

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
ORPHANS' COURT DIVISION

ESTATE OF BEATRICE B. PETERS, DECEASED
O.C. NO. 3314 DE OF 1984
CONTROL NO. 031078

OPINION

The question presented is whether the decedent died with or without heirs. Following a hearing held on May 3, 2004, this Court finds by clear and convincing evidence that Cheryl L. Radenz is the sole intestate heir of Beatrice Barcia Peters, Deceased and in support of this decision makes the following findings of fact:

Findings of Fact

1. Beatrice B. Peters died intestate on April 11, 1979.
2. Charles P. Mirarchi, III, Esquire received letters of administration and subsequently filed an account which was scheduled for audit before the Orphans' Court on July 7, 2003. The account, inter alia, proposed distributing the estate totaling approximately \$113,788.00 to the Commonwealth as sole statutory intestate heir.
3. This Court found the report which accompanied the account insufficient in several respects including the fact that no family tree was presented as required by Rule 13.3.A. In addition, the investigation performed to search for any intestate heirs appeared insufficient, incomplete and not in compliance with Orphans' Court Rule 13.2, 42 Pa.

C.S.A. The Commonwealth also objected to escheat of the assets absent a thorough investigation for heirs (see letter dated 8/20/03).

4. Subsequently, the administrator retained the services of a professional genealogist, Michael S. Ramage, Esquire, who submitted a report concluding to a reasonable degree of genealogical certainty that Beatrice B. Peters, Deceased died survived by one heir, Cheryl L. Radenz, decedent's grandniece.

5. A hearing was held on May 3, 2004 and testimony was heard from Michael S. Ramage, Esquire and Cheryl L. Radenz. The Commonwealth was represented by Nicholas J. Lamberti, Esquire who cross-examined these two witnesses. The Commonwealth offered no expert opinion to contradict that of Mr. Ramage and presented no witnesses.

6. The qualifications of the professional genealogist, Michael S. Ramage, Esquire, were stipulated to by the Commonwealth and Mr. Ramage was accepted as a qualified expert by the Court. In sum, Mr. Ramage offered the following testimony:

a. The decedent, Domenica Beatrice Barcia, was born in Philadelphia County, Pennsylvania on October 24, 1904 to George Barcia and Maria Barcia.

b. On July 12, 1908, Domenica Beatrice Barcia was baptized.

c. Domenica Beatrice Barcia married Earl Wilson Peters, who died on October 26, 1977. His death certificate lists his wife as Beatrice Barcie Peters.

d. The Barcia family, according to the 1920 and 1930 U.S. census schedules, consisted of the mother, father, a son named George, a daughter named Beatrice and a daughter named Rosalie, the latter name being Americanized to "Lilly".

e. The Barcia surname underwent several spelling changes, i.e., Barcie, Barcey. Such changes were common as surnames were frequently misspelled or Americanized.

f. George Barcia, Sr. died on January 31, 1966. His death certificate spells his surname as “Barcey” as does his wife’s death certificate. She died on November 24, 1950. George Barcey’s death certificate and Mary Barcey’s death certificate list their son, George A. Barcey, Jr. as the informant, whose address is given as “520 N. 10th Street.” This is the same address stated in Domenica Beatrice Peters’ affidavit to amend her birth certificate dated August 1, 1955 and conclusively connects her with other members of her family at this address.

g. The May 21, 1951 petition for letters of administration in the estate of decedent’s mother, Mary Barcey, lists her next of kin as three children consisting of George A. Barcey, Beatrice Peters and Lillian Miller.

h. The marriage application and license for decedent’s sister, Lillian R. Barcey, and Lynfred W. Miller states that Lillian R. Barcey was born on May 16, 1913 in New Jersey to George Barcey and Mary (Cuttitta) Barcey and identified the residence of the father as 606 N. 11th Street, Philadelphia, Pa. The surname Cuttitta is the same surname as appears for the mother of Domenica Beatrice Peters on the Certificate of Baptism and thus conclusively establishes their relationship as sisters. See also the death certificate for decedent’s mother, Mary Barcey, indicating her father as Lawrence Cuttitta and subparagraph g above.

i. Records in the Estate of Lillian R. Miller, Deceased, reflect that she died testate on July 18, 1993 leaving as her sole heir, her granddaughter Cheryl L. Radenz.

Discussion

The Commonwealth presented no witnesses, exhibits or evidence to rebut the administrator's investigative report concluding that Cheryl L. Radenz is the sole surviving heir. The Commonwealth's cross-examination of the administrator's two witnesses, Mr. Ramage and Ms. Radenz, neither impeached nor challenged the credibility of either. Under the teachings of In Re Rosen, 819 A.2d 585, the absence of any evidence to rebut the claimant's prima facie case is in and of itself a sufficient basis to recognize the claim.

The gist of the Commonwealth's doubts about whether the proof is clear and convincing are centered on two occurrences: The failure of anyone to claim the decedent's estate for many years and the apparent failure of Ms. Radenz's grandmother, Lillian, to ever refer to her sister, the decedent, although both lived near each other in Philadelphia.

From the testimony and records of the estate, it appears doubtful that any meaningful search for heirs occurred for many years following the decedent's death. The absence of such a search may partially explain the absence of any claimant, but the reality is that no immediate intact family existed.¹ And, according to Ms. Radenz, her grandmother, Lillian R. Miller, never spoke of her family, which happens on occasion. Lillian's failure to refer to her sister, the decedent, is certainly not sufficient to reject the

¹ Decedent's mother died November 19, 1950, her father on January 28, 1946, her brother on July 20, 1972 and her husband on October 26, 1977.

clear and convincing evidence of such a relationship. Moreover, according to Ms. Radenz, Lillian did not discuss any of her family members, not just the decedent. Given the expert's thorough report, neither of these facts persuades this Court to reject the expert's opinion.

This Court reaches the following conclusions of law:

Conclusions of Law

1. To a reasonable degree of genealogical certainty and as proven by clear and convincing testimony, Beatrice B. Peters' sole intestate heir was her sister, Lillian R. Miller, who died testate in 1993 leaving as her sole heir, Cheryl L. Radenz.
2. Cheryl L. Radenz is entitled to inherit the entire estate of Beatrice B. Peters, deceased.

The administrator of the estate is hereby directed to submit an amended account and proposed statement of distribution consistent with the foregoing opinion and contemporaneously issued Order of this Court.

BY THE COURT:

JOHN W. HERRON, J.

Dated: _____