

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ESTATE OF WILLIAM E. FINK

: No. 41-18-0386  
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:  
: ORPHANS' COURT  
: DIVISION  
:  
: *Petition for Payment of*  
: *Attorney's Fees*

**DECREE**

On August 27, 2019, Joanne L. Fink ("Respondent") filed a Petition for Payment of Respondent's Attorney's Fees Pursuant to 42 Pa.C.S.A. § 2503(7) and (9) ("Petition").<sup>1</sup> The Petition seeks reimbursement in the amount of \$21,120 from James S. Fink, Deborah E. Corter, and Shawn W. Fink ("Petitioners") for costs expended defending against the Petitioners' contest of William E. Fink's Will of October 9, 2017 ("2017 Will"), admitted to probate on July 19, 2018. The Petition alleges that the Petitioners acted in an bad faith by commencing and pursuing the will contest even after becoming aware that William E. Fink had two previous wills (respectively "2014 Will" and "2013 Will") that did not name Petitioners as beneficiaries. The existence of the 2013 and 2014 Wills established that the Petitioners were not parties in interest and therefore lacked standing to challenge the 2017 Will.<sup>2</sup> The Petition also alleges that Petitioners' delay in filing an appeal from probate demonstrated dilatory, obdurate, and vexatious behavior worthy of sanction. The Petition further alleges that the Petitioners'

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<sup>1</sup> 42 Pa.C.S.A. § 2503(7),(9) ("The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter: . . . (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter . . . (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.").

<sup>2</sup> See *In re Estate of William E. Fink*, 41-18-0386, Decree: 20 Pa.C.S. § 908 Jurisdictional Question (July 22, 2019) ("July 22<sup>nd</sup> Decree").

purpose in appealing this matter and in protracting proceedings was to avoid liability on two promissory notes outstanding to the Decedent's Estate. Following argument on the Petition held on October 11, 2019, the Court hereby issues the following DECREE.

The Court first notes that while it ultimately dismissed Petitioners' appeal after determining that they lacked standing to contest the 2017 Will, the mere fact that the Petitioners' appeal was unsuccessful is not in itself a basis for awarding fees:

Section 2503(9) serves not to punish all those who initiate legal actions that are not ultimately successful, or which may seek to develop novel theories in the law, as such a rule would have a chilling effect on the right to bring suit for real legal harms suffered. Rather, the statute focuses attention on the conduct of the party from whom counsel fees are sought and on the relative merits of that party's claims.<sup>3</sup>

To the contrary, the imposition of sanctions are limited to claimants "who knowingly raise, in bad faith, frivolous claims which have no reasonable possibility of success, for the purposes of harassing, obstructing, or delaying the opposing party."<sup>4</sup> However, the imposition of attorney's fees as a sanction does not always require actual knowledge that a claim is frivolous. In *In re Estate of Liscio*, the Pennsylvania Superior Court imposed joint and several liability upon an attorney and his client after the Court found that the attorney knew or *should have known* that his client's claim was without merit.<sup>5</sup>

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<sup>3</sup> See *Dong Yuan Chen v. Saidi*, 100 A.3d 587, 592 (Pa. Super. 2014), reargument denied 100 A.3d 587 (Nov. 6, 2014); see also *Dooley v. Rubin*, 618 A.2d 1014, 1018 (Pa. Super. 1993) ("[T]he intent of the rule permitting the recovery of counsel fees is not to punish all of those who initiate actions which ultimately fail, as such a course of action would have a chilling effect upon the right to raise a claim.").

<sup>4</sup> *Dooley*, 618 A.2d at 1018.

<sup>5</sup> See *In re Estate of Liscio*, 638 A.2d 1019, 1022 (Pa. Super. 1994). *In re Estate of Liscio* similarly involved an appeal from probate. Petitioner Mary DiPerna, who had been adopted at birth but was the natural daughter of the decedent, John Liscio, attempted to challenge the validity of the adoption so that she might inherit from the decedent's estate. The Superior Court found that Ms. DiPerna's counsel knew or should have known that his basis for challenging the adoption – that the decedent was not present at, or aware of, the adoption proceedings – had no legal foundation, as notification to the father was not required in 1950, the year the adoption took place. The Superior Court found that counsel had made a

The Court is satisfied that Petitioners were unaware of the standing issue prior to the point that the Court raised the issue *sua sponte* in its May 6<sup>th</sup> Decree.<sup>6</sup> The Court must then address whether Petitioners, through counsel, *should have known* that they lacked standing, either at the point that they filed the appeal or following the Court's issuance of the May 6<sup>th</sup> Decree raising the standing issue. While the Court concedes that the burden was on Petitioners to establish standing to contest the will,<sup>7</sup> Respondent was entitled to raise the issue of standing through either preliminary objections or a summary motion. They failed to do so. That neither party independently raised the standing issue prior to the Court's issuance of the May 6<sup>th</sup> Decree contradicts Respondent's claim that Petitioners should reasonably have been aware of the issue when filing the appeal.

Respondent further argues that Petitioners' decision to proceed to argument on the jurisdictional issue rather than withdraw the appeal following issuance of the May 6<sup>th</sup> Decree evidences bad faith. In the May 6<sup>th</sup> Decree, the Court ordered the parties to file supplemental briefing on the issue of standing. On June 5, 2019, Petitioners filed Appellants' Brief Regarding Standing ("Appellant's Brief"), which argued that the facts of the instant matter were distinguishable from the case law cited as precedent by the Court in the May 6<sup>th</sup> Decree.<sup>8</sup> Specifically, Appellant's Brief identified that the cases cited by the Court to establish a lack of standing all involved challenges by intestate

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bad faith attempt to apply modern law retroactively at the expense of decedent's estate and issued sanctions jointly and severally on counsel and his client.

<sup>6</sup> See *In re Estate of William E. Fink*, 41-18-0386: Decree: Preliminary Objections: Supplemental Briefing (May 6, 2019) ("May 6<sup>th</sup> Decree").

<sup>7</sup> *In re Estate of Luongo*, 823 A.2d 942, 954 (Pa. Super. 2003) ("A contestant to the validity of a will does not have standing to do so unless he can prove he would be entitled to participate in the decedent's estate if the will before the court is ruled invalid. To be aggrieved by the probate of a will, the contestant's share of the estate must be smaller because of probate or larger if probate is denied.").

<sup>8</sup> *In re Estate of William E. Fink*, 41-18-0386, to Appellants' Brief Regarding Standing 3 (June 5, 2019)

heirs, while in this instant matter Petitioners had evidence of a fourth will executed on September 28, 2006 that named Petitioners as beneficiaries.<sup>9</sup> The Court subsequently received Respondent's Answering Brief to Appellant's Brief Regarding Standing on June 21, 2019, and Petitioner's Reply Brief to Respondent's Answering Brief on July 18, 2019. Following review of the briefs, the Court issued a July 22<sup>nd</sup> Decree dismissing the Petitioners' appeal with prejudice, after determining that the relevant case law "did not narrow [its] reasoning based on the fact that the interest would ultimately be claimed by intestacy."<sup>10</sup>

While the Court ruled against the Petitioners, we cannot say that the Appellant's Brief's proposed distinction between cases involving testate and intestate heirs was wholly without merit or had no reasonable possibility of success.<sup>11</sup> Additionally, once notified of the Court's decision, the Petitioners did not file a further appeal or undertake any additional action to protract the matter. The Court finds that Petitioners did not act in bad faith in filing an appeal in the instant manner, or in continuing to litigate the claim following the Court's issuance of the May 6<sup>th</sup> Decree.

Respondent's third argument is that Petitioners acted in a dilatory, obdurate, or vexatious manner by initially failing to file a proper appeal, prolonging administration of the case. The Court acknowledges that the Petitioners' initial, incorrect filing of a Citation Sur Appeal without an actual appeal petition created procedural confusion that delayed administration of the case. The Court finds that Petitioners' delay in filing an appeal in this matter was the result of mistake rather than deliberately dilatory conduct.

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<sup>9</sup> *Id.*

<sup>10</sup> July 22<sup>nd</sup> Decree at 2 (quoting *In re Estate of William E. Fink*, 41-18-0386, Respondent's Answering Brief to Appellants' Brief Regarding Standing 3 (June 21, 2019)) (internal citations omitted).

Additionally, to the extent that Petitioners filed the appeal within the statutory of limitations,<sup>12</sup> Respondent did not suffer undue prejudice due to the delay.

Finally, Respondent alleges the Petitioners' "vexatious" purpose for litigating this matter was to avoid liability on two promissory notes outstanding to the Estate. The Court acknowledges that the Petitioners' cessation of payments on the notes one month following the death of Decedent provides potential evidence of bad faith. However, as noted in the Petition, this issue was bifurcated into a separate mortgage foreclosure proceeding<sup>13</sup> and the parties eventually reached a settlement agreement that included payment of the attorney's fees of Respondent.<sup>14</sup> The nonpayment of the promissory notes is therefore a collateral matter that is only relevant to the extent that it implicates an impure motive for filing the appeal. After consideration, the Court finds that Petitioners' appeal petition provided sufficient question that the Decedent was not of sound mind or body at the time that he composed the 2017 Will to form a non-frivolous basis for the appeal.<sup>15</sup>

For the foregoing reasons, the Court declines to find that Petitioners filed this appeal in bad faith, or participated in intentionally dilatory, obdurate, or vexatious conduct. Respondent's Petition for Payment of Attorney's Fees is DENIED.

IT IS SO DECREED this 24<sup>th</sup> day of October 2019.

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<sup>11</sup> *In re Estate of Liscio*, 638 A.2d at 1022 (finding a distinction between "weak" claims and "conduct that is arbitrary, vexatious, or in bad faith.").

<sup>12</sup> 20 Pa.C.S.A. § 908(a) ("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.").

<sup>13</sup> See *Joanne Fink EX, et al., v. F&C Real Estate LLC et al.*, CV-19-0461, Complaint (March 20, 2019).

<sup>14</sup> See *In re Estate of William E. Fink*, 41-18-0386, Response to Petition for Payment of Respondent's Attorney Fees 3 (September 9, 2019).

<sup>15</sup> See *In re Estate of William E. Fink*, 41-18-0386, Amended Petition for Citation Sur Appeal from Register in Probating Will (Feb. 5, 2019).

BY THE COURT,

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Eric R. Linhardt, Judge

cc:

Kathy Rinehart, Register & Recorder

Scott T. Williams, Esq., *Perciballi & Williams, LLC*

*429 Market St., Williamsport, PA 17701*

Brittany O.L. Smith, Esq., *Steinbacher, Goodall & Yurchak*

*413 Washington Blvd., Williamsport, PA 17701*

Gary Weber