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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

**RIDGE MD LEASING CO. LLC, Plaintiff vs. ESTELLE E.
WHITTINGTON, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2013-00777

HEADNOTES

Enforcement of Judgments Against Spouses for Necessaries

1. Under 23 Pa. C.S.A. §4102, a court cannot enter judgment against a decedent's spouse unless the creditor established the decedent's assets were insufficient to satisfy the debt owed. See also Porter v. Karivalis, 718 A.2d 823 (Pa. Super. 1998).
2. Admissions by default are insufficient to show that decedent's estate assets are insufficient to satisfy debt that he owes such that judgment can be entered against decedent's spouse.
3. In the absence of proof that the creditor filed a claim against the decedent or his estate, obtained a judgment against the decedent, or even attempted to obtain letters of administration to probate the decedent's estate, the court cannot conclude that the estate has insufficient assets to satisfy the debt owed, thereby allowing judgment to be entered against the decedent's spouse.
4. Failure to obtain judgment against the deceased contracting spouse prohibits the court from entering judgment against the decedent's spouse.

Appearances:

Ashley L. Sweeney, Esq. *for Plaintiff*

Pro se Defendant

OPINION AND ORDER OF COURT

Before Meyers, J.

Procedural and Factual Findings

On February 19, 2013, Ridge MD Leasing Co. LLC, (Plaintiff/Creditor), commenced an action against the Defendant, Estelle E. Whittington, (Ms. Whittington) by filing a complaint in which it was averred that she was the spouse of an individual identified as Edward G. Whittington, who is not a named party to this action. The complaint alleged Edward G. Whittington was admitted as a resident of Ellicott City Health and Rehabilitation Center in Ellicott City, Maryland, a facility owned by the Plaintiff/Creditor, on or about January 27, 2010. It was further pled

that Edward G. Whittington was provided medical services for which there was an outstanding balance due and owing of \$39,635.93 as of September 3, 2010. The Plaintiff/Creditor also claimed that Ms. Whittington was statutorily liable for all medical necessities provided to her spouse, Edward G. Whittington, and that despite repeated demands, Ms. Whittington had failed or refused to pay for the services rendered to her husband. On or about August 13, 2013, Estelle E. Whittington filed an unverified answer to the complaint. On or about November 18, 2013, the Plaintiff/Creditor filed a motion for summary judgment. Within the motion for summary judgment, the Plaintiff/Creditor asserted that due to Ms. Whittington's failure to respond to a First Set of Admissions, Ms. Whittington (1) admitted that she was married to Edward G. Whittington; (2) admitted that he was enrolled as a resident of Ellicott City Health and Rehabilitation Center; (3) that Ms. Whittington was legally married to him and (4) that as of September 3, 2010 there was an outstanding balance of \$39,635.93 owed to the Plaintiff/Creditor for the care of Edward G. Whittington. There was no averment in the complaint that (1) an action for damages was filed in any jurisdiction against Edward G. Whittington or his estate; (2) a judgment was obtained against Edward G. Whittington or his estate; and (3) after levy the assets of Edward G. Whittington were insufficient to satisfy the claim.

The Plaintiff/Creditor filed a brief in support of the motion for summary judgment on November 18, 2013. On January 6, 2014, the matter was listed for argument court after which the then President Judge Douglas W. Herman, (now retired and serving as a senior common pleas judge), issued an order dispensing with argument and proceeded to decide the matter based on briefs alone. On May 21, 2014, Judge Herman issued his opinion. Judge Herman concluded that Plaintiff/Creditor was entitled to judgment against the Defendant as she failed to file a response to the Plaintiff/Creditor's motion for summary judgment. However, after carefully reviewing the pleadings Judge Herman ruled that pursuant to 23 Pa.C.S. §4102, the Plaintiff/Creditor would only be entitled to have a judgment entered, enforce the judgment and pursue the Defendant's assets to satisfy the debt owed "only upon a showing that Mr. Whittington's assets prove insufficient to satisfy the debt owed. We will defer entering judgment against the Defendant until the Plaintiff/Creditor establishes that Mr. Whittington's assets are insufficient to satisfy the debt owed." Sr. Judge Herman's Opinion and Order dated May 20, 2014.

The case remained dormant until June 9, 2016, when pursuant to 39th Judicial District Court Judicial Administration Rule 1901, a notice of intent to terminate the case from the civil docket was issued by the Franklin County Prothonotary to the parties. On July 28, 2016 the Plaintiff/Creditor filed a notice of intent to proceed. The court issued an order for the parties

to appear at the Civil Call of the List on November 1, 2016 at 9:00 a.m. On October 28, 2016, the Plaintiff/Creditor filed a supplemental petition to their motion for summary judgment. On November 1, 2016, the court finding the Defendant did not appear to object to the matter remaining on the docket, issued an order directing that the case remain on the docket. On November 1, 2016, the court issued an order advising the parties it would decide the matter of the Plaintiff/Creditor's most recent supplemental petition to its motion for summary judgment and that the matter would be disposed of on briefs and/or argument. No party filed a request to waive argument. The court listed the matter for argument court on January 5, 2017. The Plaintiff/Creditor was represented by local counsel at the argument, who offered no other legal arguments besides what was in the Plaintiff/Creditor's brief. The Defendant did not appear.

In reviewing the Plaintiff/Creditor's supplemental motion to their motion for summary judgment, it makes a few new additional claims. The principle claim is that Edward G. Whittington passed away on August 23, 2010 and that no estate has been probated to date. For that reason, the Plaintiff/Creditor asserts that any assets owned by Edward G. Whittington with his spouse Defendant, Estelle E. Whittington passed to her as tenants by the entireties. The Plaintiff/Creditor has filed a copy of a Second Set of Requests for Admission sent to the Defendant, Estelle E. Whittington asking her to admit among other things, that (1) Edward G. Whittington passed away on August 23, 2010; (2) no estate was opened or probated on his behalf; and (3) that any of his assets were passed to her at the time of death. A copy of the Second Set of the Plaintiff/Creditor's Request for Admission was attached to the supplemental motion. The Plaintiff/Creditor acknowledged that it received a handwritten response to the Second Set of Admissions indicating that the assets of Edward G. Whittington were stolen by other family members. The Plaintiff/Creditor asserts that the lack of a verified response to its Second Set of Requests for Admissions satisfy the requirements of Sr. Judge Herman's order and outlined in his opinion of May 20, 2014 requiring proof that the Plaintiff/Creditor has exhausted their ability to secure judgment and payment of its claim against the Defendant's husband, Edward G. Whittington.

Discussion

The essential issue for the court to decide at this time is whether or not the Defendant's failure to contest the assertions in the Plaintiff/Creditor's Second Request for Admissions provide adequate evidence to this court that the Plaintiff/Creditor has shown as a matter of law that it has attempted to obtain a judgment against Mr. Whittington and that his assets are insufficient

to satisfy the debt that he owes. This is a question of proof and compliance by a creditor to the legal requirements to obtain a judgment against of a non-contributing spouse for “necessaries”. Porter v. Karivalis, 718 A.2d 823, 827 (Pa. Super. 1998). The Pennsylvania Superior Court ruled that:

“In all cases where debts are contracted for necessities by either spouse for the support and maintenance of the family, it shall be lawful for the creditor in this case to institute suits against the husband and wife for the price of such necessities and, after obtaining a judgment, have an execution against the spouse contracting the debt alone; and, if no property of that spouse is found, execution may be levied upon and satisfied out of the separate property of the other spouse.”

In this case now before the court, there is no proof of record that the Plaintiff/Creditor before filing a lawsuit against Ms. Whittington ever initiated a lawsuit before or simultaneously against the contracting spouse, Edward G. Whittington. In addition, there is no evidence that a judgment has been entered against Edward G. Whittington. There is no evidence that the Plaintiff/Creditor has been unable to find property of Edward G. Whittington to levy upon. Absent proof of an action having been filed against him during his lifetime, the court must therefore conclude that there has been no effort to obtain judgment against Edward G. Whittington. Accepting that he died before a claim could be filed by the Plaintiff/Creditor, there is also no proof that the Plaintiff/Creditor has filed a claim against his estate. In fact, the Plaintiff/Creditor has asserted that no estate has been probated for Edward G. Whittington.

Under 20 Pa.C.S Section 3155(b) letters of administration “shall be granted by the Register of Wills to one or more of the hereinafter mentioned persons in the following order: (1) those entitled to the residuary estate under the will; (2) to the surviving spouse; (3) those entitled under the intestate law as the register in his discretion shall judge will best administer the estate, giving preference however, according to the sizes of the shares of those in the class; (4) the principal creditors of the decedent at the time of his death; (5) five other fit persons.” (Emphasis added.) Even though the Plaintiff/Creditor appears likely to be a principal creditor of the decedent, Edward G. Whittington, it has failed to secure or obtain letters of administration to probate an estate under Pennsylvania law. A review of the initial complaint fails to identify where he was residing at the time of his death, although the contract attached to the complaint indicates that at the time of his admission to its facility, Edward G. Whittington was a resident of Brooklyn, Maryland. Assuming he was a resident of Maryland at the time of his death, MD Code,

Estates and Trusts, §5-402 provides that a “proceeding for judicial probate shall be instituted at any time before administrative probate or within the period after administrative probate provided by §5-304 of this title: (a) At the request of an interested person; (b) By a creditor in the event that there has been no administrative probate; . . .” (Emphasis added.)

The Plaintiff/Creditor has failed to prove that they obtained a judgment against Edward G. Whittington’s estate once probated, and could not obtain whole or partial satisfaction of their judgment of their claim against his estate. This court finds that although the Plaintiff/Creditor had the ability to proceed to obtain letters of administration of Mr. Whittington’s estate in the jurisdictions he may have been found, and offer proof to this court that his estate is insolvent, they have failed to do so. This court is of the opinion that the Plaintiff/Creditor has essentially “leapfrogged” an essential and required process in its effort to collect its claim. It has failed to file suit, obtain a judgment against the contracting spouse and levy upon his property before taking those same steps against the property of the non-contracting spouse, the Defendant in this case, Estelle E. Whittington. The court does not ignore that Estelle E. Whittington, by failing to properly respond to the Plaintiff/Creditor’s First and Second Set of Admissions, has acknowledged that Edward Whittington’s estate may be lacking assets, but those admissions by Estelle Whittington do not provide a justification for this court to find that the Plaintiff/Creditor has complied with the requirements of 20 Pa.C.S. §4102 and the subsequent body of case law which requires that the Plaintiff/Creditor to first initiate an action and obtain a judgment against the contracting spouse, (or in this instance the contracting spouse’s estate), and to supply proof that having attempted to levy upon the assets of the contracting spouse’s estate, establish that those assets are insufficient to satisfy its judgment, thus entitling the Plaintiff/Creditor to obtain a judgment and levy the property of non-contracting spouse. For those reasons, the court will enter an order denying the Plaintiff/Creditor’s supplemental motion for summary judgment.

ORDER OF COURT

AND NOW THIS 27th day of January, 2017, the court having considered the additional motion of the Plaintiff/Creditor for summary judgment based upon additional facts and filings of record,

IT IS HEREBY ORDERED, that the Plaintiff/Creditor’s request for summary judgment is **DENIED**. The Plaintiff/Creditor shall not be awarded a judgment or right to pursue a levy or execution upon the assets

of the Defendant, Estelle E. Whittington, until it has supplied the court proof that it has pursued its available lawful remedies to file a claim against the Estate of Edward G. Whittington, or offers sufficient proof that there is a lawful reason why it did not or cannot obtain letters of administration for the Estate of Edward G. Whittington in an appropriate jurisdiction or forum. The Plaintiff/Creditor shall also offer proof that once the Estate of Edward G. Whittington has been properly probated and his assets secured, those assets are insufficient to pay the Plaintiff/Creditor's claim, thus entitling them to a judgment and levy thereon against the assets of the non-contracting spouse, the Defendant in this case, Estelle E. Whittington.

Pursuant to the requirements of Pa. R.C.P. 236 (a)(2), (b), (d), the Prothonotary shall immediately give written notice of the entry of this Order, including a copy of this Order, to each party's attorney of record, or if unrepresented, to each party; and shall note in the docket the giving of such notice and the time and manner thereof.