 2004 will he is contesting is deemed invalid. See, e.g., Estate of Sidlow, 374 Pa. Super. at 628, 543 A.2d at 1145.

In his petition, Timothy Vaughn does not aver that he is related to Edna Duncan in any way other than by her marriage to his grandfather, Henry Duncan. Vaughn therefore would not qualify as an intestate heir as defined by the PEF code. See 20 Pa. C.S. §§ 2101 *et seq*. As a consequence, since petitioner could not take part in Ms. Duncan's estate under the law of intestacy if her Will is declared invalid, he has no "pecuniary interest which would be adversely affected by a determination that the Will was valid" and thus he "has no standing to contest the will" as an intestate heir. Estate of Seasongood, 320 Pa. Super. at 569, 467 A.2d at 859.

Alternatively, petitioner might have established the requisite aggrievement of a pecuniary interest that is necessary for standing to contest Edna Duncan's will if he had averred that he had been named as an heir under a prior will of Edna Duncan. See, e.g., Estate of Luongo, 823 A.2d at 954 (a nonrelative 'legatee under a prior will, whose legacy is revoked only by implication by virtue of the testator's act of executing a later will, has standing to challenge the validity of the

later will, because the prior will is revived upon a ruling that the later will is invalid). Petitioner's failure to assert this alternative basis for standing dooms his appeal.

In reaching this conclusion to dismiss the appeal and petition filed by Timothy Vaughn at this early stage of the litigation, this court relies on the analysis of Estate of Luongo where the Superior Court observed that standing is a "jurisdictional prerequisite to an action, [and] **can be raised at any time**, by any party, **or by the court *sua sponte*."**[4] Admittedly, this ruling comes at the initial phase of the litigation but, as the Luongo court stated, "[o]n appeal from the Register of Wills' decree admitting a will to probate, the Orphans' court must consider the facts presented and 'either dismiss the petition, grant an issue in case of substantial dispute, or set aside the probate."[5] Under Philadelphia Orphans' Court Rule 10.2.C.(3),[6] "the contestant must establish a legally sufficient cause of action to obtain a citation from the Orphans' Court." Estate of Luongo, 823 A.2d at 962. While in most cases the legal sufficiency of a petition for a citation for an appeal from a decree of the register cannot be determined on the petition alone because it raises issues of fact, in this case the petition's failure to set forth facts as to the petitioner's standing was patent. Moreover, even though Timothy Vaughn by the January 12, 2011 order was given a second chance to allege facts as to his standing to bring this appeal, his second petition failed to do so and is properly dismissed.

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[4] Estate of Luongo, 823 A.2d at 953-54. The Luongo court explained that when "a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction." Id., 823 A.2d at 953.

[5] Estate of Luongo, 823 A.2d at 951 (quoting Wagner's Estate, 289 Pa. 361, 367, 137 A. 616, 618 (1927)).

[6] Pennsylvania Orphans' Court Rule 10.2 provides that "Appeals from judicial acts or proceedings of the Register of Wills and the practice and procedure with respect thereto shall be **as prescribed by local rules.** (emphasis added). Philadelphia Orphans' Court Rule 10.2.C.(3) setting forth the procedures for "Issuance of Citation" provides: "**If the petition sets forth a prima facie case**, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside." (emphasis added).

Date: March 10, 2010

BY THE COURT:

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John W. Herron, J.