

appeal the decision, as he is an intestate heir of the above captioned Estate and has a pecuniary interest in the Estate. IN RE ESTATE OF SIDLOW, 543 A.2D 1143 (1988) (party must have interest in order to challenge grant or denial of letters to administer decedent's estate); IN RE LUONGO, 823 A.2D 942 (PA. SUPER. 2003) (whether an heir-at-law of decedent had standing to appeal the probate decree, when the heir-at-law was not a beneficiary under decedent's probated will, but was a named successor trustee under a prior will).

This matter now reaches the Orphans' Court as it has jurisdiction over appeals from the decisions of the Register of Wills. 20 PA.C.S. § 908. APPEALS.

Factual Background

On March 25, 1999, Myrtle Lapp, deeded her residence at 2269 Sylvan Road, South Williamsport, PA, Lycoming County for the consideration of \$1, to her three sons: Shane Lapp, Sr., Randy Lapp, and Paul Lapp. Each has 1/3 ownership of the real property.

Shane Lapp, Sr. (Decedent) died on June 18, 2016. At the time of his death, he resided at the above-described residence, with his mother, Myrtle Lapp, and his brother, Randy Lapp. He died without a will (intestate). Three sons survive Shane Lapp, Sr.: Shane Lapp, Jr., Steven Lapp, and Andrew Lapp.

The Estate of Shane Lapp, Sr. has an estimated amount of \$6,000 in personal property and 1/3 property interest in the above real property (estimated value of 1/3 portion is \$36,000).

Randy Lapp (Decedent's brother) petitioned the Register of Wills of Lycoming County for a grant of letters of administration. After a hearing on the matter, the

Register of Wills granted letters to Randy Lapp. The intestate heir Steven Lapp, son of Decedent, appeals from the decision of the Register of Wills.

Discussion

What is the Orphans' Court standard of review in appeals from the decision of the Register of the Wills?

In will contests, the Orphans' Court standard of review is *de novo*. In appeals regarding deviation from the order of preference in granting letters of administration, the Orphans' Court standard of review is for an abuse of discretion. 1-II REMICK'S PENNSYLVANIA ORPHANS' COURT PRACTICE § 2.09 (2016).

Section 908 of the Probate, Estates and Fiduciaries Code provides that

Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree:...

Petitioner's Counsel argues that Section 776³ guides the instant matter and that a *de novo* hearing is required. The Court disagrees, finding that Section 776 governs Will Contests and requires that substantial dispute of facts exist in order to grant a jury trial. The instant matter is not a will contest. Decedent had no will. The dispute is over whether good cause was shown for deviating from the order of preference in granting letters. After review of the findings below, the Court finds that the requisite good cause was shown and that the Register correctly applied the law to the facts.

³ 20 Pa.C.S. § 776. **Testimony in proceedings removed from register.**

On appeal from the register, or in a proceeding removed from the register, the orphans' court division may find, upon the testimony taken before the register, that a substantial dispute of fact exists and grant a jury trial. When upon the testimony taken before the register a jury trial is not granted, the division shall hear the testimony *de novo* unless all parties appearing in the proceeding agree that the case be heard on the testimony taken before the register. In any event, the division may require witnesses already examined and other witnesses to appear before it. The division, in its discretion, may impanel a jury at any stage of the proceedings.

The Register specifically found that Steven Lapp was a person not qualified to be entrusted with the administration of the estate. 20 PA.C.S. § 3156. PERSONS NOT QUALIFIED.

It is the register who has the authority and duty to issue letters. 711(12), 901, 3155(a), (b). When doing so, the register has some degree of discretion in selecting the appointee. However, that discretion must be exercised within the strictures of 20 Pa.C.S.A. § 3155. More specifically, the register can exercise discretion only within the class of entitled persons and cannot, without good cause, deviate from the order of appointment set forth in the statute.

IN RE ESTATE OF TIGUE, 926 A.2D 453, 456 (PA. SUPER. 2007) (INTERNAL CITATIONS OMMITTED).

The Register found the testimony regarding the threats of arson to the real property that is primary at issue here to be credible. Findings of Fact, 2/10/2017. All three of Decedent's intestate heirs testified at the preceding as well and the Register did not find them credible. *Id.* Because Steven Lapp has threatened to destroy the property to which he would be a fiduciary of if granted letters, the Register of Wills was correct in her decision making. The Register in her capacity as a judicial officer heard testimony and made a decision. When sitting as a judicial officer, the decisions of the Register of Wills will not be disturbed absent a finding that the Register abused her discretion or made an error of law. *Id.* at 456. The Orphans' Court finds no such misapplication here.

ORDER

AND NOW, this 21st day of February, 2017, the Register of Wills' appointment of Randy Lapp, as personal representative of Decedent's estate, is hereby AFFIRMED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Joseph Orso, Esq. Petitioner's Counsel
Scott Williams, Esq. Respondent's Counsel
Gary Weber, Esq. Lycoming Law Reporter
Law Clerk (work file)