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In Re: Estate of Wallace

IN RE: ESTATE OF CONSUELLA B. WALLACE
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphans' Court Division, No. 102-OC-2011

Standing; accounting by a personal representative; negative wills; party in interest.

1. The Court may raise standing sua sponte on a petition to compel a first and final accounting because 20 Pa.C.S.A. §3501.1 creates a cause of action and designates who may sue. See *Estate of Adelaide Briskman*, 808 A.2d 928, 933 (Pa. Super. 2002), 20 Pa.C.S.A. §3501.1.
2. Only a party in interest has standing to petition the court to cite a personal representative to perform an accounting. See 20 Pa.C.S.A. §§3501.1, 764.
3. A will which states that an individual is intentionally and specifically excluded is a clear case of a negative will. See 20 Pa.C.S.A. §2101, UPC §2-101 cmt.
4. Because an individual who has been excluded under a negative will is treated as if he had predeceased the testator, he can be neither a beneficiary under that will nor have a substantial, direct and immediate interest sufficient to make him a party in interest. See *Estate of Adelaide Briskman*, 808 A.2d 928, 931, 933 (Pa. Super. 2002), 20 Pa.C.S.A §§2101, 6205.

Appearances:

Marcus Wallace, *Petitioner*

Yvette Marks, *Administratrix*

OPINION

Meyers, J., November 30, 2011

Statement of Facts

Consuella B. Wallace (Mrs. Wallace) died on February 9, 2010.^[1] Her Last Will and Testament [hereinafter Will] states, "I acknowledge the existence of my son Marcus L. Wallace. I have intentionally specifically excluded him from my Last Will and Testament." Will of Mrs. Wallace, October 18, 2006. The Will names Yvette C. Marks as Mrs. Wallace's personal representative. On September 23, 2011, Marcus L. Wallace (Mr. Wallace) filed a Request for a First and Final Account of Mrs. Wallace's estate.

This Court hereby denies Mr. Wallace's petition because he is not a party in interest with standing to petition the Court for an accounting.

Discussion

"Generally, standing is not an issue of subject matter jurisdiction and, therefore, may not be raised by the court *sua sponte*." *Bowers v. T-Netix*, 837 A.2d 608, N4 (Pa. Commw. Ct. 2003). However, an exception to the general rule exists when a statute creates a cause of action and designates who may sue. See *Estate of Adelaide Briskman*, 808 A.2d 928, 933 (Pa. Super. 2002). When this occurs, the "issue of standing becomes interwoven with that of subject matter

jurisdiction,' and may be raised by this Court *sua sponte*." *Id.* (quoting Grom v. Burgoon, 672 A.2d 823, 824-25 (Pa. Super. 1996)).

In Briskman, the Court found that it could raise standing *sua sponte* in an action brought under 20 Pa. C.S.A §908 because that section of the Probate, Estates and Fiduciaries Code^[2] (Code) states that an appeal may only be brought by a party in interest. Here, as in Briskman, the controlling statute only allows a party in interest to pursue the cause of action in question, petitioning the Court to cite a personal representative to file an accounting.

The controlling statute in this case is 20 Pa. C.S.A §3501.1.^[3] Section 3501.1 states that "[a] personal representative may be *cited* to file an account at any time after the expiration of six months from the first complete advertisement of the original grant of letters."^[4] *Id.* (emphasis added). The legislature's use of the word "cited" in Section 3501.1 demonstrates its intention that only a party in interest may petition for an accounting by a personal representative.

Courts must construe statutes "to effectuate the intention of the legislature and to give effect to all provisions of the statute." Commonwealth v. Poland, 26 A.3d 518, 524 (Pa. Super. 2011); 1 Pa. C.S.A. §1921(a). This is done by reading sections of a statute together and construing them with reference to the entire statute. See Fletcher v. Pa. Property & Cas. Ins. Guar. Ass'n, 985 A.2d 678, 684 (Pa. 2009).

The term "cited" is defined in 20 Pa. C.S.A §764. This Section must be read in conjunction with Section 3501.1 to give effect to the legislature's use of the term cited in Section 3501.1. Only a party in interest may apply to the Court to obtain a citation. See *id.* §764. A personal representative must be cited to perform an accounting. See *id.* §3501.1. Therefore, only a party in interest has standing to petition the court to cite a personal representative to perform an accounting.

Here, Mr. Wallace is not a party in interest who may apply to the Court for a citation because he is neither a beneficiary under Mrs. Wallace's will, nor does he have a substantial, direct, and immediate interest in her estate.

In the absence of a valid will, an intestate heir is a party in interest. See Briskman, 808 A.2d at 931. Where a valid will exists, an intestate heir is a party in interest only if (1) he is a beneficiary under that will, or (2) his interest is substantial, direct, and immediate. See *id.* at 931, 933.

Here, Mr. Wallace is not a beneficiary and has no interest in Mrs. Wallace's estate because he has been expressly excluded under Mrs. Wallace's "negative will."

Negative wills are permitted in Pennsylvania. See 20 Pa. C.S.A §2101. The Code adopted the Uniform Probate Code provisions for negative wills as part of the 1994 amendments. See *id.* cmt. A negative will is created when a decedent "expressly exclude[s] or limit[s] the right of an individual or class to succeed to property of the decedent passing by intestate succession." *Id.* Determining whether or not a decedent's will excludes or limits the rights of an individual or class is a question of construction. UPC §2-101 cmt. A clear case of a decedent excluding an individual occurs where the decedent's will expressly states that the individual is to receive none of the decedent's estate. See *id.*

Mrs. Wallace's Will is a clear case of a negative will excluding Mr. Wallace because the Will expressly states "I have intentionally specifically excluded [Mr. Wallace] from my Last Will and Testament." Will of Consuella B. Wallace, October 18, 2006.

Under a negative will, an excluded individual who survives the decedent is treated as if he had disclaimed his portion of the intestate share. See 20 Pa. C.S.A §2101. The effect of a disclaimer is to treat the disclaimant as if he had predeceased the decedent. See 20 Pa. C.S.A §6205. Where a beneficiary fails to survive the testator, the beneficiary's share falls to the residuary and passes to the remaining residuary devisees or legatees. See 20 Pa. C.S.A §2514.

Here, Mr. Wallace is treated as if he predeceased Mrs. Wallace under her negative will. Therefore, any interest Mr. Wallace would have had in Mrs. Wallace's estate passes to the remaining residuary devisees or legatees of Mrs. Wallace. Having no interest remaining, Mr. Wallace can neither be a beneficiary under Mrs. Wallace's will, nor have a substantial, direct, and immediate interest in her estate. Therefore, Mr. Wallace is not a party in interest with standing to cite a personal representative for an accounting under Section 3501.1.

For the foregoing reasons, the Court denies Mr. Wallace's request for a first and final accounting.

ORDER OF COURT

November 30, 2011, the Court having read and considered the Petitioner's Request for a First and Final Account of the Estate of Consuella B. Wallace, it is hereby ordered that this petition is denied due to lack of standing.

[1] Mrs. Wallace died of a blunt force trauma to the head which she received during an assault at her residence on December 10, 2009. Marcus L. Wallace is currently awaiting trial for her death.

[2] 20 Pa. C.S.A. §101, et sec.

[3] The Court notes that this *pro se* Petitioner cites Sections 751 and 774 as the basis for his petition. However, the Petitioner is seeking to have Yvette C. Marks, the decedent's personal representative, perform a first and final accounting. The proper section under which to file this action is Section 3501.1, Accounting by Personal Representative. The Court will, therefore, treat this petition as having been filed under Section 3501.1.

[4] The Court notes that this petition is timely filed under Section 3501.1. The grant of letters was advertised in the Franklin County Legal Journal on April 2, 9, and 16 of 2010.