

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ESTATE OF PHILIP D. AMOROSO,
Deceased :
: **NO. 41-00-0611**
: **ORPHANS' COURT DIVISION**

OPINION AND ORDER

Background

Philip S. Amoroso (hereinafter "Decedent") died on October 31, 2000. The Decedent was survived by, inter alia, Brooke Lyn Davis, a/k/a Brook Lynn Amoroso (hereinafter "Petitioner"), Tina Reighard (hereinafter "Respondent"), and Vicki Harvey.

On November 3, 2000, at the time of Decedent's funeral the Petitioner and Ms. Harvey, who were half-sisters of Respondent, were approached by Respondent and her husband and agreed to sign a Renunciation of their right to administer the estate, at the request of Mrs. Reighard's husband. Both Petitioner and Vicky Harvey agreed to this because they lived out of town and Respondent resided in the Williamsport area, Decedent's home.

Petitioner, Respondent and Vicki Harvey had some discussion about their father's estate, and they discussed splitting the estate equally between the three of them. Although Petitioner resided in North Carolina, Respondent was aware that she claimed to be a daughter of Decedent and, in fact, when Petitioner was age 15 she came to live with her father for a short period of time but returned to North Carolina.

At the funeral of Decedent both Petitioner and Ms. Harvey were treated by family members as daughters of the Decedent.

The Respondent filed a Petition for the Grant of Letters and the Register and Recorder's Office granted said request and issued the same on November 30, 2000. On

December 4, 2000, Respondent sent notices of beneficiary interest to both Ms. Harvey and Petitioner. On December 15, 2000, Respondent made the first advertisement of the Decedent's estate.

In a letter dated December 19, 2000, Respondent's attorney, Malcolm S. Mussina, Esquire, sent letters to both Petitioner and Ms. Harvey, in which he informed them that in his opinion the two women were not legal heirs of the Decedent because both women were conceived to women who were married at the time of their birth. The letter advised Petitioner and Ms. Harvey to contact an attorney if they disagreed with Attorney Mussina's opinion.

Petitioner called Respondent on the telephone after receiving this letter, and Respondent told her the letter was a formality and that she, Respondent, would do the right thing. The Petitioner still believed the estate would be split between Petitioner, Respondent and Ms. Harvey.

Ms. Harvey also telephoned Respondent after receipt of the letter. Respondent affirmed to her that the estate would be equally split between the three daughters. However, Ms. Harvey later had subsequent telephone conversations with Respondent where Respondent said she would not give an equal share of the estate to Petitioner because Petitioner had little contact with her father throughout his life. Ms. Harvey, in hearing these comments from Respondent, became concerned as to what her share in the estate would be. She eventually reached an agreement with Respondent sometime in 2002 to settle her interest in the estate of her father with a payment of \$17,000. This money was paid by Respondent out of the monies she obtained from the estate.

On July 31, 2001, Respondent filed the Inheritance Tax Return for the Decedent's estate. On October 24, 2001, the Respondent signed the Informal Accounting for the Decedent's

estate in which she proposed to distribute the entirety of the Decedent's estate to herself; the Respondent did not provide notice to Petitioner of the informal accounting. On the same date the Respondent signed a Formal Accounting Waiver, Release and Refunding Agreement (hereinafter "Refunding Agreement") regarding the Decedent's estate. The Respondent, in the Refunding Agreement acknowledged receipt of two vehicles with a total value of eighteen thousand seven hundred seventy five dollars (\$18,775) and cash in the amount of sixty thousand five hundred ninety-two dollars and fifty-nine cents (\$60,592.59) from the Decedent's estate. The Refunding Agreement also provided that the Petitioner further agrees to make refunds of her inheritance in the event that valid claims against the estate are determined to be payable at a later date. Subsequent to signing the Refunding Agreement, the Respondent deposited the cash assets she received from the Decedent's estate into a joint bank account she shared with her husband.

In November of 2001, Respondent forwarded to Petitioner a Five Thousand Dollar (\$5,000) check drawn from her and her husband's joint bank account, and a release document.

The document stated, in relevant part:

KNOWN ALL MEN BY THE PRESENTS, that I, BROOKE LYNN DAVIS [the Petitioner], do hereby waive any all right or rights which I may have to inherit as an intestate heir of PHILIP D. AMOROSO, DECEASED, and request that distribution be made to me of the sum of Five Thousand Dollars (\$5,000.00).

I, BROOKE LYNN DAVIS, do hereby acknowledge that I have this day had and received from TINA M. REIGHARD [the Respondent], the following asset in full satisfaction of the amount due and distributable to me pursuant to a settlement agreement resulting from my claim as an intestate heir of PHILIP D. AMOROSO.

CASH: \$5,000.000

The Petitioner did not accept the check or sign the Release. She telephoned Respondent and Respondent told her she felt the \$5,000 should be her share of the estate.

Petitioner then contacted the Clerk of Courts by telephone and learned that Respondent had distributed the entire estate to herself. In late 2001 or early 2002 Petitioner contacted a lawyer to advise her on this matter.

In June 2002 the Petitioner filed a petition requesting that the Court order DNA testing to establish or refute paternity as relating to her and the Decedent. In October 2003, the Court granted her request and later ordered that the Decedent's body be exhumed to effectuate the testing. The test results proved that Petitioner is the biological daughter of the Decedent.

In March 2005, the Petitioner filed a Petition to Cite the Administrator to Render a First and Final Accounting and Report of Administration. On April 18, 2005, the Court granted said Petition and further provided that “. . . the informal accounting shall give Brooke Lynn Davis (the Petitioner) all the procedural rights as if there had been a formal accounting advertised and confirmed NISI and absolute.” In April 2005, the Respondent provided the Petitioner with a copy of the Informal Accounting of the Decedent's estate. On May 5, 2005, the Petitioner filed objections to the Respondent's accounting.

The objections were scheduled to be heard by Senior Judge Clinton W. Smith, but the parties, with Judge Smith's help, resolved the matter when Respondent agreed to enter into a stipulated judgment in favor of Petitioner in the amount of \$30,865, which judgment was in favor of Petitioner and against the Decedent's estate. The stipulation further noted that since the estate had been distributed to Respondent, the judgment would also be entered in favor of Petitioner and against the Respondent individually. The stipulation was signed by the attorneys for Petitioner and Respondent and was dated July 8, 2005. On July 28, 2005, an Order was signed by the Honorable Judge Nancy Butts which made the stipulation a Court Order.

Despite the stipulation and Order the Respondent has refused all informal requests by Petitioner to make payment on the judgment. The Petitioner then engaged in discovery to determine what had happened to the assets of the estate. The informal accounting for the estate indicated that 100% of the residuary estate \$79,367.59 was distributed to the Respondent.

On September 13, 2006, the Petitioner filed a "Petition for Review and Rehearing." The Petition requests that the Court order Respondent to refund the \$30,867 plus interest at the rate of 6% per annum from July 28, 2005 through the time the Petitioner's claim is paid.

The matter was to be heard by Senior Judge Clinton W. Smith who brokered the settlement, but Judge Smith by Order of May 14, 2007, recused himself.

The undersigned was assigned to handle this matter and after several conferences with counsel to review the case and see if settlement could be reached, scheduled the evidentiary hearing which was held as previously alluded to on July 17 and October 1, 2007.

Respondent, in testifying on July 17th, acknowledged that the approximately \$60,000 she received from the estate after paying administration expenses, was placed by her in a joint bank account with her husband, Joe. While the account is still in existence today it has under \$2,000. When asked to explain where the money went she testified that she and her husband put the money into repairs and improvements of her home. She still has the Ford pick-up truck, which she received from the estate. The truck was valued at \$17,425 at the time of Decedent's death. Mrs. Reighard is not employed and has no income.

When Respondent was asked about her offer of \$5,000 to Petitioner in November 2001 Respondent denied she was trying to settle Petitioner's claim against the estate. Rather, Respondent referred to the \$5,000 check, despite its accompaniment with a release of claims

document, as a gift to Petitioner which she was offering out of kindness. Further, Respondent, Tina Reighard, testified she did not realize Petitioner was making a claim against the estate at this time.¹

At the close of the proceedings before the Court counsel for Respondent argued that Petitioner in making a claim through counsel of the Decedent's estate on or about February 2002 was too late because the estate had already been distributed by that time. Mrs. Reighard's counsel also argues that Mrs. Reighard has no income and no money apart from the marital entity with her husband and that, despite the refunding agreement and stipulated judgment she entered into in July 2005 that she can make no payments to Petitioner because she has no independent income. Finally, Respondent argues that her marital assets and property she owns with her husband cannot be subject to collection of Petitioner's stipulated judgment. She thus contends Petitioner's judgment is basically uncollectable and worthless.

Petitioner contends that any argument by Respondent that Petitioner waived her claim to the estate by not making an earlier claim must fail because Respondent in July 2005 stipulated to a judgment against the estate and Mrs. Reighard personally to pay Petitioner's inheritance from the estate. Further, Petitioner contends the Court can find a constructive trust in favor of Petitioner against Respondent and her husband to satisfy the \$30,867 obligation owed to Petitioner. Thus, Petitioner argues that the marital assets of Respondent and her husband should be subject to collection of this debt.

¹ The Court finds this testimony of Respondent, Mrs. Reighard, to be clearly unbelievable. The Court believes Petitioner, Respondent and Ms. Harvey early on were discussing how the proceeds of the estate would be split up. The Court believes Respondent was made aware early on that her two half-sisters were making claims on the estate. It is not at all plausible that Respondent was trying to make a gift of \$5,000 to her half-sister who she obviously resents. In fact, Respondent now refuses to make any payment to Petitioner. *See* Stipulated Fact 34 submitted by both parties.

Discussion

The Petitioner cites, in her brief in support of her September 13, 2006 Petition for Review and Rehearing, at length, *In re Jones*, 442 Pa. Super. 463, 660 A.2d 76 (Pa. Super. Ct. 1995). In *Jones*, the Petitioners, paternal cousins of the decedent, filed a Petition for Review and Rehearing, pursuant to 20 P.S. §3521, in which they requested that the trial court order redistribution of the decedent's estate² to satisfy their interests in the estate. 20 P.S. §3521 states, in relevant part, that, "[i]f any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require. . . ." After a hearing, the trial court found that the Petitioners were genuine legal heirs to the deceased and therefore, were entitled to share in the Deceased's estate. Accordingly, the trial court granted the Petitioners' request and ordered the Respondents to return certain monies to effectuate redistribution of the Decedent's estate to include the Petitioners. On appeal, the Superior Court of Pennsylvania upheld the trial court stating that, "the trial court is permitted to order original distributees to return a part of their distribution." *Jones*, 442 Pa. Super. at 470, 660 A.2d 80 (Pa. Super. Ct. 1995). In so finding, the *Jones* appellate court dismissed the Appellant/Respondent's arguments that, absent fraud, the court was precluded from reviewing the decedent's account after distribution had been made finding that, although a finding of fraud was at one time a necessary precursor to reviewing the decedent's account after distribution had

² After the trial court approved and confirmed the Administrator's accounting of the Decedent's estate, the Administrator made actual distribution of the Decedent's estate in May 1990 to the Respondent's maternal cousins. Within three months, counsel for the Petitioners notified the Administrator of the alleged interest of the Petitioner's interest in the Decedent's estate. Several months of unsuccessful negotiations ensued culminating with the filing of the Section 3521 Petition for Review and Rehearing.

been made, subsequent amendments to the Probate, Estates and Fiduciaries Code (hereinafter “Code”) eliminated this requirement.

The Court here finds that Respondent, Mrs. Reighard, entered into the Stipulated Judgment in bad faith. She did not intend to refund money to the Petitioner, and she is now using her distribution of the entire estate to herself and her husband as a shield to preclude any recovery of the money owed to Petitioner. It clearly is not consistent with fairness and equity to permit Respondent to prevail on this basis. 20 P.S. §320.721, which was later recodified as the present 20 Pa. C.S. §3531, “permits the court to ‘give such relief as equity and justice require.’” *In Re: Jones*, supra, 442 Pa. Super, at p. 471.

This Court also believes the equitable doctrine of constructive trust would apply to this case. Constructive trust is an equitable remedy designed to prevent unjust enrichment. *See* Restatement of Restitution, §160 (1937); *Yohe v. Yohe*, 466 Pa. 405 (1976). In the case of *Torchia v. Torchia*, 499 A.2d 581 (Pa. Super. 1985) the court imposed a constructive trust against a second wife of a decedent who received insurance proceeds which should have gone to the children of the first wife. While the court found the second wife to be a passive and innocent party, the court still found her rights to be subordinate to the children. The *Torchia* case stated:

Even though the widow was a passive and innocent party, her rights were subordinate. It would have been unjust to allow her to retain the proceeds of the policy in preference to the children. At p. 584.

In this case Mrs. Reighard’s conduct is not so passive and innocent. Likewise, her husband has benefitted from her conduct. Mrs. Reighard’s husband was in fact instrumental in getting the two half-sisters to agree to allow Mrs. Reighard to administrate the estate of their father.

Mrs. Reighard's stipulation to judgment in 2005 defeats and waives any arguments that Petitioner has been untimely in making her claim against the estate.

The money knowingly deposited by Mrs. Reighard into her joint marital account from decedent's estate should be considered to include a constructive trust in favor of Petitioner's claim against her father's estate.

For this reason the following Order is entered.

ORDER

AND NOW, this _____ day of November 2007, the Court hereby **ORDERS** and **DIRECTS** as follows:

Petitioner's Petition is granted. Respondent shall refund to the Petitioner \$30,867 plus interest at the rate of 6% per annum from July 28, 2005 through the time the Petitioner's claim is paid. The money from the Estate of Philip D. Amoroso, which Respondent deposited in the joint savings account of herself and her husband, is deemed to be subject to a constructive trust in favor of Petitioner. This judgment may be collected, if necessary, against the joint or marital assets of Respondent and her husband.

The payment of the aforesaid monies, or a reasonable payment schedule to repay the monies, shall be accomplished within 60 days of the date of this Order.

By the Court,

Kenneth D. Brown, President Judge

cc: Ryan M. Tira, Esq.
Malcolm S. Mussina, Esq.
Hon. Kenneth D. Brown
Judges
Gary L. Weber, Esq. (Lycoming Reporter)