

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Gloria G. Capobianco, Deceased  
O.C. No. 1371 DE of 2016  
Control No. 195147

Gloria G Capobianco, Deceased



OPINION SUR APPEAL

Otto J. Capobianco, Jr. (“Appellant”), appeals the Court’s Decree of July 10, 2019, ordering his eviction from 6811 Oxford Avenue, Philadelphia, Pennsylvania 19111 (the “Property”). For reasons stated below, the Decree is not appealable. Rather, it is an interlocutory order, and the appeal, taken without right or permission, should be quashed.

Background

Gloria G. Capobianco (“Decedent”) died intestate on June 13, 2016. Decedent was not survived by a spouse, but she was survived by her seven children, including Appellant. At the time of her death, Decedent owned, and resided in, the Property. It is the primary asset of the Estate. Appellant had been living with Decedent prior to her death for many years and continued to live in the Property following Decedent’s death.

On April 23, 2019, Mario D’Adamo (“Petitioner”), Administrator of the Estate of Gloria G. Capobianco, Deceased, filed a Petition for Citation for the ejectment of Appellant from the Property. Petitioner avers Appellant’s continued presence in the Property has delayed its sale and the eventual distribution of the proceeds to all the heirs.

On April 29, 2019, the Court issued a rule to show cause directing Appellant to appear and show cause why he should not be evicted from the Property.

A hearing on the rule took place on July 9, 2019. At the hearing, the Court informed Appellant an administrator has an absolute right to sell real estate in order to settle an estate and asked if he had any law to the contrary. N.T. 07/09/19, at 3. Appellant stated it was the “family

plan” that he remain in the Property because of the care he provided Decedent during her final years. N.T. 07/09/19, at 3. The family plan notwithstanding, the Court asked Appellant how it was to reconcile such a plan with the law, and Appellant ultimately suggested he buy the Property from the Estate. *Id.* at 4–7.

After a brief recess to discuss a possible timetable for Appellant to voluntarily vacate or purchase the Property, Petitioner stated there was no agreed upon timetable. *Id.* at 10–11. As a result, the Court ordered Appellant’s eviction from the Property in sixty days’ time. *Id.* at 19, 26.

On July 23, 2019, Appellant filed a Petition to Stay the eviction. The Court issued a Decree on August 2, 2019, extending Appellant’s eviction another thirty days.

On August 7, 2019, Appellant filed his Notice of Appeal. The Court issued a 1925(b) Order on August 16, 2019, directing Appellant to file a concise statement of the matters he intended to raise on appeal.

Appellant subsequently filed an “Appeal Statement” on August 22, 2019. The statement indicates Appellant appeals the Decree evicting him from the Property, but the statement does not identify which errors, if any, the Court made in evicting Appellant.

### Discussion

As a preliminary matter, “[t]he appealability of an order directly implicates the jurisdiction of the court asked to review the order.” *In re Estate of Considine v. Wachovia Bank*, 966 A.2d 1148, 1151 (Pa. Super. Ct. 2009). If appellate review is sought for an order that is not appealable, then the appellate court asked to review the order has no jurisdiction to hear the appeal, and the appeal must be quashed.

Germane to the appealability of Orphans’ Court orders, Pennsylvania Rule of Appellate Procedure 342 provides:

**Rule 342. Appealable Orphans' Court Orders.**

(a) General rule. An appeal may be taken as of right from the following orders of the Orphans' Court Division:

- (1) An order confirming an account, or authorizing or directing a distribution from an estate or trust;
- (2) An order determining the validity of a will or trust;
- (3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;
- (4) An order interpreting, modifying, reforming or terminating a trust;
- (5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;
- (6) An order determining an interest in real or personal property;
- (7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or
- (8) An order otherwise appealable as provided by Chapter 3 of these rules.

Pa. R. App. P. 342(a)(1)–(8).

The Decree appealed here is not enumerated as an appealable Orphans' Court order pursuant to Rule 342. Nevertheless, Rule 342 allows appeals of Orphans' Court orders "otherwise appealable as provided by Chapter 3 of these rules." *Id.* 342(a)(8).

Pursuant to Chapter 3 of the Pennsylvania Rules of Appellate Procedure, appeals may be taken from the following types of orders: a final order; an interlocutory order as of right; an interlocutory order by permission; or a collateral order. *Id.* 341, 311–13.

Rule 341 governs appeals from final orders, and a final order is any order that disposes of all parties and all claims. *Id.* 341(b)(1). As the Supreme Court of Pennsylvania noted, "An order is not final and appealable merely because it decides one issue of importance to the parties. Rather, for an order to be final and ripe for appeal, it must resolve all pending issues and

constitute a complete disposition of all claims raised by all parties.” *In re Estate of Stricker*, 977 A.2d 1115, 1118 (Pa. 2009).

Generally, in an estate case, the confirmation of the final account of the personal representative represents the final order. *E.g.*, *In re Estate of Habazin*, 679 A.2d 1293, 1295 (Pa. Super. Ct. 1996); *see also* 20 Pa. C.S. § 3514. Conversely, “[a]n appeal from an order directing the administrator of a decedent’s estate to sell real estate belonging to the decedent is interlocutory and must be quashed.” *Stricker*, 977 A.2d at 1118. A delay in the review of such an order will not result in a loss to decedent’s heirs as “the real estate is not specifically devised . . . to any person, and the proceeds of the sale will remain under the review and control of the Orphans’ Court until confirmation of the final account.” *Habazin*, 679 A.2d at 1295.

Here, the Decree evicting Appellant from the Property was necessary so Petitioner could sell the home and distribute the proceeds to Decedent’s heirs. Administration of the estate is ongoing, and Petitioner has not filed a final account for the Court’s confirmation. Pursuant to *Stricker* and *Habazin*, an order that furthers the sale of decedent’s property and eventual distribution of the proceeds to decedent’s heirs pending confirmation of a final account is not a final order. Thus, the Decree at issue is not a final order under Rule 341; it is an interlocutory order.

Although the Decree ordering Appellant’s eviction is an interlocutory order, Appellant neither sought the Court’s permission to file an interlocutory appeal nor is the Decree enumerated among the types of interlocutory orders appealable as of right. *See* Pa. R. App. P. 312, 311(a)–(f).

Also, the Decree is not appealable as a collateral order. *See id.* 313(b) (defining collateral order as “an order [1] separable from and collateral to the main cause of action where [2] the

right involved is too important to be denied review and [3] the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.”). All three elements of the definition must be satisfied since the collateral order doctrine is narrowly construed to avoid piecemeal litigation. *See Rae v. Pa. Funeral Dirs. Ass’n*, 977 A.2d 1121, 1125 (Pa. 2009).

Here, ejecting Appellant from decedent’s home is central to, and inseparable from, the proper administration of decedent’s estate which, as stated above, is ongoing and has yet to result in the filing of a final account for the Court’s confirmation. Further, the right involved is not so important as to require review since an eviction does not implicate a right “deeply rooted in public policy going beyond the particular litigation at hand.” *Melvin v. Doe*, 836 A.2d 42, 47 (Pa. 2003). Lastly, there is no irreparable loss of a claim. Even though decedent’s home will be sold as a result of Appellant’s eviction, Appellant is not entitled to the Property. Instead, Appellant is entitled to an intestate share of the Estate to be paid from the proceeds of the sale. Those proceeds will remain under the Court’s supervision pending Petitioner’s filing of a final account. *See Habazin*, 679 A.2d at 1295. Thus, the Decree is not a collateral order.

Alternatively, if the Decree is found to be an appealable order of any type, the Court’s decision to evict Appellant was in accordance with the law and should be affirmed.

The personal representative of an estate is empowered to take possession of, preserve, and administer a decedent’s assets, including real property. *See* 20 Pa. C.S. § 301(b) (“Legal title to all real estate of a decedent shall pass at his death to his heirs . . . , *subject, however, to all the powers granted to the personal representative by this title . . . and to all orders of the court.*” (emphasis added)); *id.* § 3351 (“Except as otherwise provided by the will, if any, *the personal representative may sell, at public or private sale, . . . any real property not specifically devised . .*

. .” (emphasis added)); *see also id.* § 3311(a) (“The court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or a devisee if this is necessary to protect the rights of claimants or other parties. *Nothing in this section shall affect the personal representative’s power to sell real estate occupied by an heir or devisee.*” (emphasis added)). Heirs do not have the same powers as a personal representative when it comes to possession of a decedent’s assets. In fact, as the Supreme Court of Pennsylvania observed, “[I]t would constitute an unwise precedent to permit an individual to retain possession of an asset of an estate when the personal representative is charged with the responsibility of possession and administering such asset, merely because that individual is, or may be, entitled to subsequently share in the distribution of the estate. Inherent dangers are self-evident.” *In re Estate of Brose*, 223 A.2d 661, 663 (Pa. 1966). Those inherent dangers are present here.

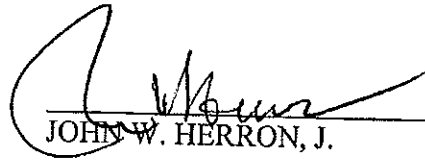
Here, the Property was owned by Decedent at the time of her death. Upon her death, title to the Property passed to the Estate. This is undisputed. The only question was whether Appellant had a right to remain in the Property, and he did not. Decedent did not specifically devise the Property to Appellant. He has no greater claim to the Property than any of his other siblings. Instead, Appellant is entitled to a one-seventh intestate share of the Estate which will be paid out of the proceeds of the sale of the Property. The Property cannot be sold so long as Appellant occupies it, depriving other intestate heirs of their rightful share of the Estate. In order to allow the proper administration and distribution of this asset, the Court ordered Appellant’s eviction.

Thus, despite his status as an heir, Appellant does not have an unfettered right to remain in the Property, and any assertion to the contrary is simply a misunderstanding of the law.

Conclusion

Therefore, the instant appeal is interlocutory, taken without right or permission, and should be quashed.

BY THE COURT:

  
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JOHN W. HERRON, J.

Dated this 10<sup>th</sup> day of September 2019

Otto J. Capobianco, Jr.  
Mario D'Adamo, Esquire