

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

O. C. No. 1541 of 1995

Estate of SUSIE N. CAIN, Deceased

Before: O'KEEFE, ADM. J., BONAVIDACOLA, J., and LAZARUS, J.

OPINION SUR EXCEPTIONS

O'KEEFE, ADM. J.

This court en banc has before it exceptions to an Adjudication of Judge O'Brien dated May 1, 2000.

Susie N. Cain died on January 4, 1995, intestate and unmarried, leaving to survive her, as her sole heir-at-law and next of kin under the intestate laws, one niece, namely Willa B. Davis.

Willa B. Davis renounced her right to administer the instant decedent's estate, and, asked that Letters of Administration be granted to her granddaughter, Verona D. Walker.

Letters of Administration were granted to Verona D. Walker on January 9, 1995.

On January 22, 1996, Verona D. Walker filed a "First And Partial" Account of her administration of the decedent's estate.

On February 1, 1996, Willa B. Davis filed twenty-four (24) Objections to the Administrator's "First And Partial" Account. On February 9, 1996, Ms. Davis filed an additional eight (8) Objections to the Account.

On March 21, 1996, Judge O'Brien held a hearing sur the Objections to the "First And Partial" Account.

On May 1, 2000, Judge O'Brien issued an Adjudication which makes no reference to the Objections to the "First And Partial" Account.

On May 19, 2000, the law firm of Benjamin L. Winderman, P.C., filed Exceptions to the Adjudication of May 1, 2000. Said Exceptions contain a recitation of services rendered in representing the interests of Willa B. Davis as sole heir-at-law of the decedent. Said Exceptions close with the following prayer for relief:

" WHEREFORE, Benjamin L. Winderman, P.C., Attorneys at Law, as Exceptors in their own right and not on behalf of Willa B. Davis or any other party herein, Except to the May 1, 2000 adjudication and to the Account herein, praying instead that the Account provide for payment to Benjamin L. Winderman, P.C. in an amount not less than \$18,500.00."

The Exceptant filed no Brief in support of its Exceptions. At the call of the Argument List, on January 17, 2001, no counsel appeared to offer oral argument in support of the Exceptions.

In disposing of exceptions to an Adjudication, this court en banc is, "...performing an essentially appellate function." In Re Duncan Trust, 480 Pa. 608 (1978) The scope of our review is set forth in Estate of Dembiec, 321 Pa.SuperiorCt. 515, 519-520 (1983), to wit,

" On appeal, the findings of an Orphans' Court judge who hears testimony without a jury are entitled to the weight of a jury verdict. *In re: Masciantonio's Estate*, 396 Pa. 16, 151 A.2d 99

(1959). This rule is particularly applicable to 'findings of fact which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony' *Herwood v. Herwood*, 461 Pa. 322, 336 A.2d 306 (1975). In reviewing the Orphans' Court's findings, our task is to ensure that the record is free from legal error and to determine if the Orphans' Court's findings are supported by competent and adequate evidence and are not predicated upon capricious disbelief of competent and credible evidence. *In re: Estate of Damario*, 488 Pa. 434, 412 A.2d 842 (1980). However, we are not limited when we review the legal conclusions that Orphans' Court has derived from those facts. *In re: Ischy Trust*, 490 Pa. 71, 415 A.2d 37 (1980)."

In his Adjudication of May 1, 2000, the Auditing Judge could make no error in disposing of a claim for legal services rendered to the sole heir-at-law because no such claim was raised in the proceedings before the Auditing Judge. The law firm of Benjamin L. Winderman, P.C., has no standing to pursue Exceptions to the Adjudication because it raised no claim or objection before the Auditing Judge. Accordingly, the Exceptions must be dismissed.

BY THE COURT:

JOSEPH D. O'KEEFE, ADM. J.

Benjamin L. Winderman, Esquire
Benjamin L. Winderman, P.C.
for Exceptant, Benjamin L. Winderman, P.C.

Dianne S. Salter, Esquire
for the Accountant, Verona D. Walker