IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE:	**: ORPHANS' COURT DIVISION**
	:
ESTATE OF WELLARD R. GUFFY	**: 41-12-0298**
	: Motion for Surcharge

OPINION AND ORDER

Before the Court are two motions filed on April 1, 2016 by Petitioners Margaret Stryker and Dennis Stalker. The first motion is a Motion for Surcharge or Adjustment. The second is a Motion for Summary Judgment.

A hearing on the motions was held on May 25, 2016. Following the hearing and in accordance with the Court's directive, the parties filed their respective briefs.

In their Motion for Surcharge, Petitioners request that the Court enter an Order surcharging William Colyer in the amount of $95,819.37 or in the alternative, withholding said amount from Mr. Colyer's share of future distributions from the trust.

In their written motion, Petitioners assert that contrary to the wishes of Wellard R. Guffy, Mr. Colyer "failed or refused" to change ownership and beneficiary designations with respect to five different life insurance policies. Petitioners further assert that Mr. Colyer's "action or inaction "constituted a breach of his fiduciary duty as agent under power of attorney for Mr. Guffy, to the detriment of the trust beneficiaries."

Following the hearing, however, Petitioners' assertions changed.

Petitioners now argue that "the gravaman" of their position is that a confidential relationship existed between Mr. Colyer and Mr. Guffy when the trust documents were signed by Mr. Guffy on December 27, 2011. Therefore, petitioners argue that he had a duty to carry out Mr. Guffy's alleged wishes to transfer the ownership and beneficiaries of the policies to the trust.

Regardless of what position Petitioners advance, under the circumstances, a surcharge shall not be allowed. Mr. Colyer had no duty to act either as agent or because of any alleged confidential relationship.

By way of background, Wellard Raymond Guffy died on February 10, 2012. He had executed a Last Will & Testament dated December 27, 2011. Pursuant to his Will, he devised all of his estate to the co-trustees named and appointed under the declaration of trust known as the Wellard Raymond Living Trust, also dated December 27, 2011. Pursuant to his Will, he named Mozelle Snyder to be executor. He noted that if she was unable or unwilling to serve, Mr. Colyer, would be the named executor.

Pursuant to a written financial power of attorney dated February 3, 2010, Mr. Guffy appointed both Mr. Colyer and Mozelle Snyder as his attorneys in fact. Mr. Guffy wanted both Mr. Colyer and Ms. Snyder to serve as his financial power of attorney. At the time Mr. Guffy signed the financial power of attorney, his mind was apparently good. According to Mr. Colyer, he had no problems in terms of memory or being influenced by other people. For the most part, he was firm in his

opinions.

Despite Mr. Colyer being named financial power of attorney for Mr. Guffy, Mr. Guffy continued to handle his own financial affairs. Mr. Colyer never used the financial power of attorney and was not aware of Ms. Snyder ever using her power of attorney.

Mr. Guffy also had life insurance policies on his own life. He did not want them to be put in the trust. The only two beneficiaries were his sisters, Ethel and Pearl. Pearl was the beneficiary for the vast majority of the life insurance proceeds. Mr. Guffy was clear in his intent that the insurance policies not go into the trust. According to Mr. Colyer, he never saw any document titled "Bill of Transfer." He did, however, believe that he sent out assignment letters to the life insurance companies.

According to Mr. Colyer when it came time to sign all of the legal documents including the Will and Trust, he made arrangements with Mr. Guffy. Mr. Colyer traveled to Williamsport and the documents were signed on December 27, 2011.

Prior to signing the documents, Mr. Colyer returned Mr. Guffy's Will. Mr. Guffy opened up the book and went through it page by page, line by line, to make sure that the documents mirrored the Will.

Regarding page 12 or what had been previously referenced as "Schedule A", looking through the binder, he found it "back in the financial section" out of place. He did not know how it got there because once it was signed, Mr. Guffy

took it home and it was "his."

There were forms to be sent to the life insurance company. Mr. Colyer had no idea what happened to those forms. He does not know why they were ever signed. Apparently, the documents were eventually signed by Mr. Guffy but never sent. These matters were never discussed with Mr. Colyer and he had nothing to do with it. As he explained, "you didn't make him do anything. He did what he determined what he wanted to do in his mind."

Mr. Colyer was aware that Mr. Guffy never notified any of the life insurance companies to change their beneficiaries. The beneficiaries were his two sisters, Ethel and Pearl. More specifically, and contrary to his estimated percentages, Pearl was to receive $85,000.00 and Ethel was to receive $5,000.00.

In an Opinion and Order of this Court dated September 11, 2015, this Court expressed serious doubts regarding Mr. Colyer's credibility. The Court noted that it made no sense that after being appointed Mr. Guffy's financial power of attorney, Mr. Guffy failed to discuss any of his financial decisions with Mr. Colyer.

With respect to the life insurance policies, the Court noted that there was a clear conflict of interest with respect to Mr. Guffy continuing to serve as executor and/or trustee. On one hand, the Court noted that the evidence was arguable that Mr. Guffy never intended to change the beneficiaries in his life insurance policies. He chose not to sign the forms needed to do so. He signed the estate and trust documents he wanted to sign and did not sign the ones that he did not want to sign.

On the other hand, the circumstances surrounding "schedule A" suggested otherwise. First, the schedule was specifically addressed in the trust documents. Second, it directed that the life insurance proceeds be placed in the trust. Further, the bill of transfer arguably supported the proceeds going into the trust. Lastly, the misplacement of "Schedule A" with respect to the binder documents was highly suspicious.

Despite these findings, the Court agrees with Mr. Colyer that said findings do not in and of themselves establish that a surcharge is appropriate. The fact that the Court found that he should be removed from his positions does not lead to the conclusion that he must be surcharged for the life insurance policies.

As the parties previously conceded, to warrant a surcharge, some affirmative act and some element of self-dealing was necessary. As argued by Mr. Colyer, taking into consideration all of the evidence, it is insufficient to support a surcharge. In fact, the evidence appears to be equally balanced. The Court cannot say that greater than not, Mr. Guffy elected to change the beneficiaries and that Mr. Colyer failed to do so. It is equally likely that Mr. Guffy elected not to change the beneficiary designations on his life insurance policies when the time came for him to sign the forms to do so.

Of substantial significance to the Court is the fact that on September 27, 2011, Mr. Guffy clearly signed documents transferring brokerage, financial and bank accounts to the trust. Yet, he did not sign any similar documents with respect to

the life insurance policies. Of significance as well is that the proposed forms with respect to the life insurance policies only purported to change the beneficiary and nothing else. His failure or refusal to sign such is strong evidence of his intent.

Moreover, Mr. Colyer advances a very strong argument concerning the circumstances in which the documents were signed. The documents were delivered to a public place in Pennsylvania to be signed by a disinterested notary and a disinterested housekeeper as witnesses. Had Mr. Colyer wanted to take advantage of Mr. Guffy, there were sufficient opportunities to do so outside the presence of these disinterested individuals. The fact that the documents were executed in the presence of others at the bank points to the regularity of their execution.

Moreover, the Court cannot ignore Mozelle Snyder's role in all of this. She was a trusted confidant of Mr. Guffy. Had she believed that Mr. Guffy intended to change the beneficiary of his life insurance policies to his newly created trust, she certainly would not have submitted a claim form for the proceeds to go to one of Mr. Guffy's sisters.

Furthermore and addressing the confidential relationship argument, there was no testimony or evidence whatsoever that Mr. Colyer took advantage of the confidential relationship for his own gain. As Mr. Colyer argues, "the evidence introduced showed that Captain Guffy as far back as 1965 showed a clear preference to name his wives and then his sisters as his beneficiaries of his military insurance policy. Several of the beneficiary changes were in the form of letters sent by Captain

Guffy directly to the insurance companies showing that Captain Guffy was well aware of how to change a beneficiary designation and the importance of what a change of beneficiary means. The most recent change by Captain Guffy occurred on November 19, 2011, again showing a preference for his sisters. It is telling that most of the changes were made following the death of one of the previous named beneficiaries."

As Mr. Colyer also argues, there is no evidence of self-dealing. All of the beneficiary designations that were in effect at the time of Mr. Guffy's death were designations made by Mr. Guffy himself. "No one acted other than Captain Guffy to make those designations, most of which were made in 2009 before either the power of attorney was executed. While the existing beneficiary designations did result in Mrs. Colyer receiving $91,017.10 and Ethel Lucas receiving $5,148.96 directly from the insurance benefits, there is no testimony on how this somehow was a benefit to Mr. Colyer. While his mother may have received those benefits, there is no testimony that this became a benefit of Mr. Colyer."

As well, "the testimony at the earlier hearings established that a portion of this amount was effectively used by Mrs. Colyer to satisfy the mortgage of Ethel Lucas, Pearl Colyer's only surviving sibling at the time. Adjusting for this amount, Pearl Colyer received 55% of the insurance benefits and Ethel Lucas received the remaining 45% of the insurance benefits."

Had Mr. Guffy elected to change his beneficiaries of his life insurance to his trust, Mrs. Colyer would have received 17% of those benefits and William

Colyer and his brother Donald would have received 14% each, or a total of 45% going to the "Colyer family" while 17% would have gone to Ethel Lucas.

Accordingly, a surcharge will not be awarded.

The next issue concerns petitioner's claim that the prior distribution to the remaining heirs was improper after the one heir died. The Court in its April 11, 2016 Order directed that the parties submit a brief in support of their respective positions. The Court indicated that it would defer a decision.

Petitioners filed a "Motion for Summary Judgment" arguing that as a matter of law, judgment should be entered in their favor and it should be ordered that the share of any trust beneficiary who survived Mr. Guffy would be unaffected by that beneficiary's subsequent death, and that said beneficiary's share of the trust should be paid to his or her estate.

More specifically, the petitioners "seek a determination by the court as to whether the estate of any beneficiary who survived Wellard Guffy but later died during the administration of the estate and trust should continue to receive that deceased beneficiary's share of the trust, consisting of annual annuity payments." (Motion for Summary Judgment, paragraph 5).

Each party claims, properly so, that this court must determine the intent of Mr. Guffy with respect to this issue. ***In the matter of Estate of McFadden***, 100 A.3d 645 (Pa. Super. 2014).

Paragraph six of the trust entitled "Beneficiaries" specifically notes that

"on the death of the grantor, the trustee shall allocate or distribute the remaining trust property to the beneficiaries named below." Each of the beneficiaries is specifically named and each beneficiary's percentage is specifically set forth. As well, the relation of each named individual to Mr. Guffy is also set forth.

Paragraph seven notes that if at any time before full distribution of the trust property "all of the beneficiaries are deceased…the remaining portion of the trust property will then be distributed to the grantor's heirs at law…."

Notwithstanding any other provision in the trust, paragraph eight directs that: "If any of the above beneficiaries predeceases me, that percentage designated will be prorated on a percentage basis to the surviving beneficiaries."

Petitioners argue that because the trust was revocable, the beneficiaries' respective interests in the trust did not vest until the time of Mr. Guffy's death. This argument however misses the point.

Reading paragraphs 6, 7 and 8 together, the Court concludes that Mr. Guffy specifically intended that a certain percentage of his estate would go to a named beneficiary. Further, the language in paragraph 8 while not dispositive certainly is persuasive evidence that Mr. Guffy wanted his trust proceeds to go to named individuals instead of unknown individuals. He specifically noted that if a beneficiary predeceased him that percentage designation would be prorated on a percentage basis to the surviving beneficiaries.

As Mr. Colyer cogently argues, Mr. Guffy did not want the extended

family of his "heirs at law" to share in his trust assets until all of his named beneficiaries were deceased showing a clear preference for those named in the trust over any unnamed individuals. "A preference for his named beneficiaries over his own extended family members that would constitute his heir at law cannot be clearer."

Mr. Guffy clearly intended that his named beneficiaries would receive from the trust their percentage amount and their right to receive from the trust would end only when all of them were deceased. Clearly there was a preference for the named beneficiaries over "unknown others."

ORDER

AND NOW, this ____day of July 2016, the Court denies Petitioners' Motion for Surcharge. The Court also denies Petitioners' Motion for Summary Judgment. The Court concludes that a construction of the declaration of trust is such that the percentage designated for a beneficiary who died after Mr. Guffy be prorated on a percentage basis to the surviving named beneficiaries and not to the deceased beneficiary's heirs at law.

By The Court,

_____

Marc F. Lovecchio, Judge

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