

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

O. C. NO. 1018 of 1997

Estate of JAMES ALBERT MINTON a/k/a JAMES A. MINTON, Deceased

Before: PAWELEC, S. J. and LAZARUS, J.

OPINION SUR EXCEPTIONS

Pawelec, S. J.

Before us for disposition are exceptions to a decree of Tucker, A.J., dated June 7, 2000. It is necessary to review the record in order to put this matter into the proper perspective.

The decedent died on November 5, 1996, intestate, survived by Dorothy Minton, a sister, and Robert Minton, a brother. As a result of an agreement between the parties, Letters of Administration were granted to Dorothy. She administered the estate. She filed an account. The account was confirmed by adjudication of Tucker, A.J., dated September 8, 1997. No exceptions were filed to this adjudication.

Dorothy Minton died on April 27, 1998, and Letters Testamentary were granted on her estate on May 8, 1998.

On August 26, 1999, Robert Minton petitioned for and had granted to him Letters of Administration d.b.n. on the estate of James Minton, the decedent. On March 24, 2000, Robert Minton, as administrator

d.b.n. of James Minton's estate, filed a petition entitled "Petition for Rehearing and Leave for Discovery and Objections to Fiduciary's account."

In this Petition, Robert requests (a) a rehearing on Judge Tucker's adjudication dated September 8, 1997 of the account of James' estate, as stated by Dorothy Minton; (b) leave to take depositions and discovery to gather information to support his position; (c) to file objections to the account which had been adjudicated by Judge Tucker in September of 1997, and, (d) a new adjudication based on hearings to be held.

Judge Tucker considered this petition, held a status conference with counsel on the issues raised by the petition and by decree dated June 7, 2000, she dismissed the petition. Robert filed exceptions to this decree and they are presently before us.

In his exceptions, *inter alia*, Robert complains that there were assets in James' estate that were never accounted for in the account that was adjudicated; that he needs discovery to find the value of the unaccounted for assets and what they are. He also contends that he had no notice of the audit date.

We find the exceptions to be without merit. When an adjudication is filed, Philadelphia O. C. 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 or adjudication, the adjudication becomes final. No exceptions were filed. That adjudication is final and there is no case law or

statute for rehearing on issues that could have been addressed at the audit of the account before Judge Tucker.

Petitioner's claim that he did not receive notice of the audit before Judge Tucker is without merit. The record reflects, and his counsel admitted at argument, that Robert did receive notice of the date, time and place of the audit. He also received a copy of the account. Robert filed no objections to the account nor did he appear to enter any objections. The audit was continued to another date by Judge Tucker because counsel for the accountant failed to appear. Robert is now complaining that he did not get notice of the date to which the audit was continued. There was no need to give him further notice since he filed no objections and never indicated in any way to anyone that he had objections to the account.

20 Pa.C.S.A. §3521 does provide a method for the review of an adjudication. However, a petition for a review of a settled and confirmed account must show one of three things: (1) an error of law apparent on the face of the record; (2) new matter which has arisen since the decree; and (3) the subsequent discovery of new evidence which could not have been obtained previously by the use of due diligence. Hunter, Vol. 5 Review §5(a) and cases cited therein.

It is evident that this petition does not meet any of the three requisites. The petition is only two (2) pages and contains no facts or averments in support of the relief requested. Attached to the petition is a memorandum of law, which contains 12 pages of factual averments and

legal arguments. Also, attached are various exhibits in support of the memorandum. It is totally inadequate and Judge Tucker properly dismissed it.

Further, the alleged omitted assets were not considered or passed upon in Judge Tucker's adjudication. The adjudication awards only the assets that were listed in the account that was filed. If additional assets are discovered, they can be listed in a subsequent accounting.

BY THE COURT:

PAWELEC, S. J.

William J. Hirsch, Esquire
for Exceptant

Mark Richardson, Esquire
for Accountant