

Adjudication date: 8/24/00

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

#2 Oct 97

No. 974 of 1997

Estate of IRENE ANDERSON, Deceased

Sur account entitled: First and Final Account of Juanita Hayes, Executrix

Before PAWELEC, J.

The accounts were called for audit: October 6 and December 1,  
1997;  
and February 2, April 6, June 1, September 14, October 5 and  
December 7, 1998; and April 5, June 7, July 7, September 13,  
October 8 and November 8, 1999; and May 1, 2000

Counsel appeared as follows:

DEBORAH S. GRIFFIN, ESQ., - for the Accountant

and  
CONSTANCE W. MAIER, ESQ., - for Pauline Mack, Beneficiary  
Objectant

JAMES P. GOLDEN, ESQ., of HAMBURG and GOLDEN, P.C.  
- for the Commonwealth of PA, for taxes

Irene Anderson, also known as Irene Yuell Anderson and Irene Euell Anderson, died on November 15, 1995, leaving a will dated June 30, 1982, which was duly probated. She was unmarried at the time of her death. She was survived by her daughters, Juanita Lee Hayes and Pauline Marie Mack; by her son, Lonzie Anderson; and, by two children of her deceased daughter, Ruth Ellen Wilson, namely Fred Wilson, Jr., and Darren Keith Wilson.

Letters Testamentary were granted to the accountant on March 22, 1996; proof of publication of the grant of same was submitted and is annexed hereto.

It is stated that the accountant paid \$1,638.84 on account of transfer inheritance tax on April 16, 1997, but, such payment has not been duly vouched. James P. Golden, Esquire, representing the Commonwealth of Pennsylvania, entered an appearance claiming such Pennsylvania transfer inheritance tax as may be due and assessed, "without prejudice to the right of Commonwealth to pass on DEBTS and DEDUCTIONS", and the awards herein contained will accordingly be made subject thereto.

By the terms of her will, a copy of which is annexed hereto, the testatrix gave her estate to her children, Juanita Lee Hayes, Ruth Ellen Wilson, Pauline Marie Mack and Lonzie Anderson, with a provision that the share of any deceased child should pass to his or her children who are living on the date of execution of the will. She gave her daughter, Juanita Lee Hayes, sole authority and power to determine who shall reside in premises 428 East High Street,

Philadelphia, and, made all other provisions of her will subject to this power. She appointed Juanita Lee Hayes to serve as executrix of her will.

It is stated that Ruth Ellen Wilson died in the lifetime of the testatrix, and, that the testatrix is survived by two sons of Ruth Ellen Wilson, namely Fred Wilson, Jr., and Darren Keith Wilson, who were living on the date of the execution of the will.

It is stated that the family exemption has not been claimed and has not been allowed.

It is stated that notice of the audit has been given to all parties having a possible interest in the estate of the testatrix.

The account contains no receipts of property other than premises 428 East High Street, Philadelphia, Pennsylvania, which is carried, unconverted, at an appraised value of \$35,000.00. The account reflects disbursements of \$7,685.90 which are stated to have been paid by the accountant from her sole and separate funds.

Pauline Marie Mack, daughter of the testatrix and beneficiary under the will, has appeared by counsel and filed three Objections to the account.

These objections read as follows:

“ 1. The Accountant has failed to include in the Account various bank accounts and certificates of deposit the deceased owned at the time of her death. These include specifically, a money market account at Mellon Bank and certificates of deposit at Republic Bank.

2. These accounts were allegedly titled as a joint tenancy between the deceased and Juanita

Hayes, the Executrix and Accountant. However at the time the accounts were opened in 1992-93 the deceased, Irene Anderson, was not mentally competent to enter into an such joint accounts.

3. There is an obvious conflict of interest between Juanita Hayes' personal interests and the interests of the estate."

One who would surcharge a personal representative for failure to marshal and administer property of a decedent must identify the missing property; prove that it was owned by the decedent at death; prove the value of said property at the time of death; prove that failure to marshal and administer the missing property constituted breach of a fiduciary duty; prove that said breach of fiduciary duty resulted in a loss to the estate; and, prove the amount of said loss. See Cutler's Estate, 225 Pa. 167 (1909), Schwartz Estate, 68 D.&C. 154 (O.C., Phila., 1949), Conway Estate (No. 2), 12 Fiduc. Rep. 283 (O.C., Montg., 1962), Dunn Estate, 54 D.&C.2d 760 (Mercer, 1972), Estate of Stetson, 463 Pa. 64 (1975), and, Miller's Estate, 345 Pa. 91 (1942).

In support of her Objections, Pauline Marie Mack offered two Exhibits and her own testimony.

Exhibit "O-2" is a copy of a letter from the Office Of Federal Employees' Group Life Insurance, dated March 26, 1997, which indicates that said Office paid \$48,441.86 in life insurance proceeds to Irene Anderson, the testatrix, on March 1, 1982.

Exhibit "O-3" is a copy of a letter from Mellon Bank, dated June 5, 1998, which includes copies of the front and back sides of PSFS Certificate of

Deposit No. 5-61658180. Said Certificate is in the face amount of \$48,441.86, and, was issued in the name of Irene Anderson on March 10, 1982. It appears that the name of Juanita L. Hayes was added to this Certificate on November 22, 1982. The names of the depositors appear over the following language, to wit, "with right of survivorship (1) signature required for payment." It appears that Juanita Hayes redeemed this Certificate for \$99,994.93, on February 11, 1989, and, that the redemption proceeds were re-deposited as follows: \$50,000.00 into a Savings Account; and, \$49,994.93 into a Certificate of Deposit.

Pauline Marie Mack testified that she did not know what assets belonged to her mother at the time of her mother's death. Ms. Mack stated that Exhibits "O-2" and "O-3" were the only proof that her mother owned any assets other than premises 428 East High Street. Ms. Mack believes that her sister, the accountant, has a duty to disclose the existence of assets which are not included in the account.

Juanita Lee Hayes, the accountant, testified that she is the oldest daughter of Irene Anderson. Ms. Hayes admitted that she and her mother had owned assets in joint names through the years. She admitted that she and her mother held \$87,500.00 in a joint account with First Republic Bank on the date of her mother's death; that the monies in this First Republic joint account came from former PSFS Certificate of Deposit No. 5-61658180 which has been marked as Exhibit "O-3"; and, that Ms. Hayes received the proceeds of this First Republic joint account after her mother's death. Nevertheless, Ms. Hayes insisted that, at

the time of her mother's death, her mother did not own any assets other than premises 428 East High Street.

Former PSFS Certificate of Deposit No. 5-61658180, which has been marked as Exhibit "O-3", clearly meets the definition of a "joint account" under Section 6301 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. §§ 6301. Since the proceeds of this joint account were on deposit in another joint account, in First Republic Bank, on the date of the death of the testatrix, this Court will apply the statutory presumption which is set forth in Section 6304(a) of the Code in determining ownership of the monies in the First Republic joint account on the death of the testatrix. Section 6304 (a) of the Code reads as follows, in relevant part,

" (a) JOINT ACCOUNT. Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created. ...."

The definition of clear and convincing evidence is provided in the following language of our Supreme Court in La Rocca Trust, 411 Pa. 633 (1963), at 640,

" In Broida v. Travelers Ins. Co., 316 Pa. 444, 175 A. 492 (1934), at 448, in describing the meaning of the phrase, 'clear, precise and convincing,' we stated, '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, direct, weighty and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue ... It is not necessary that the evidence be uncontradicted [citing cases], provided 'it carries conviction to the mind' (Burt v. Burt, supra,) or 'carries a clear conviction of its truth'..."

The record in this matter contains no direct evidence of the intent of Irene Anderson, the testatrix, in creating either of the joint accounts in question.



being premises 428 East High Street, Philadelphia, Pennsylvania, which is awarded

as follows, to wit: an undivided, three-fourths (3/4) interest, as tenant in common, to Juanita Lee Hayes; and, an undivided, one-fourth (1/4) interest, as tenant in common, to Pauline Marie Mack.

The above award of an undivided, one-fourth (1/4) interest in premises 428 East High Street, Philadelphia, to Pauline Marie Mack, is made subject to payment by Pauline Marie Mack of the sum of \$1,921.47, being an equal, one-fourth (1/4) share of the aforementioned deficit of (\$7,685.90), to Juanita Lee Hayes, in reimbursement of funds advanced by Juanita Lee Hayes.

All of the above awards are made subject to payment of such transfer inheritance tax as may be found to be due and assessed.

A schedule of distribution, to contain only a recital of the award of real property, described as provided and containing all certifications required by Rule 6.11.A, shall be filed within ninety (90) days of absolute confirmation of the account.

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

AND NOW, \_\_\_\_\_, unless exceptions are filed to this adjudication within twenty (20) days, the account is confirmed absolutely.

J.