

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of John C. Whitehead, Deceased  
O.C. No. 1418 DE of 2004  
Control No. 160757

John Cavadus Whitehead Sr, Deceased



Opinion

Upon petition of a party in interest and without a hearing, this Court removed Kenneth L.R. Whitehead (“Kenneth”) as Administrator of the Estate of John C. Whitehead, deceased (“Estate”), for willfully failing to comply with a Court-approved Stipulation to file an account. Kenneth appealed that decision to the Superior Court. For the reasons explained herein, this Court properly removed Kenneth for failing to file an account per the Stipulation that his counsel signed and this Court approved, attached hereto and made a part hereof.

**I. Procedural Background**

John C. Whitehead (“Decedent”) died testate on May 11, 2004. The Register of Wills of the County of Philadelphia accepted the Decedent’s Will for probate on June 25, 2004 and issued Letters Testamentary to Elnor Whitehead. Following objections to Elnor Whitehead’s December 8, 2008 Account, the Court issued a Decree dated May 6, 2009 removing Elinor Whitehead as Executrix. On May 28, 2013, the Register of Wills issued Letters of Administration d.b.n. to Kenneth. On October 14, 2015, Aaliyah Castro (“Aaliyah”), a beneficiary of the Estate, filed a Petition for a Citation, directed to Kenneth, then-Administrator of the Estate, to show cause why he should not file an account of his administration of the Estate. In a Preliminary Decree dated On October 22, 2015, this Court awarded that Citation. The attorney for Aaliyah and the attorney for Kenneth then entered into a Stipulation whereby Kenneth would “file an Account and statement of the status of his administration of the Estate . . . within thirty (30) days of the approval of this Stipulation by the Court” and, in exchange, Kenneth would not be obligated to

respond to the Petition. On December 21, 2015, this Court approved the Stipulation.

Kenneth never filed an Accounting, which was due January 20, 2016, or requested an extension of time. On March 2, 2016, Aaliyah filed a Petition to Remove Kenneth as Administrator of the Estate. In a Decree dated March 14, 2016, this Court, without a hearing,<sup>1</sup> removed Kenneth as Administrator of the Estate. On March 24, 2016, Kenneth filed a Petition for Reconsideration, which this Court denied in a Decree dated March 30, 2016. On April 8, 2016, Kenneth filed a Petition to vacate the March 14, 2016 Decree and grant other relief, including removing Aaliyah's attorney from the case for alleged conflict of interest. Shortly thereafter, Kenneth filed a notice of appeal of the March 14, 2016 Decree to the Superior Court. In an Order dated May 9, 2016, this Court declined to address Kenneth's April 8, 2016 Petition while the appeal is pending.

In an Order dated May 3, 2016, this Court, pursuant to Pa.R.A.P. 1925(b), ordered Kenneth to file a concise statement of the errors complained of on appeal. Kenneth timely filed and served that statement. This opinion in support of the Court's March 14, 2016 Decree, pursuant to Pa.R.A.P. 1925(a), follows. Importantly, the record reflects that Kenneth has still not filed an Account, which is now overdue by five (5) months.

## **II. Discussion**

This Court has the "power to remove a personal representative when he . . . has failed to perform any duty imposed by law" or "the interests of the estate are likely to be jeopardized by his continuance in office" and may summarily remove a personal representative upon "the petition of any party in interest alleging adequate grounds for removal" if summary removal "is necessary to protect the rights of creditors or parties in interest." 20 Pa.C.S. § 3182(1); 20

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<sup>1</sup> We note that Kenneth has neither sought a hearing nor complained that he was deprived of one.

Pa.C.S. § 3183. When summary removal occurs, the removed personal representative may petition the court “to have the decree of removal vacated and to be reinstated.” 20 Pa.C.S. § 3183

“[T]he removal of a fiduciary,” especially when the fiduciary is “a personal representative selected by the testator,” “is a drastic action which should be taken only when the estate is endangered and intervention is necessary to protect the property of the estate.” *See Scientific Living, Inc. v. Hohensee*, 270 A.2d 216, 224 (Pa. 1970) (internal citations omitted). Nonetheless, “the removal of a fiduciary lies within the discretion of the orphans’ court” and thus the appellate court will only disturb an orphans’ court decision to remove a personal representative if the orphans’ court “abused its discretion in the matter” *Id.* at 223 (internal citations omitted).

The decision by this Court to remove Kenneth as Administrator of the Estate was not made lightly and the Court did not abuse its discretion in doing so. Per the Court-approved Stipulation that Kenneth’s attorney signed on Kenneth’s behalf, Kenneth had a legal obligation to file with the Court an account of his actions as Administrator of the Estate on or before January 20, 2016. *See Zampetti v. Cavanaugh*, 406 Pa. 259, 265, 176 A.2d 906, 909 (1962) (internal citation omitted) (emphasis removed) (noting that “a consent decree . . . binds the parties with the same force and effect as if a final decree has been rendered after a full hearing upon the merits”). However, Kenneth did not file an account by the deadline or petition the court for additional time. When Aaliyah filed the Petition to remove Kenneth as Administrator that this Court granted, about six weeks had passed since the deadline and Kenneth had still not filed an account or requested additional time. In Kenneth’s March 24, 2016 Petition for Reconsideration (which this Court evaluated as a petition for reinstatement under 20 Pa.C.S. § 3183), he claimed that “he complied by filing an accounting with the Court by the deadline” but admitted that his

alleged attempt to file an account was unsuccessful and ultimately no account was accepted for filing. *See Petition for Reconsideration*, ¶ 17. Notably, in his Concise Statement of Matters Complained of on Appeal, Kenneth claims that his alleged attempt to file an account occurred “on or about January 22, 2016,” even though that date is after the deadline in the Stipulation. Ultimately, the excuses and explanations in Kenneth’s Petition for Reinstatement were unconvincing to this Court and, in any event, should have been raised before the deadline in the Stipulation.

Kenneth made alarming statements in his March 24, 2016 pro se filed<sup>2</sup> Petition for Reconsideration that led the Court to deny the Petition for Reconsideration and reinforced this Court’s conclusion that the rights of the beneficiaries were in jeopardy with Kenneth as the Administrator. For instance, Kenneth claimed that the Decedent “died without a Will” and “the 1998 Will found after his death was fraudulent” and “was wrongly accepted for probate.” *See Petition for Reconsideration*, ¶¶ 1, 3. Kenneth’s responsibility was to administer the Estate per the terms of the Will that was probated and these statements indicated that he would not do so, thereby endangering the interests of proper beneficiaries under the probated Will. Kenneth’s stated intention to ignore the Will is deeply flawed and a serious breach of his fiduciary duty to administer the estate in accordance with the Decedent’s expressed intent and ignores the reality that the time limit for challenging the Will has long since expired. *See* 20 Pa.C.S. § 908(a) (providing that “[a]ny party in interest seeking to challenge the probate of a will ... may appeal therefrom to the court within one year of the decree”).

Furthermore, Kenneth stated that he “feel[s] that an accounting shouldn’t be filed before the estate is closed,” despite the Stipulation that his attorney signed on his behalf. *See Petition*

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<sup>2</sup> Counsel of record for Kenneth should have filed a Petition to withdraw and received court approval to do so before Kenneth proceeded to represent himself. *See* Pa.R.C.P. 1012(b).

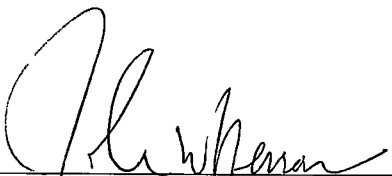
*for Reconsideration*, ¶ 17. Although these statements were not before the Court when the Court initially decided to remove Kenneth as Administrator, the fact that Kenneth made such statements in court filings served to further demonstrate that Kenneth was unwilling to properly perform his legal duties, a conclusion that, due to Kenneth's failure to file an Account per the Stipulation, this Court had arrived at before removing Kenneth as Administrator.

### **III. Conclusion**

Kenneth had a legal duty to file an account of his administration of the Estate by January 20, 2016 in accordance with the Court-approved stipulation. He failed to do so and he has still not done so. Kenneth also disavows in strong terms the probated Will that he is supposed to be faithfully administering.

The Court has the authority by statute to remove an administrator who fails to perform a legal duty or who is jeopardizing the interests of the estate and the Court may summarily remove an administrator if necessary to protect the rights of parties in interest. This Court exercised that authority and removed Kenneth for failing to fulfill his legal duty to account to the beneficiaries. Accordingly, this Court urges the Superior Court to conclude that there was no abuse of discretion and affirm the decision to remove Kenneth as Administrator of the Estate.

BY THE COURT:

  
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JOHN W. HERRON, J.

Kenneth L.R. Whitehead, pro se  
Christian C. Nduka, Esquire  
Timothy J. Holman, Esquire

*Dated: June 15, 2016*

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION


O.C. NO. 1418DE OF 2004

CONTROL NO. 153416

ESTATE OF JOHN C. WHITEHEAD, DECEASED

STIPULATION

It is hereby stipulated by and between the attorneys for the parties in the above-captioned matter that (1) no response shall be required to the Petition for Citation to Show Cause Why Kenneth Whitehead, Administrator *d.b.n.*, Should Not File An Account, which was filed on October 14, 2015; and (2) Kenneth Whitehead shall file an Account and statement of the status of his administration of the Estate of John Whitehead, Deceased, within thirty (30) days of the approval of this Stipulation by the Court.

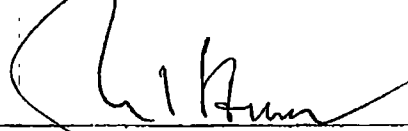
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APPROVED:



THE HONORABLE JOHN W. HERRON

*December 21, 2015*

John Cavadus Whitehead Sr, Deceased



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