

In *Estate of Mary J. Peles*, the Superior Court did not allow the probate record opened when a later codicil was presented after the three-month limitation of § 3138. It is clear that the register cannot reopen the record beyond the three-month period absent “extraordinary circumstances” as determined by the *Peles* Court. 1999 PA Super 256, 739 A.2d 1071 (1999). In a footnote, the *Peles* Court indicated that the § 908 one-year limitation on appealing a decree of the register does not apply to later wills or codicils. 739 A.2d at 1074 n. 5. However, following the decision in *Peles*, the Common Pleas Court of Allegheny County undertook a reassessment of the statutory language of § 3138 and § 908 as well as the rationale in *Peles*. *In Re: Estate of Lillian Frances Harley*, No. 1667 of 2000, C.P. Al Cty Orphan’s Ct Div.; as cited in 4 Lawyers J. 163 (August 9, 2002). The *Harley* Court concluded that while §3138 did in fact limit the *register’s* authority to reopen the probate record to three months, it did not preclude the standard one-year limitation on appealing the decree of the register in the Orphan’s Court. The inconsistency with *Peles* was explained,

This court respectfully takes note of the fact that in Note 5 *Peles* . . . defers to [§ 3138] indicating that [§ 908] is not applicable where a later will or codicil is brought before the court. Seemingly, counsel in *Peles* did not bring to that court’s attention [§ 3133] wherein [§ 3138] with its three month period for appeal to amend the probate record is juxtaposed with [§ 908] which allows for a one year period to bring an appeal from probate before the court. [§ 3133] permits the use of either [§ 3138] or [§ 908] as may be applicable to the procedural posture of the case. Due to this apparent oversight, Note 5 of the *Peles* case was not applied to the facts of the instant case.

Harley, 4 Lawyers J. 163.

Upon review of the foregoing materials, the Court is persuaded by the analysis in *Harley*. The time limit established by § 3138 evidently sets forth a term after which the

register may not reopen and reevaluate the probate record. Outside of the three-month period, any appeal from a decree of the registrar must be before the Orphan's Court, the time limitations on which are governed by § 908.

The petition presently before the Court was filed within one year of the decree of the register and is therefore timely. Based on the petition and testimony heard on May 6, 2005, the Court finds that the 1996 Will should govern the disposition of Decedent's probate estate. The Court finds no reason to doubt that the 1996 Will was properly executed, it revoked any and all prior wills, and that it reflects the Decedent's intent. Further, the Court finds no complications arising from dispositions under the 1994 Will as a result of the correction.

ORDER

AND NOW, this 12th day of May 2005, based on the foregoing Opinion, the Petition Regarding Newly-Discovered Will is hereby GRANTED. It is hereby ORDERED and DIRECTED a) that the 1996 Will is the Decedent's Last Will and Testament, and b) that the probate estate of Louisa M. Johnson be distributed pursuant to and in accordance with the 1996 Will. .

By The Court,

Nancy L. Butts, Judge

cc: P. Facey, Esquire
Annabel Miller, Register and Recorder's Office