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
	:
	: *20 Pa.C.S. § 908*
	: *Jurisdictional Question*

DECREE

Before this Court is an appeal from the probate of an October 9, 2017 will ("2017 Will"). This matter possesses a convoluted procedural history, as this Court did not possess jurisdiction at the beginning stages because Petitioners James Fink, Deborah Corter, and Shawn Fink (collectively "Petitioners") did not file the actual appeal until February 5, 2019.[1] Alas, the question of jurisdiction has raised its formative head once again. As Petitioners indicate in the first sentence of their supplemental brief, the issue of standing was raised by this Court *sua sponte*.[2] On May 6, 2019, this Court issued a detailed decree (the "May Decree"), which noted its concern that the jurisdictional question of Petitioners' standing had not been adequately addressed.[3] Based on the Court's Wonderlandian research adventures, the Court requested briefing on whether

[1] *See In re: Estate of William E. Fink*, Decree: Motion for Reconsideration 2 (Mar. 25, 2019) (granting reconsideration after Petitioners filed the actual appeal on February 5, 2019). While Petitioners captioned the appeal as "nunc pro tunc," the timeframe of this case was not disrupted.

[2] Appellants' Brief Regarding Standing 1 (June 5, 2019) [hereinafter "Petitioners' Brief"] ("Prior to this date, the standing of the Appellants to contest the Will admitted to probate (the 2017 Will) has not been an issue.").

[3] *See In re: Estate of William E. Fink*, Decree: Preliminary Objections: Supplemental Briefing 1 (May 6, 2019) [hereinafter "May Decree"] (citing *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))).

the Petitioners lacked standing to make an intestate claim after the invalidation of two prior wills—the 2017 Will and 2014 Will.[4]

In an attempt to provide guidance to the parties, the May Decree provided a detailed discussion regarding the precedent underlying standing in will contest matters. Specifically, the Court summarized the current state of the law: "Thus, as the Court interprets *Swenson* and *Gordon*, a petitioner must show a substantially aggrieved interest in the immediately preceding will, or that Pennsylvania's intestate laws will apply following the invalidation of the current will."[5]

Nevertheless, Petitioners argue that based on the existence of a third will, executed on September 28, 2006, which names Petitioners as beneficiaries, *In re Estate of Briskman* ("*Briskman*"), *In re Estate of Luongo* ("*Luongo*"), *In re Estate of Swenson* ("*Swenson*") and *In re Estate of Gordon* ("*Gordon*") are not dispositive.[6] Petitioners focus on the fact that *Briskman* and its progeny concern "heirs at law" seeking intestate shares, not beneficiaries under prior wills.[7] Conversely, Respondent Joanne L. Fink ("Respondent") points out that the Pennsylvania Superior Court did not "narrow [its] reasoning based on the fact that the interest would ultimately be claimed by intestacy."[8]

Further, Respondent attaches the conforming copy of a will dated June 6, 2013 ("2013 Will"), which the law firm McNerney, Page, Vanderlin & Hall (the "law firm") provided to Respondent.[9] The law firm confirmed by electronic mail that it does not possess a photocopy of the 2013 Will, but that the provided copy is a conformed copy

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[4] May Decree at 6.
[5] *Id.*
[6] Petitioners' Brief at 2, Exhibit 1.
[7] *Id.* at 3.
[8] Respondent's Answering Brief to Appellants' Brief Regarding Standing 3 (June 21, 2019) [hereinafter "Respondent's Brief"].
[9] *Id.*, Exs. B, C.

with T. Max Hall, Esq.'s ("Mr. Hall") handwritten alterations indicated in the document.[10] Among those alterations, Mr. Hall crossed out Petitioners' names in the second paragraph, removing them as beneficiaries under the 2013 Will, and wrote "wife's sons or stepsons" in the margin alongside this alteration.[11] The names of Respondent's sons, Ronald J. Shaffer, Jr. and Richard J. Shaffer, remained in the second paragraph.[12] Petitioner James Fink was also crossed out in the fourth paragraph, stripping him of his alternative executor status.[13]

The Court agrees with Respondent. While the Superior Court's analyses in *Briskman* and its progeny concern intestate "heirs at law," the Superior Court did not restrain its analytic cogs to turn on whether the interest concerns the laws of intestacy. Rather, the inquiry is broader. First, a petitioner must establish that he or she has an interest that has been aggrieved.[14] Second, a petitioner must establish that his or her aggrieved interest is "substantial, direct, and immediate."[15] As defined by the Superior Court in *Briskman*:

> A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, and is shown where the interest the party

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[10] *Id.*, Ex. C. According to *Black's Law Dictionary*, a conformed copy is an "exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original." "Copy(5)," BLACK'S LAW DICTIONARY (11th ed. 2019); *see also* 'LOST WILL' WAS ADMITTED TO PROBATE, 25 Est. Plan. 282, 1998 WL 428172, 1 (July 1998) (advising practitioners that "[m]aking and retaining a conformed copy of a will is good practice and can easily overcome the difficulty of proving the contents of the 'lost' will.").

[11] Respondent's Brief, Ex. C.

[12] *Id.*

[13] *Id.*

[14] *See In re Estate of Briskman*, 808 A.2d 928, 932-33 (Pa. Super. Ct. 2002), *appeal denied*, 574 Pa. 769 (2003); *see also In re Nadzam*, 203 A.3d 215, 222 (Pa. Super. Ct. 2019) (noting that a "party-in-interest" must be "aggrieved").

[15] *In re Estate of Briskman*, 808 A.2d at 933.

> seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.[16]

Petitioners' "beneficiary status" alone is insufficient since it satisfies only the first prong of the analysis.[17] As the Court outlined in the May Decree, Petitioners must also show that their share of the estate will increase or decrease based on the current will contest—i.e. immediacy.[18] The Superior Court continues to subscribe to this analytic framework for will contests.[19] Based on Decedent bequeathing his estate to Respondent and his stepchildren in both the 2017 Will and 2014 Will, Petitioners' interest is not "immediate."[20]

Based on the analysis discussed herein and in the Court's May Decree, the Court finds that Petitioners lack standing to challenge the 2017 Will. Petitioners' appeal is **DISMISSED with prejudice** and Respondent's preliminary objections are overruled as **MOOT**.

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[16] *Id.* (quoting *S. Whitehall Twp. Police Serv. v. S. Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989)).
[17] *See In re Estate of Luongo*, 823 A.2d 942, 956 (Pa. Super. Ct. 2003), *appeal denied*, 577 Pa. 722 (2003).
[18] May Decree at 7.
[19] *See Lucci v. Lillian J. Roehl Revocable Tr.*, 2017 WL 4329784, at *2 (Pa. Super. Ct. Sept. 29, 2017) (noting that even though the appellant was not a relative and would, thus, be unable to claim intestacy status, she possessed standing to challenge the 2014 will if she could prove a photocopy of the immediately preceding 2011 will, which named her as a beneficiary, was valid) (quoting *In re Estate of Luongo*, 823 A.2d 942, 954 (Pa. Super. Ct. 2003)); *accord Estate of Duncan*, 2010 WL 11661379, at *2 (Phil. Com. Pl. Mar. 10, 2010), *appeal denied*, 620 Pa. 210 (2013).
[20] Based on the Pennsylvania Supreme Court allowing a conformed copy of a will to be admitted to probate if evidence is presented which satisfies the standard of "clear and convincing," the Court believes the 2013 Will could be submitted to probate before the 2006 Will. *See In re Estate of Wilner*, 142 A.3d 796, 805 (Pa. 2016). Thus, it is conceivable that three wills stand in the way of Petitioners claiming beneficiary status under the 2006 Will. However, it is not necessary for the Court to consider the 2006 Will and 2013 Will in its above calculus in order to find that Petitioners lack standing in this matter.

IT IS SO DECREED this 19th day of July 2019.

BY THE COURT,

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Eric R. Linhardt, Judge

cc:
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