

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of James J. Pepper, Deceased  
313 DE of 2011  
Control No. 115073

Sur First and Final Account of Mary L. Pepper, Executrix

The account was called for audit April 4, 2011  
Counsel appeared as follows:

By: **HERRON, J.**

Richard I. Torpey, Esquire – for the Accountant  
Angela Brock, pro se -- Objectant

ADJUDICATION

James J. Pepper died testate on October 5, 2009. In his will dated April 20, 2004, he appointed Mary L. Pepper as executrix. Letters testamentary were granted to Mary Pepper on October 14, 2009 and proof of their advertisement was presented. On March 2, 2011, Ms. Pepper filed an account of her administration of the estate covering the period October 5, 2009 through February 21, 2011. Objections were filed to the account by Angela Brock. Ms. Brock (“objectant”) asserted that the account improperly reduced her share of the estate by \$20,000 by characterizing that distribution from her uncle as a loan that should be repaid to the estate. A hearing was held on the objections on May 2, 2004.

The sole question presented at the hearing is whether two sums advanced by decedent James Pepper to objectant were gifts or loans. For the reasons explained hereinafter, this Court finds the sum involved of \$20,000 represented a loan which is now due and owing to the Estate.<sup>1</sup> Objectant Angela Brock is a niece of decedent and appeared pro se. Other than a written statement accompanying the objections, she presented no evidence to support her claim that the

---

<sup>1</sup> In her “Proposed Distribution to Beneficiaries Schedule,” the accountant states that \$11,823.53 of this amount due would be credited to the objectant’s share of the estate.

\$20,000 advance was a gift from the decedent. The Accountant presented persuasive and compelling evidence to the contrary. Three of Decedent's relatives testified to a general course of conduct by decedent of helping relatives in need. While decedent during his lifetime offered small sums as gifts, he treated larger sums as loans.

Timothy Pepper, who works as a financial adviser and was the decedent's nephew, testified that he assisted his uncle with his financial transactions. He recalled that in early 2006, decedent advanced \$15,000 to objectant as a loan to enable her to pay her taxes.<sup>2</sup> She repaid this loan together with interest on October 5, 2006.<sup>3</sup> In February, 2007, decedent authorized Mr. Pepper once again to facilitate a loan to Ms. Brock in the same amount.<sup>4</sup> Decedent expressly stated this was a loan. The loan was never repaid. Mr. Pepper testified that decedent again loaned \$5,000 to Objectant in March, 2008.<sup>5</sup> Mr. Pepper's testimony is credible, it is supported and corroborated by the exhibits admitted into evidence and there was no cross examination challenging his statements.

Under Pennsylvania law, those who object to an account bear the initial burden of proof. Dunn Estate, 54 Pa. D & C 2d 760, 761 (Mercer Cty. 1972) (“[t]here can be no doubt that the person attempting to prove an account incorrect must sustain the burden of establishing his position”). Moreover, the person seeking to establish that she is the donee of an inter vivos gift has the initial burden of proof to show both donative intent and delivery “with intent to vest title with the donee.” Rankin v. Kabian, 414 Pa. 554, 556-57, 201 A.2d 424, 426 (1964); Cole Estate, 11 Fid. Rep. 2d 17, 18-19 (Phila. O.C. 1990). As the Pennsylvania Supreme Court emphasized in Pappas Estate, 428 Pa. 540, 542, 239 A.2d 298, 300 (1968), “[i]t is well settled that appellant,

---

2 See, e.g., Ex. P-2.

3 See Ex. P-3.

4 Ex. P-4.

5 Ex. P-5.

the alleged donee of an inter vivos gift by a decedent, has the burden of proving by clear, direct, precise and convincing evidence a delivery to the alleged donee, either actual or constructive, together with a donative intent on the part of the donor.” See also Mallon Estate, 28 Fid. Rep. 2d 317,319 (Phila. O.C. 2008)(O’Keefe, Adm. J.)

In the instant case, the objectant elected to present no evidence. She neither presented any documents nor testified under oath in support of her claimed gift. Consequently, there is no evidence of any gifts ever being given to her. On the other hand, there is compelling evidence of a prior loan which was repaid by objectant and thus ample evidence of an intention to make a loan, not a gift. In addition, Decedent declared the \$15,000 to be a loan. Accordingly, this Court finds that both sums advanced by decedent totaling \$20,000 were loans and not gifts.

The accountant states that Pennsylvania Transfer Inheritance and Estate Tax in the amount of \$12,000 was paid on January 5, 2010 and in the amount of \$36,056.44 on June 2, 2010. According to the account, the balance of principal before distributions was \$338,808.11 and the balance of income before distributions was \$3,388.23 for a total of \$342,196.34. This sum, composed as stated in the account, plus income received since the filing thereof and subject to distributions already properly made or transfer inheritance tax which may be due, is awarded as set forth in the accountant’s petition for adjudication and statement of proposed distribution.

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

AND NOW, this \_\_\_\_\_ day of May 2011, the account is 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 7.1.A and Pa. O.C. Rule 7.1 as amended, and Pa. R.A.P. 902 and 903.

BY THE COURT:

---

John W. Herron, J.