

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Ruth C. Perelman, Deceased
O.C. No. 153 DE of 2012
Control No. 132490
Control No. 132571
Control No. 132454
Control No. 132821

Introduction

The preliminary objections filed by Raymond Perelman raise the issue of whether his appeal of this court's July 23, 2013 ruling that his wife's domicile at the time of her death was in Philadelphia deprives this court of subject matter jurisdiction to make any further rulings on issues that arise in the administration of Ruth Perelman's estate. For the reasons set forth below, Raymond's preliminary objections are overruled because the ruling on domicile was not appealable as either a final order or an interlocutory order appealable as of right.

Facts

Raymond Perelman, whose wife Ruth died on July 31, 2011 in Philadelphia, filed an appeal with this court from the decree of the Philadelphia Register of Wills that admitted into probate Ruth's July 28, 2010 Will and granted letters testamentary to their son, Jeffrey Perelman. After a hearing, this court concluded by decree and opinion dated July 23, 2013 that Ruth had been domiciled in Philadelphia at the time of her death, rejecting Raymond's arguments that she had been domiciled in Florida.

In the weeks following this ruling, both Jeffrey and Raymond filed various petitions. Raymond filed a petition for a restraining order on August 15, 2013 seeking, inter alia, to prevent Jeffrey, as executor, from distributing property subject to spousal election by Raymond. Jeffrey filed a petition on August 16 seeking a list and valuation of all property Raymond had received as a result of Ruth's death as well as other documents. This petition also sought an order that Raymond's elective share of his wife's estate is zero. On August 20th, Jeffrey filed a petition seeking an order to require Raymond to produce unredacted, complete copies of his and Ruth Perelman's joint tax returns to Jeffrey for the years 2003 through 2010.



On August 19th Raymond filed a notice that he was appealing to the Pennsylvania Superior Court this court's July 23, 2013 ruling that Ruth had been a Philadelphia domiciliary at the time of her death. He followed this up with two sets of preliminary objections to Jeffrey's petitions. In his preliminary objections, Raymond asserts that this court lacks subject matter jurisdiction to proceed further in this matter because of the pendency of his appeal. More specifically, he argues that this court should therefore dismiss both Jeffrey's petition for determination of elective share as well as his petition for "turn over/discovery" of the unredacted joint federal tax returns. Jeffrey vigorously opposes these preliminary objections. For the reasons set forth below, this court overrules Raymond Perelman's preliminary objections.

Legal Analysis

I. The Domicile Ruling Is Neither a Final Order Nor an Interlocutory Order Appealable as of Right

Raymond asserts that under Pa.R.A.P. 1701(a), after an appeal has been taken, "the trial court lacks subject matter jurisdiction over the matter."¹ Determination of the effect of an appeal of an Orphans' Court ruling, however, cannot be resolved by reference solely to Rule 1701. Moreover, there are explicit exceptions set forth in Rule 1701 for when a trial court may proceed in a matter after an appeal has been taken. This rule provides, for instance, that a trial court may "[p]roceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of that order."² The ruling that Ruth Perelman was domiciled in Philadelphia at the time of her death is not a final order. Instead, it is an interlocutory order not subject to review under the present rules. Final orders are generally defined as an order that:

- (1) disposes of all claims and of all parties; or
- (2) is expressly defined as a final order by statute; or
- (3) is entered as a final order pursuant to subdivision (c) of this rule.

Pa.R.A.P. 341

¹ 9/13/13 Raymond Memorandum of Law at 3. The expanded arguments set forth in this brief shall be considered in the context of both sets of preliminary objections.

² Pa.R.A.P 1701 (b)(6). Rule 1701 further provides that a trial court may proceed on with matters not in dispute in the appeal: "**Limited to matters in dispute.** Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further **with only such item, claim or assessment**, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant." Pa.R.A.P. 1701(c)(emphasis added).

Because of the unique nature of litigation in Orphans' Court, there has been some confusion as to which orders are final and appealable. In Estate of Schmitt, 846 A.2d 127,129 (Pa. Super. 2004),*superseded by rule as stated in In re Estate of Harper*, 975 A.2d 1155, 2009 Pa. Super. 104 (Pa. Super 2009), for instance, the Superior Court concluded that an order by the Orphans' Court striking a caveat and admitting a will to probate was not a final appealable order because it did not dispose of all claims. In response to Schmitt, the Appellate Court Procedural Rules Committee specifically amended Pa.R.A.P. 311 to permit immediate appeals from Orphans' Court orders determining the validity of a will "despite the fact that these orders are often interlocutory." Estate of Fritts, 906 A.2d 601, 605 (Pa. Super. 2006), *app. denied* 591 Pa. 673, 916 A.2d 1103(2007). In 2005, Pa.R.A.P. 342, which outlines appealable Orphans' Court orders, was amended³ to permit an appeal by right of an order determining the validity of a will or trust. It also identified the following specifically designated Orphans' Court orders as appealable:

- (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....
 - (8) An order otherwise appealable as provided by Chapter 3 of these rules.
- Pa.R.A.P. 342

This list of appealable Orphans' Court orders does not include rulings on domicile. Although Raymond argues that the domicile ruling would be appealable under Rule 342 either because it determines the status of fiduciaries and beneficiaries in an estate or because it determines the validity of Ruth's will, neither argument is convincing. The ruling on Ruth's domicile does not determine whether a person is a fiduciary or a beneficiary of the estate.⁴ Nor

³ See Pa.R.A.P. 311, Note.

⁴ See, e.g. Pa. R A.P. 342 Note. The note explains that 342 (a)(5) "is intended to clarify prior Rule 342 in several respects: First, an appealable Orphans' Court order concerning the status of individuals or entities means an order

does the domicile ruling determine the validity of Ruth's will. In fact, the validity of Ruth's will was not before this court after Raymond abandoned his challenge when a Florida court ruled against his will contest.

Instead of these bogus issues, there is a more practical issue at hand. As Raymond notes, he is challenging not the manner in which the register exercised his judicial functions, but whether he had the right to do so.⁵ The right—or authority—of the Register of Wills to exercise his judicial functions by granting letters or admitting a will to probate is defined by the PEF Code. More specifically, section 3151 provides:

Letters testamentary or of administration on the estate of a decedent domiciled in the Commonwealth at the time of his death shall be granted only by the register of the county where the decedent had his last family or principal residence. **If the decedent had no such domicile in the Commonwealth, letters testamentary or of administration may be granted by the register of any county wherein property of the estate shall be located and, when granted, shall be exclusive throughout the Commonwealth.** 20 Pa.C.S. §3151 (emphasis added).

As the comments to section 3151 note, the Register has the authority to grant letters either based on domicile or on the presence of decedent's property: "When the decedent was domiciled elsewhere, letters, whether original or ancillary, can be granted in any county in which any property of the decedent is located." Jt.St. Govt. Comm. Comment -1949. Consequently, even if Ruth had not been domiciled in Pennsylvania, letters on her estate could be granted by a register in any county in which her estate has property. That remains an open issue which Jeffrey's petition seeking information about her assets might help to resolve. Query if she had an ownership interest in her Rittenhouse Square home, the Register of Wills would have properly probated the will based on Ruth's ownership of property in this Commonwealth. In any event, the ruling on domicile is but one aspect of determining the practical issue of the Register's authority in this case. It is thus not a final order.

In addition to these controlling statutes, the relevant Orphans' Court precedent cited by Raymond must be considered. Raymond emphasizes that Judge Taxic refused to consider a petition for declaratory judgment after an appeal was filed in Taubel Estate, 19 Pa. D. & C. 2d 342 (Mont. Cty. O.C. 1959), *aff'd* 398 Pa. 19, 156 A.2d 858 (1959). The facts of that case differ

determining if an individual or entity is a fiduciary, beneficiary or creditor, such as an order determining if the alleged creditor has a valid claim against the estate."

⁵ 9/13/13 Raymond Memorandum at 6 (quoting In re Loudenslager's Estate, 430 Pa. 33, 39, 240 A.2d 477, 480 (1968)).

significantly from the present dispute. In Taubel, after the Orphans' Court concluded that a decedent had revoked her will, that ruling was appealed. A few days after the appeal was filed, the administrators of the estate filed a petition seeking a declaratory judgment as to the status of a putative common law husband. Judge Taxis refused to consider this declaratory judgment petition on the theory that a decision by the appellate court as to the validity of the revoked will could change the status of the plaintiffs. If the appellate court ruled that the will was valid, the proper plaintiffs would be the executors named in the will and not the administrators, thereby depriving the administrators of standing in their declaratory judgment petition. This would render any decision by the trial court a "useless act." No such standing issue is implicated here, however, because Jeffrey was named as executor in the same will that has been probated in Pennsylvania and that was upheld by the Florida court in its February 23, 2012 final judgment

The precedent of Estate of Sowers, 383 Pa. 566, 573-74, 119 A.2d 60 (1956) is likewise distinguishable. Although the procedural history in Sowers was not clearly outlined, the Pennsylvania Supreme court concluded in that case that the trial court was "without power" to file a revised schedule of distribution after an appeal had been filed. In essence, it appears the trial court was attempting improperly to amend a ruling that was being appealed. Similarly, in another case cited by Raymond, Curtis Trust, 19 Fid. Rep 686 (Mont.Cty. O.C. 1969), Judge Taxis concluded that after an appeal was filed of an Orphans' Court order authorizing trustees to enter into an agreement of sale for the Public Ledger Building in Philadelphia, the Orphans' Court lacked authority to grant a petition that would change the terms approved by that order. These instances in which a court concluded there was no authority for a trial court to amend an order or a schedule of distribution that had been appealed are quite different than this case where an interlocutory ruling on domicile has been appealed and there remains other issues of estate administration still pending. If each disputed issue in this matter could be appealed, the result would be a plethora of piecemeal litigation and an unmanageable administration of Ruth Perelman's estate.

In determining whether an Orphans' Court order is either final or interlocutory but subject to appeal, courts consistently emphasize the need to avoid piecemeal litigation. Such piecemeal litigation is engendered by granting premature appeals of orders that are not dispositive of all claims and parties or that do not resolve all claims. See, generally., Estate of Fritts, 906 A2d 601, 606 (Pa. Super 2006)(granting appeal after probate hearing where the sole

claim challenging the validity of the will was dismissed would not raise the specter of piecemeal litigation); Estate of Harper, 975 A.2d 1155, 1158 (Pa.Super 2009)(after account was filed, a court order sustaining objections to the proposed distribution and commissions was appealable because there was no danger of piecemeal litigation). In the present case, the ruling on the domicile of Ruth Perelman is not a final determination of all pending issues and claims nor does it fall within the appealable orders set forth in Pa.R.A.P. 342. The appeal of that ruling should be quashed.

II. This Court Has Jurisdiction to Consider the Elective Share Petition Despite the Pending Appeal of the Domicile Ruling and Any Ruling Would Not Be Final Until Adjudication of the Account or a Distribution

Raymond also filed preliminary objections to Jeffrey's petition seeking an order that Raymond's elective share is zero. In so doing, Raymond reiterates his general argument that his appeal of the domicile ruling deprives this court of subject matter jurisdiction under Pa. R. A.P 1701(a). He then argues that by its nature, "nothing could be more fundamental to this court's jurisdiction concerning the determination of Mr. Perelman's elective share than the location of Mrs. Perelman's domicile." 9/13/13 Raymond Memorandum at 5. This is because, he argues, if Ruth died a domiciliary of Pennsylvania, the Pennsylvania Elective Share statute would apply to all of her assets wherever located. Alternatively, if she died a domiciliary of Florida, that state's elective share statute would apply to all of her assets. *Id.* citing 20 Pa.C.S. §2203; 20 Pa.C.S. § 2202; F.S.A. §732.201. This argument is not convincing for several reasons.

A ruling on any claim for elective share of a decedent's estate at this stage in the administration of Ruth's estate would not be a final order that disposes of all claims or all parties under Pa.R.A.P. 341. Likewise such a ruling on an elective share claim is not among the enumerated orders set forth in Pa.R.A.P. 342 as an appealable Orphans' Court order. Neither party cites a case directly on point, but in Estate of Borkowski, 794 A.2d 388 (Pa. Super. 2002), the Pennsylvania Superior Court dealt with an analogous issue as to whether a prenuptial agreement precluded the husband of a decedent from asserting his right to the spousal share of the estate under 20 Pa.C.S.A. § 2507.⁶ The decedent in Borkowski had neglected to amend her

⁶ Clearly, the analysis in Borkowski, though analogous, is distinct. The section at issue in that case was 20 Pa.C.S. §2507 which provides that a decedent's will shall be modified by marriage since "[i]f the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate...." 20 Pa.C.S. § 2507(3). According to the notes for this section, under the Model Probate

will after marriage, and her husband was not named in it. The decedent's parents as co-executors of their daughter's estate filed an account that proposed no distribution to decedent's husband. When the husband filed objections to the account, the parents argued that the husband had waived his statutory rights. After a hearing, the Orphans' Court concluded that the husband had not waived his statutory rights and it ordered the co-executors to amend the account to provide for his statutory rights. The parents filed an appeal, which was quashed by the Superior Court. The Borkowski court reasoned:

In the instant case, Appellants have not made a final accounting and the trial court has not confirmed a final accounting. The estate remains under administration. Under *Habazin*, *Preston* and *Meininger*, the order directing appellants to amend the accounting is not final because it does not dispose of all claims and all parties. Borkowski, 794 A.2d at 390 (emphasis added).

As the Borkowski court further explained, to "avoid piece-meal litigation no appeal will be permitted from an interlocutory order unless specifically provided for by statute." 794 A.2d at 389. This rationale is relevant to the dispute over Raymond's elective share of his wife's estate. It is an issue that must be resolved in the administration of her estate and, if merited, formalized by the adjudication of an account. In fact, it may be just one of many issues that will arise in the contentious administration of Ruth's estate. To allow an appeal to delay the administration of this estate is not mandated by the PEF code. As the executor Jeffrey Perelman notes, the PEF code provides that an appeal of an order of the Orphans' Court shall not suspend an executor's power to administer the estate. As section 793 provides:

§ 793. Effect of appeal

No appeal from an order or decree of an orphans' court division concerning the validity of a will or the right to administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder. The reversal or modification of any decree of an orphans' court division in a proceeding in which the division has jurisdiction of the sale, mortgage, exchange or conveyance of real or personal estate shall not divest any estate or interest acquired thereunder by a person not party to the appeal.
20 Pa.C.S. § 793.

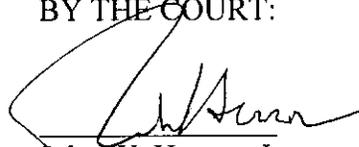
To delay the administration of Ruth Perelman's estate while Raymond pursues an interlocutory appeal would thwart the intent of section 793. As a consequence, Raymond's

Code, it was presumed that an after-married spouse's right to take against the will would provide full protection but with §2507 "Pennsylvania places the after-married spouse in the more gracious position of receiving a full intestate share, including the spouse's allowance, without requiring that there be an election to take against the will."

preliminary objections to both the turnover petition and the spousal election petition are overruled as set forth in contemporaneously issued decrees.

BY THE COURT:

Date: November 7, 2013


John W. Herron, J.

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NOV 7 2013
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