

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

**Control No. 030829
6 June 2003**

No. 579 ST of APRIL TERM 1922

Estate of JOSEPH C. NOBLIT, Deceased

Sur account entitled Fifth and Final Account of Wachovia Bank, N.A., Trustee

Before O'KEEFE, ADM. J.

This account was called for audit

**June 2, October 6,
November 3, 2003
& February 2, 2004**

Counsel appeared as follows:

**JAMES F. MONTEITH, ESQ. of DILWORTH PAXSON LLP
- for the Accountant**

**ALAN F. MARKOVITZ, ESQ., - for Kathryn Lyn Jaffe,
Roger E. Richards, Krista Richards Mann, and
Kevin Roger Richards, Objectants**

**Joseph C. Noblit, the Testator, executed his Will on June 12, 1919, and,
died on September 25, 1921. The testator was survived by his wife, Katharine, and,
by all four (4) of his children, namely Marion, William, Sara and Clara. By his said
Will, the testator gave the residue of his estate in a Trust which was to continue until
the expiration of twenty years after the death of his last surviving child. Marion died**

on April 21, 1951. William died on July 16, 1954. Sara died on December 28, 1975. Clara died on December 14, 1980. The Trust thus came to an end, by its terms, on December 14, 2000.

The relevant terms of the Trust appear in Items FIFTH, SIXTH, SEVENTH, EIGHTH and NINTH of the Will, which Items will be quoted herein so that this Court may resolve several questions pertaining to the proper distribution of the remaining principal and income. Item FIFTH of the Will reads, in relevant part, as follows, to wit:

“ITEM FIFTH: Should my said wife and my four children all survive me, I direct my Trustees to divide the net income from the remainder of my estate into ten equal parts, and for and during the lifetime of my said wife, to pay to her six of said parts, and to my children, Marion....., William....., Clara....., and Sara....., one fourth each of the remaining four parts.”

Item SIXTH of the Will reads as follows, to wit,

“ITEM SIXTH: On the decease of my said wife, I direct that the share of the income which had theretofore been paid to her shall be paid to and distributed among, or expended for the benefit of my surviving children, or if any of them be deceased at that time leaving children to survive him or her, then to such children, per stirpes and not per capita, in accordance with the general scheme of distribution in this Will.

Should my said wife not survive me, and all of my said children be living at the time of my decease, I direct that the said net income shall be divided into four parts, and one-fourth part thereof be paid to each of my said children in the same manner and under the same conditions as heretofore directed”

Item SEVENTH of the Will reads as follows, to wit,

“ITEM SEVENTH: If any child shall die without children surviving, then I direct my Trustees to pay the income theretofore paid to such child, to my surviving children and widow, share and share alike. In the event

that my wife shall also be deceased, then such income shall be equally divided among my surviving children. In the event that any child shall pre-decease me without issue, then the share of income thereby represented shall be paid to my wife and surviving children as in this item provided, the children of a deceased child always taking his or her parent's share of income."

Item EIGHTH of the Will reads as follows, to wit,

"ITEM EIGHTH: At the expiration of twenty years after the death of my last surviving child, I direct my Trustees to distribute and pay over absolutely and in fee simple the principal of my estate so held IN TRUST to my grandchildren and their issue then living, share and share alike, (per capita and not per stirpes). In the event that my grandchildren, and their issue, are in their minority at the time of distribution herein fixed, payment of their shares shall be made to their proper and legally appointed guardian."

Item NINTH of the Will reads, in relevant part, as follows, to wit,

"ITEM NINTH: In the event that at the decease of the last of my children there should be no grandchildren or their issue living, and my wife shall also be deceased, I direct my Trustees to dispose of the remaining principal of my said estate in their hands, to and among such persons, and for such uses and purposes, as my said child may designate by any last Will, duly executed, making disposition thereof. In case such child dies without having made such last Will so disposing of such portion of my Trust Estate, I direct my Trustees to divide the same in equal shares between five Protestant charitable institutions....."

A copy of the Will is annexed.

Katharine E. Noblit, the Testator's wife, died on November 11, 1922, survived by all four (4) of the Testator's children.

On December 14, 1925, the Testator's daughter, Marion Stiger, adopted a son named Roger, who had been born on December 21, 1923.

The First Account of the Trust, entitled "First Account of John MacFaden and Tradesmens National Bank.....", was confirmed by an Adjudication

of Sinkler, J., dated December 31, 1930. In his said Adjudication, Judge Sinkler awarded the balance of income, in equal shares, to the four (4) surviving children of the Testator.

The Second Account of the Trust, entitled “First and Final Account of The Pennsylvania Company.....”, was confirmed by an Adjudication of Stearne, J., dated November 16, 1939. In his said Adjudication, Judge Stearne awarded the balance of income, in equal shares, to the four (4) surviving children of the Testator.

On February 7, 1948, a son named Roger (now Roger E. Richards) was born to Marion Stiger’s adopted son, Roger.

On July 14, 1949, a daughter named Kathryn (now Kathryn Lyn Jaffey) was born to Marion Stiger’s adopted son, Roger.

Marion Stiger, the Testator’s daughter, died on April 21, 1951, survived by her adopted son, Roger; by Roger’s two (2) children; and, by the Testator’s three (3), surviving children, namely William, Sara and Clara.

Marion Stiger’s adopted son, Roger, served as Executor of the Estate of Marion Stiger, Deceased.

The Third Account of the Trust, entitled “Second Account of The Pennsylvania Company.....”, was confirmed by an Adjudication of Bolger, J., dated November 19, 1953. In his said Adjudication, Judge Bolger awarded one-fourth (1/4th) of the income accrued to the date of Marion Stiger’s death, April 21, 1951, to her adopted son, Roger, in Roger’s capacity as Executor of Marion’s Estate; and, awarded the balance of income, in equal, one-third (1/3rd) shares, to the three

surviving children of the Testator.

William H. Noblit, the Testator's son, died on July 16, 1954, without leaving children, grandchildren or any other issue surviving him. After William's death, the Trustees paid the income of the trust in equal, one-half (1/2) shares, to the two (2) surviving children of the Testator.

At some time in 1963, Roger Stiger's natural children, Roger and Kathryn, were adopted by their step-father, Jack Dart Richards.

On November 17, 1972, speaking for himself, Mr. Justice Roberts and Mr. Justice Nix, Chief Justice Jones issued an Opinion in Tafel Estate, 449 Pa. 442 (1972).

Sara C. Krentzlin, the Testator's daughter, died on December 28, 1975, survived by her son, Laurence Krentzlin, and, by issue of her deceased son, John Krentzlin.

The Fourth Account of the Trust, entitled "Third Account of First Pennsylvania Bank, N.A.....", was filed by reason of the death of Sara C. Krentzlin, and, confirmed by an Adjudication of Bruno, J., dated October 26, 1977. At pages 3 and 4 of his said Adjudication, Judge Bruno addressed what he termed "THE INCOME DISTRIBUTION PROBLEM" in the following manner, to wit,

" The will contains express provisions governing the disposition of a child's share of income after that child's death, but the dispositive plan is incomplete. Items SIXTH and SEVENTH of the will contain income disposition provisions which cover only a certain number of contingencies. No Item contains any express provisions covering a situation where a child, who has survived the testator and testator's wife, dies survived by a child and the issue of a deceased child.

The death of testator's daughter, Sara C. Krentzlin, who survived testator and his wife, and who was survived by a son and the issue of a deceased son, one of whom is a minor, has focused the Court's attention on the gap in the dispositive scheme for income.

* * * *

The guardian-trustee ad litem and counsel for the Accountants are of the opinion that these income disposition provisions suggest that the income is to be distributed on a stirpital basis to testator's now living issue. The Auditing Judge agrees. An examination of the income distribution provisions in the will leads to the conclusion that it was in the mind of the testator that the share of income of a child dying after testator and his widow, but survived by issue shall be distributed on a stirpital basis until principal becomes distributable and the trust terminates. Accordingly, the income will be so awarded." (emphasis supplied)

At pages 4 and 5 of his said Adjudication, Judge Bruno addressed what he termed "THE INCOME INTERESTS OF ROGER EDWIN STIGER" in the following manner, to wit,

" In connection with the Account presently before the Court, Roger Edwin Stiger has presented a claim for a share of income. The claimant, who was born on December 1, 1923, was adopted by testator's daughter, Marion Noblit Stiger, on December 14, 1925. Marion Noblit Stiger died on April 21, 1951.

* * * *

Counsel for the Accountant and the guardian-trustee ad litem are of the opinion that Roger Edwin Stiger is entitled to one-third of the income collected subsequent to the death of Sara C. Krentzlin on December 28, 1975, because of the decision in Tafel Estate, 449 P. 442 (1972).

Roger Edwin Stiger, by writing dated October 17, 1977, agrees to accept the award of income as outlined above; disclaims, releases and relinquishes any right to income prior to that date; and reserves the right to claim a share of principal upon the termination of the trust.

In view of the above, and since no objections were entered by

any other party in interest, Roger Edwin Stiger will be awarded a one-third share of income accrued since the death of Sara C. Krentzlin.” (emphasis supplied)

At page 6 of his said Adjudication, in keeping with the foregoing discussion, Judge Bruno made the following awards of income, to wit,

“.....: one-half of income accrued to the date of death of Sara C. Krentzlin is awarded to the personal representative of her Estate; one-half of the income accrued to the date of death of Sara C. Krentzlin is awarded to Clara Edith Noblit Baker; of the income accrued after that date one-third is awarded to Clara Edith Noblit Baker; one-third is awarded to Roger Edwin Stiger; one-sixth is awarded to Laurance D. Krentzlin; and one-twelfth, in equal shares, is awarded to Jeffrie Noblit Kentzlin and Paula Julie Krentzlin.”

Clara Edith Noblit Baker, last surviving child of the testator, died on December 14, 1980, survived by all three (3) of her children, namely Katherine B. Curtiss, Edward H. Baker, III, and Nicholas Baker.

Laurance D. Krentzlin, son of the Testator’s daughter Sara C. Krentzlin, died on April 10, 1993, without leaving children, grandchildren or any other issue surviving him.

The Fifth Account of the Trust, entitled “Fourth Account of Corestates Bank, N.A.....”, was filed by reason of the death of Laurance D. Krentzlin, and, confirmed by an Adjudication of O’Brien, Jr., dated March 30, 1994. At pages 3 and 4 of his said Adjudication, Judge O’Brien addressed the question of income distribution in the following manner, to wit,

“ One (1) question unresolved by the terms of the trust is the situation where a grandchild of testator survives his parent and testator but dies without issue during the term of the trust. This occurred when Laurence Krentzlin, a child of the late Sarah Krentzlin, one of decedent’s four (4) children, died without issue on April 10, 1993.

He was survived by the issue of his brother, John Krentzlin, who died April 30, 1968: namely, his niece, Paula Nichols, and his grandniece and grandnephew, Tracey Patterson and Dennis Allen. The question was whether the income distributed to Laurence Krentzlin during his lifetime is, after death, distributable solely among members of his mother's line of descent or, alternatively, is distributable among all issue of the testator, including Laurence Krentzlin's cousins and issue of deceased cousins.

The position of the Accountant is that the income distributed to Laurence Krentzlin should, at his death, be distributed solely among the surviving issue, per stirpes, of Sarah Krentzlin, i.e., one-half (1/2) of that share to his niece, Paula Nichols, and one-quarter (1/4) to each of the two (2) children of his deceased niece, Jeffrie Allen, namely, Tracey Patterson and Dennis Allen. The Auditing Judge is satisfied with the position taken by the accountant." (emphasis supplied)

At pages 4 and 5 of his said Adjudication, in keeping with the foregoing discussion,

Judge O'Brien made the following awards of income, to wit,

"Laurence Krentzlin – one-sixth (1/6) of income collected and distributed on April 10, 1993;

Mary E. Krentzlin, Executor of the Estate of Laurence Krentzlin, Deceased – one-sixth (1/6) of collected and accrued but undistributed income to April 10, 1993;

Paula Nichols – one-twelfth (1/12) of income collected and accrued to April 10, 1993 and one-sixth (1/6) thereafter;

Tracey Patterson – one twenty-fourth (1/24) of income collected and accrued to April 10, 1993 and one-twelfth (1/12) thereafter;

Dennis Allen – one twenty-fourth (1/24) of income collected and accrued to April 10, 1993 and one-twelfth (1/12) thereafter,

Katherine E. B. Curtiss- An equal one-ninth (1/9) share;

Edward H. Baker, IV – an equal one-ninth (1/9) share;

Nicholas Baker – an equal one-ninth (1/9) share;

Roger Stiger – an equal one-third (1/3) share."

Roger Stiger, adopted son of the Testator's daughter Marion Stiger, died on March 11, 1996, survived by his two, natural children, who had been adopted by their step-father in 1963, namely Roger E. Richards and Kathryn Lyn Jaffey. Roger was also survived by two grandchildren by his said son, namely Krista Richards Mann and Kevin Roger Richards.

Krista Richards Mann gave birth to a daughter named Samantha Hope Mann in 1999.

A daughter, named Kaylee Richards, was born to Kevin Roger Richards in 1997.

Since the death of Roger Stiger, on March 11, 1996, no income has been distributed to any of his children, grandchildren or great grandchildren.

Since the death of Roger Stiger, on March 11, 1996, all income has been distributed to and among the issue of two (2) of the Testator's daughters, that is, to and among the issue of Sara C. Krentzlin and Clara Edith Noblit Baker.

The Sixth Account of the Trust, entitled "Fifth And Final Account Of Wachovia Bank, N.A., Trustee", has been filed by reason of the termination of the Trust, by its terms, on December 14, 2000. The Account shows a balance of principal valued at \$417,134.05, and, a balance of income, after distributions, valued at \$29,749.51.

On the termination of the Trust, that is, on December 14, 2000, the

adopted line of Roger E. Stiger included six (6) individuals, being: Roger's children, Roger E. Richards and Kathryn Lyn Jaffey; Roger's grandchildren, Krista Richards Mann and Kevin Roger Richards; and, Roger's great grandchildren, Samantha Hope Mann and Kaylee Richards, both of whom are minors.

On the termination of the Trust, that is, on December 14, 2000, the natural issue of the Testator included thirty-four (34) individuals, being the issue of two (2) of the Testator's daughters, that is, the issue of Sara C. Krentzlin and Clara Edith Noblit Baker. Said thirty-four (34) individuals include twenty-eight (28) adults and six (6) minors.

Only one grandchild of the Testator, namely Katherine B. Curtiss, a child of Clara Edith Noblit Baker, was alive at the time that the Testator wrote his Will.

In a Rider to Paragraph 13 of the Amended Petition For Adjudication, the Accountant takes the position that, "....., the natural children of Roger Stiger, and their issue, are precluded by reason of their adoption from taking part of the income and principal of the Trust under Will of Joseph C. Noblit." The Accountant cites Branson Trust, 12 Fiduc.Rep.2d 122 (O.C., Phila., 1990), and, Section 2514 (7) of the Probate, Estates and Fiduciaries Code, in support of its said position. Ten (10) of the natural issue of the Testator have joined in separate requests that this Court uphold the said position. However, none of the said ten (10) individuals has appeared before this Court, in person or by Counsel representing his or her interests.

The children and grandchildren of Roger Stiger have appeared by Counsel, and, filed Objections to the aforementioned position of the Accountant. The Objectants claim, inter alia: that Roger's children should share in a per stirpital distribution of the income of the Trust in the period March 11, 1996 to December 14, 2000; that Roger's children, grandchildren and great grandchildren should share in a per capita distribution of the income of the Trust in the period following December 14, 2000; and, that Roger's children, grandchildren and great grandchildren should share in a per capita distribution of the principal of the Trust. The Objectants cite the following cases, to wit: Taylor Estate, 357 Pa. 120 (1947); Matter of Tracy, 464 Pa. 300 (1975); and, Trust Estate of Block, 1 P.C.R. 587 (O.C., Phila., 1978). The Objectants also cite Section 16 (b) of the Wills Act of 1917.

Having considered all of the aforementioned cases, I hold that none of them contains a factual situation similar to the one now before me. None of the cited cases involves a combination of: gaps in the dispositive provisions of the Will or Trust; one adoption; and, further adoptions of the children of the first adoptee, before the interests of the said children vest in enjoyment.

Upon consideration of the terms of Joseph C. Noblit's Will, and, the facts and circumstances previously recited in this Adjudication, this Court holds that the Objectants do not fall within the class of beneficiaries designated, in the Will, to receive income or principal of the Trust. These Objectants were not adopted out of a class of beneficiaries into which they had been naturally born, as in Branson, Taylor,

Tracy and Block, supra. They are strangers to the blood of Joseph C. Noblit. The adoption of Roger's children did not take them out of a class of beneficiaries designated in the Will in question. Instead, it prevented them from becoming members of said class. When Joseph C. Noblit spoke of children of his children, or, issue of his grandchildren, he most certainly did not intend to benefit persons who were adopted out of the family of one who had been adopted into his family. Tafel, supra, does not require such a result, and, the Will does not express any such intent.

The Will of Joseph C. Noblit is sufficiently clear, as regards the claims of these Objectants, that there is no need to resort to statutory rules of construction, in Section 16 (b) of the Wills Act of 1917, or, in Section 2514 (7) of the Probate, Estates and Fiduciaries Code.

The Objections are Dismissed. This Court will make no awards of income or principal to the Objectants.

In a Rider to Paragraph 13 of the Amended Petition For Adjudication, the Accountant takes the following Positions, as to each of which there is no objection by any party in interest, to wit:

"B. The trustee believes that the Will directs a distribution of an undivided whole among the grandchildren and issue of deceased grandchildren, and that the language of ITEM EIGHTH directing the trustee to pay over and distribute 'to my grandchildren and their issue then living, share and share alike, per capita and not per stirpes' requires a distribution of one equal share for the living grandchild and one equal share for each descendant of each grandchild, living and dead."

“C.The Trustee is of the opinion that the Will directs the distribution of an equal share of principal to each member of the class composed of grandchildren and issue of grandchildren living at the time the trust terminated, regardless of whether such class members were grandchildren, great grandchildren, great great-grandchildren or more remote descendants, and regardless of whether or not such class member had a parent or ancestor then living and also taking a share of principal.”

“D. The trustee believes that an excess distribution of income to a beneficiary should be recoverable from his or her share of presently distributable income and principal.....”

“E.The Trustee.....proposes that the shares of minors be deposited in their respective names in federally insured restricted accounts in accordance with the provisions of 20 Pa. C.S. §§5101 and 5103.....”

There being no objection to the said Positions of the Accountant, they are adopted by the Auditing Judge, and, the awards will be made accordingly.

All Objections having been addressed and disposed of, the account shows a balance of principal of \$ 417,134.05

from which deduct additional counsel fee due Dilworth Paxson LLP, per page 16 of the Account 11,000.00

leaving a balance available for distribution of \$ 406,134.05

which, composed as indicated in the account, is awarded, in equal, one thirty-fourth (1/34th) shares, as requested in the Distribution Rider to the Amended Petition For Adjudication.

The account shows a balance of income, before distributions, of \$ 240,943.15

which, together with income received since the filing of the account, if any, is

awarded as requested in the Distribution Rider to the Amended Petition For Adjudication.

The above awards of principal and income are made subject to appropriate reduction for over-distribution of income, as requested.

The above awards of principal and income to minors shall be deposited in restricted accounts, as requested.

All of the above awards are made subject to all payments heretofore properly made on account of distribution.

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

A schedule of distribution, containing all certifications required by Phila. O.C. Rule 6.11.A (2), and, in conformity with this adjudication, shall be filed with the Clerk within ninety (90) days of absolute confirmation of the account.

AND NOW, _____, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of issuance of the Adjudication. An Appeal from this Adjudication may be taken, to the appropriate Appellate Court, within thirty (30) days from the date of issuance of the Adjudication. See Phila. O.C. Div. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and, Pa.R.A.P. 902 and 903.

ADM. J.