

617-2017  
COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No. 617 DE OF 2017  
Control No. 171682  
744 EDA 2018

Charles L Small, Deceased



20170061705029

**Estate of CHARLES L. SMALL, Deceased**

**OPINION SUR APPEAL**

Juanita Small has filed an appeal of this Court's February 27, 2018 Decree denying her Petition for Forfeiture of Estate. Appellant asserted that Appellee forfeited his right or interest in their deceased son's \$90,000.00 medical malpractice settlement. This court finds that Charles L. Small was not a dependent child pursuant *20 Pa. Cons. Stat. Ann. § 2106* and therefore the forfeiture statute is inapplicable to the case at bar.

***Facts and Procedural History***

Charles L. Small died intestate on July 11, 2013 at the age of thirty-seven. Letters of Administration were granted to Juanita Small ("Appellant"), Charles Small's mother, on November 26, 2013. A medical malpractice claim was filed in Delaware County and settled in the amount of \$90,000.00. Appellant petitioned this court for forfeiture of estate pursuant to *20 Pa C.S. § 2106(b)*. Appellant asserted that Laverne Dollard ("Appellee"), Charles Small's father, forfeited any right to the proceeds of the Estate of Charles L. Small, Deceased.

On February 26, 2018, this court held a hearing on the petition. Appellant called Appellee, as-of-cross, Almeta Miller, Mr. Small's home health aide/girlfriend and Appellant to testify. Mr. Small became a paraplegic at the age of 18 after he was shot. (N.T. 02/26/18, 10:11-16). Mr. Small was in a wheelchair from that time until his death. *Id.* Appellee testified that Mr. Small could put his own cloths on, get in and out of his wheelchair, ride paratransit by

himself and that he even drove with a cane at times. (*Id.* at 11:23-12:25). Ms. Miller testified that Mr. Small could get dressed by himself, get in and out of his wheelchair and chair lift. (*Id.* at 63:17-64:25). Appellant testified that Mr. Small could get in and out of his wheelchair, ride paratransit and SEPTA by himself to visit friends. (*Id.* at 84:9-11; 89:1-91:7). Appellant added that Mr. Small didn't need help but he wanted it. (*Id.* at 82:21-83:2). Appellant would help him with his colostomy bag and wash him. (*Id.* at 79:11-25). Mr. Small received Social Security and Appellant was paid as his home health aide. (*Id.* at 85: 18-20; 87:5-25). Ms. Miller later became his home health aide and girlfriend. (*Id.* at 60:16; 61:18-19). Mr. Small lived with Ms. Miller in her home for about the last four or five years of his life. (*Id.* at 62:2). Ms. Miller testified that they met downtown one day when they crossed paths and he asked for her number. (*Id.* at 61:21-24). Ms. Miller helped him get in the shower and going to the bathroom but she added that he could do a lot in his wheelchair. (*Id.* at 56:23-24; 66:8; 67:11-15). Ms. Miller testified that other than not being able to walk, there was nothing wrong with him. (*Id.* at 74:12-13). She added that he wrote and sang rap songs. (*Id.* at 77:16-18). Appellee also testified that Mr. Small could do everything except walk. (*Id.* at 34:8-15). Mr. Small's Obituary (R-1) stated in relevant part: "Charles didn't allow his disability to affect him. He was still the life of the party dancing in his wheelchair and doing all kinds of tricks...he would hold a conversation with you for hours..." (*Id.* at 51:50-52:10).

Appellee also called Marcella Thompson, Annette Roberts and Tyrone Booker to testify about Appellee's relationship with Mr. Small. Appellant submitted into evidence Appellee's affidavit (P-1) and photos (P2-P8). Appellee submitted into evidence Mr. Small's Obituary (R-1).

On February 27, 2018, this Court denied Appellant's Petition for Forfeiture of Estate. Based on the evidence submitted, this Court found that Charles L. Small was not a dependent child pursuant to *20 Pa. Cons. Stat. Ann. § 2106* and therefore the forfeiture statute did not apply to the instant case.

On March 8, 2018, Appellant filed a Notice of Appeal. Statements of Matters Complained of on Appeal were requested and properly tendered on March 22, 2018. Appellant raised the following issue in their Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b):

- I. The Trial Court abused its discretion and committed reversible error failing to find that Charles Small, deceased was a dependent under the law;
- II. The Trial Court abused its discretion and committed reversible error failing to apply the forfeiture statute 20 PA.C.S. sec. 2016 [sic] to make a determination whether the Respondent forfeited his rights under the statute.

#### *Discussion*

- I. **This Court did not abuse its discretion in finding that Charles Small was not a dependent child under the law.**

Appellant asserts this Court abused its discretion and committed reversible error failing to find that Charles Small as dependent under the law. This claim is without merit.

Abuse of discretion standard of review requires proof of more than a mere error in judgment; it requires evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice, or partiality. *Simmons v. Simmons*, 723 A.2d 221, 222 (Pa. Super. Ct. 1998). The Superior Court does not lightly find an abuse of discretion, which requires a showing of clear and convincing evidence. *Morgante v.*

*Morgante*, 119 A.3d 382, 386 (2015). An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion than the trial court. *Snizavich v. Rohm & Haas Co.*, 83 A.3d 191, 194 (2013).

The forfeiture statutes provides that a parent's share may be forfeited "previous to the death of the parent's minor or dependent child." 20 Pa. C.S.A. §2106(b). The Superior Court discussed the requirements for forfeiture stating:

The elements of a forfeiture based on failure to support are easily discerned from the plain language of the statute: **(1) the decedent must be a minor or dependent child;** (2) the parent must owe some duty of support to the decedent; (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. The petitioner must produce evidence of all of these elements to make a prima facie case of forfeiture. *In re Estate of Teaschenko*, 574 A.2d 649, 651 (1990).

The purpose of the statute is to protect minor or dependent children who are not legally competent to effectuate a will. *In re Kistner*, 858 A.2d 1226, 1228 (2004). Where the decedent is not a minor or dependent child at the time of death, the forfeiture provisions of §2106(b) are inapplicable. *Id.* at 1229. In *Kistner*, the forfeiture statute did not apply to a father whose fifty-eight year old daughter died intestate despite mother's contention that father failed to perform his duty of support.

Here, the decedent, Charles L. Small, was thirty-seven years old at the time of his death. Mr. Small was not a minor and based on the evidence, he was not a dependent child. Mr. Small was never adjudicated an incapacitated person. He was never declared incompetent or appointed a guardian by a court or otherwise. In fact, both his parents and girlfriend testified that he could do everything except walk. According to the testimony and evidence presented, there was no mental impairment. Appellant and Ms. Miller may have assisted him but Appellant testified that he "didn't need it but rather wanted it." Having a home health aide and collecting disability does not make one a dependent child under the forfeiture statute. Mr. Small could get in and out of

his wheel chair and onto buses to travel by himself. He met his girlfriend, Ms. Miller while downtown in Philadelphia and he frequently rode the bus to visit his friend Joey. Here, as in *Kistner*, if Mr. Small believed his father failed to perform his duty to support him or had deserted him, he could have executed a last will and testament disposing of his estate accordingly. *Id.* at 1229. The *Kistner* court's extensive analysis of the applicability of the forfeiture statute relative to an adult decedent's estate as opposed to a minor's estate and its broad language is both relative to and controlling of the instant case. Based on the evidence submitted, Charles L. Small was not a dependent child pursuant to *20 Pa. Cons. Stat. Ann. § 2106(b)*.

Therefore this claim is without merit.

**II. This Court did not abuse its discretion by not applying the forfeiture statute.**

Appellant asserts this Court abused its discretion and committed reversible error failing to apply the forfeiture statute to make a determination whether the Appellee forfeited his rights under *20 Pa.C.S. § 2106*. This claim is without merit.

Where the decedent is not a "minor or dependent child" at the time of death, the forfeiture provisions of § 2106(b) are inapplicable. *In re Kistner*, 858 A.2d 1226, 1229 (2004). Based on this court's previous analysis, Mr. Small was not a dependent child.

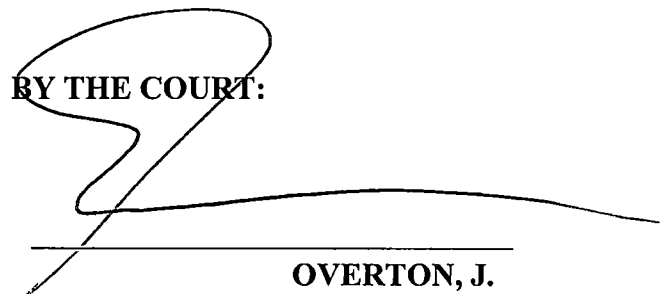
Therefore this claim is without merit.

***Conclusion***

Based on the record, this Court's Decree dated February 27, 2018 denying Appellant's petition should be **AFFIRMED**.

Date: 6/7/18

BY THE COURT:

  
\_\_\_\_\_  
OVERTON, J.