

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Eleanor Boss Fluellen, Appeal from Register
O.C. No. 240 AP of 2011
Control No. 115273
Control No. 111688
Control No. 113107

O P I N I O N

Introduction

This appeal from a decree of the Register of Wills raises the legal issue of whether the Register abused his discretion in granting a rule to show cause filed by decedent's grandniece and grandnephew to remove Andrea Phillips as administrator of the estate of Eleanor Boss Fluellen and to appoint in her place Fincourt B. Shelton, Esquire, as Administrator Pendente Lite.¹ Since the appeal raises an issue of law, the parties presented a stipulation of facts in lieu of a hearing.

Because the decedent was survived by her husband, Samuel Fluellen, with no surviving issue or parent, upon her death her entire estate passed by intestacy to her spouse so that upon his death those interests passed by his will to his only child, Andrea Phillips. For these reasons and based on the stipulated record, it was an abuse of discretion for the Register to vacate the letters of administration it had granted to Andrea Phillips upon the petition of parties who lacked an interest in the estate. The appeal of Andrea Phillips is therefore sustained, the letters granted to Fincourt Shelton, Esquire are vacated and the Register is directed to grant letters of administration to Andrea Phillips for the Estate of Eleanor Boss Fluellen.

Factual Background

Eleanor Boss Fluellen died intestate on September 7, 2007. At the time of her death, she was survived by her husband, Samuel Fluellen. Her parents had predeceased her. She was not survived by any children. Eleanor's husband, Samuel, whose only daughter is Andrea Phillips, renounced his right to administer his wife's estate. Instead, the Register of Will granted letters of administration to Ms. Phillips on November 7, 2007. Samuel died nearly 6 months later,

¹ Stipulation of Facts ("Stipulation"), ¶ 21.

leaving a will, and Ms. Phillips was appointed Executrix of Samuel's estate by the Register on June 8, 2008.²

On April 15, 2011 Shalaina Tann and Ronald Tann Jr., who were the grandniece and grandnephew of decedent Eleanor Fluellen, filed a rule to show cause with the Register of Wills against Ms. Phillips seeking her removal as Administrator of Eleanor Fluellen's estate and the appointment of Fincourt Shelton, Esquire. A hearing was held before the Register on May 3, 2011, which was attended by the Deputy Director and counsel for Ms. Phillips. On May 25, 2011, the Register by decree vacated the letters of Administration it had previously granted to Ms. Phillips and issued letters of administration pendente lite to Fincourt Shelton, Esquire.³ According to the Register's record, the Register issued a decree dated May 31, 2011 granting Letters of Administration d.b.n. to Fincourt Shelton. That decree apparently has not been appealed by Ms. Phillips but the rationale for vacating the May 25, 2011 decree applies equally to the May 31, 2011 decree.⁴

On June 21, 2011, Ms. Phillips filed an appeal to this court seeking a citation directed against Shalaina Tann and Ronald Tann, Jr. to show cause why the Register's decree appointing Mr. Shelton as administrator pendente lite should not be set aside, reversed, and stricken. She asserts in her petition that under the PEF Code, and more specifically 20 Pa.C.S. § 2102(1), her father, Samuel Fluellen was the sole heir of Eleanor Fluellen's estate as the surviving spouse where the decedent left no issue. Upon Samuel's death, Ms. Phillips maintains, she became the "successor in interest" as the sole beneficiary under her father's will.⁵

In response, Shalaina Tann and Ronald Tann assert that they "are the sole blood relatives being the grandniece and grandnephew of decedent Eleanor Boss Fluellen."⁶ Andrea Phillips, they maintain, is neither a blood relative nor survivor of Eleanor Fluellen. The allegation that Samuel Fluellen was the sole intestate heir of Eleanor Fluellen as her surviving husband, they maintain, is "a conclusion of law."⁷

² Stipulation, ¶¶ 3, 9-10, 19-20.

³ Stipulation, ¶¶ 7, 21-26.

⁴ Stipulation, ¶¶ 25-27.

⁵ 6/21/11 Phillips Petition, ¶¶ 24 & 25.

⁶ 11/29/11 Tann Answer, ¶26. This answer was incorrectly docketed under the "DE" caption for decedent's estate though it responds to the petition filed as an appeal under an "AP" caption. According to the parties' stipulation, Shalaina Tann and Robert Tann, Jr. are the children of Ronald Hampton Tann who is deceased. Ronald Tann is the son of Wade Tann, the deceased brother of Eleanor Boss Fluellen. As a consequence, Shalaina Tann and Robert Tann are the grandniece and grandnephew of Eleanor Boss Fluellen. Stipulation, ¶¶ 3-7.

⁷ 11/29/11 Tann Answer, ¶¶ 26-27.

Legal Analysis

Under the PEF Code, it is the Register of Wills who has the initial authority to grant letters of administration to personal representatives of an estate. 20 Pa.C.S. §901; 20 Pa.C.S. § 711(12). In awarding letters, the Register is afforded a degree of discretion which nonetheless “must be exercised within the strictures of 20 Pa.S.C. § 3155.” Estate of Tigue, 2007 Pa.Super. 140, 926 A.2d 453, 456 (2007)(citation omitted). To challenge the Register’s award of letters, any aggrieved party may file an appeal of that decree by the Register with the Orphans’ Court. 20 Pa.C.S. § 908. In reviewing that appeal, where no additional evidence has been presented, the court must determine whether the Register abused his discretion in awarding the letters. Estate of Dodge, 361 Pa. Super. 188, 189, 522 A.2d 77, 78 (1987). In this case, the parties submitted a stipulation of facts so that the issue of law presented by the appeal could be resolved. Even so, this court must determine whether the Register abused his discretion in vacating and awarding letters of administration.⁸ If the Orphans’ Court concludes that the Register abused his discretion in selecting an administrator, it “may determine the proper individual to act as administrator, and direct the Register to issue letters of administration to that individual.” Estate of Klink, 1999 Pa. Super. 309, 743 A.2d 482, 485 (1999) *citing* Estate of Osborne, 363 Pa. Super. 200, 525 A.2d 788, 789 (1987).

In reviewing the Register’s appointment of an Administrator Pendente Lite after vacating the letters awarded to Andrea Phillips it is necessary to focus on the interplay of the provisions of the PEF Code outlining the persons entitled to letters of administration, 20 Pa.C.S. §3155(b) with the rules establishing who may inherit an intestate share. 20 Pa.C.S. § 2102. See generally Johnson Estate, 26 Fid.Rep. 2d 357, 358 (Phila.O.C. 2005)(O’Keefe, A.J.). This, in turn, will determine who has standing to raise any claim concerning the administration of the estate. Since the parties have stipulated to the relevant facts, this issue of law can be analyzed in terms of the appropriate PEF Code provisions.

The critical facts in determining the intestate shares in this appeal are that Eleanor Boss Fluellen died intestate without issue and without a surviving parent. The parties stipulate, for instance, that Eleanor died on September 7, 2007 while her mother, Irué Bass, predeceased her

⁸ By taking additional evidence, this court’s ruling would then be subject to review as to whether it committed an error of law or abuse of discretion. See Estate of Klink, 743 A.2d at 485-85. Otherwise, appellate review would be limited to determining whether the Register abused its discretion. Estate of Tigue, 926 A.2d at 456.

on January 7, 2003. Eleanor's husband, Samuel Fluellen, was alive at her death. Consequently, the applicable section of the PEF code is 20 Pa.C.S. § 2102 which provides:

§2102. Share of surviving spouse.

The intestate share of a decedent's surviving spouse is:

- (1) If there is no surviving issue or parent of the decedent, the entire intestate estate. 20 Pa.C.S. § 2102(1)(emphasis added).

Since decedent's husband, Samuel, was alive at her death, under the laws of intestacy he inherited her entire intestate estate. Estate of Kirk, 369 Pa. Super. 515, 517 n.2, 535 A.2d 669, 670 n.2 (1988)(intestate share of a decedent's surviving spouse is the entire estate where decedent has no surviving parent or issue). Under these provisions, moreover, neither Shalaina Tann nor Ronald Tann, Jr. had any claim to Eleanor's intestate death. After Samuel renounced his right to administer his wife's estate, the Register granted letters of administration instead to Samuel's daughter, Andrea. The intestate estate that went entirely to Samuel Fluellen upon his death was passed by his will to his only daughter, Andrea Phillips. In Pennsylvania, determination of who should be granted letters is controlled by 20 Pa.C.S. § 3155. Estate of Blom, 434 Pa. Super. 111, 114, 642 A.2d 498, 500 (1994). To the stipulated facts, therefore, section 3155 of the PEF code applies which provides:

§ 3155. Persons entitled.

- (a) *Letters testamentary.* –Letters testamentary shall be granted by the register to the executor designated in the will, whether or not he has declined a trust under the will.
- (b) *Letters of administration.* –Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned, and except for good cause, in the following order:
 - (1) Those entitled to the residuary estate under the will.
 - (2) The surviving spouse.
 - (3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.
 - (4) The principal creditors of the decedent at the time of his death.
 - (5) Other fit persons.
 - (6) If anyone of the foregoing shall renounce his right to letters of administration, the register, in his discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding paragraph.

20 Pa.C.S. § 3155.

Applying these principles to the present controversy makes it clear that the surviving spouse in the first instance was entitled to letters of administration. Upon the surviving spouse's death, Andrea Phillips, as the sole beneficiary under her father Samuel's will of the assets he inherited by intestacy from his deceased wife's estate, was then entitled to letters of administration for Eleanor's estate. In fact, the Register had already granted those letters to her by decree dated November 7, 2007 after her father renounced letters of administration. The distant grandniece and grandnephew of Eleanor Fluellen, having no interest in her estate, lacked standing to challenge the letters that had been awarded to Ms. Phillips. As a consequence, the grant of letters of administration pendente lite to Fincourt Shelton was an abuse of discretion.

The facts of this case are similar in key elements to those of the Johnson Estate, 26 Fid. Rep 2d 357 (Phila. O.C. 2005) involving an appeal of the granting of letters of administration by the Register of Wills to a decedent's half-siblings instead of his mother. Upon review of the Register's decree, Judge O'Keefe concluded that the letters should be vacated because, inter alia, under sections 3155 and 2103 of the PEF Code, "not only are the half- siblings inferior to Ms. Johnson (the decedent's mother) under intestacy, but the half siblings lack standing to nominate an administrator for the instant estate" due to their lack of financial interest in the estate. Johnson Estate, 26 Fid. Rep. 2d at 358, *citing* Reamer's Estate, 315 Pa. 148, 172 A. 655 (1934). See generally Estate of Tigue, 2007 Pa. Super. 140, 926 A.2d 453, 458 (2007)(in granting letters of administration under the statute preference should be given to those with an interest in the estate).

As a final matter, in vacating the letters of administration granted to Fincourt Shelton, this court directs the Register to reinstate the letters of administration it previously granted to Ms. Phillips. While it is true that selection of an administrator is normally the responsibility of the Register in the first instance, Pennsylvania precedent has concluded that where an Orphans' Court determines that the Register "abused its discretion in the selection of the original administrator" it may "direct the Register to issue letters to the individual whom the court finds entitled to administer the estate." Estate of Simmons-Carton, 434 Pa. Super. 641, 649, 644 A.2d 791, 795 (1994), *citing* Estate of Osborne, 363 Pa. Super 200, 525 A.2d 788 (1987). In this case, Andrea Phillips should be granted letters of administration for the Estate of Eleanor Boss Fluellen.

Conclusion

For all of these reasons, the appeal of Andrea Phillips is sustained, the letters of administration pendente litem granted to Fincourt Shelton by decree dated May 25, 2011 and letters of administration d.b.n granted to Fincourt Shelton by decree dated May 31, 2011 are vacated, and the Register is directed to grant letters of administration to Andrea Phillips.

Date: April 9, 2012

BY THE COURT:

John W. Herron, J.