

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ESTATE OF : ORPHANS COURT DIVISION

PETER J. JEAN : NO. 41—86-0402

OPINION AND ORDER

Before the Court is Co-executor Louise Prettyleaf's Petition to remove Caroline Pandolfi as Co-Executor. The stated purpose of the Petition is to allow the sale of the Estate's remaining asset, a parcel of land located in Old Lycoming Township, and to enable the Estate to be closed. The Court finds the following facts.

On August 18, 1986, Peter J. Jean died and at the time of his death he had four daughters, Elizabeth Jean, Caroline Pandolfi, Mary Potter and Louise Prettyleaf. Decedent's will set forth the provision that sisters Caroline Pandolfi and Louise Prettyleaf would be Co-Executors and that they, along with Mary Potter and Elizabeth Jean would share in the residuary. Elizabeth Jean died without children in September 1993. An inheritance tax return was filed covering other assets owned by the Decedent; the lone remaining asset is an approximately 17-acre parcel of land, subdivided into 55 individual lots. Co-Executor Prettyleaf asks this Court to remove her sister, Caroline Pandolfi as Co-Executor, so she may sell the property and finally close the estate.

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.

(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to persons not qualified), provided that the removal shall not occur on these grounds if the charge has been dismissed, withdrawn or terminated by a verdict of not guilty; or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.

20 Pa.C.S. § 3182. 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.

As set forth in § 3182, this Court, sitting as the Orphans Court Judge, has the authority to remove an administrator where the interests of the estate are likely to be jeopardized by his/her continuance in office. See, Zaleski Estate, 17 Pa D&C 3rd 456 (1980). It is well settled however, that a “substantial reason” must exist to remove an executor before such action will be taken by the Court. *Glessner’s Estate*, 343 Pa. 370; 22 A.2d 701 (1941). To remove an executor, “[i]t must clearly appear that the executor is ‘wasting or mismanaging the property or estate under his charge, or that for any reason the interests of the estate or property are likely to be jeopardized by the continuance of such executor’” Id. at 373-74. Further, the testator’s wishes regarding chosen executor(s) will be respected until there appears, “a situation where the estate is in real danger of substantial loss if the fiduciary is permitted to remain.” Id. at 374.

In the present case, the mere disagreement on disposition of the property is not sufficient jeopardy or waste for purposes of removing this Co-Executor. The Will does not specify that the

property is to be sold, so it cannot be asserted that jeopardy exists based solely on a failure to carry out the terms of the Will. Further, the Respondent has expressed legitimate concerns about reimbursement for taxes she has paid on the property, as well as whether the sale of property proposed by Petitioner offers the best obtainable price. Petitioner has asserted that the property is not suitable for partition nor are the beneficiaries prepared to manage the property. While this assertion points toward sale of the property as ultimately the best alternative for closing the estate, the concerns of Respondent as Co-Executor will not be subordinate to the plans of Petitioner, as they appear to have some merit. Perhaps if Respondent would be reimbursed for her payment of taxes or be guaranteed that upon any transfer she be completely reimbursed, she would be more amenable to the sale. In any event, the Court finds Petitioner has failed to establish a “substantial reason” to justify removal of the Co-Executor.

ORDER

AND NOW, this ____ day of January, 2005, the Petition to Remove Caroline Pandolfi as Co-Executor of the Estate of Peter Jean is hereby DENIED.

By The Court,

Nancy L. Butts, Judge

cc: Robert C. Wise, Esquire
Carolyn Pandolfi
Lot E12, 4225 45th Street, West Palm Beach, FL 33407
Annabel Miller, Register of Wills
Gary Weber, Esquire
Judge Nancy L. Butts
Law Clerk
Judges