

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS COURT DIVISION

Geraldine Woodie, et al. :
: April Term 2001
:
v. : No. 2010
:
City of Philadelphia : Control No.: 02121132

O P I N I O N

Joseph D. O'Keefe, J.

24 March 2003

On 12 December 2002, Petitioner in her capacity as Administratrix of the Estate of DeSean Hennie, a Minor, deceased, filed a Petition for Approval of Settlement of the Wrongful Death and Survival Actions in the amount of Two Hundred Thirty-Five Thousand and 00/100 Dollars (\$235,000.00). After satisfying attorney's cost and fees, and a Department of Public Welfare lien, the amount of One Hundred Forty-Two Thousand Eight Hundred Thirty-Six and 49/100 Dollars (\$142,836.49) will be left in the estate of the Decedent. In that petition, Geraldine Woodie, the Administratrix of the estate advised this Court that the Decedent's father had made a claim for a portion of the settlement funds. This Court scheduled a hearing for 14 February 2003.

On 14 February 2003, this Court opened to hear testimony on the issue of whether or not the father / claimant, Dennis Hennie, is entitled to share in the proceeds of the settlement. Petitioner testified and was cross-examined before the Court. Claimant was not present at the hearing. No further witnesses were called by either Petitioner's counsel or Claimant's counsel. On 14 February 2003, the Court offered to take briefs from counsels, ordered the notes of testimony, and affirmed that the "evidence is closed in this case." Neither Petitioner's counsel nor Claimant's counsel objected.

Facts and Procedural History

On 21 March 1988, DeSean Hennie was born. On 18 April 1999, less than one month before his eleventh birthday, DeSean Hennie died when a wall at the rear of 3215 West Montgomery Avenue collapsed upon him. DeSean Hennie (hereinafter referred to as the "Decedent") lived his entire life with his mother, Geraldine Woodie (hereinafter referred to as the "Petitioner"). Petitioner is a single-mother of two children, including Decedent, by Decedent's father, Dennis Hennie (hereinafter referred to as "Claimant"). Petitioner received no financial support from Claimant during Decedent's entire life. Claimant has resided in the State of Florida since 1994.

On 14 February 2003, Petitioner responded to the following questions, accordingly:

Q: (Petitioner), were you any relation to the deceased child in this

case (Decedent)?

A: Yes, I am his mother.

Q: And when was (Decedent) born?

A: March the 21st, 1988.

Q: And does (Decedent) have a brother or sister by (Claimant), also?

A: Yes.

Q: What is their name?

A: (Sister)

Q: And what is her date of birth?

A: February 4th, 1987.

Q: And were you at one time married to (Claimant)?

A: Yes, I was.

Q: And did it take place in the City of Philadelphia?

A: Yes.

Q: How long did (Claimant) remain with you?

A: Two weeks after the marriage.¹

Petitioner thereafter testified that Petitioner and Claimant were divorced in 1994. Questioning resumed:

Q: Now, you had testified that (Decedent) was born in 1988?

A: Yes.

Q: How did that happen if you were separated from (Claimant) at that time?

A: He would come back to visit periodically.

Q: And (sister) was born in 1987?

A: Yes.

Q: And that happened the same way, periodically he would just

drop in?

A: Yes.²

Questioning continued:

Q: ... was (Claimant) the natural father of (Decedent)?

A: Yes.

Q: And was and is (Claimant) the natural father of (sister)?

A: Yes.³

¹ Notes of Testimony from pg.3 ln.20 to pg.4 ln.19.

² Notes of Testimony from pg.5 ln.9 to ln.19.

³ Notes of Testimony from pg.5 ln.21 to pg.6 ln.1.

Petitioner's subsequent testimony revealed that Claimant never supported or provided any financial support for Decedent; never visited Decedent; never wrote to Decedent; and never called Decedent on the telephone.⁴ Additionally, Petitioner testified that Claimant never "provide(d) any gifts or anything else worth any monetary value" to Decedent.⁵ Further, Petitioner testified that the only difference in treatment that Decedent's sister received was an occasional telephone call.⁶

Significantly, further questioning of Petitioner revealed the following:

Q: Did (Decedent) have an issue with regard to his father and the failure to have contact with his father?

A: Yes.

Q: What was the issue?

A: When he would call periodically to talk to (sister) he would never ask for (Decedent) and it kind of upset him because he wanted to know why he (Claimant) always talked with (sister) and never talked with him (Decedent).⁷

On cross examination, Claimant's counsel began questioning, as follows:

Q: ...You do not deny, Ma'am, that (Claimant) is (Decedent's) biological father?

A: No, I do not deny it, but (Claimant) denied that (Decedent) was his son.⁸

⁴ Notes of Testimony from pg.6 ln.2 to ln.12.

⁵ Notes of Testimony from pg.6 ln.14 to ln.17.

⁶ Notes of Testimony from pg.7 ln.10 to ln.16. (Petitioner testified that Claimant called Decedent's sister approximately ten (10) times from 1987 to the present never asking to speak to Decedent)

⁷ Notes of Testimony from pg.6 ln.22 to pg.7 ln.6.

⁸ Notes of Testimony from pg. 12 ln.6 to ln.9.

Surprised, but undeterred, Claimant's counsel continued with a request for clarification:

A: At the time of my pregnancy, (Claimant) said it was not his child.

Q: But your position is that (Claimant) is the biological father?

A: Yes, sir.⁹

Neither counsel offered any further witnesses. Petitioner's counsel moved into evidence without objection from Claimant's counsel a letter from Claimant's Florida counsel dated December 27, 2000, attesting to the fact that between 1997 and the end of 2000, Claimant was working, earning \$22,000 a year. The Court subsequently offered to take briefs from counsels, ordered the notes of testimony, and affirmed that the "evidence is closed in this case." Neither Petitioner's counsel nor Claimant's counsel objected.¹⁰

Legal Analysis

This Court is being asked to determine whether Claimant, who denied fathering Decedent, who denied Decedent *any* support throughout Decedent's brief life, who neither lived with nor visited Decedent, and who refused to talk to Decedent on the telephone is entitled to share the proceeds of a settlement made on behalf of Decedent's estate in a Wrongful Death Action.

In his legal brief, Claimant's counsel offers a well reasoned *conclusion* that Claimant is entitled to share with Petitioner in Decedent's estate. The conclusion arrives after an analysis of 20 Pa.C.S.A. 2103 (hereinafter "§2103") and 20 Pa.C.S.A. 2106 (hereinafter "§2106"). The analysis, however, fails to apply the facts of the present case,

⁹ Notes of Testimony from pg.12 ln.11 to ln. 15.

¹⁰ Notes of Testimony from pg.17 ln.20 to pg.18 ln.1.

and instead relies solely upon the judicial holdings in those factually dissimilar matters.

Counsel's logic proceeds as follows: 1) Because Decedent had no surviving spouse and no children, Decedent's estate descends to his parents or parent according to § 2103(2); 2) Claimant is Decedent's parent; and 3) Even though Claimant may have abandoned Decedent, Claimant is still entitled to share in Decedent's estate according to §2106(b), because Petitioner has not met her burden of proving all of the elements of forfeiture.¹¹

¹¹

In re Estate of John Teaschenko, Jr., 574 A.2d 649 (Pa. Super. 1990) (The elements of forfeiture are: (1) the decedent must be a minor or dependent child; (2) the parent must owe some duty to support the child; (3) the parent must have failed to perform any duty of support for the decedent for at least a year prior to the decedent's death; and (4) the parent's failure must be willful.)

In his legal brief, Claimant's counsel notes that the Court in Teaschenko held that the petitioner must produce evidence of all of the elements to make a *prima facie* case of forfeiture, and further, that the court focused on the term "any" in the phrase "any duty of support."¹² Counsel offers that "[a] parent does not forfeit (his) interest in (his) child's estate merely by failing to perform (his) duties fully; rather, the parent must completely fail to perform any duty of support before a court will find forfeiture..."¹³ And further, that the court highlighted that the failure to support must have been performed "willfully," "... that the parent is aware of the duty to support, has the capacity to perform that duty, and makes no attempt to do so."¹⁴ When applying the facts of the present matter, Claimant's argument begins to crumble.

Claimant's counsel further offers that the Court of Common Pleas, Chester County also addressed the "issue present herein" in the case of Winslow Estate,¹⁵ in which the court focused on the desertion aspect of the statute. The court concluded that the "plain meaning of desertion... supports a finding that even minimal contacts would preclude the application of the theory that the defendant effectively and willfully deserted his son."¹⁶ This is where counsel's argument completely disintegrates under the otherwise negligible weight of Claimant's own minimal burden of proving minimal contacts.

Petitioner testified that she married Claimant on 17 September 1985 in Philadelphia. Claimant remained with her for only two (2) weeks. Claimant would return to visit periodically. This union produced two children, sister (DOB: 2/4/87) and Decedent

¹² Claimant's brief at page 4.

¹³ Teaschenko, 574 A.2d at 651.

¹⁴ Teaschenko, 574 A.2d at 651.

¹⁵ 19 Pa. D&C, 4th 349.

¹⁶ Winslow 19 Pa. D&C, 4th at 353.

(DOB: 3/21/88). Petitioner divorced Claimant in 1994. In the lives of his ex-wife and two children, there is no other evidence before the court of Claimant's existence. This Court will not speculate on the existence of "evidence" not before it.

Claimant's counsel argues that this Court must require the Petitioner to prove Claimant's complete and willful neglect of his duties. In so arguing, counsel cites cases in which both parents played an active role in the child(ren)'s life. Counsel has not convinced the Court that the fact patterns of each respective case bears any affinity to the present fact pattern.

Much to the contrary, while the cited cases are valid, an application of the present facts yields a conclusion inconsistent with counsel's own conclusion. Claimant could not play an active role in Decedent's life, because Claimant did not play *any* role in Decedent's life. Claimant could not perform partially his parental duties toward Decedent, because Claimant did not perform *any* of his duties toward Decedent. Claimant was at all times, completely and conspicuously absent from Decedent's life. In fact, according to the facts presented at the hearing, Claimant completely denied a fatherly relationship to Decedent, much to Decedent's detriment, consistently throughout the entirety of Decedent's life.

Petitioner cannot be expected to produce evidence of "contacts" that evidentially never occurred, nor can she be expected to produce evidence of phone records of conversations that evidentially never transpired,¹⁷ nor can she be expected to produce

¹⁷

Petitioner's Petition to Settle Wrongful Death and Survival Actions: Exhibit D (letter dated November 2, 2000 addressed to counsel for the Petitioner from Claimant's Florida counsel Robert M. Stoler of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A. of Tampa, Florida) ((Claimant) advises me that he is not in possession of any telephone records or records indicating the value of gifts which he provided to

evidence of a father-son relationship that evidentially never existed. The facts of the present case do not even allow this Court to seriously consider *what* Petitioner's burden might have been, because to get to that level of consideration there must be some parental role to measure. Claimant did not play *any* parental role in Decedent's life. There was nothing.

The record reveals absolutely no involvement on Claimant's part in the life of Decedent. The record simply reveals Claimant's willful neglect of Decedent's needs, Claimant's conspicuous absence from Decedent's life, and Claimant's specific opportunism through Decedent's death. It seems to the Court, that Claimant's absence from the hearing, that he himself requested and which was held for his sole benefit, represents the poetic conclusion to Claimant's lifetime of missed opportunities, with, of course, the measuring lifetime being Decedent's.

Conclusion

Claimant has completely failed to carry even the slightest of burdens in proving that he ever had even minimal contacts with Decedent. The evidence reveals that Claimant was aware of the duties attendant to being a parent, that he had the means to contribute to Decedents well-being, and that he willfully avoided those duties and missed those opportunities. Claimant will not be rewarded for his failings. His claim, therefore, is denied.

(Decedent)) .

BY THE COURT

JOSEPH D. O'KEEFE, A. J.

ORPHANS' COURT DIVISION