

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Laminer E. Davis, Deceased
O.C. No. 513 DE of 2000
Control No. 145124

Opinion Sur Appeal

Brian Williams has filed an appeal of this court's September 9, 2014 decree that ordered his eviction from premises located at 3219 W. Hilton Street, Philadelphia after an evidentiary hearing. The real property located at 3219 W. Hilton Street is the main asset of the estate of Laminer Davis who died intestate on May 6, 2006. This property is still in the name of Laminer Davis, and her husband, William Davis, who died on October 18, 1998, as tenants by the entireties.¹

Laminer Davis was survived by her five children: Eugene R. Williams, Carmen Williams, Denise Mitchell, Sharyn Williams and Brian Williams. On March 7, 2014, letters of administration were granted to Denise Mitchell and Brian Williams. Brian Williams was subsequently removed as co-administrator by decree dated December 10, 2013.

On March 24, 2014, Denise Mitchell, as Administratrix, filed a petition pro se seeking a citation to show cause why Brian Williams should not be evicted from 3219 W. Hilton Street so that the property could be sold to pay the decedent's debts and provide distributions to her intestate heirs.² According to the petitioner, Brian Williams has resided in the Hilton Street premises since November 2008.³ Brian Williams filed an answer opposing the eviction petition, and an evidentiary hearing was held on June 25, 2014. At the hearing, Ms. Mitchell presented an agreement she had signed with Brian Williams entitled "This Not A Lease, It Is A Declaration For Living Arrangements" (hereinafter "Agreement"). Exs. A-1 and A-2. Unfortunately, this Agreement was drawn up by the parties without the assistance of legal counsel. It outlines the requirements Brian Williams must satisfy to continue residing in the premises. The final paragraph eleven to this Agreement provides that if Mr. Williams fails to adhere to the Agreement, the Administrator will seek to evict him from the premises and then sell the property. Ex. A-2, ¶11. In essence, Ms. Mitchell asserts that her brother Brian should be evicted

¹ 3/23/14 Denise Mitchell Petition, ¶¶ 3 & 7.

² 3/24/14 Denise Mitchell Petition, ¶ 13.

³ 10/16/13 Denise Mitchell Default Petition, ¶ 8.



because he breached three aspects of this agreement: he failed to pay the mortgage; he failed to provide her with keys to the premises, and; he failed to pay the utilities as required under the Agreement.

Only Denise Mitchell and Brian Williams testified at the June 2014 hearing. At the end of Brian Williams's testimony on June 25, 2014, he rested his case.⁴ The main focus of the testimony was the Agreement and whether Brian had breached it. The first issue focused on mortgage payments on the premises. Paragraph 3 of the Agreement provides:

Brian Williams will continue to occupy said property and make the monthly mortgage payments to Denise Mitchell by the 15th of each month which will give her ample time to make timely payments to the lender. Any late payments that accrue because Brian Williams failed to make timely payments will be his responsibility to pay. Ex. A-1

According to Ms. Mitchell, Brian stopped making mortgage payments of August 15, 2013. On cross-examination, she conceded, however, that he pays the mortgage through his bank account.⁵ Brian Williams likewise confirmed that the mortgage payments for the premises were taken out automatically from his Freedom Credit Union Card.⁶ Based on this record, the assertion that Brian Williams breached the agreement by failing to pay the mortgage is without merit and cannot be a basis for his eviction.

Next, Ms. Mitchell asserted that Brian had breached the requirement under their Agreement that he was to give Ms. Mitchell a set of the keys to the premises and that no locks were to be changed.⁷ The Agreement, however, sets forth the following requirement as to keys to the premises:

Denise Mitchell must possess a set of working keys at all times. Brian Williams must obtain authorization from Denise Mitchell to change the locks or disburse copies of the keys. Ex. A-2, ¶10.

Ms. Mitchell testified that she discovered that her keys to the premises did not work on March 15. On cross examination, she conceded that she still had a set of keys to the front door of the premises but they did not work.⁸ Brian Williams testified that he never changed the front door lock, although he did change the back door lock because it looked as if someone had

⁴ 6/25/14 N.T. at 59.

THE COURT: R-1 is admitted. You rest? Do you rest?

Mr. Hays: I rest, Your Honor.

⁵ 6/25/14 N.T. at 17 & 22 (Mitchell).

⁶ 7/25/14 N.T. at 35 (Williams).

⁷ 6/25/14 N.T. at 20 (Mitchell).

⁸ 6/25/14 N.T. at 20-21 & 28 (Mitchell).

tampered with it. He contended that since he never changed the front door lock, Ms. Mitchell still had the access to the house that was required under their agreement.⁹ This court concurs. A fair reading of paragraph 10 does not support Ms. Mitchell's assertion that Brian was required to give her copies of the keys. Rather, it required that Ms. Mitchell possess working keys. Brian's testimony that he never changed the front door lock is credible, and this issue fails to support his eviction as a breach of the Agreement.

The final issue raised by Ms. Mitchell does, however, support her petition to evict Brian Williams based on his clear breach of the Agreement due to his failure to make proper provisions for the payment of utility bills. More specifically, paragraph 6 of the Agreement provides:

Brian Williams will be responsible to pay the utility bill(s) at said property: gas, water and electric. Account(s) must be held in his name and are to be paid in timely. (sic.) Denise Mitchell will be updated periodically as to the status of the account(s). Past due amount(s) owed on these accounts will be his responsibility whether the debt is owned (sic.) severally or jointly by Brian Williams, Ebony Williams or a Third Party's name.
Ex. A-1, ¶ 6.

In deeply disturbing testimony, Brian Williams acknowledged that although he has had gas service to the premises for the entire 5 ½ years that he resided there,¹⁰ he has never paid for that gas as reflected in the following colloquy:

The Court: So you're knowingly using gas service knowing that there is no charge—

Mr. Williams: There should be a charge.

The Court: --there should be a charge, and because you're not receiving a bill you're paying nothing towards the use of the gas you're using?

Mr. Williams: Correct¹¹

. . . .

The Court: And when I asked a question, you admitted using gas in the winter.

Mr. Williams: She said gas bill as far as paper.

The Court: That's an ingenious way of getting around the question when the reality is you're using gas and you're not paying.

Mr. Williams: Yes.

The Court: The Estate is liable for that gas, when they catch up with you.

Mr. Williams: Yes.¹²

. . . .

⁹ 6/25/14 N.T. at 38.

¹⁰ 6/25/14 N.T. at 48 (Williams).

¹¹ 6/25/14 N.T. at 50.

¹² 6/25/14 N.T. at 52.

The Court: You signed an agreement, sir, that says, quote, “Brian Williams will be responsible to pay the utility bills.” That doesn’t mean just the paper, that means the expenses, the charge for the use of the utilities.

Mr. Williams: Correct.¹³

Based on this admitted failure to change the gas utility bill into his name and to make sure that it was paid, Brian Williams breached his agreement and forfeited his right to remain living in the premises. At the conclusion of the June 25, 2014 hearing, this court granted a continuance so that Ms. Mitchell might present evidence as to the amount of the outstanding PGW bill, noting that Mr. Williams would be found in breach based on that bill. There was also a suggestion that if the bill was in fact paid, there would be no harm to the Estate.¹⁴ At the subsequent September 9, 2014 hearing, however, the Court reconsidered this option. After reviewing the evidence that had been presented at the June evidentiary hearing, and in particular Mr. Williams’s testimony that he had never paid for any of the gas service to the premises, this court found a clear breach of the Agreement. Based on that finding, there was no need for any additional evidence. By decree dated September 9, 2014, this court therefore granted the petition to evict Brian Williams from the premises with 60 days to vacate.

Legal Analysis

The law in Pennsylvania is fairly clear that the administrator of a decedent’s estate has a right to possession of the decedent’s real property with certain exceptions. 20 Pa.C.S.A. § 3311(a). Brian Williams in this case has failed to invoke any such exception. Instead, the parties concur that whether Brian Williams, as one of the intestate heirs, is entitled to reside in the estate’s property located at 3219 W. Hilton Street must be analyzed in the context of the Agreement that Brian Williams and Denise Mitchell, as Administratrix of the Laminer Davis Estate, entered into on November 25, 2012. In fact, Ms. Mitchell specifically invoked 20 Pa.C.S.A. § 3328 as the basis for the agreement among the intestate heirs as to the conditions under which Brian Williams might continue residing in premises that constitute the main asset of the estate.¹⁵

By his own admission, Brian Williams failed to transfer the gas utility bill into his own name to make sure that it was paid. This was not some momentary lapse. On the contrary, he

¹³ 6/25/14 N.T. at 53.

¹⁴ 6/25/14 N.T. at 71-72 (the Court)

¹⁵ 6/25/14 N.T. at 9 (Mitchell).

admitted that he had used gas service without paying for it the five and one half years he resided at the premises, realizing that ultimately the Estate could be liable for this expense. In so doing, he breached the Agreement and under paragraph 11, the Administratrix was authorized to petition for his eviction and sell the property. As this court advised, however, upon his eviction, Mr. Williams would then have a claim against the Estate for all the mortgage payments he had made as well as any maintenance expenses, offset by the fair market value of the rent due on the property.¹⁶

Mr. Williams has opted to appeal the order for his eviction. In response to a 1925(b) order, he has offered 9 reasons for his appeal which basically boil down to a claim that he did not breach the Agreement that he transfer the gas bill into his name because he was unable to do so for various reasons. While he claims in the 1925(b) statement that he made reasonable efforts to obtain a bill, he provided no proof of those efforts at the June 25, 2014 evidentiary hearing. Consequently, none of these redundant grounds has merit. His claim that it was error to find that he had not paid for the gas service where he had not been presented with a bill flies in the face of paragraph 6 of the Agreement that all utility accounts should be in his name and that he should be responsible for any payments due.

In his statement of matters on appeal, Mr. Williams also asserts that he did not commit fraud and the court erred in stating that he had done so by using gas service for 5 ½ years with no payment. This, however, misses the thrust of the order he is appealing. The September 9, 2014 order merely ordered that he vacate the premises at 3219 W. Hilton Street. It did not convict him of any crime. Finally, Mr. Williams claims this court erred in abruptly ending the hearing and “in not allowing the Appellant’s lawyer to ask him any questions.” The transcript of the June 25, 2014 evidentiary hearing, however, reveals otherwise. After Ms. Mitchell finished her re-cross examination of Brian Williams, the issue of whether Mr. Williams’s attorney had any additional questions was specifically raised:

The Court: You [i.e. Mr. Williams] may step down. Thank you. Any other testimony?
Mr. Haye: “No, your Honor.”¹⁷

Shortly thereafter, counsel for Mr. Williams formally rested his case:

The Court: R-1 is admitted. You rest? Do you rest?

¹⁶ 6/25/14 N.T. at 68.

¹⁷ 6/25/14 N.T. at 58.

Mr. Haye: I rest, Your Honor.¹⁸

While it is true that this court stated that the June 25th hearing would be continued so that a PGW bill could be presented, upon review of the record it was clear that Brian Williams had breached the Agreement by residing at the premises for 5 ½ years without transferring the gas bill into his name or paying for the gas service he received. By clearly breaching this key element of the Agreement, Mr. Williams was subject to the final paragraph 11 of his Agreement:

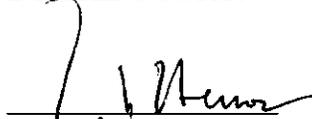
Brian Williams understands that if he is in breach of this Agreement the heirs and/or Denise Mitchell will file eviction proceeds (sic.) against him and/or list the property for sale without prior notice.

Ex. A-2, ¶11.

Conclusion

Based on the record, the petition to evict Mr. Williams was properly granted and the Appeal of that order should be dismissed.

BY THE COURT:



John W. Herron, J.

DATE: November 13, 2014

Denise Mitchell, pro se
Geoffrey L. Haye, Esquire
Brian Williams, pro se

¹⁸ 6/25/14 N.T. at 59 (emphasis added).