

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ESTATE OF BETSY J. DOLAN, :
Deceased : **No. 41-04-0487**
: **ORPHANS COURT DIVISION**

OPINION AND ORDER

Before this Honorable Court, is Elliott B. Weiss's (hereinafter "Executor") Motion to Strike Jane Rishel's (hereinafter "Objector") January 3, 2006 Objections to his First and Partial Account of the Will of Betsy J. Dolan (hereinafter "Deceased") and, Meredith Rishel's (hereinafter "Petitioner") Petition to Intervene and Object to the First and Partial Account of the Executor. For the following reasons, the Court GRANTS the Executor's Motion to Strike the Objector's Objections and GRANTS the Petitioner's Petition to Intervene.

Background

The Deceased passed away on September 9, 2004 leaving behind a March 3, 1993 Last Will and Testament. Pursuant to the Deceased's Will, Executor Weiss was appointed Executor. The Executor filed his First and Partial Account on December 8, 2005. On January 3, 2006, the Objector filed Objections to the Executor's Account and, on January 23, 2006, the Executor filed his Motion to Strike the Objector's Objections. The Court, after a January 27, 2006 conference on the matter, ordered briefs on the issue of standing. On February 3, 2006, the Petitioner filed her Petition to Intervene and Object to the First and Partial Account of the Executor.

Discussion

The Executor opposes the Objector's Objections on the ground that she does not have standing to object. The Objector contends that, she does have standing to Object and, if she does not, then the Petitioner, who does have standing to Object, should be permitted to intervene and Object to the Executor's Account.

Integral to the disposition of these matters, are two portions of the Deceased's Last Will and Testament extracted below:

. . . **SECOND:** I give and bequeath my tangible personal property and household effects, together with any insurance thereon, . . . but excepting cash to my Executor to be disposed of by him in accordance with written instructions which I may leave with my personal papers. Any item not so disbursed should be distributed by my Executor to JANE RISHEL and MEREDITH RISHEL as they may select. My Executor shall sell the remaining items not selected, the proceeds therefrom to become part of my residuary estate. . .

THIRD: I give, devise and bequeath all the rest of my estate, both real and personal, of whatsoever nature and wherever situate, to my Trustee, hereinafter named, IN TRUST NEVERTHELESS, for the following purposes:

- A. [MEREDITH LAUREN RISHEL's] tuition, room board and other expenses of my said cousin of such higher educational institution. . . my principal objective in creating this Trust is to insure adequate funds for the college education of my said cousin.
- B. Upon completion of my said cousin's education or her thirtieth (30th) birthday whichever shall occur first, this Trust shall terminate. . . [t]he principal and accrued and undistributed income of the Trust shall be divided [amongst three entities].

See, Last Will and Testament of Betsy J. Dolan, March 3, 1993. The Court will address the aforementioned filings in turn.

Does the Objector have standing to Object to the Executor's First and Partial Account of the Estate of the Deceased?

The Executor correctly states in his brief that, "a party, who is directly and adversely affected by a judgment, decree, or order and who has some pecuniary interest which is thereby injuriously affected," is, by virtue of this position, aggrieved and therefore has standing. *Estate of Atlee*, 406 Pa. 528, 532, 178 A.2d 722, 724 (1962) and *In the Estate of Seasongood*, 320 Pa. Super. 565, 568, 467 A.2d 857, 859 (1983). Also persuasive to the issue of standing, is the York County case advanced by the Executor during the conference on this matter, *Yorlets Estate*, No. 67-87-0596 (1989 unreported opinion). In *Yorlets*, the decedent's children filed objections to the administration of the will. The Court found that, because the objector's had received the full amount of the bequests they were entitled to under the decedent's will, they did not have a substantial or pecuniary interest sufficient to maintain the requisite standing pursuant to *Seasongood, supra*.

Instantly, the Objector, like the objector children in *Yorlets*, has received the full amount of the bequests entitled to her under the Deceased's will; as such, she does not have the requisite standing to maintain her objections to the Executor's First and Partial Account. Moreover, the Court rejects the Objector's contention that she can maintain standing by virtue of her daughter's status as a residuary beneficiary. The Objector's daughter is not a minor; therefore, any connection to her daughter's residuary interest is too remote to confer standing. *See, Estate of Briskman*, 2002 PA. Super. 287, 808 A.2d 928 (2002) (holding that, in order to obtain the requisite standing to challenge a will, one's interest in the probate of that will must be substantial, direct, and immediate and, that a niece's contingent interest or status as an intestate heir at law were too remote to confer standing) and *Megargel Estate*, 349 Pa. 14, 36 A.2d 319 (1944) (holding that, a cousin did not have standing to object to an accounting where her interest in the estate was too remote; specifically, she was not named in the decedent's will and would only realize a benefit through the settlement of two other connected estates).

Can the Petitioner Intervene and Object to the Executor's First and Partial Account of the Estate of the Deceased?

“At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein provided, *inter alia*, that such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; that such person should have joined as an original party in the action or could have been joined therein; or that the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pennsylvania Rule Civil Procedure No. 2327.

The Petitioner satisfies all of the above requirements to intervene in this matter. As a residuary beneficiary, she could be adversely affected by the distribution of the instant estate, she

should have and could have been joined in the original action, and the disposition of the instant estate may affect her legally enforceable interest regarding the distribution of the estate.

ORDER

AND NOW, this _____ day of February 2006, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. Without reaching the merits of the Objector's Objections, the Executor's Motion to Strike the Objector's Objections is **GRANTED** for lack of standing;
2. The Petitioner's Petition to Intervene is **GRANTED** providing her with an opportunity to Object to the Executor's First and Partial Account of the Estate of the Deceased ; and
3. The April 6, 2006 hearing on the Petitioner's Petition to Intervene is **CANCELLED** by virtue of this Order.

By the Court,

Nancy L. Butts, Judge

cc: Daniel K. Mathers, Esq.
Julianne E. Steinbacher, Esq.
Elliott B. Weiss, Esq.
Deb Smith, Court Scheduling Technician
Judges
Law Clerk
Gary L. Weber, Esq.