

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: :
ESTATE OF MARY J. CHELENTIS : **No. 41-07-0484**
: **ORPHANS COURT DIVISION**

OPINION AND ORDER

Before this Honorable Court, is the Executor's Motion to Dismiss Objection and Compel Answers to Interrogatories filed on August 22, 2008. Argument on the Petition was held on September 30, 2008.

Background

Mary J. Chelentis (Decedent) executed her Last Will and Testament (2005 Will) on March 11, 2005. The will provided that if the Decedent's husband predeceased her, then each of her six children shall receive an equal one-sixth ($1/6^{\text{th}}$) of the residuary of the estate.

On May 29, 2007 the Decedent executed a second Last Will and Testament (Will) which revoked all prior Wills and Codicils. This Will provided that the residuary of the Decedent's estate was to be divided into six equal shares to be distributed outright to five of her six children, with the one-sixth ($1/6^{\text{th}}$) intended for George Chelentis (Petitioner) to be held in Trust with Michael J. Chelentis as Trustee. The Trustee was to pay Petitioner equal monthly installments on the first day of each month for the duration of his life or until the one-sixth ($1/6^{\text{th}}$) share has been exhausted. The amount of the payments was to be determined by the Trustee in his discretion. If any money is remaining upon the Petitioner's death, the Trustee is to distribute the remaining principal and income to the Decedent's then living children and any issue of any deceased children, per stirpes.

Petitioner filed a Petition for the Court to issue a Citation to challenge the Last Will and Testament dated May 29, 2007, that was admitted to probate. Petitioner alleges in the Petition that the Decedent was not capable of disposing her Estate by will due to her physical and mental condition and that the Will was procured by the undue influence, duress and constraint of Trustee.

Following the filing of the Petition, Trustee and Tula Avlonitis as Co-Executor's of the Decedent's estate served Interrogatories and Request of Production of Documents upon Petitioner. Petitioner objected to each Interrogatory and Request for Production of Documents arguing that the discovery sought is irrelevant and immaterial, will cause unreasonable annoyance, embarrassment, oppression, burden, and expense, and is not reasonably calculated to lead to the discovery of admissible evidence. Executors filed a Motion to Dismiss Objection and Compel Answers to Interrogatories. Executors allege the discovery requests are an attempt to ultimately obtain admissible evidence which would explain and justify why the Decedent changed her Will to place Petitioner's share in Trust rather than bequeathed to him outright.

Discussion

Under Pennsylvania Rule of Civil Procedure 4011, “[n]o discovery or deposition shall be permitted which . . . (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party . . .” Nothing in this opinion shall be construed as a bar to the allowance of discovery if the matters sought are relevant to the issue of the cause. According to the Pennsylvania Supreme Court, “[w]hile ‘fishing expeditions’ are not to be countenanced under the guise of discovery, requests for discovery must be considered with liberality as the rule rather than the exception.” In re Estate of Thompson, 416 Pa. 249, 261 (Pa.

1965). See also Estate of Townsend, 430 Pa. 318, 321 (Pa. 1968) (finding no abuse of discretion when the Orphans' Court disallowed a demand for sweeping discovery that amounted to a "fishing expedition.")

After review of the Interrogatories and Request for Production of Documents, the Court finds that the requested discovery will not lead to admissible and relevant evidence. Executors have alleged the requested information is well known among the family and therefore, the Court can find no reason to require the Petitioner to provide the requested documents. The Court believes that while requiring the Petitioner to produce the requested documents would be cheaper for the Executors it would also place an unreasonable burden on the Petitioner. The Court also believes that some of the Interrogatories and Request for Production of Documents cover a very broad period of time which is nothing more than a "fishing expedition." As such, the Court finds the information requested would cause unreasonable annoyance, embarrassment, oppression, burden, and expense to Petitioner. Therefore, Executor's Motion to Dismiss Objection and Compel Answers to Interrogatories shall be denied.

ORDER

AND NOW, this _____ day of October 2008, it is hereby ORDERED and DIRECTED that the Executor's Motion to Dismiss Objection and Compel Answers to Interrogatories is DENIED.

By the Court,

Nancy L. Butts, Judge

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