

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

IN RE THE ESTATE OF MARGUERITE	:	ESTATE NO. 41-99-0268
C. SCHURER, DECEASED	:	
	:	
PETITION OF EUGENE A. SCHURER	:	
AND JOSEPH L. SCHURER	:	
Defendants	:	

**OPINION and ORDER**

The petitioners, Eugene and Joseph Schurer, have filed this action in an attempt to remove their sister and brother, Mary Smith and Robert Schurer, as executors of the estate of their mother, Marguerite Schurer.

The essential facts are not in dispute. On 17 January 1999 Marguerite Schurer, the Decedent, suffered a stroke. She was admitted to the hospital and shortly thereafter was discharged to Manor Care nursing home, where she remained until returning home on 9 March 1999, after which she received constant care. On 22 April 1999 the Decedent executed an Agreement of Sale for her farm in Limestone Township to her grandson, Matthew Smith, the son of Mary Smith, for \$115,000. Pursuant to that agreement, on 12 May 1999 the Decedent executed a deed conveying her farm to Matthew Smith and Edward Smith, her former son-in-law and the ex-husband of Mary Smith. Marguerite Schurer died on 18 May 1999.

Under Pennsylvania law, an executor may be removed if he or she is wasting or mismanaging the estate or has failed to perform any duty imposed by law. 20 Pa.C.S. § 3182. However, because an executor is chosen by the testator herself and represents an expression of trust and confidence, the removal of an executor is a drastic action which

should be undertaken only when the estate is endangered, and the proof of the cause for removal must be clear. In re Quinlan's Estate, 441 Pa. 266, 273 A.2d 340 (1971). The petitioners have failed to meet this standard.

The petitioners allege that the executors should be removed because they did not question Marguerite Schurer's transfer of real estate for what they feel was inadequate consideration. They maintain the Decedent lacked capacity to transfer the property, and that the transfer occurred because Mary Smith exerted undue influence upon the Decedent.

The primary gripe underlying the litigation is that Joseph Schurer wanted to buy the farm, and had been attempting to convince the Decedent to sell it to him for years. However, this litigation is only the tip of a family feud iceberg which had been looming large over this family for some time. The suspicions, resentments, and ill will displayed by these siblings toward one another was deeply imbedded before this litigation began and surely is even stronger now, after this contentious hearing at which they aired as much of their dirty laundry as this court would permit.

In any case, the petition to remove the executors must be denied because the evidence at the hearing showed little reason for the executors to have questioned the real estate transfer, and scant evidence of undue influence. On the contrary, the evidence fully convinced this court that an attempt to rescind the transaction would not only have been a waste of time and of the estate's assets, but would have violated the wishes of the Decedent.

Specifically, the testimony of Dr. Rinaldo Cornell, the Decedent's physician who

examined her on the day she executed the Agreement of Sale, clearly established that she was mentally competent on the date she signed the Agreement. Dr. Cornell expressed his confidence that Marguerite Schurer had the ability to fully understand what she was doing and to know the value of the property she was conveying. The court finds Dr. Cornell's testimony fully credible.

Most convincing of all, however, was the testimony of Marc Drier, Esq., the Decedent's attorney, who testified at length and in comprehensive detail about how the transaction came about. He explained that it was part of a comprehensive estate plan designed to spare as many of Marguerite Schurer's assets as possible from depletion if she should find it necessary to enter a nursing home. Marguerite Schurer's plan was to: (1) Liquidate the farm by selling it to her grandson for the lowest price acceptable to Public Assistance, which was the assessed value of \$115,000; (2) Preserve a life estate for herself so she could live on the farm as long as she was able; (3) Retain one quarter of the money to pay her living expenses; and (4) Divide the remainder equally among her children as quickly as she could, by gifting each month as much as the state would allow. Mr. Drier's testimony was entirely credible in every way, and convinced this court that the Decedent knew exactly what she was doing when she sold the property to her grandson,<sup>1</sup> and that she had made up own mind to do so.

In short, the testimony presented at this hearing painted a portrait of a strong-willed, independent-minded, elderly farm woman who was troubled for years about what should happen to her beloved farm after she died. Above all, she wanted to keep the land

---

<sup>1</sup> Edward Smith's name was on the deed sheerly for financing purposes.

intact, to keep it in the family, and to be able to live there until she died. Although she wavered back and forth for some time, when Marguerite Schurer finally made up her mind to sell the farm to her grandson, Matthew Smith, she was firm and resolute, and stuck to her decision despite a counter-offer of \$150,000 made by her son, Joseph Schurer.

Given this evidence of sound mind and independent decision, along with the hefty burden imposed upon a party attempting to rescind a real estate transaction, it would have been foolhardy for the executors to have challenged the sale.

No one can say for certain why Marguerite Schurer chose to do what she did, but the evidence suggests that this astute farm woman was well aware of the foibles of her bickering children and predicted that the contention would grow even worse if one of them received the farm. So instead, it appears that she decided to skip a generation, placing her faith in youth, as many elderly people are inclined to do after a lifetime of witnessing the pettiness to which adults are prone.

Marguerite Schurer knew her decision would raise the hackles of Joseph Schurer, and she told her attorney so. She also knew he would not like receiving the assessed value of five acres of land instead of the land itself, which he hoped to receive from her will. But Marguerite Schurer made her decision in spite of that knowledge, and she stuck to her guns once the decision was made.

As for counsel fees, this court is sorely tempted to impose them. However, we stop short of doing so only because it is possible Joseph and Eugene Schurer brought this litigation not simply to harass their siblings, but because their anger, resentment, and hurt feelings blinded them to the clear and overwhelming evidence against their position.

However, we note that the Superior Court possesses greater leeway for granting attorney fees, Pa.R.A.P. No. 2744, and might well assess such fees if the case is appealed. For after sitting through the proceedings and hearing the testimony of Dr. Cornell and especially of Marc Drier, which was highly credible and which thoroughly answered all the questions raised, there would be little excuse to drag the case on any further.

We will never know whether Marguerite Schurer was watching the proceedings from her new farmstead in the sky. If she was watching, she surely must have been displeased with her children and this public display of intense, deep-rooted ill will between them. And yet somehow we doubt Marguerite Schurer was *surprised*, for she knew her children well and was aware of the animosity between them, although she might not have predicted the extent to which this miserable situation would proceed. In any event, although the contention will probably continue for a long time due to the fresh wounds inflicted by these proceedings, we can only hope that with the signing of this opinion Marguerite Schurer, along with this case, will finally rest in peace.

**ORDER**

AND NOW, this \_\_\_\_\_ day of January, 2001, for the reasons stated in the foregoing opinion, the Petition to Remove Executors filed by Joseph and Eugene Schurer is dismissed and the estate's claim for counsel fees is denied.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
Benjamin Landon, Esq.  
Marc Drier, Esq.  
Gary Weber, Esq., Lycoming Reporter