

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: :
ESTATE OF EDITH J. O'CONNELL : **No. 41-07-0431**
Deceased : **ORPHANS COURT DIVISION**
:

OPINION AND ORDER

Before this Honorable Court, is the Executrix's Petition for Declaratory Judgment and Citation filed on May 1, 2008. Argument on the Petition was held on September 30, 2008.

Background

On August 7, 2007, Keith Wood (Wood) of Thrivent Financial went to the home of his client, Edith J. O'Connell (Decedent). The Decedent and her niece, Betty J. Smith (Smith) were present when Wood arrived. The Decedent requested the money from her annuity contract be transferred to Smith in order for her to pay for home care bills and to pay her for all she had done for the Decedent. Wood asked the Decedent several questions and believed the Decedent to understand the consequences of the transaction. Wood related the Decedent tried to write her signature on the signature pad attached to his computer but her hand was unsteady. Instead, Smith, who was appointed as Power of Attorney (POA) on September 13, 2002 signed for the Decedent. Wood also believed from his office that Smith had the authority to sign for Decedent with her POA. Wood then signed as a witness and processed the transaction. The money was transferred to the Decedent's M & T bank account on August 8, 2007.

Smith testified she was with the Decedent on August 7, 2007. She related that the Decedent knew she was getting very sick and did not want to go into a home. Smith told the

Decedent she would take care of her as long as she (Smith) could afford it. The Decedent then told Smith she could take money out of the Thrivent account to pay for the home care and to keep what was left because "I can never repay you for what you've done." Smith related that the Decedent was competent the entire time Wood was present and that she signed for the transaction as POA. Smith testified that after the money was transferred to the Decedent's M & T account she transferred the money to her own M & T account because she knew the POA would end when the Decedent died and the Decedent wanted her (Smith) to be able to pay the bills. Smith also testified she had been paying Decedent's bills with Decedent's account and did not need to open up another account to do so.

Michelle Carpenter testified that she is the granddaughter of the Decedent. Carpenter related her grandmother went into Hospice care on August 7, 2007 and died on August 11, 2007.

William Miele, the Decedent's attorney, testified that about a week before August 6, 2007 he was contacted by Smith. As a result of the call, he met with the Decedent in the hospital, who requested that he make major changes to her will; the proposed changes included making Smith the beneficiary of her Thrivent account and the sole beneficiary of the Decedent's house. Miele related the Decedent wished to make changes to her will because Smith had helped her over the years by running errands, cleaning, and taking care of her. At the time, Miele found the Decedent to be competent, was comfortable the changes were in fact what the Decedent wanted, and had no doubt it was her decision. Smith was present when Miele spoke with Decedent.

On August 6, 2007, Miele along with his law partner, Edward Rymsza, Esquire and Mary Allen Kelly went to the Decedent's home. All three testified they felt on that day the Decedent was not competent to execute the will. Miele related the Decedent's answers were not responsive and not consistent. Miele explained he could see a contrast between the Decedent on that day and

the day he went to the hospital. Miele explained he was not comfortable allowing her to sign the will that day.

Discussion

Petitioner asserts that regardless of the Decedent's intent, the transfer to Smith was not valid as the POA does not give her gifting powers. In response, Smith argues the POA did allow her to satisfy debts. In support, she asserts that the Decedent's intent was for her to get the money to pay for the Decedent's care and to compensate her.

Paragraph Two of the Power of Attorney executed in this case provides:

To deposit any moneys which may come into her hands as such agent with any bank or banker, either in my or her own name, and any of such money or any other money to which I am entitled which now is or shall be so deposited to withdraw as she shall think fit; to sign mutual savings bank and federal savings and loan association withdrawal orders; to sign and endorse checks payable to my order and to draw, accept, make, endorse, discount, or otherwise deal with any bills of exchange, checks, promissory notes or other commercial or mercantile instruments; to borrow any sum or sums of money on such terms and with such security as she think fit and for that purpose to execute all notes or other instruments which may be necessary or proper; and to have access to any and all safe deposit boxes registered in my name.

Paragraph Ten provides:

In general to do all other acts, deeds, matters and things whatsoever in or about my estate, property and affairs and things herein, either particularly or generally described, as fully and effectually to all intents and purposes as I could do in my own proper person if personally present, giving to my said agent power to make and substitute under her an agent or agents for all the purposes herein described, hereby ratifying and confirming all that the said agent or substitute or substitutes shall do therein by virtue of these presents.

A gift is defined as “[t]he voluntary transfer of property to another without compensation.”

Black's Law Dictionary 709 (8th ed. 2004).

The Court finds based upon the testimony the Decedent's intent was clear that Smith was to receive the money from the Thrivent account. The testimony clearly shows that Miele was

asked to change the Decedent's will in order for Smith to be the beneficiary of the Thrivent account and to also receive the Decedent's house. Miele's testimony also establishes the Decedent's intent was partially to satisfy a debt, or future debts incurred on Decedent's behalf and was partially a gift. Most persuasive was the testimony of Wood, the Thrivent Representative, who took specific precautions the day he met with Decedent and Smith to insure his was her true desire. His testimony along with Miele's established a desire to reimburse Smith as well as compensate her for her care in Decedent's last days. Therefore, the Court finds that the transfer of the Thrivent account to Smith was valid.

ORDER

AND NOW, this _____ day of October 2008, after hearing and this Court's determination that the transfer of the Thrivent account was valid, it is **ORDERED** and **DIRECTED** that the Executrix's Petition for Declaratory Judgment and Citation is hereby **DENIED**.

By the Court,

Nancy L. Butts, Judge

xc: Melody L. Hanisek, Esq.
Michael A. Dinges, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)