

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Gabriel Robles, Deceased
O.C. No. 685 DE of 2011
Control No. 113354

OPINION SUR APPEAL

Introduction

This appeal raises the issue of whether this court erred in refusing to order the Department of Public Welfare to “disgorge” payments it received from an attorney on behalf of a decedent’s estate whose sole beneficiary is a minor where the attorney tendered that payment without the consent of the administratrix of that estate and without court approval. Although the attorney has appealed this court’s March 27, 2012 order under the caption of the decedent Gabriel Robles’s estate, the issues raised in this appeal also involve the attorney’s related filings regarding the estate of decedent’s sole, minor beneficiary, Aisya Robles, a Minor, O.C. No. 1656 MI of 2010. The factual background will therefore encompass those filings as well. Upon review of the record, the attorney’s petition for disgorgement of funds was properly denied. Not only did he act without the requisite authority or court approval, but he failed to file a timely appeal of the September 19, 2011 order by this court that denied his requested distribution to DPW and he failed to follow the appropriate administrative procedure to obtain a refund from the DPW. As a consequence, his appeal is without merit.

Factual Background

Gabriel Robles (“Gabriel”) died intestate on March 19, 2005. At the time of his death, Gabriel was unmarried but he was survived by an eight year old minor child, Aisya Briana Robles (“Aisya”) as well as by his mother Lourdes Sierra. On November 15, 2007, Lourdes Sierra obtained letters of administration to serve as administratrix of her son’s estate. Ms. Sierra retained the law firm of Pelagatti and Pelagatti (“Pelagatti”) to investigate a potential medical malpractice claim against Temple University Hospital relating to the death of her son. The Pelagatti firm, however, failed to file a lawsuit prior to the expiration of the applicable statute of limitations. Ms. Sierra therefore engaged a different law firm—the Colleran firm—to bring a legal malpractice action against the Pelagatti firm in June 2008. Before trial, an offer of

settlement was obtained. At this point, the appellant, attorney Fincourt Shelton became involved with the settlement negotiations. The administratrix agreed to a settlement in the gross amount of \$175,000 which was obtained.¹ This lawsuit was marked settled by a September 13, 2010 decree of Judge Howland Abramson with the condition that the settlement was “subject to distribution by Orphans’ Court.”

Instead of filing a petition seeking distribution of the settlement funds under the caption of decedent Gabriel Robles, attorney Fincourt Shelton on November 4, 2010 filed a petition with Orphans’ Court under the estate of Aisya Robles, who was Gabriel’s minor daughter. In that petition, Fincourt Shelton sought to be named guardian of Aisya. He also sought court approval of various distributions from her father’s estate. One particular disbursement he sought court approval for was \$20,249.73 to the Department of Public Welfare. The petition explicitly stated that it was the “petition of Lourdes Sierra, administratrix of the Estate of Gabriel Robles.”² A verification by Lourdes Sierra was attached. In response to this petition, this court issued a decree for the Estate of Aisya Robles, a Minor, dated November 9, 2010 that named Fincourt Shelton as guardian of the estate of Aisya. This order did not however specifically approve any of the third party distributions. On the contrary, the November 9, 2010 decree explicitly stated: “The Guardian shall not enter into any settlement of any claim or cause of action without prior approval of this court.”

Within days of this order appointing Fincourt Shelton as Aisya’s guardian, her grandmother Lourdes Sierra filed objections. She stated that she had never authorized Shelton’s appointment as guardian and requested that he be removed.³ In response to this alarming objection, this court issued a citation to Fincourt Shelton to show cause why a different guardian should not be named for Aisya. In addition, a hearing was scheduled for January 25, 2011. After that hearing, Fincourt Shelton was removed as guardian. Lourdes Sierra was named in his stead as guardian of Aisya with the explicit limitation that she “shall not enter into any settlement

¹ See generally, 12/14/11 Fincourt Shelton Petition for Disgorgement (Estate of Gabriel Robles, O.C. No. 685 DE of 2011) & Ex. A (11/15/07 Decree of the Register of Wills granting letters to Lourdes Sierra for the estate of Gabriel Robles who died March 19, 2005); 5/13/11 Fincourt Shelton Petition (Estate of Gabriel Robles, O.C. No. 685 DE of 2011), ¶¶1-11; 7/27/11 Lourdes Sierra Answer (Estate of Gabriel Robles, O.C.No. 685 DE of 2011) ¶¶1-11.

² See, e.g., 11/4/10 Petition to Appoint Guardian and Approve Settlement (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010), Introductory Paragraph (“The petition of Lourdes Sierra, administratrix of the Estate of Gabriel Robles, deceased respectfully states that”) and ¶ 1 (“Petitioner is the paternal grandmother of the minor Aisya Robles and administratrix of the Estate of Gabriel Robles, Deceased”).

³ 11/19/10 Objections by Lourdes Sierra (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010).

of any claim or cause of action without prior approval of this court.” 1/25/11 Aisya Robles Decree.

Astoundingly, on the day that he was removed as Aisya’s guardian, Fincourt Shelton forwarded a check in the amount of \$20,249.73 to the Department of Public Welfare on behalf of Gabriel Robles.⁴ Not only was January 25, 2011 the date when this court removed Fincourt Shelton as guardian of Aisya, but the DPW payment had been tendered without the explicit Orphans’ Court approval required by the September 13, 2010 decree of Judge Abramson.

On March 22, 2011, Fincourt Shelton filed another petition under the caption of Aisya Robles, a Minor, seeking court approval of allocation of settlement funds, and in particular for \$20,249.73 to the DPW. The exact identity of the “petitioner” was once again unclear. Although the petition began with a reference to “Petitioner Fincourt B. Shelton, Esquire, counsel to and on behalf of the Estate of Gabriel Robles,” paragraph 1 stated that the “Petitioner was appointed as Administratrix of the Estate of Gabriel Robles, on March 19, 2005....”⁵ In this petition, Shelton conceded that he had already paid \$ 20,249.73 to DPW and requested court approval of this and other settlement distributions. Once again, Sierra Lourdes filed objections, this time represented by counsel. Ms. Lourdes stated that Fincourt Shelton’s petition for court approval of settlement distributions had been brought without her knowledge. She clarified that he was not the administrator of the Estate of Gabriel Robles and asserted that he lacked standing to file the Petition to Confirm Distribution of the Settlement Funds. She also maintained that his petition had been inappropriately filed under Aisya’s name rather than as a petition directed to decedent Gabriel’s estate. Finally, she maintained that Shelton had improperly negotiated and received settlement proceeds without obtaining Court approval as required by Phila. R.C. P. *2206 and that he failed to protect the interests of the minor beneficiary because he did not advocate that the funds should be allocated to a wrongful death action under which the DPW payments would not have been required.⁶ By decree dated April 26, 2011, this court sustained the objections to Mr. Shelton’s petition and ordered him to file an appropriate petition under the caption of the Estate of Gabriel Robles, Deceased.

⁴ 3/22/11 Fincourt Shelton Petition, (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010) ¶ 16. As Exhibit D to this petition, Mr. Shelton attached a letter from him to DPW dated January 25, 2011 stating that he was enclosing a check in the amount of \$20,249.73 from his attorney escrow account to the DPW. By letter dated February 14, 2011, Jennifer Hartman on behalf of the DPW acknowledged payment in the amount of \$20,249.73.

⁵ See 3/22/11 Fincourt Shelton Petition (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010) ¶1.

⁶ 4/8/11 Sierra Lourdes Objections (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010).

Several weeks later, Fincourt Shelton filed a petition under the Estate of Gabriel Robles seeking court approval for the distribution of the settlement funds. Once again, the identities or positions of the respective parties were blurred. Although the petition stated in paragraph 1 that it was “filed on behalf of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles, deceased,” it ultimately acknowledged in paragraph 23 that the “Administratrix has not agreed to the foregoing distribution, thus the Court is requested to review the propriety of the proposed distribution and enter and to enter (sic.) an order approving allocation and distribution.”⁷ Among the distributions Fincourt Shelton sought approval for was \$ 20,249.73 for Commonwealth of PA lien. Sierra Lourdes objected to this petition, noting that Fincourt Shelton had failed to give her notice of it. She noted that by letter dated June 15, 2011, this court had advised Mr. Shelton that the petition would be held under advisement until receipt of an affidavit evidencing notice to all parties in interest. Thereafter, by letter dated July 12, 2011, Mr. Shelton transmitted a copy of the petition to Ms. Sierra. She maintained that Mr. Shelton had been required by local rule and order of Judge Abramson to obtain prior court approval for any distributions but he had advanced sums prior to obtaining these approvals. More specifically, she asserted that the \$20,249.73 Commonwealth of PA lien should not have been tendered if they had been allocated as a wrongful death claim.⁸

By decree dated September 19, 2011, this court granted the petition in part and denied it in part. More specifically, it did not approve the distribution to the Department of Public Welfare. No timely appeal was taken of this decree. Nearly 3 months later, Fincourt Shelton filed a petition seeking a court order of “discouragement” by the DPW of “amounts received without benefit of court ordered distribution.” He specifically conceded that this DPW distribution “was a compromised amount of the total lien but said distribution was made prior to approval by the Court, receipt thereof was acknowledged by the Commonwealth.”⁹ The Department of Public Welfare objected to this petition on various grounds. It asserted that any distribution of funds to the DPW without prior court approval “is the fault of the Petitioner and not the Department.” Any refund at this point is “within the exclusive jurisdiction of the Board of Finance and Revenue” rather than with the court. It further asserted that the petition is barred

⁷ 5/13/11 Fincourt Shelton Petition (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶¶ 1 & 23.

⁸ See generally 7/27/11 Lourdes Sierra Answer (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶¶ Q-S & 13-15..

⁹ 12/14/11 Fincourt Shelton Petition (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶13.

by the voluntary payment doctrine.¹⁰ Upon consideration of these filings and a conference, this court by decree dated March 27, 2012 denied Fincourt Shelton's petition for disgorgement. Fincourt Shelton subsequently filed an appeal of this decree. In his statement of matters complained of pursuant to Pa.R. A.P. § 1925, Mr. Shelton broadly asserts that the court erred in issuing its March 27, 2012 decree; that the court erred in not holding a hearing on his disgorgement petition; and as a matter of equity, the court erred in denying his petition because "equity abhors a forfeiture" and as a consequence of the court's order the attorney "would forfeit his entire fee plus personal sums."¹¹ None of these arguments have merit and they fail to address a central issue in this case: by tendering the settlement proceeds to the DPW, Shelton Fincourt was an attorney acting without the approval of the administratrix of the estate that he represented and without the Orphans' Court approval required by the September 13, 2010 order of Judge Abramson. His appeals to the equitable powers of this court due to his lost fee were therefore unprevailing.

Legal Analysis

It is undisputed that prior to the trial of the legal malpractice action initiated by Lourdes Sierra, as administratrix of her estate of Gabriel Robles, the parties agreed to a settlement in the gross amount of \$175,000.¹² That settlement, however, potentially implicated the interests of the decedent's minor child as well as a survival or wrongful death action. Under such circumstances, allocation of those proceeds require court approval. See generally Pa. R. C.P. 2206; Pa.R.C.P. 2039; Phila. R.C.P. *2206; Phila.R.C.P. *2039.1. Consequently, in his September 13, 2010 order marking the lawsuit between Lourdes Sierra, as administratrix of the Estate of Gabriel Robles, and attorney Pelagatti as settled, Judge Abramson imposed the requirement that the settlement was subject to distribution by Orphans' Court.

From the very beginning, the tactics taken by Fincourt Shelton to obtain Orphans' Court approval of the distribution of the settlement award was duplicitous and confused. Instead of filing a petition under the caption of the decedent, Gabriel Robles, he first filed a petition to have himself named as guardian of decedent's only child, Aisya Robles. As part of that petition, he sought in the name of Lourdes Sierra, administratrix of the Estate of Gabriel Robles, approval of

¹⁰ 3/2/12 Department of Public Welfare Answer (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶¶13-19 & New Matter 1-2..

¹¹ Statement of Matters Complained of On Appeal.

¹² 5/13/11 Fincourt Shelton Petition (Gabriel Robles, Deceased, O.C. No. 685 DE 2011), ¶ 7 & Ex. B; 7/26/11 Lourdes Sierra Answer (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011) ¶7.

distributions of those proceeds to the DPW among others. Alarming, he misrepresented that the petitioner was Lourdes Sierra, as administratrix of her son's estate and as grandmother of Aisya.¹³ In response to this petition, this court appointed Fincourt Shelton as guardian of Aisya, but explicitly denied him the authority to settle "any claim" without prior approval of this court. See 11/9/10 Estate of Aisya Robles Decree. Within days of that decree, this court was alerted by Lourdes Sierra that Fincourt Shelton had filed his petition without her approval and that she petitioned for his removal as guardian of her granddaughter.¹⁴ In fact, after a hearing, Fincourt Shelton was removed as Aisya's guardian on January 25, 2011. It was on that date, however, that he decided, as attorney for the estate, to tender a payment of \$20,249.73 to the DPW on behalf of the Estate of Gabriel Robles, Deceased.¹⁵ In so doing, he acted without the consent of the administratrix of the Gabriel Robles Estate and without court approval.

Under long-standing Pennsylvania precedent, the "general rule of law is that the ordinary employment of an attorney to represent a client with respect to litigation does not of itself give the attorney the implied or apparent authority to bind the client with settlement or compromise and in the absence of express authority he cannot do so." Lodowski v. W.L. Roenick, 227 Pa. Super. 568, 570-71, 307 A.2d 439, 440 (1973). Accord Bennett v. Juzelenos, 2002 Pa. Super. 19, 791 A.2d 403, 408 (2002). This is because in "this Commonwealth, the litigant is the complete master of his own cause of action in matters of substance, and he may press his case to the very end regarding the facts and law arrayed against him." Garnet v. D'Alonzo, 55 Pa. Comm. 263, 265, 422 A.2d 1241, 1242 (1980).

These vital principles apply by extension to this dispute as to the distribution of settlement assets. Throughout the filings by attorney Shelton and the administratrix Sierra Lourdes regarding the estate of decedent Gabriel Robles, and his minor beneficiary Aisya, the attorney sought to exceed his authority in representing the estates. After being removed as Aisya's guardian, Mr. Shelton persisted in confusing the record and issues by filing petition for court approval of allocation of settlement funds under the caption of Aisya Robles but on "behalf of the Estate of Gabriel Robles, deceased" and misleadingly characterizing the petitioner as the Administratrix of the decedent's estate.¹⁶ In so doing, he sought approval of the distribution to

¹³ See, e.g. 11/4/10 Fincourt Shelton Petition (Estate of Aisya Robles, a Minor, O.C. No. 656 MI of 2010), ¶1.

¹⁴ 11/19/10 Lourdes Sierra Objections (Aisya Robles, a Minor, O.C. No. 1656 MI of 2010).

¹⁵ 3/22/11 Fincourt Shelton Petition (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010) ¶16 & Ex. D.

¹⁶ See 3/22/11 Fincourt Shelton Petition (Estate of Aisya Robles, a Minor, O.C. No. 1656 MI of 2010), ¶1.

the DPW months after it had been made by him. This proposal, vigorously opposed by Sierra Lourdes as Administratrix, was denied and Fincourt Shelton was directed to file an appropriate petition under the caption of the decedent's estate, Gabriel Robles.

With his first filing under the caption of Gabriel Robles, deceased, Fincourt Shelton once again represented that his petition for approval of the distribution of settlement proceeds was "filed on behalf of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles, Deceased."¹⁷ Yet disingenuously, in paragraph 23 of that petition he admitted that the "Administratrix has not agreed to the foregoing distribution" set forth in the petition. Because it was unclear whether notice of this petition had been given to the Administratrix, the petition was held under advisement pending a response. In fact, in her responsive pleading, the administratrix maintained that she had not received notice of this petition and its proposed distribution which she once again opposed. More specifically, she denied that it had been filed on her behalf, she objected to Mr. Shelton's distribution of settlement proceeds to the DPW without court approval, and she asserted that the interests of Aisya regarding that payment should have been more vigorously advocated.¹⁸

Based on this persistent pattern of misrepresenting the identity of the petitioner and pushing the boundaries of his client's consent, there is no equitable basis to afford Fincourt Shelton's requested relief of ordering the DPW to disgorge his unauthorized payment to it. His lament that the practical effect of refusing to order the DPW to refund the \$20,249.73 is the forfeiture of his attorney fee¹⁹ is not compelling due to his repeated unauthorized actions in this matter. Courts repeatedly emphasize that "he who seeks equity must do equity." Estate of Aiello, 2010 Pa. Super. 52, 993 A.2d 283, 288 (2010), *citing* Sprague v. Casey, 520 Pa. 38, 550 A.2d 184, 188 (Pa. 1995). It is well established that a "court may deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue." Terraciano v. Com., DOT, 562 Pa. 60, 69, 753 A.2d 233, 237 (2000)(elaborating general principle without applying it). Furthermore, a party seeking equitable relief "must come before the court with clean hands" which doctrine "applies when the wrongdoing relates to the matter in controversy and affects the relationships between the

¹⁷ 5/13/11 Fincourt Shelton Petition (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶1

¹⁸ 7/26/11 Lourdes Sierra Answer (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011).

¹⁹ See Statement of Matters Complained of on Appeal, ¶ 4.

parties.” Mudd v. Nosker Lumber, Inc., 443 Pa. Super 483, 491 \$ n.5, 662 A.2d 660, 663-64 & n.5 (1995).

It is patently clear from the record that attorney Fincourt Shelton realized he was required to obtain court approval for the distributions from the Gabriel Robles Estate. This is evidenced by the numerous petitions he filed under the Aisya Robles and Gabriel Robles captions seeking court approval of his proposed estate distributions. Curiously, when this court by decree dated September 19, 2011 issued its order regarding the proposed distributions, Mr. Shelton failed to file a timely appeal of the order that \$0 be distributed to the Department of Public Welfare. In failing to file a timely appeal of that ruling, Mr. Shelton has waived it. Similarly, in his statement of matters complained of on appeal, Mr. Shelton complains that this court committed reversible error in not holding a hearing on his petition for disgorgement. This complaint is without merit on a number of scores. First, there is no record that he ever requested a hearing on that petition. Second, the record was well established by the voluminous filings in the related estates of Gabriel Robles, deceased, and his daughter Aisya Robles, a minor.

Finally, the Department of Public Welfare argued convincingly that the petition for disgorgement of funds tendered to it should have been denied because any demand for refund at this point should have been directed to the appropriate administrative body. It suggests, moreover, that “at this juncture, it is within the exclusive jurisdiction of the Board of Finance and Revenue not this court.” In addition, any “distribution of funds made to the Department prior to Court approval is the fault of the Petitioner and not the Department.”²⁰

Conclusion

For these reasons, the petition filed by Fincourt Shelton seeking disgorgement of funds he tendered to the DPW was properly denied.

BY THE COURT:

Date: July 17, 2012

John W. Herron, J.

²⁰ 3/2/12 DPW Answer (Estate of Gabriel Robles, Deceased, O.C. No. 685 DE of 2011), ¶13.

