COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Trust Under Agreement of Edward Winslow Taylor
O.C. No. 3563 IV of 1939
Control No. 161714

OPINION SUR APPEAL

Introduction

The executors of the Anthony T. Wallace Estate ("executors") are appealing this court's refusal to issue a citation on their petition for declaratory judgment concerning the termination date of a trust established by decedent's great-grandfather, Edward Winslow Taylor, in 1928, as amended in September 25, 1930 ("1930 Amendment"). Prior to his death, Anthony Wallace had been an income beneficiary of this trust and had entered into a Family Agreement dated August 12, 2009 and approved by this court's December 7, 2009 adjudication. With their Family Agreement, the trust beneficiaries unanimously agreed that the trust would continue until it terminates in 2028 pursuant to the 1930 Amendment. The executors nonetheless seek to reopen this issue by seeking an interpretation of the trust document of 1928 and its 1930 Amendment to assert that the trust terminated in 2008. Because the issue raised in the executor's petition has been definitively settled by the Family Agreement approved by the 2009 adjudication under the provisions of the Pennsylvania Uniform Trust Act, their petition is without merit. It was properly denied as raising a moot issue. Their appeal should likewise be dismissed.

Factual Background

On August 12, 2009, Wachovia Bank, as trustee of the Edward Winslow Taylor Trust ("Taylor Trust"), filed an account of its administration of the trust covering the period May 23, 1980 through May 4, 2008. Its reason for filing the account was the death of Edward Taylor's only grandchild, Frank R. Wallace, Jr., who was the income beneficiary of the trust as well as its individual co-trustee.[1] In filing the account, Wachovia set forth its interpretation of the dispositive terms of the trust that Edward Winslow Taylor established on February 9, 1928, for the initial benefit of his daughter Anna Taylor Wallace. It noted that the Trust Agreement was

[1] 8/12/2009 Edward Winslow Taylor Account (hereinafter 2009 Account), Petition for Adjudication, ¶ 10.

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amended on April 20, 1928, on September 25, 1930 and on March 20, 1933. According to the Trustee, the dispositive terms of the Trust are set forth in paragraph 3 of the September 25, 1930 trust amendment. It noted that the net income was to be distributed to the settlor's daughter, Anna Taylor Wallace, for her lifetime. Upon her death, the net income was to be distributed among the persons she chose to appoint under her will. Anna Wallace exercised this power of appointment in her will by providing that her only child, Frank R. Wallace, should receive all the net income during his lifetime. The trustee noted that the Trust is "to terminate 20 years after the death of the last survivor of the Settlor, Anna Taylor Wallace, Frank Rich Wallace (Anna Taylor Wallace's husband) and Frank R. Wallace, Jr." With the death of Frank R. Wallace, Jr. on May 4, 2008, the trustee concluded that the Trust will terminate on May 4, 2028.[2] Until that termination date, the income of the trust was to be distributed to the four surviving children of Frank R. Wallace, Jr.:

Anthony T. Wallace
Elise W. Carr
W. Sewell Wallace
Christopher G. Wallace

None of these issue was given a power of appointment by the Taylor trust documents. Only the settlor's daughter, Anna Taylor Wallace, was granted the power to appoint the net income of the trust by her last will.[3]

As an issue for adjudication, the trustee in 2009 sought court approval of a Family Agreement to modify the trust pursuant to the Pennsylvania Uniform Trust Act, 20 Pa.C.S.A. section 7740.1(b). In so doing, the trustee characterized the Family Agreement as seeking "to divide the Trust, as permitted with Court approval under Section 7740.1(b) of the UTA, into four separate equal Trusts—one Trust of each of the surviving children of Frank R. Wallace, Jr. and to appoint each of the children as a Co-Trustee with Petitioner of his or her separate Trust **until each Trust terminates on May 4, 2028, 20 years from the death of Frank R. Wallace Jr.**"[4]

A copy of the 2009 Family Agreement was presented with the Account. It was signed by all parties in interest, who were the four children of Frank R. Wallace, Jr. In addition, it was signed by all of Frank Wallace Jr.'s grandchildren. The Family Agreement specifically states

[2] 2009 Account, Petition for Adjudication, Attachment to Paragraph 9.
[3] 1928 Deed of Trust, Paragraph SECOND; 1930 Amendment, Paragraph 3(b).
[4] 2009 Account, Petition for Adjudication, Attachment to Paragraph 13 (emphasis added).

that "paragraph 3 of the September 25, 1930 supplement of the Trust provides for the disposition of the income and principal of the Trust."[5] It also specifies that the Trust terminates on May 4, 2028 which is 20 years after the death of Frank R. Wallace Jr.[6]

No objections were filed to the account. This court therefore confirmed the account by adjudication dated December 7, 2009 ("2009 Adjudication") and approved the Family Agreement. In so doing, this adjudication twice reiterated that the trust terminates on May 4, 2028. The adjudication in addition approved the distribution of principal as follows to the following four trusts:

Trustees of the Anthony T. Wallace Trust	one-fourth
Trustees of the Elise W. Carr Trust	one-fourth
Trustees of the W. Sewell Wallace Trust	one- fourth
Trustees of the Christopher G. Wallace Trust	one-fourth

Significantly, no exceptions or appeals were filed to this 2009 Adjudication nor to the schedule for distribution filed in March 2010. Anthony T. Wallace died on January 15, 2015. More than a year after his death, the executors of his estate on May 18, 2016 filed a petition seeking a citation on a petition for declaratory judgment to interpret the trust as terminating in 2008 upon the death of Frank R. Wallace, Jr. In filing this petition, the executors seek a declaratory judgment "invalidating the September 25, 1930 supplement to the Edward Winslow Taylor Inter Vivos Trust to the extent it purports to amend any disposition of principal, and an order compelling that one-fourth (1/4) of the principal of the Trust shall be distributed immediately to the Estate of Anthony T. Wallace together with appreciation and interest on the share of Anthony T. Wallace…." In addition, they seek reasonable attorney's fees.[7]

Essentially, the executors argue that the terms of the Taylor Trust were irrevocably set in the 1928 Deed of Trust to provide for the termination of the trust at the death of the settlor, his daughter, her husband and settlor's grandchild. This termination date was improperly modified, the executors argue,[8] by the September 25, 1930 Amendment under which the settlor provided that the trust would continue for twenty years after the death of his grandchild.[9] The executors

[5] 8/12/2009 Family Agreement, ¶ A(2).
[6] 8/12/2009 Family Agreement,¶¶ A(2) & A (8).
[7] 5/18/2016 Petition, Proposed Preliminary Order.
[8] The executors argued that this 1930 Supplement was invalid because by the express terms of the 1928 Trust Agreement, the "Trust was irrevocable and the Settlor did not have the power to unilaterally amend the dispositive provisions of the Trust as to principal." 5/18/16 Petition,¶ 17.
[9] 5/18/2016 Petition,¶ 15

assert that the Family Agreement is voidable because it was based on a material mistake of fact that the 1930 amendment was effective.[10] No explanation was offered as to why this claim had not been made upon the death of Frank Wallace Jr. or at the time the account was filed or even during the lifetime of Anthony Wallace. Curiously, the executors seek distribution of trust principal to Anthony Wallace's estate by petition filed more than a year after Anthony died. They acknowledge that he left no issue[11] but they do not identify the beneficiaries of his estate. They briefly touch on the practical ramifications of the timing of the trust termination date in 2008 or 2028: "because Anthony Wallace did not have issue, this meant the difference between receiving his share in 2008, and his share being reallocated among his siblings if he died before 2028."[12]

The executors maintain that although accounts had been filed for the trust in 1965, 1972 and 2009, "[n]one of these adjudications discussed the question of the validity of the purported amendment of the principal provisions of the Trust by the 1930 Agreement."[13] They complain that "upon the death of Frank R. Wallace Jr., instead of resolving this newly ripe question in favor of the 1928 Trust, the Trustee executed a Family Agreement with the children of Frank R. Wallace, Jr. on August 12, 2009 (the "Family Agreement"), which purported to split the Trust into four shares to be held according to the terms of the 1930 Agreement, which was confirmed by the Court in the Fourth Accounting."[14] The executors argue that this Family Agreement is invalid even though signed by all the income beneficiaries and their children due to a material mistake of fact that the 1930 amendment was effective and a conflict of interest by the counsel representing the beneficiaries.

After careful consideration of this Petition, this court denied the Petition for Citation and Declaratory Judgment by two decrees.[15] Both decrees noted that the December 7, 2009 adjudication had clearly set forth the Trust Termination date of May 4, 2028 while approving the

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[10] 5/18/2016 Petition, ¶¶ 42 & 43. The executors argue: "In fact, the 1930 Agreement was ineffective as to the principal provisions of the Trust because it changed the terms in violation of the 1928 Trust, which was irrevocable." Id., ¶ 43(a)(i).

[11] See 5/18/2016 Petition, ¶¶ 7 & 44. In paragraph 41, the executors list the children of the income beneficiaries (Elise Wallace Carr; William S. Wallace and Christopher G. Wallace). No children were listed for Anthony T. Wallace.

[12] 5/18/2016 Petition, ¶ 44.

[13] 5/18/2016 Petition, ¶ 33.

[14] 5/18/2016 Petition, ¶ 38.

[15] The executors are appealing the June 27, 2016 Decree. See Statement of Errors Complained of on Appeal.

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Family Agreement and that no objections or appeals had been filed to this Adjudication. The Executors filed an appeal of this 2016 decree as well as a Statement of Matters Complained of on Appeal.

Legal Analysis

I. The Court Had Discretion to Deny the Citation Where the Underlying Petition for Declaratory Judgment Raised Issues Previously Settled by Family Agreement and Adjudication

The Executors complain that this court abused its discretion and committed an error of law in denying their petition for citation and declaratory judgment without issuing a citation. To support this claim, they reach back to only one case, an 1848 precedent, Smith v. Black, 9 Pa. 308 (1848). Regrettably, the facts of Smith v. Black are far from clear. After stating that a "citation was as much a matter of right as a subpoena in chancery," the Smith court admitted that "[w]e know nothing of previous litigation between the parties. We have no more before us than a petition for citation, with a rejection for no apparent cause." Smith v. Black, 9 Pa. 308, 1848 WL 5609 (Pa. 1848). In contrast, in this matter the executors' declaratory judgment action raised issues that had been decisively decided by this court as well as by a Family Agreement.[16] There is admittedly a dearth of precedent on the issue of when a citation may be denied upon review of the underlying petition. In a more recent Pennsylvania Supreme Court case decided in 1980, however, a divided Pennsylvania Supreme court upheld an Orphans' Court refusal to issue a citation where the underlying petition did not comply with local rules. Estate of Lachmuth, 487 Pa. 605, 410 A.2d 776 (Pa. 1980)(ruling by Orphans' Court dismissing a Petition for Citation on the grounds that it was not printed or typewritten in violation of Philadelphia Orphans' Court Rule 34.1 affirmed by divided court). The reasons for denying the citation in this case involving the Taylor trust were clearly more compelling.

Procedurally, courts have analogized a citation to a rule to show cause. Appeal of Beiler, 144 Pa. 273, 277, 22 A. 808 (1891)(a citation "is in substance a rule to show cause"). In contrast to the dearth of precedent on the granting of citations, there are Pennsylvania Rules of Procedure that specifically address the issuance of a rule to show cause when a petition proceeds upon it.

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[16] The executors' petition conceded that an account had been audited and confirmed in 2009, but they did not acknowledge the legal implications of the resulting adjudication issued by this court. 5/18/2016 Petition, ¶¶32-33.

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These rules offer guidance on when a citation might be denied by a court as "gatekeeper." Under the Pennsylvania Rules of Civil Procedure, the issuance of a rule to show cause may be discretionary or it may issue "as of course." The issuance of a rule to show cause "shall be discretionary with the court as provided by Rule 206.5 unless the court by local rule adopts the procedure of Rule 206.6 providing for issuance as of course." See Pa.R.C.P. 206.4(a)(1). In those instances where the rule to show cause is discretionary, the court considers whether the petition "is properly pleaded and states prima facie grounds for relief." Pa.R.C.P. 206.5(c). A local court rule, however, may provide that a rule to show cause shall issue as a matter of course upon the filing of a petition. See Pa.R.C.P. 206.4(a)(1);Pa.R.C.P. No. 206.6(a). The rationale behind these differing approaches is explained in the Explanatory Note to Pa.R.C.P. 206.4 as follows:

> The two methods of issuing the rule to show cause reflect differing concepts in the administration of petition practice. The discretionary issuance reflects the view of the court which wants to assume the "gatekeeper" function. Petitions are reviewed prior to the issuance of the rule to show cause requiring that an answer be filed and those which show no merit on their face or which can be determined by a brief presentation by the attorneys are disposed of without a formal fact-finding procedure. Courts which review a petition prior to issuing a rule to show cause may short circuit a laborious procedure of filing an answer, taking discovery and holding argument.
> Pa.R.C.P. 206.4 (Explanatory Comment-1995).

The Civil Trial Division of the Philadelphia Court of Common Pleas by local rule *206.4(c) has provided that rules to show cause for petitions under Pa.R.C.P. 206.1 shall issue as a matter of course by the Motion Court Clerk on behalf of the Court. See Phila.Civ..R.*206.4(c). The Orphans' Court, in contrast, has not adopted this limited view of the court's role as gatekeeper when presented with an analogous citation. Instead, the Philadelphia Orphans' Court rule 1.2.P in effect until September 1, 2016 and the newly enacted Pennsylvania Supreme Court Rule 5.1 merely state that a declaratory judgment action shall commence by citation and petition. The court is thereby assigned the task of deciding whether the citation should issue.

While, at first blush, a citation in Orphans' Court might seem analogous to a complaint in a civil action there are significant differences. In the civil division, for instance, no court approval is necessary prior to filing a complaint. Instead, a civil action can be initiated by filing a complaint with the prothonotary pursuant to Pa.R.C.P. 1007(b). The rules for Orphans' Court have subtle differences. Under the local Philadelphia rules in effect when the executors filed

their petition as well as the Pennsylvania Orphans' court rules in effect since September 1, 2016, certain petitions can be filed without seeking a citation while a petition for declaratory judgment requires the issuance of a citation by the Orphans' Court.[17] This suggests that a court exercise some scrutiny before issuing the citation. Finally, the PEF code states that "[j]urisdiction of the person shall be obtained by citation to be awarded by the Orphans' Court upon application of any Party in interest," 20 Pa.C.S.A. § 764. A natural reading of this provision suggests that the "shall" language refers to obtaining jurisdiction over a person not already under the jurisdiction of orphans' court, not that an orphans' court must issue a citation regardless of the contents of a petition. This strongly suggests that the court has some kind of gate-keeping responsibility when presented with such a petition. Admittedly, denying a petition for a citation is a rare occurrence, but in this case it is justified based on the following facts of record and in the interest of equity and judicial economy.

II. The Petition for Declaratory Judgment Failed to Present a Prima Facie Case

Both the local Philadelphia and the Pennsylvania State Orphans' Court rules provide that an action for declaratory judgment shall be commenced by petition and citation directed to the interested parties.[18] A petition for declaratory judgment may be filed to obtain a declaration of rights regarding a will, trust or decedent's estate. Estate of Jones, 2002 Pa. Super. 109, 796 A.2d 1003, 1005 (2002). See also 42 Pa.C.S.A. §§ 7533 and 7535. But a "declaratory judgment is not obtainable as a matter of right. Whether a trial court should exercise jurisdiction over a declaratory judgment action is a matter of sound judicial discretion." Osram Sylvania Prods., Inc. v. Comsup Commodities, Inc., 2004 Pa. Super. 35, 845 A.2d 846, 848 (2004) (trial court properly refused to exercise jurisdiction over declaratory action brought for a declaration that plaintiff had a valid defense in Pennsylvania for a contract action brought against it in California). See also McGlinn Trust, 12 Fid. Rep. 2d 377, 378 (Montgomery County O.C. 1992)(dismissing declaratory judgment action after hearing where there is no controversy). In

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[17] Prior to their repeal effective September 1, 2016, the local Philadelphia O. C. Rule 1.2.P required a citation for a declaratory judgment petition, while the Special Petitions under Philadelphia O.C. Rules 12.1.1 through 12.16.A were silent on the need for a citation. Likewise, the newly enacted Pennsylvania Supreme Court Rules require a citation for a Declaratory Judgment Action. See Pa. O.C Rule 5.1.

[18] See Pa.O.C. Rule 5.1 (effective 9/1/16); Philadelphia O.C. Rule 1.2.P. When the executors filed their petition, the local Philadelphia O. C. Rule 1.2.P was in effect. It was repealed effective September 1, 2016 and was replaced by Pa.O.C.Rule 5.1 which is based on the Philadelphia local rule.

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the present case, this court properly refused to exercise jurisdiction over the executors' declaratory judgment action because they are essentially seeking to litigate a legal issue that has been decisively resolved in 2009 by Family Agreement and court adjudication. As the Pennsylvania Superior Court has observed, "[t] he purpose of a declaratory judgment action 'is to afford relief from uncertainty and insecurity with respect to legal rights, status and other relations.'" Osram Sylvania Prods., Inc. v. Comsup Commodities, 845 A.2d at 849. In light of the 2009 Family Agreement and adjudication, there was no uncertainty or controversy in the present case as to the termination date of the Taylor Trust. An analysis of the statutory provisions relating to declaratory judgment actions clarifies this key point.

Under 42 Pa.C.S.A. § 7533, for instance,[19] an "interested" person may obtain the following relief:

> Section 7533. Construction of documents
> Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

Anthony Wallace, together with all the other income beneficiaries "interested" under the Taylor Trust, submitted their Family Agreement as to the 1930 amendment and the trust termination date to this court in 2009 together with an account of the trust. This court's adjudication confirmed the account and approved the Family Agreement with no objections or appeals filed thereafter. By law, this adjudication was a final order. Estate of Litostansky, 499 Pa. 321, 453 A.2d 329, 330(1982)("an order confirming the account and ordering distribution without interest became final when an appeal was timely filed" and "failure to appeal from a final order renders the doctrine of res judicata applicable"). See also Estate of Jones, 2002 Pa. Super. 109, 796 A.2d 1003, 1005 (2002). The legal issues recently presented in the executors' petition were therefore definitively decided in 2009. Declaratory judgment cannot be rendered on moot cases. Gulnac v. South Butler School Dist., 526 Pa. 483, 587 A.2d 699 (1991)(where trial court concluded that parents lacked standing to seek an injunction against striking teachers, the court should not have gone on to decide the constitutional issue rendered moot and academic by its ruling on standing). Similarly, a court will not address an academic issue by declaratory

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[19] The executors invoke 45 Pa.C.S.A. § 7533 in their petition. See 5/18/2016 Petition, ¶ 57.

judgment. Humes' Estate, 24 Pa. D & C 73, 75 (Centre County O.C. 1935)(declaratory judgment is "not intended to permit, much less require, the courts to answer abstract proposition of law or meet questions which are merely academic").

The main thrust of the executors' petition is that this court should render a declaratory judgment invalidating the September 25, 1930 supplement to the Edward Winslow Taylor Inter Vivos Trust to the extent that it "purports to amend any disposition of principal."[20] Instead of terminating in 2028, the executors assert, the trust should have terminated in 2008 at the death of Frank Wallace Jr. as set forth in the 1928 deed of trust. More specifically, they assert that under the controlling law in 1930, the settlor lacked that authority to amend the 1928 deed of trust because the 1928 Deed "provided that the Trust was irrevocable as to principal."[21] However, in harking back to the 1928 and 1930 trust provisions, the executors skip over the implications of the recent enactment of the Uniform Trust Act and the authority it gives to trust beneficiaries to modify a noncharitable irrevocable trust with court approval.

The Pennsylvania Uniform Trust Act which became effective in November 6, 2006 clearly enabled all the beneficiaries to enter into this agreement to modify the trust termination date with court approval. More specifically, 20 Pa.C.S.A. § 7740.1 provides:

> **Section 7740.1. Modification or termination of noncharitable irrevocable trust by consent**
> (b) **Consent by beneficiaries with court approval.** – A noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust. A noncharitable irrevocable trust may be terminated upon consent of all beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

A key requirement of section 7740.1(b) for modification of a trust is the consent of all the beneficiaries. In this case, the executors concede that all the interested parties signed the family settlement agreement. In fact, all the grandchildren of Frank Wallace signed the Family Agreement even though technically they are not parties in interest. Under long-standing Pennsylvania precedent, family settlement agreements are encouraged if they are unambiguous and joined by all parties in interest. They are enforced unless based on fraud. Fry v. Stetson, 370 Pa. 132,135, 87 A.2d 305, 307 (1952)(family agreement construing will is binding in absence of

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[20] 5/18/2016 Petition, Proposed Preliminary Decree.
[21] 5/18/2016 Petition,¶¶ 10 & 13-28.

fraud). Moreover, family settlement agreements are enforceable even if based on a mistake of law. Estate of Boardman, 2013 Pa.Super. 300, 80 A.3d 820, 822 (2013)("family settlement agreements are favored in this Commonwealth because they are an attempt to avoid potentially divisive litigation"); Estate of Brojack, 321 Pa. Super. 154, 161, 467 A.2d 1175, 1180 (1983) ("Where a fair and valid agreement is present it will be upheld whenever possible; in the absence of fraud, the agreement is binding even though based on an error of law").

The executors do not argue that the 2009 Family Agreement is invalid due to fraud nor do they claim that it is ambiguous. Instead, they assert that the Family Agreement is invalid because based on the mistake of "fact" that the 1928 deed of trust was effectively amended by the September 25, 1930 Amendment.[22] These alleged mistakes of fact, however, are, in reality, mistakes of law, which would not render the 2009 Family Agreement invalid. A mistake of law is "a mistake as to the legal consequences of an assumed state of facts" and occurs "where a person is truly acquainted with the existence or nonexistence of facts, but is ignorant of, or comes to an erroneous conclusion as to, their legal effect." Acme Markets, Inc. v. Valley View Shopping Ctr., Inc., 342 Pa. Super. 567, 568, 493 A.2d 736, 737 (1985) (citation omitted)(where tenant made payments assuming they were required under the lease, this was a mistake of law). Pennsylvania courts have long embraced the general rule "that a mistake of law will not affect the enforceability of a contract." Villani v. Italian Workingmen Bldg. & Loan Ass'n, 129 Pa. Super. 330, 334, 195 A. 476, 478 (1937).

Even if the 1930 Amendment is legally invalid, and beneficiaries mistakenly believed that it changed the 1928 trust provisions as to principal, the mistake that Anthony and the other beneficiaries made was a pure mistake of law. The "assumed state of facts" that the beneficiaries were "truly acquainted with" was the existence of the 1928 and the 1930 trust documents. The "erroneous conclusion as to, their legal effect" was the beneficiaries' alleged conclusion that the 1930 Agreement validly altered the 1928 Agreement as to the disposition of Trust principal. As the Pennsylvania Superior court recently observed, "the interpretation of a trust or will presents a question of law." Estate of McFadden, 2014 Pa. Super 203, 100 A.3d 645, 650 (2014), *citing* In re Barnes Foundation, 453 Pa. Super. 243, 683 A.2d 894, 898 (1996). The executors are essentially seeking a legal interpretation of the Taylor trust documents in arguing that the Family Settlement Agreement improperly interpreted the implications of the 1928 deed of trust and the

[22] 5/18/2016 Petition,¶¶ 42-44.

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1930 amendment. Even if the agreement is thereby premised on a mistake of law, this mistake would not render the Agreement invalid under long-standing Pennsylvania precedent.

Another fact that the executors fail to present is that the Family Agreement and its embrace of a 2028 trust termination date were explicitly approved by the 2009 Adjudication. In their petition, the executors note that the validity of the 1930 Amendment regarding principal was raised by Judge Stearne in a 1940 Adjudication but that he declined to rule on this issue. They then note that adjudications of accounts for the trust were issued in 1965, 1972 and 2009, but that "[n]one of these adjudications discussed the validity of the purported amendment of the principal provisions of the Trust by the 1930 Agreement."[23] The executors thereby fail to acknowledge that the issue of the trust termination date was specifically raised as an issue for adjudication in the 2009 Fourth Account. Rather, in their statement of matters complained of on appeal, the executors misleadingly contend:

> 3. c. The Petition for Adjudication of the Fourth Account did not raise the question of the validity of the attempted revision of the irrevocable Trust, it merely asked the Court to confirm the August 12, 2009 Family Agreement. Said Family Agreement did not address the question of the validity of the attempted revision of the irrevocable Trust in 1930, it merely agreed to split the trust into separate shares. Accordingly to the extent that the Court cited language from the 2009 adjudication in its decree, it improperly relied on dicta.[24]

This assertion is belied by the clear, unambiguous language of the 2009 Petition for Adjudication filed by the Trustee as well as of the Family Agreement. In that 2009 Petition for Adjudication that the Trustee submitted with its account, the Trustee identified the following "questions requiring adjudication":

> Petitioner seeks approval of the Family Agreement to modify the Trust with Court approval as permitted under Section 7740.1(b) of the Pennsylvania Uniform Trust Act, 20 Pa.S.C.A. § 7740.1(b). The Agreement seeks to divide the Trust as permitted with Court approval under Section 7740.7(b) of the UTA, into four separate equal Trusts—one trust for each of the surviving children of Frank R. Wallace, Jr. and to appoint each of the children as a Co-Trustee with Petitioner of his or separate Trust **until each Trust terminates on May 4, 2028, 20 years from the death of Frank R. Wallace Jr.**[25]

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[23] 5/18/2016 Petition, ¶¶ 32-33.

[24] 8/22/16 Statement of Matters Complained of on Appeal, ¶ 3.c.

[25] 2009 Account, Petition for Adjudication, Attachment to Paragraph 13 ("Describe any questions requiring Adjudication and state the position of Petitioner(s) and give details of any issues identified in item 2).

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Moreover, the Family Agreement presented to the court for approval specifically notes that Edward Winslow Taylor executed an Irrevocable Trust Agreement dated February 9, 1928 which he then amended on April 20, 1928, on September 25, 1930 and then on March 20, 1933. But it is paragraph 3 of the September 15, 1930 Supplement that the Family Agreement invokes as providing for the disposition of the trust income and principal. Under this 1930 Supplement, the beneficiaries formally agreed, the "Trust is to be terminated 20 years after the death of the last survivor of the Settlor, Anna Taylor Wallace, Frank Rich Wallace (the husband of Anna Taylor Wallace) and Frank R. Wallace Jr. (the son of Anna Taylor Wallace)."[26]

Similarly, the executors fail to acknowledge that the 2009 adjudication in approving the Family Agreement and the continuation of four trusts explicitly states that the Taylor Trust terminates on May 4, 2028. This is a fatal factual and legal omission in their petition. The December 7, 2009 adjudication twice states that the termination date of the Taylor Trust is on May 4, 2028 to provide clear and precise notice to all. No objections or appeals were filed in response to the adjudication. Now, more than six years later, however, the executors are attempting to revisit the issue of the trust's termination date. In so doing, they are necessarily challenging a key element of the 2009 adjudication. This challenge to the 2009 adjudication is clearly untimely. The PEF code sets a 5 year limit as to when an adjudication to an account may be reviewed. Section 3521, for instance, provides:

> **Section 3521. Rehearing; relief granted.**
> If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require; Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.
> 20 Pa.C.S.A. § 3521.

The Pennsylvania Supreme court has emphasized that in "the interest of finality, section 3521 of the Probate, Estates and Fiduciary Code, 20 Pa.C.S.A. § 3521, permits a beneficiary to petition to reopen an account only if the petition is made within 5 years of the confirmation of the account and before distribution." Estate of Thomas, 495 Pa. 93, 97, 432 A.2d 968, 969 (1981).

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[26] Family Agreement, ¶¶ A(1) & A(2) & A(8).

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Neither in their petition for citation nor in their statement of matters complained of on appeal do the executors explain why they waited until May 2016 to reopen the issue of the trust's termination date. Curiously, the objection was not made until more than a year after the death of Anthony T. Wallace, who as one of four income beneficiaries, had signed the Family Agreement and did not object to it throughout his lifetime. The executors hint at one motive for their petition when they note:

> These mistakes of fact were material because the difference between the 1928 terms and the 1930 terms was the difference between distribution in 2008 and distribution in 2028; particularly because Anthony Wallace did not have issue, this meant the difference between receiving his share in 2008, and his share being reallocated among his siblings if he died before 2028.[27]

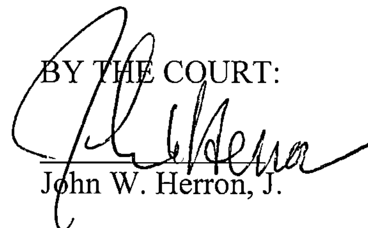
Since Anthony Wallace died before the executors filed their petition for declaratory judgment, he personally cannot benefit from it. The executors note, moreover, that Mr. Wallace had no issue. It is not clear who is being represented by the executors. Their petition fails to identify who these "parties in interest might be." This raises a provocative issue of whether the beneficiaries of Anthony Wallace's estate have an equitable interest to assert. But that issue is not before this court.

Conclusion

For all of the reasons presented, the executors' petition for declaratory judgment was clearly without merit as raising issues previously decided. Rather than allow the expense of fruitless litigation on a moot issue, the petition for citation was properly denied.

DATE October 18, 2016

BY THE COURT:



John W. Herron, J.

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[27] 5/18/2016 Petition, ¶ 44.

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