

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

5 Jan 98

No. 2185 of 1985

Estate of GRACE E. STROBEL, Deceased

Sur account entitled First Account of Brian G. Strobel, Trustee

Before PAWELEC, J.

This account was called for audit January 5 and 29, 1998

Counsel appeared as follows:

ANDREW J. KARCICH, ESQ. - for the Accountant

**ARTHUR S. CAVALIERE, ESQ. - for David C. Strobel,
Phyllis D'Ambrosio and Susan D'Ambrosio,
Beneficiaries**

This trust arises under Item THIRD of the will of Grace E. Strobel, dated December 13, 1982, whereby she gave one-third (1/3) of the residue of her estate, in trust, on the following terms and conditions,

“ THIRD: In the event that my son, DAVID C. STROBEL, shall be living at the time of my decease and entitled to inherit hereunder, I give and bequeath the share of my residuary estate to which he is entitled to my Trustee, hereinafter named, upon the following terms of trust:

(A) To hold, manage, invest and reinvest the same, and to receive

the rents, income, shares and profits therefrom, and

(B) In the sole discretion of my Trustee, to accumulate or expend the net income therefrom and so much of the principal as may be deemed desirable by my Trustee for the support, maintenance, education and/or benefit of my son, David C. Strobel, and

(C) Said Trustee shall continue to hold said fund, together with any accumulated income therefrom, for so long as any principal or income therefrom shall remain or for so long as the beneficiary shall be living, whichever event shall first occur, and

(D) In the event that any principal and accumulated income remains in the trust upon the death of David C. Strobel, the trust shall terminate and any remaining principal and accumulated income shall be distributed, in equal shares or parts, among STEPHANIE STROBEL, STACEY STROBEL, PHYLLIS D'AMBROSIO and SUSAN D'AMBROSIO, and

(E)

In Item SIXTH of her will, the testatrix provided that both the principal and income of the aforementioned trust,

“.....shall be free from the control of the beneficiary and shall not, in any manner be subject or liable to his debts, liabilities or assignments, and that the same may not be subject to attachment.”

The testatrix appointed her son, Brian G. Strobel, to serve as executor of and trustee under her will.

A copy of the will is annexed.

Grace E. Strobel, the testatrix, died on July 7, 1984.

Grace E. Strobel was survived by three children, namely Marcia Louise D'Ambrosio, Brian G. Strobel and David C. Strobel. She was also survived by two children of Marcia Louise D'Ambrosio, namely Phyllis D'Ambrosio and Susan D'Ambrosio; and, by two children of Brian G. Strobel, namely Stephanie Strobel and Stacey Strobel. All four of said grandchildren of Grace E. Strobel, being remaindermen of the instant trust, are alive and sui juris.

The account is of the fund awarded in trust by an adjudication of Bruno, J., dated February 28, 1986, and is filed because David C. Strobel and two of his nieces, namely Phyllis D'Ambrosio and Susan D'Ambrosio, want the trustee to make distributions for David's support and maintenance.

The account shows that the trustee has made no distributions since the confirmation of his account as executor. David C. Strobel has filed Objections to the account in which he suggests that the trustee should be removed: because he has abused his discretion by failing to make any distributions despite numerous requests for distributions; and, because he has threatened or physically assaulted his brother, David.

Two of the remaindermen of the instant trust, namely Phyllis D'Ambrosio and Susan D'Ambrosio, join in the Objections of their uncle, David C. Strobel.

It is stated that notice of the audit has been given to all parties having a possible interest in the continuing trust.

Marcia Louise D'Ambrosio is a daughter of the testatrix, and, a sister of David and Brian Strobel. Testifying in support of David's Objections to the account, Marcia stated that David is 47 years old, and, has an IQ of 35 to 40. David lived with his mother, the testatrix, until her death in 1984. Since his mother's death, David has lived in the home of Marcia and her husband at 1108 Anchor Street, in Philadelphia. David is now one of six persons living in Marcia's home. There is no written lease or agreement regarding David's residence in Marcia's home. David does not have an air conditioner in his room. He has only a black and white television set. Marcia and her husband take David to Friends Hospital for psychological counseling.

Marcia Louise D'Ambrosio testified that her brother, Brian, wanted to put David into a Home when their mother died in 1984. In Marcia's opinion, David would never survive in a Home. According to Marcia, since their mother's death: Brian and David have had only one conversation; Brian never calls David; Brian has visited David only once; Brian has never sent any money to Marcia for David; and, Brian has never expressed an interest in David. Marcia hopes that her husband and

daughters will take care of David when Marcia dies. Marcia stated that, since their mother's death, Marcia has never called Brian.

Marcia Louise D'Ambrosio testified that David has worked as a dishwasher at Gallo's Restaurant, in Philadelphia, since 1979. David's net pay is \$186.02 per week. He makes no tips and works no overtime. Marcia stated that David's pay is deposited into a household "pot" along with her husband's monthly pension of \$1,300.00; her husband's social security of \$225.00 per month; and, her husband's weekly pay of \$160.00 from Pizza Hut. From the "pot", Marcia: gives David \$5.00 a day to spend; gives David \$17.00 per week to purchase a weekly Transpass; pays David's expenses for clothing, doctors' fees and health insurance premiums; and, pays utilities and real estate taxes on premises 1108 Anchor Street. Exhibit "P-2" is a summary of payments for David's clothing, doctors' fees and health insurance premiums. Exhibit "P-2" shows total payments of: \$1,992.39 in 1995; \$3,081.90 in 1996; and, \$2,500.76 in 1997.

Marcia Louise D'Ambrosio testified that David has no assets other than an IRA and a bank account. The IRA is at PNC Bank, and, includes two accounts totaling \$17,022.93. According to Marcia, there has been only one contribution to the IRA since her mother's death. The bank account is also at PNC Bank, and, is in the joint names of David and Brian. It has been stipulated that this joint account contains \$29,800.00. Marcia

stated that the bank would not allow her to make a withdrawal from the joint account without Brian's signature.

Marcia Louise D'Ambrosio testified that their mother knew that David had limited abilities. According to Marcia, their mother established the instant trust to provide for David when he is retired or unable to work. In Marcia's opinion, Brian should make the following payments, from the trust, for David's benefit, to wit: payment of David's medical bills, and, payment of a monthly allowance of \$500.00.

Exhibit "P-12" is a letter from Arthur S. Cavaliere, Esquire, to Brian Strobel. Exhibit "P-12" is dated December 9, 1994 and reads as follows, in relevant part,

"As you may know, I represent your Brother, David and your Sister, Marcia, with regard to the above matter. Your Brother is in need of money for certain medical problems, including dental work, a hearing aid, glasses and health insurance. He currently does not have health insurance. These problems are getting worse with time, therefore, they must be addressed immediately.

I enclose herewith a copy of a letter from Dr. Schriftman dated September 4, 1994, detailing the dental work that needs to be done now. Also, there needs to be reimbursement to Marcia for monies that she has expended on David's behalf over the past few years. It is my understanding that no monies have been disbursed from the Trust by you on David's behalf.

....."

Dr.Schriftman's letter of September 9, 1994 indicates that David needs dental work which will cost \$1,932.00.

Exhibit "P-11" is a copy of a "Final Protection Order (Default)" which was entered by Zaleski, J., in the Family Division of the Court of Common Pleas, on June 6, 1996. Said Order was entered in the matter of "Louise D'Ambrosio for David C. Strobel vs. Brian G. Strobel", May Term 1996, No. 7464. In relevant part, said Order: orders Brian G. Strobel to refrain from abusing, harassing or threatening David C. Strobel; prohibits Brian from entering the residence at 1108 Anchor Street; and, prohibits Brian from having any contact with David.

Exhibit "P-9" is a copy of a "Private Criminal Complaint" which was filed in the Philadelphia Municipal Court, at CR 96-06-18-9659, on May 24, 1996. The named complainant is David Strobel, and, the named defendant is Brian G. Strobel. The complaint stems from an incident which allegedly occurred at Gallo's Restaurant, at noon, on May 21, 1996. Said complaint recites, in relevant part,

" Complainant states that the accused is his brother. On the above date, comp states the accused pointed a loaded shotgun at him and threatened to shoot him and the whole family. Comp states accused struck him all about the body with his fists. Comp states this is the second time the accused threatened comp in this manner. Comp treated at Northeast Mental Health & Retardation Center, Roosevelt & Adams, on May 13, 1996. Comp states since 12/95 the accused repeatedly engaged in a course of unwanted conduct toward the complainant consisting of the following acts: Follows comp everywhere he

goes; strikes comp about the body; and threatens comp with bodily harm.”

Said complaint includes a summons which commands the defendant to appear in the Philadelphia Municipal Court on July 9, 1996 at 9:00 A.M.

Exhibit “P-10” is a copy of an Order of Eve Levitan, Arbitrator in the Philadelphia Municipal Court’s Dispute Resolution Program, dated July 17, 1996. Said Order refers to an Arbitration Agreement dated July 9, 1996. In summary, said Order orders Brian G. Strobel: to cease all physical violence towards David Strobel; to cease all forms of communication or harassment towards David; and, to refrain from entering David’s residence.

David C. Strobel, the Objectant, testified in support of his Objections. David stated that he last saw Brian, at Gallo’s restaurant, on Friday. According to David, on this Friday visit to Gallo’s, Brian beat the heck out of David, and, Brian hit David with a gun. David testified that he thinks that Brian is a “bad boy”.

David G. Strobel, the accountant, testified that he lives in Cinnaminson, New Jersey, and, that he is the father of two of the remaindermen, namely Stephanie Strobel and Stacey Strobel.

David G. Strobel testified that his brother, David, lived with their mother until her death. David gave his paychecks to the mother, and, she paid all of his bills from a “household pot”, just as Marcia pays them now. There was no trouble in the mother’s lifetime. The trouble began after her death. According to Brian, the trouble began when his sister,

Marcia, and her husband insisted on accompanying David on visits to Brian's house.

Brian G. Strobel testified that he would like to visit David and bring David on visits to Brian's house. Brian would like to give David a 13" color television set. However, Brian stated that he stays away from David because Brian is afraid of Marcia's husband and the court system. According to Brian, it has been at least ten years since he last visited David at David's place of work.

Brian G. Strobel testified that he and his mother made the first contribution to David's IRA. According to Brian, the IRA is managed by Marcia and her husband. Brian stated that he has no objection to making additional contributions to the IRA, but, that these contributions must be made from the aforementioned joint bank account and not from the instant trust.

Brian G. Strobel testified that the aforementioned joint bank account was funded with monies from himself, his mother and David. The account was originally in the name of the mother, but, she had it changed before her death. She took Brian and David to the bank, and, had the account put in both of their names. According to Brian, the requirement of two signatures to make withdrawals was intended to avoid invasions of the account. There was \$20,000.00 in the account on the mother's death. Brian stated that the bulk of this money was his mother's and not David's. Brian testified that someone attempted to make a withdrawal, on David's

signature, in 1985. According to Brian, David never signs his name, but, always prints it. Therefore, Brian doubts that David signed any withdrawal form.

Brian G. Strobel admitted that he received the letter from Arthur S. Cavaliere, Esquire, dated December 9, 1994, which has been marked as Exhibit "P-12". Brian testified that he called Mr.Cavaliere and asked for information on David's income and expenses. According to Brian, Mr.Cavaliere did not provide adequate information in response to this request. Brian stated that, whenever he has been asked to make payments for David, he has always asked about David's income and expenses.

Brian G. Strobel testified that his mother set up the instant trust to provide for the time when David can no longer work. In considering requests for payments, Brian's stated goal is to save as much as possible for David's retirement. While on the witness stand, Brian agreed to make future payments directly to providers of goods and services, but, insisted that he should receive an annual accounting of David's income and expenses. Also, while on the stand, Brian agreed to make certain payments for David's dental bills and a hearing aid.

Brian G. Strobel testified that there is animosity between himself and his sister, Marcia, and, that David is the man in the middle of this animosity. Brian recalled that, eleven years ago, David brought criminal charges against Brian. According to Brian, he was acquitted

because witnesses testified that he was not present at the scene of the alleged crime. Brian stated that, despite the acquittal, the said incident resulted in a two year “Stay Away” Order.

Brian G. Strobel denies that he has ever threatened or attacked his brother, David. Brian denies that he went to Gallo’s restaurant on May 21, 1996, or, that he did any of the other acts which are complained of in the aforementioned Private Criminal Complaint. Brian insists that he was working in Pennsauken, New Jersey, on May 21, 1996. When shown a copy of the Default Order which was entered by Judge Zaleski on June 6, 1996, Brian insisted: that he was never served with a Petition in that matter; and, that he had never seen a copy of the Default Order before the date of the Hearing before this Court. When shown copies of the aforementioned Private Criminal Complaint and Arbitrator’s Order, Brian: insisted that David could not have signed the Complaint because David never signs his name; and, stated his understanding that the Arbitrator’s Order merely meant that all parties should stay away from one another.

The instant trust is created under Item THIRD of the will of Grace E. Strobel. The language of Item THIRD confers discretion to accumulate net income. Marcia Louise D’Ambrosio and Brian G. Strobel both testified that their mother established the instant trust to provide for their brother, David C. Strobel, when David can no longer work. The language of the will and the testimony of the witnesses are thus consistent, and, evidence the intent of the testatrix that the instant trust is to be a form

of retirement fund for David. In determining whether Brian should be removed for failing to make distributions, this Court will apply the principals summarized in the adjudication of Sokolove, J., in Furlow Trust, 14 Fiduc. Rep. 2d 277, 287-288, to wit:

“ The general rule in this situation is that, when discretion is conferred upon a trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse of discretion: *Restatement 2d of Trusts §187*. See *Abarbanal v. Weber*, 340 Pa. Super. 473, 490 A.2d 877. This ordinarily means that so long as the trustee acts not only in good faith and from proper motives, but also within the bounds of reasonable judgment, the court will not interfere; but the court will interfere when he acts outside the bounds of a reasonable judgment: III *The Law of Trusts, supra*, 4th ed., §187, pp. 14-15. In particular, the court will control the trustee in the exercise of a discretionary power where he fails to use his judgment or acts from an improper motive: *Restatement 2d of Trusts*, §187 comments g, h.

As explained by *The Law of Trusts*,

Where by the terms of the trust a discretionary power is conferred upon the trustee and the exercise of the power is left to his judgment, the court will interpose if the trustee fails to use his judgment. Thus if the trustee is authorized in his judgment to make certain payments to a beneficiary in the discretion of the trustee, and instead of exercising any judgment in the matter he arbitrarily declines to make any payment, the court may interpose So also his conduct is arbitrary and the court may interpose where he is authorized to make payments to a beneficiary if

in his judgment he deems it wise and he refuses to inquire into the circumstances of the beneficiary.

(Footnotes omitted.) III *The Law of Trusts, supra*, §187.3, pp. 40-41. See also, *Forrish v. Kennedy*, 377 Pa. 370, 105 A.2d 67.”

Having considered the testimony and exhibits in this matter, this Court is not convinced that Brian G. Strobel has abused his discretion by failing to make distributions to his brother, David. This Court believes the testimony of Brian that he has responded to requests for distributions by reasonably inquiring into David’s circumstances. This Court finds that Brian has refused to make distributions because Marcia Louise D’Ambrosio and her husband have refused to provide adequate information about David’s income and expenses. On this record, this Court holds that Brian has exercised his discretion as trustee, and, that he has done so in good faith and within the bounds of reasonable judgment. Disagreements between Marcia and Brian do not constitute abuses of discretion on Brian’s part. Marcia has not convinced this Court that, in addition to his weekly pay, Brian needs a monthly distribution of \$500.00 from the instant trust.

Having considered the testimony and exhibits in this matter, this Court is not convinced that Brian G. Strobel has threatened or physically assaulted his brother, David. Noting that David printed his name on the Affidavit to his Objections, and, believing Brian’s testimony that David never signs his name, this Court finds that David did not sign his

name on the Private Criminal Complaint against Brian. David may believe that Brian is a “bad boy”, but, this Court does not find David to be a reliable witness. This Court believes that the Default Order of Judge Zaleski, the Private Criminal Complaint, and, the Arbitrator’s Order, are all products of animosity between Marcia Louise D’Ambrosio and her brother, Brian.

In his opening statements in this matter, counsel for Brian G. Strobel announced that his client had agreed to pay for David’s dental bills, a hearing aid, and, an ear mold. Said agreement was said to have been based upon information which had been provided to Brian’s counsel by counsel for Marcia L. D’Ambrosio. This Court hopes that Brian and Marcia will continue to cooperate in caring for their brother, David.

Exhibit “P-13” is a statement of attorney’s fees and costs which is offered in support of a request that counsel for David G. Strobel, Phyllis D’Ambrosio and Susan D’Ambrosio should receive \$2,958.00 from the instant trust. The account includes a disbursement of \$3,250.00, from principal, for services rendered by counsel to Brian G. Strobel. The services of counsel in this matter have clearly not been for the benefit of the trust or David G. Strobel. Since this Court views the instant proceedings as a product of animosity between Marcia Louise D’Ambrosio and her brother, Brian G. Strobel, it will disallow said request for counsel fees and costs, and, strike \$2,500.00 from the fees of counsel in the account. Brian will thus be surcharged in the amount of \$2,500.00.

In keeping with the foregoing discussion, this Court dismisses the Objections to the First Account of Brian G. Strobel as Trustee of the Trust under the will of Grace E. Strobel.

All objections having been dismissed, the account shows a balance of principal of \$ 14,478.85

To which add surcharge of reduction of counsel fees,
per discussion,
of 2,500.00

making a balance of principal available for distribution of \$
16,978.85

which is awarded to Brian G. Strobel, trustee, for the uses and purposes of the continuing trust under the will of Grace E. Strobel.

The account shows a balance of income of \$
12,926.73

which is awarded to Brian G. Strobel, trustee, for the uses and purposes of the continuing trust under the will of Grace E. Strobel.

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

The certificate of the Official Examiner of the examination of assets awarded in further trust shall be submitted, and, when approved by the Auditing Judge, will be annexed.

AND NOW, , unless exceptions are filed to this adjudication within twenty (20) days, the account is confirmed absolutely.

J.