

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

Estate of Peter D. Simon, Deceased

O.C. No. 1164 DE of 2006

Estate of Alma Simon, Deceased

O. C. No. 622 DE of 2013

OPINION SUR DECREE

O'KEEFE, ADM. J.

February 21, 2014

Before this Court is the petition of Carol Simon Weinstein seeking distribution of her share of the Estate of Peter Simon. Also before this Court is the petition of Peter Simon Jr. seeking to recover money allegedly taken from the Estate of Alma Simon by Carol Simon Weinstein. The issues raised in these estates were consolidated for trial.

Facts and Procedural History

Alma Simon died intestate on January 14, 2004. Alma was survived by her husband, Peter D. Simon Sr., and her children Peter D. Simon Jr. ("Peter Jr.") and Carol Simon Weinstein ("Carol"). On December 8, 2005, Peter Jr. and Carol were granted Letters of Administration for the Estate of Alma Simon.

On February 3, 2005, approximately a year after his wife's death, Peter Simon Sr. died intestate. On August 9, 2005, Peter Jr. and Carol became Co-Administrators of their father's estate. During the course of these hearings, both Peter Jr. and Carol testified that they essentially administered both estates through the estate of their father, Peter D. Simon. (N.T. 10/24/13, 12:2-4, 13:7-12, 43:21-44:7, 75:24-76:7) Carol testified that she and her brother specifically agreed to administer the affairs of their mother's estate through their father's estate. (N.T. 10/24/13, 75:24-76:7) In his pleadings, Peter Jr. has maintained that he entered no formal agreement to administer his mother's estate through his father's estate, but that certain tasks were combined and benefitted both estates.

In the course of administering their father's estate, litigation ensued between Peter Jr. and Carol. In their respective pleadings, each accused the other of misappropriating estate assets, failing to cooperate in administering the estate and being negligent in the administration of their father's estate. This Court held hearings on those petitions in June 2010. By Decree of this Court, on December 1, 2010, Letters of Administration in the Estate of Peter D. Simon were granted solely to Peter Jr. and Carol was removed as Co-Administrator of her father's estate. (Control # 091770)

On January 30, 2012, Peter Jr. and Carol entered into an *Estate Settlement Agreement in the Estate of Peter D. Simon Sr. Deceased* ("Estate Settlement Agreement") in order to conclude the administration of the estate and prevent the necessity of an accounting. (Exhibit CW-3) The relevant portions of the estate settlement agreement provided that the estate was to be distributed in equal half shares to Peter Jr. and Carol. (Exhibit CW-3, D) Additionally, the settlement agreement provided that \$30,000.00 was to be held in reserve pending any potential assessment

of an income tax deficiency. (Exhibit CW-3, G) Finally, the estate settlement agreement provided that

[t]he undersigned, and all the Parties, hereby forever fully release, compromise, settle and discharge any and all claims, demands, actions or causes of action, legal or equitable, absolute or contingent, vested or hereafter to accrue, which any of them may have against any other party hereto or against the Estate of Peter D. Simon Sr., deceased, or the Administrator DBN and the Administrator DBN's employees (Exhibit CW-3, H)

In February 2012, the Estate Settlement Agreement was filed and distributions of \$130,799.90 were made to both Peter Jr. and Carol. (Control # 120346)

In August 2012, Peter Jr., as Co-Administrator of the Estate of Alma Simon, contacted Wachovia Bank about an account belonging to his mother, Alma Simon. On August 21, 2012, Wachovia bank provided Peter Jr. with statements from Alma Simon's bank account. The statements demonstrated that two transfers were made from Alma Simon's checking account following her death. (Exhibit PS-3) The first check, dated August 17, 2005, transferred \$3,000.00 from Alma Simon's account to an account belonging to Carol. (Exhibit PS-3) The second check, dated December 25, 2009, was signed by Alma Simon and made payable to Carol Weinstein for \$8,100.00. (Exhibit PS-3) This check was endorsed by Carol and deposited into her checking account. Respectively, these transfers took place a year and a half and six years after Alma Simon had died.

Upon discovering these transfers, counsel for Peter Jr. and Carol attempted to reach a resolution over the disputed \$11,100.00. Peter Jr. proposed an additional distribution of \$11,100.00 to himself from his father's estate. By withholding the \$11,100.00 from Carol's share of her father's estate and distributing it to Peter Jr., the amount available for distribution decreased to \$13,495.81. Split evenly between Carol and Peter Jr., each would receive

\$6,747.91. Although Carol never accepted this offer, a check for \$6,747.91 was prepared and sent to Carol on February 10, 2013. (Exhibit PS-7, Exhibit PS-8) In April 2013, Carol filed a petition seeking to compel the final distribution of her one half share of the Estate of Peter D. Simon Sr., pursuant to the terms of the Estate Settlement Agreement. (Control # 131226)

In response, in May 2013, Peter Jr. filed a petition in the Estate of Alma Simon seeking to recover the \$11,100.00 allegedly taken by Carol Simon. (Control # 131418) The petition requested that the Court direct Carol to pay over \$11,100.00 to the Estate of Alma Simon. Alternatively, the petition proposed that the sum of \$11,100.00 could be satisfied by a reduction of Carol's share from her father's estate by \$11,100.00.

Existence of a Gift

In responding to allegations that \$11,100.00 was fraudulently transferred from her mother's checking account, Carol has maintained that the money was gifted to her. The burden for proving a gift is on the party asserting the gift. *In re Estate of Clark*, 467 Pa. 628 (Pa. 1976); *see also Henes v. McGovern*, 317 Pa. 302 (Pa. 1935); *In re Gongware Estate*, 265 Pa. 512 (Pa. 1920). The proponent of the gift has the burden of proving it by clear and convincing evidence. *See In re Leadenham's Estate*, 289 Pa. 216 (Pa. 1927); *Lanning v. West*, 803 A.2d 753 (Pa. Super. 2002). To establish a prima facie case that a gift was made, the proponent of the gift must show donative intent on the part of the donor and actual or constructive delivery to the donee. *See Wagner v. Wagner*, 466 Pa. 532, 537 (Pa. 1976); *In re Estate of Korn*, 332 Pa. Super. 154 (Pa. Super. 1984); *Moore v. Miller*, 910 A.2d 704 (Pa. Super. 2006).

At the hearings held in this case, Carol provided limited to no evidence as to the existence of a gift from her mother. In her pleadings, Carol asserts that the checking account was a gift from her mother prior to her death. Carol's only testimony regarding gifts was that her parents recognized the differences between her and her brother and did not feel the need to buy presents of equal value for the siblings. (N.T. 10/24/13, 71:22-75:11)

Based on the very limited testimony and evidence provided, Carol failed to establish donative intent and delivery, the necessary elements of a gift. Furthermore, the dates of the transfers, which took place a year and six years after Alma Simon died, undercut the assumption that Alma Simon gifted her checking account to Carol around her death in 2004. As noted above, it was Carol's burden to demonstrate by clear and convincing evidence the elements of a valid gift. The Pennsylvania Supreme Court has defined the clear and convincing standard as follows:

“the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, weighty, and convincing as to enable the [fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Estate of Flickert*, 461 Pa. 653, 658 (Pa. 1975).

Carol clearly did not meet her burden in demonstrating that the checking account was a gift from her mother. For these reasons and based on the record in this case, I conclude that the \$11,100.00 in transfers from Alma Simon's bank account cannot be considered a gift to Carol.

Estate Settlement Agreement

In response to claims of improper transfers from the Estate of Alma Simon, Carol asserts a variety of defenses; among them are judicial estoppel, equitable estoppel, laches and the statute of limitations. In essence each defense relies on the argument that Peter Jr.'s claims are barred

because they are encompassed by the Estate Settlement Agreement entered into for the Estate of Peter D. Simon.

As discussed above, the Estate Settlement Agreement specified that the assets of the estate were to be distributed 50-50 between Peter Jr. and Carol. Similarly, the Estate Settlement Agreement contained a provision which released the parties from any liability or claims which may arise out of the Estate of Peter D. Simon. Specifically, Carol asserts that any effort to withhold the \$11,100.00 by reducing Carol's distribution in the Estate of Peter D. Simon is prevented by the Estate Settlement Agreement. Additionally, since the estates were administered together, Carol argues the Estate Settlement Agreement encompasses the transfers from Alma Simon's checking account.

Counsel for Peter Jr. maintains that the Estate Settlement Agreement is limited to the Estate of Peter D. Simon and would not preclude a claim to recover the \$11,100.00 in Alma Simon's checking account. Alternatively, Peter Jr. relies on a provision of the Estate Settlement Agreement which directs that any funds received by the Administrator after the date of the Account would be distributed 50-50. He argues that since the transfer of funds was discovered subsequent to the settlement agreement, he was correct in treating the \$11,100.00 as a distribution and crediting himself with an equal amount, thus reducing Carol's share.

Family agreements and settlement agreements are looked upon favorably in the Orphans' Court. This Court has repeatedly held that "family agreements are favorites in the law and the [O]rphans' [C]ourt is duty bound to uphold such agreements whenever possible." *Kurek Estate*, 15 Pa. D&C 2d 192, 194 (Del. Orphans' Ct. 1958); *In re Edelman's Estate*, 336 Pa. 4 (Pa. 1939); *Way Estate*, 379 Pa. 421, 437 (Pa. 1934). Additionally, the agreements, "when fairly made are

never allowed to be disturbed by the parties or any other for them.” *Walworth v. Abel*, 52 Pa. 370, 370 (Pa. 1866).

Much of the testimony in this case centered on the Estate Settlement Agreement. Both Peter Jr. and Carol testified that they read the settlement agreement, signed it, had counsel and understood its provisions relating to a release of all potential claims in the estate opened for their father. (N.T. 10/24/13, 61:11-79:7; 78:21-79:12) This Court finds no evidence that the Estate Settlement Agreement was entered into unfairly. Additionally, the language of the agreement and the parties understanding of it make clear that the agreement was intended to prevent any further litigation in the Estate of Peter D. Simon. For that reason, I hold that Peter Jr. is directed to distribute to Carol her one-half share of the remaining assets in the Estate of Peter D. Simon, per the Estate Settlement Agreement.

However, I disagree with the contention that the Estate Settlement Agreement reached in the Estate of Peter D. Simon foreclosed claims related to the Estate of Alma Simon. By its terms, the Estate Settlement Agreement relates solely to the Estate of Peter D. Simon and makes no mention of the Estate of Alma Simon. (Exhibit CW-3) Additionally, based on the record in this case, I reject the contention that there was an explicit agreement by the parties that the Estate of Alma Simon was to be administered through the Estate of Peter D. Simon. As noted above, nothing in the Estate Settlement Agreement reflects such an understanding and thus it cannot prevent claims from being pursued within the Estate of Alma Simon. Recognizing that Carol did not meet her burden for proving the transfers totaling \$11,100.00 were valid *inter vivos* gifts, I hold that Carol must pay over \$11,100.00 to the Estate of Alma Simon.

Conclusion

This Court finds that the transfers made from Alma Simon's checking account totaling \$11,100.00 cannot be considered gifts to Carol Simon Weinstein. This Court directs Carol Simon Weinstein to pay over to the Estate of Alma Simon, the sum of \$11,100.00.

This Court also holds that per the terms of the Estate Settlement Agreement, Peter D. Simon Jr., as Administrator DBN of the Estate of Peter D. Simon, is directed to distribute to Carol Simon Weinstein her one-half share of the assets of the estate.

BY THE COURT:

J.

