

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ESTATE OF : ORPHANS COURT DIVISION
 :
DAVID JOSEPH BEATTY : NO. 41--04—0086

OPINION AND ORDER

On January 21, 2004, David Beatty (Decedent) was killed in a motor vehicle accident in Dauphin County, Pennsylvania. At the time of his death he was not married but had a son, Alex J. Weigel, with Vicki Landis born on January 16, 1996. Decedent had been living in a halfway house under the supervision of the Pennsylvania Board of Probation and Parole. Decedent died intestate without any assets. On February 4, 2004, Decedent's sister, Judy Aderhold petitioned the Register of Wills of Lycoming County for letters of Administration for the sole purpose of filing a lawsuit on behalf of the Decedent's estate. On February 17, 2004, after attempting to obtain Letters in Dauphin County Vicki Landis filed a petition to revoke the Letters of Administration on behalf of the Decedent's minor son. Landis alleges that Lycoming County Register of Wills did not properly appoint Aderhold Administrator, as she does not possess greater priority than Landis (on behalf of her son) under the Intestacy statute. Aderhold argues that the Register did not abuse her discretion, and Aderhold has properly been appointed administrator. After hearing, the Court determines the following facts.

In Pennsylvania, the law on intestacy provides that an estate shall pass in the following order:

- (1) ISSUE. --To the issue of the decedent.

(2) PARENTS. --If no issue survives the decedent, then to the parents or parent of the decedent.

(3) BROTHERS, SISTERS, OR THEIR ISSUE. --If no parent survives the decedent, then to the issue of each of the decedent's parents.

(4) GRANDPARENTS. --If no issue of either of the decedent's parents but at least one grandparent survives the decedent, then half to the paternal grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half, which would have passed to them or to their children and grandchildren, shall be added to the half passing to the grandparents or grandparent or to their children and grandchildren on the other side.

(5) UNCLES, AUNTS AND THEIR CHILDREN, AND GRANDCHILDREN. --If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in section 2104(1) (relating to taking in different degrees).

(6) COMMONWEALTH. --In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

23 Pa C.S.A § 3155. Since all parties agree that Alex Weigle is the Decedent's issue, it is clear that the entire estate, what ever it may be, by operation of law, shall pass to him. As he is only 8 years old, by statute, he is not permitted to be appointed administrator.¹ The Court must decide whether Landis, Weigle's mother, has met her burden to have Aderhold removed as administrator. If the Court grants Landis' request, then the Court must appoint a new administrator.

Under Section 3182 of the Fiduciary's Code, the court shall have exclusive power to remove a personal representative when s/he:

(1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

(2) Deleted. 1992, April 16, P.L. 108, No. 24, § 4, effective in 60 days.

¹ See 23 Pa C.S.A. §3156

(3) has become incapacitated to discharge the duties of his office because of sickness or physical or mental incapacity and his incapacity is likely to continue to the injury of the estate; or

(4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or

(4.1) has been charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in sections 3155 (relating to persons entitled) and 3156 (relating to persons not qualified), provided that the removal shall not occur on these grounds if the charge has been dismissed, withdrawn or terminated by a verdict of not guilty; or

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

An examination of the statute reveals the only applicable provision is section 5 as there has been no testimony and the Court finds no other provisions apply. Landis argues that she is in the best position to care for her son's interest as the sole heir of his father's estate. Aderhold argues that she has done nothing in violation of the law to justify her removal.

As an aside, the Court notes that in obtaining her letters, Ms. Aderhold did identify Weigle as her brother's son, however, neither she nor the Register of Wills notified Landis that her petition was being filed. In addition, where Landis obtained renunciations from both the father and brother of the decedent, Aderhold did not contact her father or brother. Aderhold only obtained a renunciation from her mother, Gladys Beatty, with whom she resides.

As set forth in Section 3182, this Court, sitting as the Orphans Court judge, has the authority to remove an administrator where the interests of the estate were likely to be jeopardized by his/her continuance in office. See, Zaleski Estate, 17 Pa D&C 3rd 456 (19). Based upon the evidence presented, this Court finds that due to the animosity

between Landis and Aderhold, for Aderhold to retain authority over her brother's estate, creates the potential for major problems. With her lack of substantial contacts with Alex Weigle, as well as her prior criminal record for theft offenses, the Court finds that the interests of the estate are likely to be jeopardized by Ms. Aderhold remaining in her position as administrator. Since the Court intends to grant Ms. Landis' request to remove Ms. Aderhold, this Court must designate a new Administrator.

In support of Ms. Landis' request to be appointed Administrator, she cites the fact that she is the mother of the sole heir. In addition, she is also a potential creditor. She is owed a substantial amount in back child support, for years of the Decedent's either unwillingness or inability to pay child support. Additionally, there is no case law or statute that automatically confers the right to administer the estate to Ms. Landis on behalf of her minor child. Even with her status as mother and principal creditor, Landis' past history, including her prior record also for theft related offenses, does not convince the Court that she would be a suitable Administrator of the estate. This Court would also rule out Counsel for the parties acting as an administrator. With the feelings between the parties as it is the Court fears that the litigation would never cease. After much deliberation, the Court believes that an independent attorney should be appointed to act on Alex Weigle's behalf in any pending litigation as the Administrator of the estate.

ORDER

AND NOW, this day of August, 2004, the Motion to Revoke Letters of Administration filed by Vicki Landis on behalf of her son, Alex Weigel is hereby GRANTED. Based upon the foregoing discussion, Marc F. Lovecchio, Esquire is hereby appointed Administrator of the Estate of David Beatty for litigation purposes only. Counsel will not be required to perform any other administrative duties whatsoever. Counsel's duties which would include but are not limited to advertising the estate, filing a tax return or filing of an inventory are limited to the litigation only.

By The Court,

Nancy L. Butts, Judge

cc: Lee Roberts, Esquire
Scott A. Williams, Esquire
Marc F. Lovecchio, Esquire
Annabel Miller, Register of Wills
Gary Weber, Esquire
Judge Nancy L. Butts
Law Clerk