

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Robert Johnson, Deceased
O.C. No. 62 DE of 2017
Control No. 192204

OPINION

The present case is a perfect example of how, in the estate administration context, two heads are *not* better than one.

On February 11, 2019, the Register of Wills appointed Beth B. McGovern and Karin M. Gunter as co-administrators of the Estate of Robert Johnson, Deceased (the "Estate"), as part of an agreement between the decedent's heirs.¹ Pet. for Removal ¶ 3; Answer ¶ 3. The relationship between Ms. McGovern and Ms. Gunter soured almost immediately and came to a head on May 2, 2019, when Ms. McGovern filed a Petition for Removal of Co-Administrator consisting of forty averments and eleven exhibits. The Petition details a history of "needless obstruction, refusal to cooperate[,] and unilateral action" on the part of Ms. Gunter. Pet. for Removal ¶ 5. On May 10, 2019, Ms. Gunter filed an Answer consisting of forty-five averments, a counterclaim, and twelve exhibits wherein she denies Ms. McGovern's claims. In fact, Ms. Gunter alleges it is really Ms. McGovern who should be removed as co-administrator due to a conflict of interest that prevents her from fulfilling her fiduciary duty. Answer ¶¶ 42-44.

Without delving into, or relying on, the substance of the parties' allegations, the Court finds the pleadings present a *prima facie* conflict between the co-administrators. Each seeks the removal of the other for various and sundry reasons. This, without more, indicates the co-

¹ In addition to their roles as co-administrators, Ms. McGovern represents Eboni Freeman, the decedent's granddaughter, and Ms. Gunter represents Robin Johnson, the decedent's daughter. Both Ms. Freeman and Ms. Johnson were co-agents under the decedent's power of attorney and dispute what each did with the decedent's funds during his lifetime. As of the issuance of this Opinion, that litigation is still pending.

administrators' relationship has deteriorated to the point where neither has an interest in amicably administering the Estate with the other. As a result, the conflict between Ms. McGovern and Ms. Gunter would appear irreconcilable, and the administration of the Estate is at an impasse.

The removal and discharge of personal representatives falls within the mandatory jurisdiction of the Orphans' Court. 20 Pa. C.S. § 711(12). The grounds for removing a personal representative are found in Section 3182 of the Probate, Estates, and Fiduciaries Code (the "PEF Code"). In pertinent part, Section 3182 reads as follows: "The court shall have the exclusive power to remove a personal representative when . . . the interests of the estate are likely to be jeopardized by his continuance in office." *Id.* § 3182(5). The Supreme Court of Pennsylvania has interpreted subsection 5 of Section 3182 as protecting "the best interests of the estate." *See, e.g., In re Estate of DiMarco*, 257 A.2d 849, 854 (Pa. 1969). That protection may take the form of removing an antagonistic personal representative. Generally, antagonism on the part of a personal representative does not, *per se*, justify their removal absent a showing such antagonism has harmed the best interests of the estate. *Id.* However, the harm to the estate need not be an *actual* injury, only a *likelihood* of such injury due to the personal representative's continuance in office. *See* 20 Pa. C.S. § 3182(5). That likelihood exists here.

Ms. McGovern and Ms. Gunter fail to appreciate the nature of their roles as co-administrators. As the personal representatives of the Estate, Ms. McGovern and Ms. Gunter have a fiduciary duty to effectively and efficiently administer the Estate. "A personal representative is under a duty to take care of the estate and administer it in such a way as to preserve and protect the property for distribution to the proper persons within a reasonable time." *In re Estate of Kurkowski*, 409 A.2d 357, 360–61 (Pa. 1979). Ms. McGovern and Ms. Gunter are

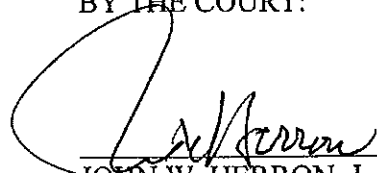
incapable of performing this task as their dealings, or lack thereof, have produced this litigation and little else. That Ms. McGovern and Ms. Gunter are also attorneys, in addition to being fiduciaries, makes their failure to cooperate even more disappointing. Unlike a lay administrator who may be unfamiliar with the law's expectations of a fiduciary, Ms. McGovern and Ms. Gunter should know better than most that fiduciaries are held to the highest standards of care and diligence—both of which are lacking here.

Furthermore, the Court will not, and need not, endure the drudgery of a she-said-she-said style evidentiary hearing just so two bickering administrators can air their squabbles. Moreover, said hearing would place the Court in the impossible position of having to choose the lesser of two evils when it need not make such a choice or even hold a hearing at all. *See* 20 Pa. C.S. § 3183 (permitting a court to summarily remove a personal representative when necessary to protect the rights of parties in interest). And should this matter proceed to a hearing, many months' time will pass before a decision is reached, incurring unnecessary legal fees and other expenses that will further strain an allegedly insolvent Estate. *See* Answer ¶ 34.

Here, removal of only one co-administrator is unlikely to mitigate the discord that surrounds and permeates this Estate. Likewise, if the Court does nothing then the co-administrators' feud will fester and further delay the proper administration of the Estate and needlessly increase the likelihood of harm both to the Estate itself and the heirs' inheritance.

Therefore, the Court finds it is in the best interests of the Estate to remove both Ms. McGovern and Ms. Gunter as co-administrators and return the matter to the Register of Wills to appoint a neutral successor administrator.

BY THE COURT:



JOHN W. HERRON, J.

Dated this 9th day of July 2019

Beth B. McGovern, Esquire
Karin M. Gunter, Esquire