

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

	: No. 41-12-0405
	:
IN RE: ESTATE OF RICHARD D. MASE,	: ORPHANS' COURT DIVISION
Deceased.	:
	: <i>Motion to Reconsider /</i>
	: <i>Petition for Pre-Complaint</i>
	: <i>Discovery</i>

**DECREE**

AND NOW, following argument held February 18, 2020, on Petitioner Michele Mase's ("Petitioner") Petition for Pre-Complaint Discovery and Motion to Reconsider and/or Modify the Court's Decree of August 30, 2019, to Extend the Time to File an Amended Petition to Challenge Richard D. Mase's Will of February 14, 2012 ("Motion to Reconsider"), the Court hereby issues the following DECREE.

The threshold issue in this matter is whether Petitioner has standing to challenge Richard D. Mase's ("Decedent") Will of February 14, 2012, or whether the Court must dismiss her challenge as untimely. Decedent's Will was filed on August 2, 2012, and the Certificate of Grant of Letters was issued on the same date. The statute of limitations for filing an appeal challenging the probate of a will is one year from the decree granting probate.<sup>1</sup> Petitioner did not file her Petition to Contest Will until March 19, 2019. Decedent's Estate filed Preliminary Objections asserting that the Petition should be dismissed as untimely, which the Court sustained by Decree issued September 3, 2019.<sup>2</sup> Petitioner was granted thirty days to file an amended will contest demonstrating an applicable exception to the one-year statute of limitations, such as fraud.<sup>3</sup>

Petitioner filed both her Petition for Pre-Complaint Discovery and Motion to Reconsider on September 30, 2019. The Motion to Reconsider requests that the Court reassess its Decree dismissing the initial Petition to Contest Will on equitable grounds,

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<sup>1</sup> 20 Pa.C.S.A. § 908(a); see also *Dempsey v. Figura*, 542 A.2d 1388, 1390 (Pa. Super. 1988) ("[T]he one year period in which an appeal to probate of a will can be taken is mandatory.").

<sup>2</sup> The Court signed the Decree on August 30, 2019, as indicated in the full title of Petitioner's Motion to Reconsider.

<sup>3</sup> See e.g., *In re Kiger's Estate*, 409 A.2d 5, 7 (Pa. 1979) (an allegation of fraud will remove the will contest from the applicable statute of limitations).

as Petitioner validly believed that the will contest was timely filed. The Motion to Reconsider alternately requests that the Court grant an extension of additional opportunity for the filing of an amended will contest in order to provide Petitioner time to obtain any and all Wills executed prior to the probated Will. Supplementing the Motion to Reconsider, the Petition for Pre-Complaint Discovery likewise requests that the Court issue a decree allowing Petitioner to conduct pre-complaint discovery in order to identify any and all Wills executed prior to the probated Will.<sup>4</sup> Petitioner asserts that, should any prior executed Wills contain distinct terms of distribution, this would confirm a material change of Decedent's testamentary intent indicative of undue influence and/or a lack of testamentary capacity. Petitioner avers that her multiple requests upon the administrators of Decedent's Estate to obtain copies of any prior executed Wills have been rebuffed, necessitating Court intervention. The Court scheduled argument on the Petition for Post-Complaint Discovery and Motion to Reconsider for December 13, 2019, which was later continued to February 18, 2020.

The Court will first address whether there is an equitable basis to permit Petitioner to file an untimely challenge to the probated Will, such as evidence that Petitioner lacked notice of the original probate. The Court concedes confusion resulting from an error in the Orphans' Court case docket. The case docket appears to indicate that the Grant of Letters was issued on August 2, 2012, and January 23, 2019. However, as per the representations of Kathy Rinehart, former clerk of the Orphans' Court, January 23, 2019, was, in actuality, the date when the Grant of Letters was scanned into the Orphans' Court electronic database.

As provided in the complete case docket and as represented by the clerk of the Orphans' Court, the Grant of Letters was actually issued August 2, 2012. The Estate sent Notice of Estate Administration to all beneficiaries under the Will on August 24, 2012, and then filed a Certification of Notice with the Court on August 29, 2012. Subsequently, upon learning that Petitioner's address had changed, the Estate sent additional Notice to her new address on October 11, 2012. Petitioner does not contend that she failed to receive notice of the initial probate. Therefore, the untimely filing therefore cannot be excused due to a lack of notice to Petitioner.

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<sup>4</sup> See Pa.R.C.P. 4003.8.

The Estate has additionally raised the doctrine of laches in its Brief in Opposition to Petitioner's Motion to Reconsider.<sup>5</sup> The Estate asserts that the untimely appeal should be dismissed because the indicators that Decedent lacked capacity or was subject to undue influence would have, or should have, been evident to Petitioner at the time of probate.<sup>6</sup> For example, the fact that the names of Petitioner, her sister Lynne, and her niece Nicole were misspelled within the probated Will would have been plainly evident from the probated Will itself, which was on record with the Court. So too would it have been evident that Decedent executed the probated Will only four months prior to his death, while suffering from poor health. The Court agrees that the doctrine of laches would preclude Petitioner's allegations of undue influence or lack of capacity.

While there are several exceptions to the one-year statute of limitations, including allegations of fraud, Petitioner has failed to demonstrate the applicability of one of these exceptions.<sup>7</sup> At the argument held February 18, 2019, counsel for Petitioner argued that any prior executed Wills could provide relevant evidence of fraud. However, the fraud exception is not inclusive of fraud in the inducement, undue influence, or lack of capacity.<sup>8</sup> Instead, fraud specifically refers to a fraud upon the Court, such as a forged signature.<sup>9</sup> While Petitioner avers certain fraudulent behaviors, such as undue influence, she does not aver fraud upon the Court.

Finding that Plaintiff has failed to demonstrate an applicable exception to the one-year statute of limitations for filing a will contest, her Motion to Reconsider is DENIED. Additionally, since Petitioner's allegations of undue influence and lack of capacity are barred under laches, her Petition for Pre-Complaint Discovery in support of those claims shall also be DENIED. Having failed to file an amended Petition to

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<sup>5</sup> *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998) ("Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another.").

<sup>6</sup> See e.g., *Estate of Colucci*, 492 A.2d 1155, 1156 (Pa. Super. 1985) (citing *In Re Estate of Kiger*, 409 A.2d 5 (Pa. 1979)) (dismissing untimely undue influence claim when undue influence was known or should have been known during the statutory period).

<sup>7</sup> See *Dempsey v. Figura*, 542 A.2d 1388, 1390 (Pa. Super. 1988).

<sup>8</sup> See *In re Miller's Estate*, 15 Pa. D. & C.2d 43, 46 (Mont. Cty. Orph. Ct. 1959) (Lack of testamentary capacity, undue influence and fraud in the inducement, are the sole grounds relied upon by petitioner, and these grounds are insufficient under the above cited cases to warrant an extension of the appeal beyond the [statutory] limit.").

<sup>9</sup> *Dempsey*, 542 A.2d at 1390 (citing *Kirkander v. Kirkander*, 415 A.2d 26 (Pa. Super. 1980)).

Contest Will within the thirty (30) days provided by the Court's Decree of September 3, 2019, Petitioner's appeal from probate is DISMISSED.

IT IS SO DECREED this 5<sup>th</sup> day of March 2020.

BY THE COURT:

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Eric R. Linhardt, Judge

ERL/cp

cc:

Clifford Haines, Esq.  
Thomas D. Marshall, Esq.  
Gary Weber, Esq. (Lycoming Reporter)