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

O. C. NO. 965 of 1992

Estate of EVELYN H. BRITTON, Deceased

Before: TUCKER, ADM. J., PAWELEC, J. and O'BRIEN, Senior Judge

OPINION SUR EXCEPTIONS

PAWELEC, J.

Before us for disposition are pleadings identified as “exceptions”, filed by Ralph R. Britton, Jr., and his current counsel, Michael Considine, Jr., Esquire.

In order to dispose of and in an attempt to bring this ongoing litigation to an end, it is necessary to review the three separate matters which these present “exceptions” attempt to effect.

Decedent, Evelyn H. Britton, died August 23, 1991 testate. She was survived by her son, Ralph Britton, and four children of her deceased daughter. Her will and codicil were duly probated and Letters Testamentary were issued. During her lifetime, she also had executed a general power of attorney. These are the subject matters of the present litigation and have spawned three separate actions. Her son, Ralph Britton, filed an appeal from probate. He also cited the executors to file an accounting of their administration of the decedent’s estate and then he filed objections to their account. He also cited the attorneys-in-fact to file

an account of their transactions pursuant to the power of attorney executed by decedent and then he filed objections to that account.

At the beginning, Mr. Britton was represented in all three matters by William C. Bullitt, Esquire, a member of the firm of Drinker, Biddle & Reath, and a well known member of the probate bar. Mr. Bullitt withdrew his appearance and James F. Mannion, Esquire, entered his appearance in all three matters. Mr. Mannion was a member of the Ballard Spahr firm and an active probate practitioner. Eventually, Mr. Mannion withdrew as counsel to Mr. Britton in all matters.

Then Brad S. Rush, Esquire, filed pleadings on behalf of Mr. Britton. Then Anthony B. Quinn, Esquire, filed pleadings and appeals in the will contest. Then Ralph D. Friedman, Esquire, represented Mr. Britton at the hearings on the objections to the account of the personal representative and the account of the attorney-in-fact. Now, Mr. Britton is represented by Mr. Considine. We shall discuss each of the matters separately.

WILL CONTEST

Evelyn H. Britton died on August 23, 1991. A will dated July 22, 1988 and a codicil thereto dated January 30, 1989 were admitted to probate by the Register of Wills of Philadelphia County on April 13, 1992, and Letters thereon were granted on the same day.

In her will, the testatrix devised her substantial estate into two equal trusts for the benefit of her children, Ralph R. Britton, Jr., and

Susanne B. Nicholas. She then provided that each child is to get the income from his or her trust, for life, and gave the trustees power to invade principal subject to certain limitations. Upon the death of a child, the trusts are to be combined and the income paid to the surviving child. Upon the death of the surviving child, the principal is to be distributed to the living children of Susanne B. Nicholas. At this point we must note that Ralph Britton is unmarried and has no children. Susanne Nicholas died in the lifetime of testatrix. She was married and had four children, who are the only grandchildren of testatrix.

In her will of July 22, 1988, testatrix appointed Shirley Knerr, Frank Burke and Rodman M. Rosenberger, Esquire, to serve as executors and trustees. In her codicil of January 30, 1989, the testatrix appointed Shirley Knerr and Frank Burke to serve as executors and trustees and excluded Rodman M. Rosenberger, Esquire. There were no changes in the dispositive provisions of the will. Mr. Burke had been acting as a financial advisor to the decedent since at least the early 1980s, and, Mrs. Knerr was a niece of the decedent.

The petition sur appeal alleged that as a result of Mr. Burke's business relationship with testatrix, he prevailed upon her to include him as co-executor and co-trustee in the will dated July 22, 1988, and, further, that as a result of action or constructive fraud on the part of Mr. Burke and Mrs. Knerr, testatrix executed the codicil which removed Mr. Rosenberger as co-executor and co-trustee. Accordingly, appellant requested that his

appeal be sustained and the Letters Testamentary issued to Burke and Knerr be revoked. Mr. Britton did not challenge the dispositive provisions of the will.

As a result of a Praecipe filed by Mr. Mannion, then counsel for Mr. Britton, the appeal from probate was placed on the audit list of Judge Pawelec to to be called on December 3, 1993.

Subsequently, there were many unsuccessful attempts to set the matter for trial. Finally, a date was set and notice thereof was sent to Brad R. Rush, Esquire, who was the last counsel to file pleadings on behalf of Mr. Britton. Mr. Rush appeared at the appointed time and place and advised the court he did not represent Mr. Britton in the will contest but only in certain matters concerning the accountings. He then asked for a continuance. However, he declined to enter an appearance for Mr. Britton in the will contest. This request for continuance was opposed by counsel for proponents of the will who was ready to proceed. The request for continuance was denied. By Decree and Opinion sur appeal dated January 3, 1996, the appeal from probate was dismissed. Copies of the Decree and Opinion were mailed to Brad S. Rush, Esquire, and to Ralph Britton. No exceptions were filed to this Decree. We note that Pennsylvania Supreme Court Orphans' Court Rule 7.1 mandates that exceptions be filed as local rules prescribe. Philadelphia Orphans' Court Rule 77.1 (now Rule 7.1.A.) mandates that unless exceptions are filed not later than 20 days after the date of the decree, the decree shall be final.

On February 2, 1996, Anthony B. Quinn, Esquire, new counsel for Mr. Britton, filed a petition seeking review of the court's decree of January 3, 1996. Answers were filed by proponents opposing this request. This petition for review was denied by decree dated February 27, 1996. No exceptions were filed to this decree. On March 27, 1996, Mr. Quinn filed a notice of appeal to the Superior Court of the decree of February 27, 1996. This was an appeal from the decree dismissing the petition for reconsideration of the decree of January 3, 1996. It was not an appeal from the decree of January 3, 1996, which dismissed the appeal from probate.

As a result of the notice of appeal, a Memorandum Opinion was filed by Judge Pawelec on April 4, 1996 in accord with Pa. R. Civ. P. 1925. On July 15, 1996, this appeal was withdrawn and the record was returned to the Clerk of the Orphans' Court on July 22, 1996. See Superior Court docket No. 1101 Phila. 96.

One might think this was the end of this will contest. Alas, but not so. Mr. Britton continues to file papers *pro se* and retain new counsel. The saga continues despite the testimony of Mr. Britton that his then attorney, Mr. Bullitt, brought him into court on a will contest, that he did not want a will contest and that this litigation is not about a will contest. (n.t. p.59, hearing 12/16/96). We also note that Mr. Britton has been and is presently receiving all of the income from this trust as the surviving child of this decedent pursuant to the terms of her will.

POWER OF ATTORNEY ACCOUNT

On January 27, 1989, Mrs. Britton executed a power of attorney in favor of Shirley K. Knerr, Franklin Burke and Barbara Nicholas (now Barbara Nicholas Delecatto), her granddaughter.

As a result of petitions filed by Ralph Britton, Barbara Delecatto filed an account of her actions pursuant to the power of attorney. Mr. Britton filed objections to this account and a hearing was held. Mr. Britton was represented by Ralph D. Friedman, Esquire, in the filing of objections, discovery, and the hearing. The objections were found to be totally without merit and were dismissed by adjudication of Judge Pawelec dated June 10, 1997. The adjudication discusses the objections, the testimony, and the evidence, has findings of fact and conclusions of law.

However, it is appropriate to again note that the account was stated by Barbara Delecatto. The evidence was very clear that she alone used the power of attorney to conduct financial transactions on behalf of her grandmother. The other two named attorneys-in-fact never acted in any way pursuant to said power.

ACCOUNT OF THE DECEDENT'S ESTATE

Shirley K. Knerr and Franklin A. Burke, co-executors, filed an account of their administration of the decedent's estate. Ralph Britton filed objections to their account. Mr. Britton was represented by Mr. Friedman in the filing of these objections, discovery proceedings, and the hearing on the objections to the account of the co-executors. The objections were

dismissed by an adjudication of Pawelec, J. dated June 10, 1997. That adjudication discussed the objections filed to the account of the executors, the evidence, and included findings of fact and conclusions of law.

SUBSEQUENT EVENTS

We again note that Philadelphia Orphans' Court Rule 77.1 (now 7.1.A.) mandates that unless exceptions are filed not later than twenty (20) days after the date of the decree, the decree shall be final. Exceptions are filed with the Clerk of the Orphans' Court and copies thereof are to be delivered to the auditing judge and served upon the accountant or his counsel and upon all parties adversely affected thereby, or their counsel of record. Philadelphia Orphans' Court Rule 35.1(b) (now Rule 3.5.A.(2)). Philadelphia Orphans' Court Rule 1.2 (now Rule 1.2.B.) provides for the listing of exceptions on the Argument List, and, Philadelphia Orphans' Court Rule 1.2(d) (now 1.2.B.(4)) provides that briefs of exceptant are to be filed with the Clerk not later than 3:00 p.m. of the third Wednesday preceding the call of the list and copies of the briefs delivered forthwith to counsel of record for opposing parties.

On June 30, 1997, the last day for filing exceptions to the aforesaid adjudications, Judge Pawelec received a letter from Mr. Britton. In the letter, he complained about the fact that his objections were dismissed. He complained that his counsel, Mr. Friedman, was unprepared and incompetent; that the adjudications were delayed in being delivered to him and were so delayed that he would not be able to except to the

adjudication of the court. He inferred that it was Mr. Friedman who held the adjudications and delayed their delivery to him. He claimed that Burke, Knerr and Delecatto have fraudulently seized his mother's estate and that this entire matter should be submitted to a Grand Jury. He also complained about the dismissal of his will contest. This he categorizes as a violation of his civil and constitutional rights. He states that he was unrepresented although "An attorney named Rush, who had refused to be my representative or act as my attorney, was present." No copies of this letter were sent to anyone.

In order to protect the interest of Mr. Britton, Judge Pawelec directed that this letter be filed of record as of June 30, 1997. The Clerk of the Orphans' Court treated this letter as exceptions to the two adjudications and on June 30, 1997, sent a letter to Mr. Britton that his letter was referenced as exceptions to the adjudications and that pursuant to local O.C. Rules, the exceptions had been placed on the December Argument List. This argument was scheduled to be heard on December 17, 1997.

On December 17, 1997, J. Michael Considine, Esquire, filed an appearance on behalf of Mr. Britton. On the same day, Mr. Considine filed Amended Exceptions on behalf of Mr. Britton. At this point, we must note that the amended exceptions are composed of five separate volumes entitled Exhibits A-B-C-D-E. A review of these five volumes reveals that they are not exceptions at all. They do not except to any rulings by the

court, contest any findings of fact or conclusions of law. They are a compilation of letters and documents which were never in the record. The writer of this opinion is not able to discern their purposes or relevance except that they, to some extent, reveal Mr. Britton's dissatisfaction with his many prior lawyers.

At the bar of the court, on December 17, 1997, Mr. Considine stated he was ready to proceed to argue his Amended Exceptions and the exhibits they contained. At first he stated that he was ready to proceed on the exceptions to the order of Judge Pawelec of June 1997. He then stated he was proceeding on Judge Pawelec's order of January 3, 1996, which dismissed "the challenge of the Will, Power of Attorney and Codicil".

We must note that these Amended Exceptions were filed on December 17, 1997.

When queried as to whether he filed a brief as required by Philadelphia Orphans' Court Rule 1.2 (now Rule 1.2.B.), Mr. Considine stated that he had, just that day, entered an appearance on behalf of Mr. Britton for the purpose of requesting a continuance. Mr. Considine then stated that he had not requested a continuance before the scheduled argument date because he was advised that any request for continuance would not be considered unless he entered an appearance on behalf of Mr. Britton. He waited until the date of argument to enter an appearance and request a continuance. The request for continuance was denied. The

exceptions were dismissed by Administrative Judge Tucker by decree dated January 21, 1998. Mr. Considine had not filed any brief as he was required to do, nor had he ever served the other side with his amended exceptions which he wanted to argue.

The decree of Administrative Judge Tucker was appealed to the Superior Court, which decree was “reversed and remanded for proceedings”. Superior Ct. No. 745 Phila. 1998. As a result of the remand, Administrative Judge Tucker entered a decree dated September 9, 1999, which stated

“AND NOW, this 9th day of September, 1999, it is hereby ORDERED and DECREED that this matter having been remanded back from Superior Court, the Exceptions have been placed on the Argument List to be called on Wednesday, October 20, 1999. Briefs are to be filed as required by Philadelphia Orphans’ Court Rule 1.2.B. Failure of exceptants to comply with this Rule and/or to proceed at that time will result in the exceptions being dismissed with prejudice.

No further continuance will be granted in this matter.”

Mr. Considine declined to comply with Administrative Judge Tucker’s order of September 9, 1999 and her specific direction that he comply with Philadelphia Orphans’ Court Rule 1.2.B. in regard to the timely filing of briefs. Philadelphia Orphans’ Court Rule 1.2.B.4. requires that four (4) copies of exceptant’s brief be filed not later than the third Wednesday preceding the date of the argument (Argument Lists are all called on the third Wednesday of the month) and copies of the brief shall be delivered forthwith to opposing counsel.

One copy of a brief with eight volumes of something entitled “REPRODUCED RECORD” were filed on October 18, 1999, two days before the argument date. Apparently copies were not furnished to opposing counsel.

It is extremely difficult to ascertain where Mr. Britton and his new counsel are heading since apparently they chose not to be bound by any court rules or applicable laws.

The brief states and I quote:

“II. STATEMENT OF JURISDICTION

Jurisdiction is conferred upon the Superior Court as a notice of appeal of the January 21, 1998 order of the Orphans’ Court Division of the Philadelphia County Court of Common Pleas was filed on February 20, 1998, pursuant to Rule 341, Pa. R.A.P.

III. ORDERS OR OTHER DETERMINATION IN QUESTION

AND NOW, this 21st of January, 1998, the Exceptions filed on behalf of Ralph R. Britton, Jr. are dismissed for failure to comply with Rule 1.2 (d) of the Orphans’ Court of Philadelphia County [relating to filing of brief 3 weeks before oral argument].

BY THE COURT:

s/ Patricia Tucker, Dam J.”

The eight volumes of reproduced record contain copies of some pleadings filed in the three separate matters, many of them marked up with comments presumably by Mr. Britton: correspondence from the court to various counsel; correspondence to Mr. Britton from his various

counsel; notes of testimony of hearings held on the objections to the accounts; various medical records, nurses notes, etc., pertaining to Mrs. Britton, none of which were offered into evidence by anyone at any time.

Frankly, it appears that these eight volumes contain the entire file compiled by Mr. Britton in regard to any matter concerning his mother's assets and estate.

We will dispose of these matters based on the record of the court and not the eight volumes of reproduced record created by Mr. Britton and Mr. Considine.

It is clear that the thrust of all this litigation is Mr. Britton's vendetta against Mr. Burke. This is expressly clear from the argument of counsel and his brief. He argues that there is no accounting of the account that was begun in 1980. Counsel admits that he is arguing about things that allegedly occurred ten years before the death of Mrs. Britton.

At this point, we must note that on October 9, 1980, Mrs. Britton entered into an investment management contract with Mr. Burke's company and deposited certain funds with him into a discretionary account. Mr. Burke continued to manage this fund, apparently in a fashion satisfactory to Mrs. Britton, until her death. In managing the account during Mrs. Britton's life, Mr. Burke was not acting pursuant to the power of attorney and, obviously, he was not an executor of her estate.

One of Mr. Britton's complaints is that the auditing judge limited his scope of discovery in regard to this account. This is totally

without merit. Since this account existed at the time of the death of Mrs. Britton, it was a part of her estate which was administered by her executors and the assets contained in the account are listed in the executor's account. The court permitted an accountant hired by Mr. Britton to audit this account for the entire period during which the executors administered these assets. In addition, the court permitted the audit to also include the year before the death of Mrs. Britton when, obviously, it was not being administered by the executors. The accountant did not find any improprieties. However, he stated he could not vouch for the transactions going back to 1980 when this account was created by Mrs. Britton. This is obviously before the power of attorney was executed and before there were any executors in office.

There is absolutely nothing in the record to indicate that Mrs. Britton, during her lifetime, was dissatisfied with Mr. Burke's management of the assets she turned over to him. It is Ralph Britton who for some reason is dissatisfied with something.

Ralph Britton complains that the account that Barbara Delecatto filed does not contain or reference the assets that are in the executors' account. This is totally without merit. The record is abundantly clear that Ms. Delecatto only used the power of attorney in the administration of one checking account and one savings account. These were the two accounts she and her grandmother, the decedent, used to pay the nursing home bills and other miscellaneous disbursements, all of

which were in her account. She never exercised the power of attorney in any fashion in regard to any other assets. Ms. Delecatto fully and satisfactorily accounted for the funds she administered pursuant to said power of attorney.

Ralph Britton's complaints about the executors' account really are not about the filed account but that the executors have not accounted for the transactions in the investment account managed by Mr. Burke going back to 1980. The executors have no responsibility to account for all of the transactions which occurred in this investment account during the lifetime of Mrs. Britton. These are transactions which occurred pursuant to a written contract between Mr. Burke and Mrs. Britton. This contract is not before the court.

The executors, as a result of the grant of Letters, obtain title to all the personal property of the decedent as of the date of her death. 20 Pa.C.S.A. §301(a). They have a duty to collect the assets, recover debts, pay creditors, pay any due taxes, and, ultimately, distribute the balance to those entitled. The executors account for the assets they have received and administered. In the instant case, it is apparent that Mr. Britton is of the opinion that Mr. Burke, inasmuch as he was a co-executor of the decedent's estate and was one of three individuals granted a power of attorney to act on behalf of Mrs. Britton (even though he never performed any act pursuant to the granted power), must explain and account for each and every transaction he ever had with Mrs. Britton during her lifetime.

This is simply not so. All of these complaints and objections are without any merit.

The dismissal of these “exceptions” is warranted for a number of reasons.

FIRST: After remand from the Superior Court, the Administrative Judge entered a decree on September 9, 1999 placing the matter on a specific argument list, on a specific date, and, she directed that briefs be filed as required by the applicable Orphans’ Court rule which she identified by number in her decree. The decree also stated that failure to comply with the decree would result in a dismissal of the exceptions with prejudice. Ralph Britton and his counsel did not comply with the decree. One copy of the brief was filed October 18, 1999, two days before the argument date and nothing was furnished to opposing counsel.

SECOND: The letter from Ralph Britton filed of record by action of the court on June 30, 1997 and the five volumes filed by Mr. Considine on December 17, 1997 entitled “Amended Exceptions” are not exceptions. There are no specific allegations of error in the findings of fact or conclusions of law of the auditing judge in regard to either account. Nothing has been preserved for appeal. VOLKHARDT ESTATE, 484 Pa. 52, 398 A.2d 656.

THIRD: Even if we address the complaints that discovery was limited and that the separate accountants did not account for the assets, we must find these complaints totally devoid of merit. The

complaint by Ralph Britton that his various counsel were incompetent warrants no discussion and is not determinative of the issues concerning the affairs of this decedent.

The findings of fact of the auditing judge in his adjudication of the account of the holder of the power of attorney are fully supported by the record. We are in full agreement with his analysis and conclusions of law. We dismiss the so-called exceptions and confirm the adjudication absolutely.

The findings of fact of the auditing judge in his adjudication of the account of the co-executors are fully supported by the record. We are in full agreement with his analysis and conclusions of law. We dismiss the so-called exceptions and confirm the adjudication absolutely.

As to the will contest, we, again, note that no exceptions were filed to the decree of January 3, 1996, which dismissed the appeal from probate. No notice of appeal was filed from that decree. The petition for reconsideration of that decree, filed February 2, 1996, did not preserve any appellate rights. Cheathem v. Temple University Hospital, et al, 1999 Superior Ct. 318 (filed 12-20-99). No exceptions were filed to the decree of February 27, 1996, which dismissed the petition for reconsideration. A notice of appeal to the Superior Court was filed to the decree of February 27, 1996 but this appeal was withdrawn. Nothing was preserved for appeal. The appeal from probate is concluded.

Ralph Britton and his counsel cannot resurrect this appeal from probate by including it in Mr. Britton's letter which was sent to complain about the two adjudications of the two accounts. If this is what is being attempted, it is dismissed as not timely and without merit.

Thus, we hopefully conclude this frivolous and vexatious litigation concerning a decedent who died in 1991.

BY THE COURT:

Pawelec, J.

**J. Michael Considine, Jr., Esquire
William R. Cooper, Esquire**