IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

	: No. 41-18-0386
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IN RE: ESTATE OF WILLIAM E. FINK	: ORPHANS' COURT
	: DIVISION
	:
	: *Preliminary Objections:*
	: *Supplemental Briefing*

DECREE

The issue before this Court concerns an October 9, 2017 will ("2017 Will") admitted to probate on July 19, 2018. Petitioners James Fink, Deborah Corter, and Shawn Fink (collectively "Petitioners"), children of William E. Fink ("Decedent"), are contesting the 2017 Will, which names Decedent's wife, Respondent Joanne L. Fink ("Respondent"), and her sons as beneficiaries.

On March 28, 2019, after argument was held, this Court reserved decision on Respondent's *Preliminary Objections*. Prior to argument, the parties agreed that the Petitioners, as children of Decedent, possessed standing to contest the 2017 Will. Despite this agreement, the Court has become concerned that the issue of standing remains in question and is dispositive. Because 20 Pa.C.S. § 908 standing is an issue that can be raised *sua sponte*,[1] the Court shall request supplemental briefing on this issue from the parties. First, however, the Court will provide its view regarding the current state of the law.

[1] *See In re Estate of Luongo*, 823 A.2d 942, 953–54 (Pa. Super. Ct. 2003), *appeal denied*, 577 Pa. 722 (2003) (noting that when a statute, such as 20 Pa.C.S. § 908, " 'creates a cause of action and designates who may sue' " standing becomes jurisdictional and the court may raise the issue *sua sponte*) (quoting *Grom v. Burgoon*, 672 A.2d 823, 824-25 (Pa. Super. Ct. 1996)).

Under § 908's predecessor, the right to appeal was reserved to an "aggrieved party who has a pecuniary interest in the estate of a decedent."[2] In the 1960s, it was generally held that the appellate right extended to intestate heirs regardless of whether they were beneficiaries under prior wills.[3] The Montgomery Court of Common Pleas in *In re Heffner's Estate* ("*Heffner*") found that a decedent's first cousin had standing as a "party in interest who is aggrieved" under § 908's predecessor.[4] Likewise, the Perry County Court of Common Pleas found similarly in *In re Holtz's Estate* ("*Holtz*").[5] In *Heffner*, the trial court reasoned that the existence of a prior will did not prevent standing, since that prior will had not been contested.[6] As no appellate court had addressed the issue, the trial court determined that standing was present if a "contestant may ultimately benefit."[7]

However, the Pennsylvania Superior Court later diverged from the rationale utilized in *Heffner* and *Holtz*.[8] In *In re Estate of Briskman* ("*Briskman*"), the Superior Court noted that the legislature had failed to include the language "heirs at law" among those permitted to appeal under § 908, despite multiple amendments from 1972 to 1976.[9] The court held that a niece of the decedent (an intestate heir) who was neither a

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[2] Charles W. Frampton, *Partridge-Remick Practice & Procedure in the Orphans' Court Division*, vol. 1, 203 (Matthew Bender & Co. ed. 1975).
[3] *See, e.g.*, *In re Heffner's Estate*, 1967 WL 5834, 43 Pa. D. & C. 2d 365, 369 (Mont. Com. Pl. 1967); *In re Holtz's Estate*, 1963 WL 6253, 30 Pa. D. & C. 2d 396, 402 (Perry Com. Pl. 1963), *aff'd on different grounds*, 222 A.2d 885, 886 n.1 (Pa. 1966).
[4] *In re Heffner's Estate*, 43 Pa. D. & C. 2d at 366-67, 369.
[5] *In re Holtz's Estate*, 30 Pa. D. & C. 2d at 400 ("Likewise we are not concerned with the fact that an heir, such as appellant here, will be compelled to establish the invalidity of another will before he is in a position to actually lay claim to the estate. If there were ten invalid wills of a decedent in existence, there is no sound reason why the law should obstruct his lawful right to die intestate.").
[6] *Id.* at 367. The trial court in *In re Holtz's Estate* expressed this same sentiment. *See* 30 Pa. D. & C. 2d at 400-01 ("The validity of [the prior will] must be determined in a proceeding involving its own probate and, therefore, it cannot be accorded such validity as to deprive appellant of his day in court.").
[7] *In re Heffner's Estate*, 43 Pa. D. & C. 2d at 369.
[8] *See In re Estate of Briskman*, 808 A.2d 928, 932 (Pa. Super. Ct. 2002).
[9] *Id.*

beneficiary under the 1993 will nor the prior 1984 will, but a successor trustee under the 1984 will, did not possess standing to challenge the 1993 will.[10] The Superior Court disagreed with *Heffner's* and *Holtz's* implicit premises that heirs at law could always contest a will, even without beneficiary status.[11] The *Briskman* Court explicitly stated that the niece's interest was "too remote" to allow her to contest the 1993 will's validity.[12] Further, the court buttressed its rationale by noting that even if the niece had a "legitimate interest" in the outcome of the 1993 will, that interest must still be "substantial, direct, and immediate" to grant standing.[13] It held that the niece's interest was substantial, but not direct or immediate.[14] This was because her interest would solidify only if the 1993 will and 1984 will were held invalid, or the 1993 will was deemed invalid and the 1984 will's named trustee was unavailable.[15]

In *In re Estate of Luongo* ("*Luongo*"), the Pennsylvania Superior Court concurred with its decision in *Briskman* to diverge from the rationale in *Heffner* and *Holtz*.[16] After a substantial review of the case law surrounding § 908 standing, the Superior Court determined that a beneficiary under the probated will, but not a beneficiary under two prior wills, could only challenge the probated will in part.[17] In *Luongo*, the decedent's probated 1995 will left his residuary estate to his long-time companion as well as specific monetary bequests to his three children, two grandchildren, and his

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[10] *Id.* at 931-33.
[11] *Id.* at 932.
[12] *Id.* at 933.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *In re Estate of Luongo*, 823 A.2d at 953 & n.4, 955 ("As discussed *infra*, the validity of both [*Heffner* and *Holtz*] has recently been called into doubt by this Court in *In re Estate of Briskman* [. . . .]").
[17] *Id.* at 949, 956, 958-59.

companion's son.[18] Prior to the decedent's probated will, he had executed wills in 1983 and 1987.[19] In both wills, he left his entire estate to his companion.[20]

The *Luongo* Court held that the language in § 908 at the time—"[a]ny party in interest who is aggrieved by a decree of the register . . ."—demanded more than a relationship to the decedent or beneficiary status under the probated will.[21] That is, the petitioner had to show a "pecuniary interest in the estate [that was] aggrieved by probate of the will at issue."[22] The Superior Court refused to grant the decedent's son standing to challenge the 1995 will when the son failed to proffer a "realistic possibility" that the two prior wills would be invalidated and Pennsylvania intestate laws would apply.[23] Nevertheless, the Superior Court granted the son standing to challenge the residuary clause in the 1995 will because he had specifically argued for partial invalidation based on the 1995 will's invalidation provision.[24]

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[18] *Id.* at 949.
[19] *Id.*
[20] *Id.*
[21] *Id.* at 956. An argument could be made that this rule was based on a prior version of § 908 that not only required "party in interest" status, but also "aggrieved" status. However, while the version of § 908 at the time of *Briskman* and *Luongo* utilized the language "[a]ny party in interest who is aggrieved by a decree of the register [. . .]," the language in the current (2006) version of § 908 has not substantially changed. The current version of § 908(a) reads: *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: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months. 20 Pa.C.S.A. § 908(a) (2006) (emphasis added). A plain reading of the statute's use of "*otherwise* aggrieved" after a conjunction implies that the former phrase, "party in interest," concerns one who is primarily aggrieved. 1 Pa.C.S.A. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."); accord Phil. Hous. Auth. v. Pa. Labor Relations Bd., 499 A.2d 294, 297 (Pa. 1985) ("Where the language of a statute is explicit and clear, it has been a long standing principle of this Court not to disturb the plain meaning of that language by resorting to the rules of statutory construction.").
[22] *Id.*
[23] *Id.* at 958. The Superior Court specifically stated its analysis was an "entirely legitimate" exercise in determining whether the son had a "practical possibility of an aggrieved interest" in the current proceedings, as the court was not "passing on the validity of those wills." *Id.*
[24] *Id.* at 959.

The following rule emerges from *Luongo*—an heir who claims an intestate share is not an aggrieved party in interest with standing to appeal unless the intestate heir can show a "practical possibility" that he or she will be able to acquire that intestate share.[25] Yet, this rule has been abrogated. More recently, the Pennsylvania Superior Court limited its holdings in *Briskman* and *Luongo*. The Superior Court In *In re Estate of Swenson* ("*Swenson*") held that the decedent's nieces lacked standing to challenge the 2009 will when they were not beneficiaries under the will and would have to invalidate three prior wills, which the nieces were also not beneficiaries under, in order for the laws of intestacy to be applicable.[26] Echoing *Briskman*, the Superior Court in *Swenson* found such interest "too remote," as well as not direct or immediate even if the nieces possessed a legitimate interest.[27] Importantly, the Superior Court proceeded further than *Briskman* by affirming the trial court's denial of the nieces' will contest without ruling on whether they "set forth grounds" that the previous wills were products of undue influence.[28]

Moreover, in an extension of *Swenson*, the Superior Court affirmed a Philadelphia County Court of Common Pleas's decision that denied standing even though the petitioners were bequeathed five dollars each in the prior will.[29] As summarized by the Court of Common Pleas:

> [A]n intestate heir lacks standing under 20 Pa.C.S. § 908(a) to challenge a will if a successful challenge to that will would revive a prior

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[25] *Id.* at 958; *accord In re Dupont*, 2011 WL 9975050, at *1 (Del. Com. Pl. Nov. 01, 2011). *Luongo* also stands for the proposition that a beneficiary under a probated will may partially challenge its validity; however, Petitioners have not alleged partial invalidity here. *In re Estate of Luongo*, 823 A.2d at 958.

[26] *See In re Estate of Swenson*, 2014 WL 10889531, at *1, 4 (Pa. Super. Ct. Aug. 1, 2014), *appeal denied*, 630 Pa. 744 (2015).

[27] *Id.* at 4.

[28] *Id.* at 1, 4.

[29] *See Estate of Gordon*, 2017 WL 5483250, at *1 (Pa. Super. Ct. Nov. 15, 2017), *appeal denied*, 186 A.3d 943 (Pa. 2018).

> will under which the heir had no interest, even if the heir planned to challenge that will too, because the heir's interest "is too remote" at that point.[30]

The Superior Court in *Estate of Gordon* found the *de minimis* five-dollar sum to be equivalent to a zero dollar disinheritance and; thus, the petitioners were neither aggrieved parties in interest nor possessed a "substantial interest" under *Briskman*.[31] In so finding, the Superior Court diverged from *Briskman*, and its progeny, and did not consider whether the petitioner would be able to successfully challenge prior wills. Thus, as the Court interprets *Swenson* and *Gordon*, a petitioner must show a substantially aggrieved interest in the immediately preceding will,[32] or that Pennsylvania's intestate laws will apply following the invalidation of the current will.[33] The Superior Court's restriction of *Briskman*, and its progeny, strikes this Court as originating from deference for a decedent's expressed wishes.

In the present case, Petitioners' focus is the probate of the 2017 Will.[34] Likewise, Petitioners' claim is an intestate one, as they allege they are "parties in interest in the estate of the Decedent, entitled as children to a one-half (1/2) interest after the first thirty thousand dollars ($30,000.00) under the intestate laws of the Commonwealth of Pennsylvania."[35] Before the Court are only two wills—the 2017 Will and 2014 Will.[36]

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[30] *Estate of Gordon*, 2017 WL 1303992, at *5 (Phil. Com. Pl. Mar. 20, 2017) (citing *In re Estate of Briskman*, 808 A.2d 928, 933 (Pa. Super. Ct. 2002)).
[31] *Id.* at 6.
[32] *Cf. The Estate of Gralak*, 2014 WL 2921592, at *5 (Phil. Com. Pl. June 24, 2014) (distinguishing *Luongo* and *Briskman* because the appellee "alleged that all known purported wills of Decedent's are invalid").
[33] While not applicable in the present case, *Swenson* interpreted *Luongo* as not preventing standing when only one will stands between the petitioner and Pennsylvania's intestate laws. *See In re Estate of Swenson*, 2014 WL 10889531, at *4 n.2.
[34] Petition for Citation Sur Appeal from Register in Probating Will, ¶¶4-6 (Sept. 4, 2018) (hereinafter "Petition Sur Appeal"); *see also* Amended Petition for Citation Sur Appeal from Register in Probating Will, ¶¶6-7 (Feb. 5, 2019); Appeal from the Register Nunc Pro Tunc (Feb. 5, 2019).
[35] Petition Sur Appeal, ¶3.

Petitioners concede that they have not (yet) challenged the 2014 Will.[37] Decedent bequeathed his estate to Respondent and his stepchildren in both wills.[38] The main alteration between the wills is Decedent changing his assigned alternate executor from Marc F. Demshock to his stepchildren.[39] Hence, it appears that Petitioners' interest is "too remote" as developed by current Superior Court precedent.

Certainly, the Court has not ultimately decided this issue and is receptive to persuasive advocacy; however, at this current juncture, the aforementioned precedent appears to demand dismissal. Therefore, the Court reserves decision on this issue. Petitioners shall file their supplemental opening brief on or before **Thursday, June 6, 2019** and Respondent shall file her supplemental answering brief on or before **Wednesday, June 26, 2019**. Thereafter, Petitioners shall be given an opportunity to file a supplemental reply brief on or before **Friday, July 5, 2019**.

IT IS SO DECREED this 6th day of May 2019.

BY THE COURT,

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Eric R. Linhardt, Judge

cc:

Scott T. Williams, Esq., *Perciballi & Williams, LLC*
Brittany O.L. Smith, Esq., *Steinbacher, Goodall & Yurchak*
Kathy Rinehart, Register & Recorder
Gary Weber, Esq. (Lycoming Reporter)

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[36] Respondent's Preliminary Objections and Motion to Dismiss to Petitioners' Petition for Citation Sur Appeal from Register in Probating Will, Exs. A & E (Sept. 4, 2018) (hereinafter "Respondent's Objections"). During argument, counsel for Petitioners made reference to the possibility that there may be other wills, but evidence of such wills has not been produced.
[37] Response to Preliminary Objections of Joanne Fink, ¶14 (Sept. 20, 2018).
[38] Respondent's Objections, Exs. A & E.
[39] *Id.*