

Adjudication dated 12/10/98

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

14 Sept 90

No. 1044 of 1990

Estate of VIOLET S. BIGGANS, Deceased

Sur accounts entitled First and Final Account
of the Administration of the Estate of Violet
S. Biggans, and, Amended First and Final
Account of Patricia A. Miller, Administratrix

Before PAWELEC, J.

This account was called for audit September 17, 1990, June 1, 1992,
May 2 and 24, 1995, February 26 and 27, 1997, and, May 22, 1997

Counsel appeared as follows:

MICHAEL J. KOROLISHIN, ESQ. - for the Accountants

CONSTANCE W. MAIER, ESQ., - for Maureen Biggans, Ronald J.
Biggans, Jr. and Kelli Biggans, Objectants

Violet S. Biggans died on February 24, 1988, leaving a will dated
May 17, 1979, which was duly probated. She was unmarried at the time of her
death and was survived: by three children, namely, Patricia Ann Miller, Robert P.
Biggans and Edward P. Biggans; and, by three children of her deceased son,
Ronald J. Biggans, namely, Maureen Biggans, Ronald J. Biggans, Jr., and Kelli
Biggans.

Letters Testamentary were granted to the accountants on July 19, 1988; proof of publication of the grant of same has not been submitted and is not annexed hereto.

It is stated that no payments have been made on account of inheritance tax.

By the terms of her will, a copy of which is annexed hereto, the testatrix gave the residue of her estate as follows, to wit: twenty-five percent (25%) to each of her surviving children, Patricia Ann Miller, Robert Paul Biggans and Edward Paul Biggans; and, twenty-five percent (25%) to her trustees, to be held and administered for the benefit of the children of her deceased son, Ronald J. Biggans. The trustees are authorized to pay or apply net income and principal for the medical needs, maintenance, education or support of Ronald's children so long as any of them are under the age of twenty-two (22) years. When Ronald's youngest child attains the age of twenty-two (22) years, the principal of this trust is to be paid, per stirpes, to Ronald's then living issue. The testatrix appointed her surviving children, Patricia Ann Miller, Robert Paul Biggans and Edward Paul Biggans to serve as executors and trustees.

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

The surviving children of the testatrix take the position that their mother left no assets which were subject to administration by a personal representative. The "First and Final Account", signed by Patricia Ann Miller and Robert P. Biggans, and, the "Amended First and Final Account", verified by

Patricia Ann Miller, Robert P. Biggans and Edward P. Biggans, indicate that the accountants received neither principal or income belonging to their mother, Violet. The accounts may be termed “nothing, nothing” accounts.

Maureen Biggans, Ronald J. Biggans, Jr., and Kelli Biggans, children of the late Ronald J. Biggans and beneficiaries of the trust under the will of Violet S. Biggans, have appeared by counsel and filed an Objection to the aforementioned Accounts.

Objectants contend that the estate of Violet S. Biggans should include her one-third (1/3) share of the estate of her deceased husband, Paul Biggans, who died on April 1, 1974. According to Objectants, Paul Biggans was a building contractor whose estate should have included at least \$4,252,914.85 in assets, being: \$588,150.00 in alleged profits on sale of 150 homes in a development known as Kelvin Twin Homes; \$3,610,000.00 in alleged profits on rental and sale of 95 Townhouse Condominium Units in a development known as Edison Gardens; \$18,500.00 in principal allegedly due on a mortgage granted by William Di Francesco and Claire Di Francesco, his wife, to a corporation known as Biggans Associates, Inc., on October 2, 1972; and, \$36,264.85 in interest and principal allegedly due on a mortgage granted by a corporation known as Glendale Center, Inc., to Paul Biggans, on August 10, 1968. In addition, Objectants contend that the estate of Paul Biggans should have included an unspecified amount of cash representing: alleged profits on sale of a warehouse known as the Allengrove Warehouse; alleged profits on sales of 58 duplex buildings in a development known as the Allengrove Duplexes; proceeds of sale

of premises 9035 and 9033 Ashton Road to New Ashton Pharmacy, Inc., by Biggans Associates, Inc., by deeds dated October 6, 1978 and October 16, 1980; and, interest and principal allegedly due on a mortgage which was granted by John R. McNulty, Edward P. Biggans and Richard E. Krager to Biggans Associates, Inc., on December 5, 1980.

By separate Adjudication, at No. 302 of 1978 and bearing even date herewith, this Court has confirmed the First and Final Account of Robert P. Biggans as Administrator of the Estate of Paul Biggans, Deceased. Said Account is a “nothing, nothing” account which reflects the Administrator’s position that he received neither principal or income belonging to the decedent. Said Adjudication makes no surcharges, and, no awards of assets of Paul Biggans to his heirs.

Insofar as Objectants contend that the estate of Violet S. Biggans should include her one-third (1/3) share of the estate of her deceased husband, Paul Biggans, their Objection is dismissed.

Accountant’s Exhibit A-3 is a copy of the Form 706 (United States Federal Estate Tax Return) which was filed by Violet Biggans on or about February 27, 1975. In said Form 706, Violet reported that the estate of her deceased husband, for Federal Estate Tax purposes, consisted entirely of property which was jointly held by husband and wife. Said property had a gross value of \$145,332.00, being: \$33,500.00 in value of premises 13010 Kelvin Avenue, Philadelphia; \$75,000.00 in value of premises 104 South Woodcrest Avenue, Longport, New Jersey; \$30,000.00 on deposit in a Frankford Trust

Company certificate of deposit; and, \$6,832.00 in value of 854 shares of a corporation known as "Lapco Corp.". Schedule K of the Form 706 indicates that the Kelvin Avenue property was subject to a Mortgage of \$25,000.00 in favor of Frankford Trust Company. After taking a Marital Deduction of \$60,666.00, other deductions totaling \$33,547.13, and, an exemption of \$60,000.00, Violet's Form 706 results in there being no taxable estate and no federal estate tax on the death of her husband.

Objectants contend that the estate of Violet S. Biggans should include all assets which Violet reported as belonging to herself and Paul Biggans on the aforementioned Form 706.

He 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).

The fact that Violet Biggans reported certain assets on a Form 706, which was filed in 1975 and referred to ownership on April 1, 1974, does not

change the general rule that Objectants must prove that Violet owned said assets at the time of her death on February 24, 1988. Conway Estate (No. 2), supra.

Called by Objectants, Patricia Ann Biggans testified that her husband, Ronald J. Biggans, was diagnosed with cancer within days of the birth of their third child, Kelli, on June 21, 1974. At that time, her other children, Ronald, Jr., and Maureen, were eight and seven years of age, respectively. Patricia Ann Biggans stated that her husband survived for eleven months, despite predictions that he would last only two months, and, that he died on July 29, 1975, at the age of twenty-six years. According to Patricia Ann Biggans, her mother-in-law, Violet Biggans, felt guilty about Ronald's illness because it arose from a childhood condition which could have been addressed and resolved, thus saving Ronald's life. Patricia Ann Biggans testified that Violet gave Ronald \$20,000.00 to be used in purchasing a Laundromat in the Ashton Shopping Center. Violet thought that Ronald would be able to run this type of business, and, that Patricia Ann could raise their children on the income therefrom. Patricia Ann Biggans recounted a conversation in which Ronald told her that he had no need to leave a will because his mother owned all that his father had owned, and, because his mother had promised to take care of his children. According to Patricia Ann Biggans, Violet promised to take care of the children every time that Ronald brought the subject up in conversation.

Patricia Ann Biggans testified that her mother-in-law, Violet Biggans, led Patricia Ann to believe that Violet had created trusts for the benefit of the children of Patricia Ann and her deceased husband, Ronald. Patricia Ann

Biggans understood that these trusts were created in the lifetime of Violet, and, in Violet's will. According to Patricia Ann Biggans, Violet did not specify the value or composition of the trusts. Violet would only say that the children would be millionaires, and, that the trust assets were in a very, very safe place, that is, a place where no one could touch them.

Patricia Ann Biggans recounted a conversation with her mother-in-law, Violet Biggans, which conversation took place at a time when it appeared that Violet's son, Edward P. Biggans, was about to go to jail. At this time, according to Patricia Ann Biggans, Violet said that she had divided her assets into four shares; that her surviving children, Robert, Patricia Ann and Edward, would act as trustees of the share for Ronald's children; and, that the trust would come to an end when the youngest of Ronald's children, Kelli, became twenty-two years of age. Patricia Ann Biggans recalled Violet saying that the surviving children insisted on being named trustees for Ronald's children because Ronald's widow might re-marry in the future. Patricia Ann Biggans further recalled that, when she needed money to raise her children, Violet told her to get it from the trustees. According to Patricia Ann Biggans, her sister-in-law, Patricia Ann Miller, never let the children forget that their aunt was in charge of their money. The children had to beg their Aunt Pat for money for schools. Patricia Ann Biggans testified that her brother-in-law, Robert P. Biggans, honored his mother's wishes and acted as a trustee when he gave money to Ronald, Jr., for school. Patricia Ann Biggans stated that her sister-in-law, Patricia Ann Miller, gave Maureen money for school

Patricia Ann Biggans testified that her mother-in-law, Violet Biggans, tried to alleviate her guilt over Ronald's illness and death by constantly reassuring Ronald's widow that Violet would take care of Ronald's children. Patricia Ann Biggans recalled a conversation in December of 1987, just before Violet's death, when Violet said that she could face Ronald because she had taken care of his children.

Patricia Ann Biggans testified that all payments for the benefit of her children ceased, abruptly, on the death of her mother-in-law, Violet Biggans. Thereafter, Patricia Ann Miller refused to acknowledge the existence of a trust for the benefit of Ronald's children; called Patricia Ann Biggans a liar; slammed the phone down on Patricia Ann Biggans; and, closed her curtains in the faces of the children. Patricia Ann Biggans recounted a conversation with her brother-in-law, Robert P. Biggans, after the death of his mother, Violet, in which conversation Robert said that he and his surviving siblings were calling the shots until Kelli Biggans reached twenty-two years of age; that Patricia Ann Biggans would not know how to handle all of the money which was in trust for the children; that Patricia Ann Biggans might re-marry; and, that the children would get their money when Kelli Biggans was twenty-two years of age.

Lillian Lucas is the mother of Patricia Ann Biggans. Called by Objectants, Lillian Lucas testified about many conversations which she had with Violet Biggans after the death of Paul Biggans. According to Mrs. Lucas, Violet often said that there was no need to worry about the money which Violet had set

aside for the children of her deceased son, Ronald, and, that the children were well taken care of.

Lillian Lucas recalled one occasion, in 1976, when she was together with Violet Biggans, Violet's daughter, Patricia Ann Miller, and, Lillian's daughter, Patricia Ann Biggans. On this occasion, Violet seemed very upset and embarrassed. Violet said that her son, Edward, was going to jail; that she did not want Edward to have access to money which she intended for Ronald's children; that she had divided her assets into four shares; and, that her surviving children, especially Patricia Ann Biggans, would be in charge of the share for Ronald's children. At this point, according to Mrs. Lucas, Patricia Ann Biggans said that she would choose schools and cars for Ronald's children. Mrs. Lucas recounted a later conversation between herself and Patricia Ann Miller, during which conversation Patricia Ann Miller acknowledged that she was in charge of the money which Violet had set aside for Ronald's children.

Ronald J. Biggans, Jr., an Objectant, testified that he had several conversations with his grandmother, Violet Biggans, over a period of eight to ten years, during which conversations Violet said that Ronald and his sisters would be millionaires, or, were well taken care of. From these conversations, Ronald, Jr., formed the clear impression that his grandmother had set up trusts for the maintenance and education of himself and his sisters. Ronald, Jr., testified that his grandmother did not mention specific amounts of money or banks. However he recalled one conversation in which his grandmother said that his Uncle

Edward was in legal trouble, and, that this trouble had led her to take money out of Biggans Associates, Inc., and put it aside for the children of her deceased son, Ronald. Ronald , Jr., testified that the last of the aforementioned conversations took place about three to four months before his grandmother, Violet, died.

Called by Objectants, as of cross-examination, Robert P. Biggans testified that, after the death of his father on April 1, 1974, he and his mother never discussed her finances or money problems. According to Robert, his mother lived with his sister, Patricia Ann Miller, towards the end of the mother's life. If his mother had any discussions about her finances, Robert believes those discussions would have been with her daughter.

Robert P. Biggans testified that his mother did not tell Robert that she had set up trusts for the children of his deceased brother, Ronald. Nor did she tell Robert that he and Patricia Ann Miller were to act as trustees of any such trusts. As far as Robert knows, his mother did not create bank accounts or make any specific arrangements for Ronald's children. Without mentioning any amounts, Robert P. Biggans admitted that he had given money to Ronald, Jr., for Junior College, and, that Patricia Ann Miller had given money to Maureen for school in New York. Nevertheless, Robert denied that his mother had created any trusts or accounts for Ronald's children.

Called by Objectants, Patricia Ann Miller testified that her parents held the following assets in their joint names, on April 1, 1974, to wit: their residence at 13010 Kelvin Avenue, in Philadelphia; their house on the beach in Longport, New Jersey; and, some money in bank accounts. Patricia Ann Miller

stated that she never knew the amounts of money in her parents' bank accounts. According to Patricia Ann Miller, her mother lived with Patricia Ann in the last seven or eight years of the mother's life. Without giving any dates, Patricia Ann Miller testified that, at some time after her father's death, her mother transferred the Longport house to her surviving children and their spouses who then sold it for about \$900,000.00. Patricia Ann Miller stated that, after her father's death, her mother's income consisted of Social Security payments, and, a monthly payment of \$130.00 from Biggans Associates, Inc., which \$130.00 payment stopped after a time. According to Patricia Ann Miller, after her father's death, her mother's expenses were limited to health insurance premiums, and, her sole asset was a bank account which she held jointly with Patricia Ann Miller. There was never much money in said joint bank account. Patricia Ann Miller testified that her mother really did not leave an estate. According to Patricia Ann Miller, her mother's will was only offered for probate because an attorney advised her brother, Edward Biggans, that the mother's will must be probated.

Patricia Ann Miller testified that her mother did tell her that Ronald's children should receive their share of Biggans Associates, Inc., and Glendale Center, Inc. According to Patricia Ann Miller, she and her surviving brothers had agreed, after their mother's death, that Ronald's children should get their share of Biggans Associates, Inc., and Glendale Center, Inc. However, Patricia Ann Miller stated that there was no money available for distribution from either corporation, and, no shareholder had received his or her share thereof.

Patricia Ann Miller testified that her mother never asked Patricia Ann to set up any accounts for Ronald's children. Patricia Ann Miller did hear her mother tell the children that they would receive their share of Biggans Associates, Inc., and Glendale Center, Inc. But, according to Patricia Ann Miller, her mother never told the children that they would be millionaires.

This Court does not believe that Objectants' evidence will support a surcharge of the accountants, in any amount, in regard to assets which Violet S. Biggans reported as belonging to herself and Paul Biggans on the aforementioned Form 706. Objectants have simply failed to prove that Violet Biggans owned any of said assets at the time of her death. They offered no evidence, whatsoever, in regard to premises 13010 Kelvin Avenue or shares in "Lapco Corp". They offered no evidence to rebut the statement of Patricia Ann Miller that the Longport house had been transferred to the surviving children and sold.

Insofar as Objectants seek a surcharge for assets on the Form 706, their Objection is dismissed.

This Court does not believe that Objectants' evidence will support a surcharge of the accountants, in any amount, in regard to assets which were allegedly placed into an inter vivos trust by Violet S. Biggans. There is no direct evidence that Violet, herself, was ever a millionaire or otherwise in a position to give millions of dollars to anyone. This Court does not regard Patricia Ann Biggans as a credible or convincing witness as to the wealth of her mother-in-law, Violet S. Biggans. The testimony of Patricia Ann Biggans is clearly

influenced by her desire that her children should be millionaires. Likewise, the testimony of Lillian Lucas is subject to influence by a natural desire to see her grandchildren become millionaires. The self-interest of Ronald J. Biggans, Jr., is self-evident. On this record, this Court requires more than vague statements about unidentified assets to establish the existence of inter vivos trusts holding millions of dollars. In any event, the assets of an inter vivos trust are not properly before this Court on the audit of an account of personal representatives.

Insofar as Objectants seek a surcharge regarding assets which were allegedly placed into an inter vivos trust by Violet S. Biggans, their Objection is dismissed.

AND NOW, _____, unless exceptions are filed to this adjudication within twenty (20) days, the Amended First and Final Account, stated to November 17, 1992, and, showing a balance of principal and a balance of income, before distributions, of \$ 000,000.00 meaning that there are no assets for distribution, is confirmed absolutely.

J.