PHILADELPHIA COURT OF COMMON PLEAS
OPRHANS' COURT DIVISION

Estate of Francis E. Martin, Deceased
O.C. No. 735 DE of 2013
Control No. 132381 and 131706

OPINION

Introduction

The petition to remove the executor of the estate of decedent Francis E. Martin raises the issue of whether a creditor of an executor, individually, has standing to seek his removal as executor of his deceased father's estate. For the reasons set forth below, the petitioner lacks standing to remove the executor where the creditor has no claim against the estate and where the decedent's will provides that "[u]ntil distributed, no gift or beneficial interest shall be subject to anticipation or to voluntary or involuntary alienation."

Background

John P. Capanna filed a petition to remove Francis J. Martin as executor of the Estate of Francis E. Martin ("decedent"). The petition stated that Capanna was a judgment creditor of both the decedent's estate and of Martin, who was the decedent's son and sole heir. In his Answer, Martin "admitted" to this assertion. On July 30, 2013, the petition to remove Martin as executor was granted. Within days, Martin filed a motion for reconsideration. He asserted for the first time that Capanna was not a creditor of the decedent's estate but was merely a creditor of Martin, personally. Consquently, Capanna lacked standing to seek Martin's removal as executor.[1] Martin also sought reconsideration because of a pending real estate closing. By decree dated August 13, 2013, this court vacated the decree removing Martin as executor and scheduled a hearing for September 9, 2013

At the hearing, Capanna admitted that he had never had a judgment against the estate of Francis E. Martin.[2] In addition to testimony, various documents were presented as exhibits

---

[1] See 8/9/13 Motion for Reconsideration, ¶12.

[2] See 9/9/13 N.T. at 16/28 (the transcript provided to this court has 2 page numbers on this page).

Q: (By Mr. Foster): Am I correct, sir, that you never obtained a judgment against my client's father, Francis E. Martin?

A: (By Mr. Capanna): That would be correct, yeah.

Id.

during the hearing. One of those exhibits was the decedent's will, which was presented as Ex. R-4. The terms of Francis E. Martin's will are quite complicated,[3] but there is no dispute that his son Martin is presently its sole beneficiary and executor. Among its various provisions, the decedent's will set forth a concise, unambiguous spendthrift provision:

> SIXTH: Until distributed, no gift or beneficial interest shall be subject to anticipation or to voluntary or involuntary alienation.
> Ex. R-4, September 16, 1987 Will, Article SIXTH

After the hearing, the parties were given the opportunity to file briefs. In his brief, Capanna acknowledges that he is a creditor of Martin based on a judgment entered by a federal magistrate judge for the Eastern District of Pennsylvania due to the default of a settlement agreement between Martin and Capanna. In contrast to his initial petition seeking Martin's removal as executor of his father's estate, Capanna makes no claim that he is also a creditor of the estate. He acknowledges that the sole issue facing this court is whether a judgment creditor of the executor individually rather that the Estate has "standing to file and litigate the Petition for Removal."[4] Unfortunately, neither party cites precedent that addresses this precise issue.

Legal Analysis

As a basis for standing, Petitioner initially invokes section 3183 of the PEF code which states that "any party in interest" may petition for the removal of a personal representative "when necessary to protect the rights of creditors or parties in interest." To support his overly expansive interpretation of section 3183 that the "rights of creditors" to be protected would apply not just to creditors of the estate but also to creditors of a beneficiary or executor, Capanna relies

---

[3] In his will, Francis E. Martin named his wife, Mary Martin, and his son, Francis Martin, as executors and trustees. The will provided that the residue of decedent's estate should be divided so that the principal would be distributed into two separate trusts (a residuary trust and a marital deduction trust) for the benefit of decedent's wife if she survived him. The income from the marital trust was to be distributed to Mrs. Martin during her lifetime. The decedent's will gave his wife the power of appointment as to the distribution of any principal remaining in the marital trust at the time of her death. If no appointment was made, the remaining principal was to be added to the residuary trust. As for the residuary trust, the will provided that if his mother-in-law, Mary Longo, survived the testator, one-hundred ($100,000) was to placed in a separate trust for her. The net income from that trust was to be paid to Mrs. Longo during her lifetime. The balance of the principal in the residuary trust was to be held for the benefit of decedent's wife, Mary Martin. She was given a limited power of appointment to direct the distribution of any principal remaining at the time of her death "to such of my descendants" as "she may appoint in her last Will by specific reference to this limited power." If Mary Martin's will made no designation as to the distribution of principal, one half of the principal remaining at the time of her death was to be paid to decedent's son, Francis Martin. The remaining half of the principal was to be placed in trust for Francis Martin. The principal of this trust was to be paid to him "upon his written request at any time after attaining the age thirty-five (35)." Ex. R-4.

[4] 10/30/13 Capanna Brief at 1.

on In re Velott, 365 Pa. Super. 313, 529 A.2d 525 (1987). Velott, unfortunately, does not address the issue of whether a creditor of a beneficiary or an executor has standing to seek the removal of an executor. Instead, the Velott court interpreted section 3183 as requiring a trial court to hold a hearing prior to removing the executor of an estate.[5] Moreover, none of the parties seeking to remove the executor in Velott were creditors. Instead, in Velott the children of the decedent sought to remove co-executors for alleged improprieties in the administration of the estate as set forth in 20 Pa.C.S. § 3182.

It is therefore necessary to focus first on the basic requirements for standing. As a general principle, "[s]tanding requires that an aggrieved party have an interest which is substantial, direct, and immediate." In re McGillick Foundation, 537 Pa. 194, 199, 642 A.2d 467, 469 (1994). Not only must a person be aggrieved to have standing to seek a judicial resolution, but that interest must be direct which "simply means that the person claiming to be aggrieved must show causation of the harm to his interest in the matter of which he complains." Wm. Penn Parking Garage, 464 Pa. 168, 195, 346 A.2d 269, 282 (1975). At least one court has denied a petition to remove an executor based on lack of standing. In DiDio Estate, 12 Fid. Rep. 2d 14 (Bucks Cty. 1991), a brother who was not named as a beneficiary in his mother's will filed a petition after her death to remove the executor of her estate. The executor was the petitioner's brother as well as the executor and sole beneficiary of their deceased mother's estate. The petition was dismissed after a hearing because the petitioner had no standing to seek the removal of the executor. In reaching this conclusion, the court reasoned:

> We dismissed the petition because we found that William had no standing to bring it. The Probate, Estates and Fiduciary Code provides that "any party in interest" may petition for the removal a personal representative. 20 Pa.C.S. §3183. Although this section of the Code does not define a party in interest, the term is defined elsewhere and appropriately extended to this context, as an unpaid claimant of the estate or a beneficiary, an heir or a next of kin with an interest in the estate. See 20 Pa.C.S. § 3503 Estate of DiDio, 12 Fid. Rep. 2d at 15 (emphasis added).

Although the petitioner in DiDio had asserted standing based on his ownership of a one-quarter interest in property in which the estate had a one-half interest, the court suggested that the appropriate forum for the petitioner "as a co-tenant would be an action in partition, rather than an action directed at the internal affairs of the estate in which he has no concern." Id. at 16.

---

[5] This conclusion is not unique. See also Estate of Wolongavich , 339 Pa. Super. 452, 489 .2d 248 (1985)(court erred in removing executor without sworn testimony at a hearing).

This analysis of standing in DiDio is in accord with the well settled principle that the removal of an executor chosen by a testator to administer his estate is a drastic action under Pennsylvania law. Estate of Pitone, 489 Pa. 60, 68, 413 A.2d 1012, 1016 (1980). Courts are cautioned that such action should "only be taken when the estate is actually endangered." Estate of Hamill, 487 Pa. 592, 599, 410 A2d 770 (1980)(citations omitted). See also Estate of Georgiana, Jr., 312 Pa. Super. 339, 347, 458 A.2d 989, 993 (1983), aff'd, 504 Pa. 510, 475 A.2d 744 (1984). In the instant case, Capanna seeks to remove Martin as executor primarily to assure payment of a debt Martin owes Capanna.

There is a formidable obstacle to this debt collection goal that decedent placed in his will. That will includes a clear, unambiguous spendthrift provision. In Article SIXTH of his will, Francis E. Martin states:

> Until distributed, no gift or beneficial interest shall be subject to anticipation or to voluntary or involuntary alienation.

The validity of such a provision is well established since "[t]here is no question but that a spendthrift trust may validly be created to protect from creditors and from alienation the income to be paid to a beneficiary during a period of life of for years" as well as principal. Sproul-Bolton v. Sproul Boulton, 383 Pa. 85, 88, 117 A.2d 688, 690 (1955). See also Riverside Trust Co. v. Twitchell, 342 Pa. 558, 561, 20 A.2d 768, 770 (1941), aff'd, 342 Pa. 558, 20 A.2d 768 (1941)("It is entirely competent, as conceded by plaintiff, for a donor to create a valid spendthrift trust so as to protect the trust estate from creditors of the beneficiary"). The rationale for enforcing such provisions is to enforce the testator's intent: "The recognition of a testator's right to protect his heirs from a presumed incapacity to manage inheritances is.... a definite policy of the common law." Heyl's Estate, 50 Pa.D.& C. 357, 359 (Phila. O.C. 1944),aff'd, 352 Pa. 407, 43 A.2d 130 (Pa. 1943). In Widener and Bigelow Trusts, 16 Fid. Rep. 2d 161 (Mont.O.C. 1996), Judge Ott concluded his detailed analysis of the longstanding protection afforded to spendthrift trusts with a practical observation that "[w]hen the income is in the trustee's [or executor's] hands, the spendthrift provision protects it because of the donor's right to condition his gift. Once the income is in the beneficiary's hands, the donor can no longer impose such conditions." 16 Fid. Rep 2d at 163.

Under this precedent, Article SIXTH of decedent's will is an impenetrable obstacle to any claim to standing that Capanna asserts. Since he admits to having no claim against the estate itself, he cannot prevail in his effort to remove its executor.

BY THE COURT:

Date: March 26, 2014

John W. Herron, J.