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

O.C. No. 1043 DE of 2014

Control No. 145560

The Estate of THOMAS BRAWNER Sr., Deceased

Thomas Brawner, Sr, Deceased

20140104305086

OPINION SUR APPEAL

Coren Wise, Esq. (hereinafter "Appellant"), appeals the Trial Court's Adjudication of the First and Final Account of George Brawner, as Administrator D.B.N. of the Estate of Thomas Brawner Sr., Deceased, dated the 9th day of March, 2016.

Factual and Procedural History[1]

Thomas Brawner, Sr. ("Decedent"), died intestate on December 29, 1991. He was unmarried at the time of his death, but was survived by three sons: Thomas Brawner, Jr., Edward Brawner, and George Brawner (hereinafter "Mr. Brawner" or "Administrator").

On January 30, 1992, Thomas Brawner, Jr. was granted Letters of Administration for the Decedent's estate with the consent of his two brothers. On

[1] The Trial Court presented a thorough background of this case in the Adjudication that is the subject of the instant Appeal. The applicable parts of this background are reproduced here for convenience.

April 15, 1992, Thomas Brawner, Jr., as Administrator, improperly transferred title of 303 N. 41st St. to himself.

On March 15, 2003, Thomas Brawner, Jr. died, and Letters of Administration for his estate were granted to his daughter, Charmaine Brawner. On August 28, 2006,[2] as a result of the death of Thomas Brawner, Jr., George Brawner was granted Letters of Administration D.B.N. for the Decedent's estate.

Administrator entered into an agreement with DDE Investments, LLC, to sell 303 N. 41st St. for $25,000.00. Meanwhile, Objectant had found another buyer offering $106,200.00. Due to the fraudulent transfer of the property in 1992 and the resulting title issues, Administrator initiated a quiet title action[3] through his counsel, Appellant. By order dated January 30, 2014, the Honorable Judge Fox struck the fraudulent deed and the property was returned to Decedent's estate. After the title issues were resolved, the property sold for $106,200.00 and closing occurred on June 9, 2014.

A total of $48,759.65 was deducted from the gross sale proceeds to pay various costs of administration, including taxes, Appellant's fee of $14,845.00, and $20,000.00 as a "release" to DDE Investments, LLC.[4] As a result of the sale, a total of $57,523.05 was paid to George Brawner as Administrator D.B.N. of Decedent's estate for distribution. Administrator paid himself a commission of $16,500.00 and

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[2] The Register of Wills file contains an error to the effect that George Brawner was granted letters of administration on February 4, 1992.

[3] *Brawner v. Brawner*, Court of Common Pleas, Philadelphia County, Civil Trial Division, Sept. Term 2012, No. 847.

[4] As noted, the propriety of this distribution was raised at trial and in Objectant's post-trial Proposed Findings of Fact and Conclusions of Law, but DDE Investments, LLC was never made a party to this action. *See* Notes of Testimony, October 29, 2015, pp. 25-26. As such, the Trial Court cannot pass on its validity. Regardless, it appears that Objectant consented to the distribution. *See* Trial Exhibit Wise 15.

distributed the remainder of the proceeds in two even shares to himself and his surviving brother, Edward Brawner.[5]

No distribution was made to Thomas Brawner, Jr., his estate, or his personal representative. At trial, Administrator stated that at the time he felt he did not have to pay anything to Objectant because Thomas Brawner, Jr. had died.

Upon Citation and subsequent order of the Trial Court, George Brawner filed The First and Final Account of George Brawner, Administrator D.B.N. on December 2, 2014, pertaining only to the real estate located at 303 N. 41st St., Philadelphia.

Objections to the Account were filed by Charmaine Brawner, Administratrix of the Estate of Thomas Brawner, Jr. ("Objectant"). The Objections alleged, among other things, that no distribution of Thomas Brawner, Jr.'s 1/3rd share of Decedent's estate was ever made. At trial, Objectant also challenged the distribution made to DDE Investments, LLC at closing. The Objections requested the following relief as a result: (1) Surcharge Administrator the amount of Thomas Brawner, Jr.'s, intestate share ($19,174.35) plus interest; and (2) Surcharge Administrator the amount of any unsubstantiated expenses or commissions.

Appellant was made a party in this matter by Objectant's petition that he be held accountable for the failure to distribute assets to the heirs, filed under control no. 150773. No response was forthcoming, and neither Administrator nor Appellant appeared as ordered at a February 17, 2015 hearing. Appellant was then ordered to respond to the Objectant's original petition. He did so by way of answer with new matter, to which Objectant replied. Administrator was attached in contempt as a result of his failure to appear.

The issues raised by these pleadings were tried at the consolidated adjudicatory hearing held October 29, 2015.

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[5] Notes of Testimony, October 29, 2015, p. 81.

On March 9, 2016, upon consideration of all evidence and testimony presented at trial and post-trial submission of Proposed Findings of Fact and Conclusions of Law, the Trial Court issued the following:

1. Adjudication of the First and Final Account of George Brawner, Administrator D.B.N. (the "Adjudication"), under control no. 145560, docketed on March 10, 2016;

2. Decree vacating George Brawner's bench warrant in attachment, under control no. 150744, docketed on March 11, 2016;

3. Decree ordering Appellant to disgorge the sum he was surcharged in the Adjudication and holding him personally liable beyond that sum for damages caused by George Brawner ("Decree Holding Appellant Liable"), under control no. 150773, docketed on March 11, 2016;

4. Decree removing George Brawner as Administrator D.B.N. ("Decree Removing Administrator"), under control no. 145560, docketed on March 14, 2016.

On April 4, 2016, Appellant filed Exceptions to the "Adjudication, Findings and Order of March 9, 2016, filed of record March 14, 2016." As such, the Exceptions were filed twenty five (25) days after the Adjudication was docketed and twenty four (24) days after the Decree Holding Appellant Liable was docketed. There has never been any contest, by exception or otherwise, of the Decree of March 14, 2016 removing George Brawner as Administrator D.B.N. The Trial Court scheduled oral argument on the Exceptions by Decree dated April 11, 2016. Appellant filed his Notice of Appeal on April 12, 2016—thirty three (33) days after the Adjudication was docketed and thirty two (32) days after the Decree Holding Appellant Liable was docketed—while the Exceptions were outstanding.

Pursuant to the Trial Court's Decree dated April 27, 2016, Appellant filed of record his Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) (hereinafter "1925(b) Statement") on May 18, 2016.

Oral argument on the Exceptions was held on June 22, 2016, whereafter the Trial Court found, by Decree dated the June 27, 2016, that it lacked jurisdiction to consider the Exceptions until such time as the Honorable Superior Court returns jurisdiction over this matter. At such time, the Trial Court will consider any remaining issues on exception that survive appeal.

Issues

The issues as expressed by Appellant in his 1925(b) Statement are concisely restated below to facilitate the Trial Court's efforts to fully address them. The Trial Court also raises the timeliness of Appellant's Exceptions and Appeal as a threshold issue.

1) Whether this Appeal should be quashed because Appellant failed to take timely exception to and/or timely appeal the relevant Decrees.
2) Whether the Trial Court erred in finding that Appellant represented George Brawner in his capacity as Administrator D.B.N. of the Estate of Thomas Brawner, Sr.
3) Whether the Trial Court erred in finding that Appellant took his fees directly from Estate funds.
4) Whether the Trial Court erred in ordering Appellant to disgorge his fee of $14,845.00.
5) Whether the Trial Court erred in holding Appellant personally liable for the amount of the surcharge assessed against George Brawner in the amount of $16,500.00, to the extent that amount is not recoverable from George Brawner.
6) Whether the Trial Court erred in holding Appellant jointly and severally liable for the actions of George Brawner.

7) Whether the Court erred in finding that Appellant failed to appear at a hearing of which he had notice.

Discussion

I. This Appeal should be quashed because Appellant failed to take timely exception to and/or timely appeal the relevant Decrees.

An aggrieved party has twenty days to file exceptions to a final decree or adjudication, and thirty days to take an appeal to a higher court. Pa.O.C. Rule 7.1; 42 Pa.C.S. § 5571; *Comm. v. Perez*, 2002 PA Super 165, ¶ 10; Pa.R.A.P. 903(a). This period begins to run when an appealable order or decree is entered of record on the docket. *Comm. v. Frazier*, 324 Pa. Super. 334, 336 (1984). Further, it is beyond the power of a court to indulge lackadaisical litigants, because timeliness is a jurisdictional question, and "[w]hen a statute fixes the time within which an appeal may be taken, the time may not be extended as a matter of indulgence or grace." *Comm. v. Pena*, 31 A.3d 704, 706 (Pa. Super. 2011) (citation omitted). An appellant must therefore file his notice of appeal with the clerk of the lower court from which he is appealing before the expiration of the thirty day period in order for it to be timely. Pa.R.A.P. 905(a)(3). Filing timely exceptions to an appealable decree effectively tolls the time to file a notice of appeal, otherwise the appeal period runs from the entry of an appealable order. *See* Pa.O.C. Rule 7.1, *explanatory note*.

Appellant takes issue with the Trial Court's surcharge of Appellant and the fact that he is held further liable. These remedies are effected by the Trial Court's Adjudication docketed March 10, 2016 and the Decree Holding Appellant Liable docketed March 11, 2016 (under control no. 150773). Therefore, the latest that timely exceptions could be filed on these matters was March 31, 2016, twenty (20) days after the docketing of the Decree Holding Appellant Liable, the last Decree

affecting Appellant. If timely exceptions were not filed, the latest that a timely notice of appeal could be filed was April 11, 2016, thirty (30) days after the docketing of the Decree Holding Appellant Liable.

Here, Appellant filed his Exceptions of record on April 4, 2016, twenty five (25) days after the docketing of the Adjudication and twenty four (24) days after the docketing of the Decree Holding Appellant liable.[6] Therefore, Appellant failed to take timely exception.

Because Appellant did not take timely exception, his appeal period was limited to thirty days from the Adjudication and Decree affecting his interests, which expired April 11, 2016.[7] Appellant filed his Notice of Appeal on April 12, 2016.

Appellant's Notice of Appeal states that he appeals "the Adjudication and Order that was entered in this matter on the 14th day of March, 2016." This is once again a misstatement of the record, however, because the only item docketed March 14 was the Decree removing George Brawner as Administrator D.B.N. The Adjudication and Decree Holding Appellant Liable were docketed the 10th and the 11th of March, respectively. Nothing docketed on March 14, 2016 affected Appellant in any way. This is confirmed by the docket report that Appellant attaches to his Notice of Appeal, which clearly refers only to the removal of George Brawner as Administrator:[8]

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[6] Despite how Appellant styles his exceptions, the substance of the Trial Court's decision to which he objects is contained completely within the Adjudication entered March 10, and the Decree entered March 11. The March 14 Decree pertains only to the removal of George Brawner as Administrator, and is in no way germane to the instant Appeal. No one, not even Mr. Brawner, has objected to his removal.

[7] Thirty days from March 11, 2016, was actually Sunday, April 10. However, under Pa.R.A.P. 107 which incorporates by reference 1 Pa.C.S. § 1908 (computation of time), when the last day of a time period falls on a Sunday, it is omitted from the count. Therefore, the appeal period expired Monday, April 11.

[8] *See* Appellant's Notice of Appeal, Attachment.

Docket Entries:

Filing Date/Time	Docket Entry	Approval/ Entry Date
14-MAR-2016 11:23	DECREE ISSUED	CARRAFIELLO, MATTHEW D. 03/14/16 00:00
	60-145560 ORDERED AND DECREED THAT GEORGE BRAWNER, JR., IS REMOVED AS ADMINISTRATOR D.B.N. OF THE ESTATE OF GEORGE BRAWNER, SR. THE REGISTER OF WILLS OF PHILADELPHIA COUNTY IS DIRECTED TO GRANT LETTERS OF ADMINISTRATION, D.B.N. TO THE PERSON OR PERSON ENTITLED THERETO, AND GEORGE BRAWNER, JR., IS DIRECTED TO DELIVER THE ASSETS OF THE ESTATE, ALONG WITH ALL BOOKS, ACCOUNTS AND PAPERS RELATING THERETO TO THE ADMINISTRATION SO APPOINTED. CARRAFIELLO, ADM. J. DECREE SIGNED MARCH 9, 2016	

In sum, Appellant is attempting to use the date of the Decree Removing Administrator in the underlying matter to render his Exceptions and Notice of Appeal timely while actually taking issue with the substance of the Adjudication and Decree entered days earlier. While it would be reasonable to read the Adjudication and the Decree Holding Appellant liable together because the Decree specifically references the Adjudication, the date that Decree was docketed still does not render Appellant's filings timely, and the Decree docketed March 14, 2016 removing Mr. Brawner as Administrator D.B.N. does not reference the Adjudication or any of the other Decrees. Therefore, this appeal is out of time and should be quashed.

II. The Court properly found that Appellant represented George Brawner in his capacity as Administrator of the Estate of Thomas Brawner, Sr.

Appellant, by his 1925(b) Statement, suggests that "at all times pertinent to the estate and Mr. Wise's involvement, George Brawner acted as pro se administrator, accountant, and litigant."[9] Inconsistent with this, however, is Appellant's very next sentence: "Mr. Wise was engaged as a real estate attorney for a Quiet Title matter during the process of the administrator's handling of the estate."[10] Appellant admits that he did represent George Brawner in some capacity. Appellant further suggests that because he never entered his appearance before the

[9] Appellant's 1925(b) Statement, ¶1.
[10] *Id.*

Register of Wills or the Orphans' Court, his representation was strictly limited in scope to the quiet title action.[11] Therefore, the issue here is what the scope of Appellant's representation of George Brawner actually was.

An attorney-client relationship may of course arise by express contract. Where such a contract is not present, this Court has held that:

> [A]n implied attorney/client relationship will be found if 1) the purported client sought advice or assistance from the attorney; 2) the advice sought was within the attorney's professional competence; 3) the attorney expressly or impliedly agreed to render such assistance; and 4) it is reasonable for the putative client to believe the attorney was representing him.

Atkinson v. Haug, 424 Pa. Super. 406, 411-12 (1993). Regardless of how the relationship arises, the scope of representation is general by default, though the attorney may limit it, "if the limitation is reasonable under the circumstances and the client gives informed consent." Pa.R.P.C. 1.2(c). Informed consent "denotes the consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Pa.R.P.C. 1.0(e).

While it is admitted that Appellant represented George Brawner as administrator in the quiet title action, the evidence[12] presented to and credited by the Trial Court establishes that Appellant's representation was never anything short of

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[11] *Id.*

[12] *See, e.g.*, Appellant's 1925(b) Statement, ¶1; Trial Exhibit Wise-10 (Civil Docket Record of *Brawner v. Brawner et al.*, listing "ATTORNEY FOR PLAINTIFF" as "WISE, COREN J," and "ADMINISTRATOR-PLAINTIFF" as "BRAWNER, GEORGE." The Court took judicial notice of the Docket and the disposition of the civil case. Notes of Testimony, October 29, 2015, pp. 51-52.

a general representation of Mr. Brawner in his fiduciary capacity. In fact, Mr. Brawner states in his pleadings that he never entered into a written agreement with Appellant, making it all the less likely that the informed consent needed to limit the scope of representation was obtained, and discrete, credible testimony on this area was never presented at trial.[13] Therefore, the Trial Court did not err in finding that Appellant represented Mr. Brawner generally in the capacity of administrator.

Further, a general attorney client relationship can be found by applying the *Atkinson* factors recited above to Appellant's conduct with regard to Mr. Brawner. Based on trial testimony, it appears Mr. Brawner initiated an attorney-client relationship with Appellant by seeking out his services, first with regard to the civil quiet title action or otherwise, in 2012.[14] This is confirmed in that Appellant did in fact undertake to represent him, as copiously demonstrated by evidence of record.[15] However, Appellant's assertion that his representation was strictly limited to the civil quiet title action is contradicted by Appellant's fee statement, for example, which includes an item for "Administration: Estate of Thomas Brawner" for which he billed $2,500.[16] Appellant also introduced a letter from himself to George and Edward Brawner, and Arnold Wainstein, Esq. for Charmaine Brawner, by writing "Dear Sir/Madam: I represent the Estate of Thomas Brawner, Sr."[17]

Appellant's conduct is likewise consistent with a general representation. He attended closing with the Administrator.[18] He advised the Administrator (and

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[13] Answer filed by George Brawner to Charmaine Brawner's Petition for Citation, under Control No. 150773, at p.2.
[14] Notes of Testimony, October 29, 2015, p. 48.
[15] Trial Exhibit Wise-10.
[16] *Id.*
[17] Trial Exhibit Wise-15 (also introduced by Mr. Wainstein for Charmaine Brawner as Exhibit P-1A) (letter dated March 24, 2014). Appellant confirmed that he wrote this letter under cross examination. Notes of Testimony, October 29, 2015, pp. 18-19.
[18] Notes of Testimony, October 29, 2015, pp. 44-45.

possibly the beneficiaries) of the need for a family settlement agreement.[19] All of this indicates that Appellant impliedly agreed to "render assistance" beyond the scope of the quiet title action. George Brawner indicated throughout that he believed that Appellant was his attorney and represented him generally as administrator.[20] Thus the *Atkinson* test supplies an independent basis for finding that an attorney-client relationship existed between Mr. Brawner and Appellant during the quiet title action, the subsequent real estate transaction, and, to an extent, through the subsequent administration of the estate.

Thus, even if Appellant's explicit agreement to represent Mr. Brawner in the quiet title action did effectively limit his representation to that matter (which it did not), Appellant's conduct was independently sufficient to create a broader implied scope of representation. For the above reasons, whether Appellant entered his appearance on behalf of Mr. Brawner before the Register of Wills, the Orphans' Court, or any other body, is totally immaterial to whether a general attorney-client relationship arose. Therefore, the Trial Court did not err in finding that Appellant represented George Brawner in his capacity as Administrator of the Estate of Thomas Brawner, Sr.

III. The Court properly found that Appellant took his fees directly from Estate funds.

The finding that Appellant was paid from the estate is clearly supported by the record, and it fairly boggles the mind of the undersigned Judge that Appellant would assert otherwise. At trial Appellant stated, under examination, that he received

[19] Notes of Testimony, October 29, 2015, pp. 46-47; Trial Exhibit Wise-15.
[20] *See, e.g.*, Answer filed by George Brawner to Charmaine Brawner's Petition for Citation, under Control No. 150773, at p.3.

his fee at the real estate settlement, which he orchestrated, and which involved the sale of the principal of the estate:

> Q (by Mr. Wainstein): When you billed $14,800, who did you bill, George or the estate?
>
> A: George as administrator of the estate.
>
> Q: Well, where was the money paid from?
>
> A: The proceeds.
>
> Q: So they were estate funds, were they not?
>
> A: Yes.[21]

The HUD-1 sheet, which Appellant introduced into evidence, also reflects a distribution of $14,845.00 for "Professional Services/Legal Fees to Wise Law Offices, Inc."[22] Because the property sold was an estate asset, funds deriving from its sale were also estate assets. Because the record is abundantly clear that Appellant was paid from the proceeds of the sale of the estate's real property, the Trial Court therefore properly found that Appellant was paid his fees from the estate.

IV. The Court properly ordered Appellant to disgorge his fee of $14,845.00.

Attorney's fees drawn from estate funds are subject to a reasonableness analysis under which the Court must consider:

> [T]he amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was 'created' by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.

[21] Notes of Testimony, October 29, 2015, p. 75.
[22] Trial Exhibit Wise-5, line 1310.

In re LaRocca's Trust Estate, 431 Pa. 542, 546 (1968).

Applying the *LaRocca* factors, the Trial Court properly found Appellant's fee of $14,845.00 grossly excessive. George Brawner's ability to pay, even in his capacity as Administrator, was limited by the small estate available, already reduced by various costs and a $20,000 "release."[23] The *LaRocca* court's final "very important" factor, the amount of funds available, weighs heavily against a fee as large as the one Appellant charged, which is almost 14% of the gross estate.

As to the amount of work performed, Appellant reports expending 53 hours, total, on this matter.[24] While this is a significant expenditure of time, the results obtained were not commensurate with this expenditure. The overall outcome of the representation was not satisfactory, resulting in the instant litigation. Appellant, either by commission or omission, is at least partly responsible for the losses to the estate caused by George Brawner's actions as Administrator D.B.N., who on numerous occasions stated that Appellant advised him that he did not need to make a distribution to Charmaine Brawner, either in her individual capacity or her capacity as Administrator of Thomas Jr.'s estate.[25] Even if he never advised George Brawner not to make a distribution to the Estate of Thomas Brawner, Jr., Appellant had an obligation to disabuse him of the incorrect but foreseeable notion that nothing was owed to the estate of a now deceased heir who survived the decedent.

In a case discussing the reduction of fees payable to attorneys representing a personal representative whose actions caused loss to an estate, the Pennsylvania Supreme Court notes that "the award of counsel fees presupposes not only that legal services were performed, but that they were performed satisfactorily." *In re: Lohm's*

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[23] *See supra*, Note 4.
[24] Trial Exhibit Wise-13.
[25] *See, e.g.*, Notes of Testimony, October 29, 2015, p. 86.

Estate, 440 Pa 268, 278 (1970). There, applying this analysis to the *LaRocca* factors, the *Lohm* Court stripped fees from attorneys whose dilatory conduct had occasioned tax penalties to the estate greater than the amount of fees claimed. *Id.* At 278-79.

Here, as in *Lohm*, and upon application of the *LaRocca* factors, the Trial Court declined to award Appellant any fee from the estate because of the extremely deleterious effect his involvement has had on the estate. Thus, the Trial Court properly ordered Appellant to disgorge his entire fee of $14,845.00.

V. The Court properly held Appellant personally liable for the amount of the surcharge assessed against George Brawner in the amount of $16,500.00, to the extent that amount is not recoverable from George Brawner.

Pennsylvania courts have held that where an attorney represents a fiduciary in their fiduciary capacity, he owes certain "derivative" duties to the beneficiaries of the fiduciary estate, especially if compensated for his professional services from the estate. *Pew Trust*, 16 Fiduc. Rep. 2d 73, 74 (O.C. Mont. Co., 1995) ("[A lawyer's] duties run not only to [his] client, but to the non-client trust beneficiaries."); *see also Pew Trust No. 2*, 16 Fiduc. Rep. 2d 80, 84-85 (O.C. Mont. Co., 1995). These duties are negative, in that they forbid the attorney from behaving adversely to the interests of the beneficiary, and affirmative, in that they require the attorney to safeguard the interests of the beneficiaries.[26]

The duty that Appellant owed to the beneficiaries of Decedent's Estate was derived from that of his client, the administrator—namely, to fairly and efficiently administer the estate according to the law, exercising the care that a man of ordinary prudence would in the administration of his own estate, and "to see that [his] purely

[26] PA Eth. Op. 2004-7, 2004 WL 5333296, at *2 (Pa. Bar Association Committee on Legal Ethics and Professional Responsibility, 2004) (discussing *Pew Trust No. 2*). *See also* ACTEC Commentary on MRPC 1.2, at p. 2, *available at* http://www.actec.org/assets/1/6/ACTEC_Commentaries_5th.pdf.

private interests were not advanced at the expense of the estate." *Estate of Pew*, 440 Pa. Super. 195, 236 (1994) (citations omitted); *In re Pitone's Estate*, 489 Pa. 60, 66 (1980) (citing *Herman's Estate*, 90 Pa.Super. 512 (1927)). Finally, where a fiduciary possesses skills that the "ordinary person" does not possess, and which are applicable to the discharge of his fiduciary duties, the standard of care by which he must act will be elevated accordingly. *In re Killey's Estate*, 457 Pa. 474, 477 (1974).

Here, Appellant had a duty that devolved to him through his representation of the Administrator, but as a practicing attorney, he was held to a higher standard and was bound to act as a prudent attorney would under the circumstances. By failing to take steps appropriate to an attorney, like ensuring that Mr. Brawner distributed estate assets to estate beneficiaries appropriately or ensuring that Mr. Brawner was given proper advice regarding the distribution of proceeds, Appellant breached his duties and caused harm to the beneficiaries of Decedent's estate, which would have been whole but for his inaction.

Mr. Brawner indicated at trial that he had dissipated the funds that he had distributed to himself, and that his brother Edward was now insolvent.[27] Further, as noted above, the Trial Court found that Appellant bore at least some responsibility for the harm caused by Mr. Brawner as administrator to the estate in that Appellant failed to take ordinary precautions. While the fee that Appellant was ordered o disgorge will go some of the way to making the estate whole, it is not sufficient by itself. Therefore, in order to ensure that the beneficiaries of Decedent's estate would be made whole, the Trial Court found it appropriate to hold Appellant liable to the extent that the surcharge against Mr. Brawner was not recoverable from him—stated otherwise, holding Appellant and Mr. Brawner jointly and severally liable for the loss occasioned by Mr. Brawner's actions as administrator.

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[27] Notes of Testimony, October 29, 2015, pp. 95, 101, 105, 106, *et passim.*

Thus, the Trial Court properly held Appellant personally liable for up to $16,500.00 (the amount of Mr. Brawner's surcharge), to the extent that amount is not recoverable from George Brawner, because by his participation at settlement as attorney for Mr. Brawner, he gave his approbation to payment of fees not approved by the Orphans' Court or the parties.

VI. This apportionment of liability between Appellant and other parties to this matter is appropriate, and no further order is necessary.

For the reasons discussed above, the Trial Court found it appropriate to hold Appellant liable beyond his fee for damages caused by Mr. Brawner, to the extent that those damages are not recoverable from Mr. Brawner. This creates joint and several liability between Appellant and Mr. Brawner for the surcharge assessed to Mr. Brawner of $16,500.00. Appellant alleges that the Trial Court erred by "failing to require [Charmaine Brawner] as Administratrix to take specific actions as to George Brawner and Edward Brawner to make the estate of Thomas Brawner Jr. whole prior to any loss being attributed to Core[n] Wise, Esquire."[28]

This allegation of error is nonsensical for a number of reasons. First, the estate of Thomas Brawner, Jr. was not before the Trial Court, and no duty that Charmaine Brawner might owe as her father's personal representative is at issue here. Second, Edward Brawner was not surcharged or otherwise found liable by the Trial Court, nor was this ever raised. Third, the law of joint and several liability renders the remedy ordered self-explanatory. Where two parties are both responsible for harm done, the court may hold them jointly and severally liable. When one jointly-responsible party carries more than his equitable share of the burden, he then "bears the risk of recovering the excess from his or her less responsible fellow tort-feasors." *Glomb v. Glomb*, 366 Pa. Super. 206, 211 (1987). Thus, it would be Appellant's

[28] Appellant's 1925(b) Statement, ¶5.

responsibility to seek recovery from Mr. Brawner to the extent Appellant bears more than his equitable share of the burden. Further, an apportionment of damages was never sought at trial or in any of Appellant's post-trial submissions, and the Trial Court did not feel it was appropriate to become an advocate for Appellant. Thus, the Trial Court properly did not order Charmaine Brawner to "take specific action as to George Brawner and Edward Brawner."

VII. The Trial Court properly found that Appellant failed to appear at a hearing of which he had notice.

Appellant takes issue with the following language from the Trial Court's recitation of this matter's procedural history found in the Adjudication:

> Attorney Wise was made a party in this matter by Objectant's petition that he be held accountable for the failure to distribute assets to the heirs, filed under control no. 150773. No response was forthcoming, and when George Brawner, with attorney Wise as his counsel of record, failed to appear as ordered at a February 17, 2015 hearing, Wise was ordered to respond to the Objectant's original petition. He did so by way of answer with new matter, to which Objectant replied.[29]

Appellant indicates by way of his 1925(b) Statement that he did not have notice of the February 17, 2015 hearing. However, Appellant fails to advance any argument as to how the Trial Court's statement of the record prejudices him, and so this is at worst an allegation of harmless error. Further, regardless of his status before filing an answer with new matter, Appellant submitted to the personal jurisdiction of the Trial Court by doing so without ever pleading lack of personal jurisdiction by preliminary objections. Indeed, the undersigned is puzzled that Appellant raised this as an issue—except for the dearth of legitimate appealable issues.

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[29] Adjudication dated March 9, 2016. *See also supra* p.4.

Conclusion

The issues addressed here concern matters of great import in the delivery of legal services to those of limited means. Unfortunately, they have not been preserved by timely exceptions and/or appeal, and therefore this Appeal should be quashed.

Should this Honorable Court reach the merits, it is suggested that Appellant's contention that he was contracted to do only those services that rendered title to the realty in question amenable to sale fails for two reasons. First, the actions and representations of Appellant at settlement gave the appearance to all, including the Administrator, that he was representing the personal representative in the administration of the estate, and after taking his fee and facilitating the distribution of remaining proceeds to the Administrator, he gave credence to the belief, especially to the Administrator, that those funds could be distributed in the administrator's sole discretion.

Second, Appellant mistakenly considered that whatever limited responsibly due his client inured only to the Administrator when in fact, derivatively, he owed a duty to all those having an interest in the realty. Nevertheless, he acted in total disregard to the interests of those beneficiaries and their interest in distribution.

Appellant's attempt to segment his duties may have had an appropriate business purpose. However, the practice of law is still a profession which does not lend itself easily the quantitising of services, let alone to the doctrine of *caveat emptor*, but requires the solemn observance of professional and ethical standards whereupon a lawyer is obliged to perform services, and to keep those services from becoming a snare to clients who lack the legal training or knowledge to avoid them on their own.

Even with the great compassion that the Trial Court has for attorneys such as Appellant, the facts of this case make it clear that once Appellant appeared at and participated in settlement and distribution, at least for those assets, he had invested himself with duties owed to all its beneficiaries. We therefor respectfully submit that this Appeal should be quashed.

CARRAFIELLO, A.J.

7-21-16

Date

Roger F. Perry, Esq.

Arnold Wainstein, Esq.

Edward Brawner, pro se
2208 Cecil B. Moore Ave.
Philadelphia, PA 19121

George Brawner, pro se
2208 4209 Stanwood Ct., Apt. D
Philadelphia, PA 19136