

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Gloria G. Capobianco, Power of Attorney
O.C. No. 1371 PR of 2016
Control No. 193867

Gloria G. Capobianco, Power Of Attorney



OPINION SUR APPEAL

Otto J. Capobianco, Jr. (“Appellant”), appeals the Court’s Decree of August 13, 2019, where the Court denied Appellant’s motion for reconsideration. For the reasons stated below, the Decree is not appealable, and the appeal should be quashed.

Background

On April 18, 2018, the Court issued a Decree rejecting Appellant’s account of his activities as agent for Gloria G. Capobianco (“Decedent”) under a power of attorney. The Court also invalidated a trust created by him and returned to the estate all Decedent’s property used by him to fund the trust. No timely appeal was taken from this Decree.

On August 5, 2019, Appellant filed a motion for reconsideration regarding the Court’s April 18 Decree. On August 13, 2019, the Court issued a Decree denying the motion as untimely.

On August 21, 2019, Appellant filed a Notice of Appeal challenging the Court’s denial of his motion for reconsideration. The Court did not issue a 1925(b) Order as it did not require “clarification of the errors complained of on appeal.” *See* Pa. R. App. P. 1925(b).

Discussion

While the Pennsylvania Orphans’ Court Rules permit motions for reconsideration, *see* Pa. O.C. Rule 8.2(a), such motions must be filed within thirty days of the final order. *See* 42 Pa. C.S. § 5505. Section 5505 of the Judicial Code grants the trial court “broad discretion to modify or rescind an order, and this power may be exercised *sua sponte* or invoked pursuant to a party’s

motion for reconsideration.” *Haines v. Jones*, 830 A.2d 579, 584 (Pa. Super. Ct. 2003). “[T]he trial court may consider a motion for reconsideration only if the motion for reconsideration is filed within thirty days of the entry of the disputed order.” *Id.* Once beyond the thirty-day window, the trial court loses the ability to act upon either the motion or the original order.

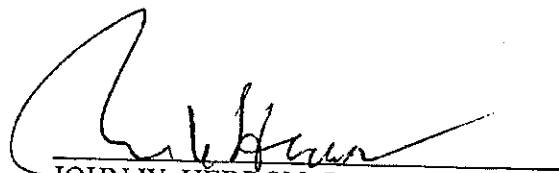
Here, Appellant filed his motion well outside the thirty-day window provided by Section 5505, and the Court denied the motion as untimely.

Nevertheless, Appellant now appeals the Court’s denial of his motion for reconsideration despite the fact Pennsylvania courts have consistently held “the refusal of a trial court to reconsider, rehear, or permit reargument of a final decree is not reviewable on appeal.” *Cheatham v. Temple Univ. Hosp.*, 743 A.2d 518, 521 (Pa. Super. Ct. 1999); *see also Thorn v. Newman*, 538 A.2d 105, 108 (Pa. Commw. Ct. 1988); *Provident Nat’l Bank v. Rooklin*, 378 A.2d 893, 897 (Pa. Super. Ct. 1977).

Conclusion

Therefore, the Decree denying Appellant’s motion for reconsideration is not appealable, and this appeal should be quashed.

BY THE COURT:


JOHN W. HERRON, J.

Dated this 10th day of September 2019

Otto J. Capobianco, Jr.
Lisa Shearman, Esquire