

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: GEORGE W. CROOKS ESTATE : No. 111 June 1936  
GEORGE W. CROOKS TRUST : OC-41-36-0111  
UNDER WILL :  
: ORPHANS' COURT

**OPINION AND DECREE**

AND NOW, in consideration of the Petition for Declaratory Judgment filed on November 16, 2021 by Wells Fargo Bank, National Association, as Trustee of the George W. Crooks Trust Under Will, the Court hereby issues the following Opinion and Decree.

***ISSUE PRESENTED***

George W. Crooks (“Testator”) died many decades ago, and the Lycoming County Register of Wills accepted his Will for probate in 1936. Testator was survived by his wife Lottie and their two daughters, Rae Crooks and Ann Seitzer. Lottie died on June 15, 1969. Ann Seitzer died testate on July 29, 2020, survived by two children and five grandchildren: Ann Seitzer’s daughter Rae Slingerland has two children, John Slingerland and Ann Slingerland; Ann Seitzer’s daughter Susan Fortuño has three children, Isabel Fortuño, Samuel Fortuño, and Lia Fortuño. Petitioner has asked this Court for a declaratory judgment concerning the portion of Testator’s Estate left to Ann Seitzer, which requires the Court to interpret Testator’s Will.<sup>1</sup> Specifically, Petitioner seeks a declaration of whether Ann Seitzer’s portion of the trust created by his Will (the “Trust”) is to be distributed per capita or per stirpes.

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<sup>1</sup> 42 Pa. C.S. § 7535 allows “[a]ny... trustee... in the administration of a trust, or of the estate of a decedent... [to seek] a declaration of rights or legal relations in respect thereto... [t]o determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.”

Petitioner filed the Petition on November 16, 2021, and the Court held argument on January 11, 2022. Each of the seven potential beneficiaries was provided notice of the date, time, and location of argument; no person or entity other than Petitioner appeared to make argument concerning or objecting to the Petition. No response to the Petition has been filed.

### ***THE WILL AND THE TRUST***

Paragraphs 1 through 3 of Testator's Will made specific devises. Paragraph 4 of Testator's Will reads, in relevant part:<sup>2</sup>

"4. I give, bequeath and devise all of the rest, residue and remainder of my estate, real, personal and mixed, and wheresoever the same may be situated, to my Executors, hereinafter named, IN TRUST NEVERTHELESS, to keep the same invested and reinvested, and to pay over the income arising therefrom as follows:

(a) In regular installments to my beloved wife, Lottie B. Crooks, for and during the term of her natural life, for the comfortable maintenance and support of herself, and the maintenance, support and education of our children.

(b) From and after the death of my said wife, Lottie B. Crooks, said income shall be paid in equal shares in regular installments to our daughters, Ray Bromley Crooks and Ann Elizabeth Crooks,<sup>3</sup> subject to the provision hereinafter made in case of the death of either of our said daughters.

(c) Upon the death of either of our said daughters, that portion of the principal of this trust estate the income from which such daughter so dying would have received after the death of their mother, Lottie B. Crooks, shall – subject to the life interest of said Lottie B. Crooks, therein – be paid and distributed to such person or persons and in such interests and proportions as such daughter so dying may, in her last Will and Testament, in that behalf limit, direct and appoint, and in

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<sup>2</sup> Subparagraphs 4(a) through 4(c) concerned the creation of the Trust and its distribution, the issues implicated here. The remainder of Paragraph 4, in subparagraphs 4(d) through 4(g), addresses specific actions the Trust was to take with regard to certain stock holdings.

<sup>3</sup> Inasmuch as the Petition avers that Rae Crooks and Ann Seitzer are Testator's daughters, the Court believes Rae Crooks is the same Ray Bromley Crooks and Ann Seitzer is the same Ann Elizabeth Crooks referred to in Paragraph 4(b) of Testator's Will.

default of such appointment the same shall go to and vest in the issue of such daughter so dying, in equal shares, and in default of issue to my heirs at law under the Intestate Laws of Pennsylvania then in force. In no event shall any distribution of the principal of this trust estate be made under the provisions of this Paragraph 4 during the lifetime of my said wife, Lottie B. Crooks.”

Stated in simpler terms, Testator directed that his residual estate be placed into the Trust, with the income to be paid to Lottie while she is alive and then to Ann Seitzer and Rae Crooks in equal shares. Upon the death of either of Decedent’s daughters, the “portion of the principal of [the Trust] the income from which such daughter so dying would have received” – that is, half of the trust principal – would be distributed according to the deceased daughter’s will. If she did not specify how her half of the Trust principal was to be distributed, that principal “shall go to and vest in the issue of such daughter so dying, in equal shares....”<sup>4</sup>

It is this specific phrase – “the issue of such daughter so dying, in equal shares,” that is potentially subject to multiple interpretations, as the Will does not explicitly state whether the Trust principal is to be distributed per capita or per stirpes. “In a ‘per capita’ distribution, the persons designated share equally, whereas in a ‘per stirpes’ distribution, particular descendants take among themselves the share of their deceased parent.”<sup>5</sup> It is possible to read the Will as directing that the Trust principal be distributed in equal one-half parts to each of Ann Seitzer’s two daughters; this would be a per stirpes distribution.<sup>6</sup> It is also possible, however, to read the Will as

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<sup>4</sup> Petitioner attached Ann Seitzer’s Will as an Exhibit. Ann Seitzer did not make an appointment in her Will regarding how her portion of the Trust was to be distributed; therefore, the provision contemplating a “default of such appointment” took effect upon her death.

<sup>5</sup> Standard Pennsylvania Practice 2d, § 150:125.

<sup>6</sup> Because their mothers are still alive, under a per stirpes distribution Ann Seitzer’s grandchildren would not have a deceased parent’s share to take.

directing a distribution in equal one-sevenths parts to each of Ann Seitzer's two children and five grandchildren; this would be a per capita distribution. Petitioner contends that the Will dictates a per stirpes distribution, and "submit[s] that [Ann Seitzer's] one-half share of Trust principal is distributable outright and free of trust solely to [Ann Seitzer's] two (2) daughters, Rae [Slingerland] and Susan [Fortuño], in equal shares and that the children of Rae [Slingerland] and Susan [Fortuño] receive no further distributions from the Trust." Petitioner cites *In re Mayhew's Estate*<sup>7</sup> in support of this contention, and argues that the countervailing exception described in *Estate of Mills*<sup>8</sup> is inapplicable.

### **ANALYSIS**

"Issue" refers to a person's lineal descendants or offspring.<sup>9</sup> Ninety years ago, the Supreme Court of Pennsylvania addressed "the construction of the word 'issue'" in *Mayhew's Estate*.<sup>10</sup> In *Mayhew's Estate*, the will said "if my said daughter Gertrude Estelle Mayhew should marry, then at her death the interest of my real estate goes to her issue."<sup>11</sup> At the time of her death, Gertrude had six children and twelve grandchildren, and her children did not agree whether the distribution of the decedent's real estate should be made per capita or per stirpes.<sup>12</sup>

The Supreme Court of Pennsylvania recognized that the word "issue" in the decedent's will was "neither qualified, explained, nor modified by any context," and thus there was no plain intent to be deciphered on the face of the text; this ambiguity

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<sup>7</sup> *In re Mayhew's Estate*, 160 A. 724 (Pa. 1932).

<sup>8</sup> *In re Estate of Mills*, 507 A.2d 853 (Pa. Super. 1986).

<sup>9</sup> Black's Law Dictionary (11<sup>th</sup> ed. 2019), Issue.

<sup>10</sup> *Mayhew's Estate*, 160 A. 724.

<sup>11</sup> *Id.* at 725.

<sup>12</sup> *Id.*

allowed the Court to consult background principles of law and construction of wills to resolve the issue.<sup>13</sup> The Court traced the history of the interpretation of the word “issue,” noting that the (heavily criticized) English rule requiring a per capita distribution had been to some extent abrogated by every state except New Jersey. In most of the country, the English Rule gave way to the “just and equitable” American rule favoring a per stirpes distribution in the absence of evidence to the contrary.<sup>14</sup> Thus, the Court held that the unqualified reference to “issue” in the decedent’s will resulted in a per stirpes distribution.

A number of cases since *Mayhew’s Estate* have discussed what is required to rebut the presumption in Pennsylvania that distributions are to be made per stirpes.<sup>15</sup> In *Estate of Mills*, the Superior Court of Pennsylvania addressed the following language in a will: “The principal... shall be paid over absolutely to the issue of such deceased child, being the lineal descendants of [the settlor] in equal shares absolutely.”<sup>16</sup> The Court determined that the language specifying that “issue” referred to “the lineal descendants” of the decedent and that the principal was to be paid to those “descendants... in equal shares *absolutely*” was sufficient to overcome the presumption of a per stirpes distribution and direct a per capita distribution to

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 726-27.

<sup>15</sup> For instance, in *Wanamaker*, 159 A.2d 201 (Pa. 1960), the Supreme Court of Pennsylvania held that language directing the estate “to pay over the principal of said sum... to and among the heirs of my children, then living, in equal shares” required a per stirpes distribution, though this ruling rested in part on the use of the word “heirs” as opposed to “issue.” In *Hoover*, 207 A.2d 840 (Pa. 1965), the Supreme Court of Pennsylvania held that direction to pay “to the last remaining child, and the children, of any of my children deceased, the principal held in trust, share and share alike” required a per capita distribution, as the phrase “share and share alike” signified that the amounts paid to each person receiving a distribution, regardless of level of relation, were to be identical.

<sup>16</sup> *Estate of Mills*, 507 A.2d 853 (Pa. Super. 1986)

each lineal descendant.<sup>17</sup> The Court highlighted that, elsewhere in the decedent's will, he directed that certain beneficiaries were "to take per stirpes and not per capita absolutely."<sup>18</sup> Inasmuch as decedent "obvious[ly] knew how to make a stirpital gift when he so intended," the fact that he did not do so in the distribution at issue and instead directed payment "in equal shares absolutely" constituted strong evidence that the decedent intended a per capita distribution.<sup>19</sup>

Here, the language of Decedent's will is somewhere between that of *Mayhew's Estate* and *Estate of Mills*. The Will provides direction beyond a plain reference to "issue," directing distribution to "the issue of such daughter so dying, *in equal shares*." The Will does not, however, go so far as the language in *Estate of Mills*, in that it does not direct distribution to "lineal descendants... *in equal shares absolutely*." Decedent's Will also does not include any other stirpital or capital gifts, so there is no intent to be gleaned from comparison to other passages of the Will.

The Court agrees with Petitioner that Decedent's Will requires a per stirpes distribution. Specifically, the language of Decedent's Will is not sufficiently specific to defeat the presumption that distributions to "issue" are to be made per stirpes rather than per capita when the language is susceptible to both possible interpretations. Unlike in *Mills*, where a per stirpes distribution could not be argued to result in distribution to decedent's "lineal descendants... *in equal shares absolutely*," both possible distributions here could be said to satisfy the language of the Will. It is certainly the case that a per capita distribution of 1/7 of Ann Seitzer's half of the Trust

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<sup>17</sup> *Id.* at 853-54.

<sup>18</sup> *Id.* at 854.

<sup>19</sup> *Id.*

principal to each of her two daughters and five grandchildren would constitute a distribution to “issue... in equal shares.” So too, however, would a per stirpes distribution, as a distribution of 1/2 of Ann Seitzer’s half of the Trust principal to each of her two daughters would be a different kind of distribution to “issue... in equal shares.” Because the phrase “in equal shares” by itself does not shed further light on which type of distribution Decedent intended, the distribution to his “issue” shall be made in accordance with the “just and equitable” American rule.

**DECREE**

For the reasons discussed above, the Court directs Petitioner to distribute Ann Seitzer’s share of the principal of the George Crooks Trust Under Will per stirpes, with distributions of equal 50% shares thereof to Ann Seitzer’s daughters, Rae Slingerland and Susan Fortuño.

IT IS SO DECREED this 11<sup>th</sup> day of May 2022.

By the Court,

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Eric R. Linhardt, Judge

ERL/jcr

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