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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.

IN RE: THE ESTATE OF DAVID E. RUSSELL

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Orphans' Court Division No. 160-OC-2012

HEADNOTES

Orphans' Court - Revocation of Grant of Letters Testamentary without Notice by the Register of Wills; Improper Actions of a Durable Power of Attorney; Fiduciary Duty; Actions of Executrix

Relevant Factual and Procedural History

1. David E. Russell died on March 7, 2011 in Franklin County, Pennsylvania. Prior to his death, David Russell executed a durable power of attorney appointing Rochelle Ott Beegle as his attorney-in-fact. At the time of his death, he was survived by his natural issue, his son, Donald Russell, and his daughter, Ann Garman. Ms. Garman did not participate in any of the proceedings seeking relief from the Orphans' Court. Nor did Barbara Timmons, the decedent's stepdaughter and a named beneficiary under his will. As of August 31, 2012, no estate administration was sought by any party.
2. On August 31, 2012, Donald Russell petitioned the Franklin County Register of Wills for letters of administration for his late father's estate. That petition was granted on August 31, 2012. Subsequently, Donald Russell, in his capacity as administrator, filed a petition seeking an accounting from the attorney-in-fact, Rochelle Ott Beegle, for her actions as agent for David E. Russell during his lifetime.
3. On December 3, 2012, Rochelle Ott Beegle presented a last will and testament of David E. Russell, dated June 14, 2002, to the Register of Wills for probate. The will distributed David Russell's estate to his wife Hazel, and to Rochelle Ott Beegle and Barbara Timmons, his stepdaughters, if Hazel did not survive him. Rochelle Ott Beegle was named as the only executor. At the time the will was presented, Rochelle Ott Beegle requested that the Register of Wills simultaneously revoke the letters of administration granted to Donald Russell, and grant letters testamentary to her. The Register of Wills honored the petition and revoked the letters of administration issued to Donald Russell without any notice to him, and granted Rochelle Ott Beegle letters testamentary.
4. On December 7, 2012, Donald Russell filed a petition to review the Register of Wills' decision to revoke his letters of administration and to remove Executrix, Rochelle Ott Beegle. An accounting was filed on August 27, 2013 on behalf of Rochelle Ott Beegle. Subsequently, Donald Russell filed an amended petition, citing information contained in the accounting.
5. This Court set a hearing to consider the issue of the decision of the Register of Wills to revoke the letters of administration issued to Petitioner David Russell without notice and hearing, and failing to conduct a hearing to consider why letters of administration should not be issued to Rochelle Ott Beegle. The matter was scheduled by the Court for an ultimate factual hearing on the issue on May 9, 2014.

Testimony Presented at the Hearing: Actions by the Power of Attorney, Rochelle Ott Beegle

1. Attorney Mark Mateya testified that, subsequent to the death of David Russell, he was hired by Donald Russell as attorney for the Estate. His firm was to handle the day-to-day administration of the estate. In August of 2012, Mr. Mateya and Donald Russell traveled to Magnolias nursing facility and to Manor Care nursing facility. While at Magnolias, the executive director indicated that there was a balance due on Mr. David Russell's account.

A similar response was received from Manor Care. Mr. Mateya and Donald Russell also traveled to several banks.

2. In reviewing the assets of David Russell, Mr. Mateya learned that Rochelle Ott Beegle had used a power of attorney executed on behalf of David Russell to sell David Russell's real estate for \$240,000. It was determined that the sale of the real estate occurred within one year of death. Furthermore, it was thought that the sale of the real estate resulted in monies being disbursed to individuals other than for the benefit of David Russell. The belief was that the proceeds of the sale went to pay for a mortgage on a parcel of real estate owned by Rochelle Ott Beegle. Mr. Mateya testified at the hearing that he could not see a benefit being derived for David Russell. If so, gift taxes should have been paid, or were payable, as part of inheritance taxes to the Commonwealth.

3. Rochelle Ott Beegle testified about her relationship with David Russell, her stepfather, Donald Russell, her stepbrother, and the relationship between David Russell and Donald Russell. Ms. Beegle stated that she looked after David Russell because her mother had married him, and explained that she was appointed as the agent of David Russell under his durable power of attorney.

4. Ms. Beegle testified that during David Russell's lifetime, she purchased a tractor at auction that was not specifically for his benefit. She stated that she invested some of the money, but ultimately sold the tractor and deposited those monies into her account. The monies were not directly spent for the benefit of David Russell. She also testified that she expended multiple sums of money from David Russell's account to pay her personal bills. Her reasoning was that David could not take care of himself, he could not read or write, and that her survival justified the spending of his money for her benefit so that she could ensure that she was able to take care of him.

5. Ms. Beegle acknowledged that she purchased a car for her daughter, asserting that David had stated it was all right with him. She claimed that he stated: "You do whatever you like. My money is your money." Ms. Beegle paid various debts for her daughter and acquired a car from Kyner's Autos on April 7, 2010. David at that point was a resident of Magnolias and did not drive. She stated that the car was purchased to ensure that she had a car so that she could take care of David Russell. Ms. Beegle did not complete a gift tax return for the monies. She also bought an additional car for her daughter so that her daughter, Jennifer Ott, a CNA, could provide care for David.

6. There was also a mortgage owed on property belonging to Ms. Beegle, which was paid with proceeds of the sale of David Russell's real estate.

7. She also acknowledged that at the time of David Russell's death he had an outstanding balance payable to Magnolias for which a payment plan was set up to pay for his care. She was making payments towards his outstanding debt.

8. Regarding the will, Ms. Beegle acknowledged that she was aware of a will that David Russell had executed appointing her as personal representative. The decedent's will provided that his estate would be distributed to his wife, if she survived him by a period of ninety days, and if not, then his estate was bequeathed to his stepdaughters, Rochelle R. Ott and Barbara A. Timmons. No provision was made for Donald Russell.

9. Ms. Beegle testified that she contacted Attorney Robert Schollaert of Black & Davison and asked whether or not she needed to probate the will and proceed with estate administration. She advised Attorney Schollaert that there was no property left in the estate, to which he responded that no estate needed to be probated. She testified that similar advice was provided to her by Attorney Wenger based upon similar information provided to him by her.

10. An agent of Magnolias also testified, and confirmed that there were outstanding balances due and owing to Magnolias as of the time of the decedent's death. Rochelle Ott Beegle confirmed that she entered into a payment agreement with Magnolias and was

making payments to ensure that the last debt for the nursing home would be paid by her.

Issue #1 for Decision: Whether the Register of Wills should have revoked the Letters of Administration granted to Donald Russell without providing Notice

1. Pursuant to 20 Pa. C.S.A. §3155 (a) and (b), letters testamentary shall be granted by the Register to the Executor designated in the will; or letters of administration shall be granted by the Register in such form as the case shall require based upon an order set forth in the statute.

2. In this instance, the Register of Wills had initially been advised that a will did not exist by Donald Russell approximately 17 months following David Russell's death. Given the averments in the petition, the Register granted letters of administration to Donald Russell, the decedent's natural son on August 31, 2012. Once the Register of Wills was presented with a valid will on December 3, 2014, the Register subsequently honored the petition for letters testamentary and for revocation of letters of administration previously granted.

3. The Court previously issued an order, taking guidance from In Re Nearhoof's Estate, 8 Pa. D. & C. 2d 199 (Pa. Orph. 1957). There, the Orphans' Court ruled that: "The Register may not revoke letters of administration granted and admit to probate an alleged will without giving due and proper notice to the administrator and any proper parties in interest of such proceedings, so that they may be given a chance to be heard and file a caveat against the probate of the alleged will, if they see fit." 8 Pa. D. & C. 2d at 205 (citing McQuade Estate, 1 Fiduc. Rep. 579). This Court also relies on In Re Neidig's Estate, 38 A. 1033 (Pa. 1898), where letters of administration were initially granted by the Register of Wills, and subsequently upon a request for revocation of the letters in the absence of a will, the Register issued a citation to the party previously issued letters of administration, and after hearing, made a decision.

4. The Register of Wills, in accordance with 20 Pa. C.S.A. §901, has jurisdiction for the determination of probate of wills and the grant of letters to a personal representative in any other matter as provided by law. Under 20 Pa. C.S.A. §907, titled **Caveat**: "when a caveat has been filed, the Register shall not delay the probate of a will or the grant of letters for more than 10 days after the filing of the petition for probate or for the grant of letters, or after the filing of the caveat, whichever shall be later."

5. By failing to provide notice to the administrator who previously had been granted letters of administration, that party is without an option to file a caveat. The word "caveat" is defined as Latin for "Let him beware. Warning to one to be careful. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration." BLACK'S LAW DICTIONARY 201 (West Publishing Co., 5th ed., 1979). Moreover, in the case of In Re Crider's Estate, 85 Pa. D. & C 443 (Orph. Ct. Union County, 1953), the Orphans' Court found that: "Caveat, let him beware, is a notice given by a party having *an interest*, to some officer not to do an act till the party giving the notice has a chance to be heard, as to the register of wills not to permit a will to be proved, or not to grant letters of administration . . ."

6. The cases dealing with caveats are unanimous in defining the purpose of a caveat, and limiting its availability to a party *in interest*. In failing to give notice to Donald Russell, the natural son, the Register of Wills created a scenario where Donald Russell was denied the opportunity to challenge the fitness of Rochelle Ott Beegle to serve as personal representative for the estate of David Russell. While the Register of Wills would be expected and anticipated to honor a request for the probate of a will, the ultimate decision as to who to issue letters to under that will is certainly something within her right to determine within the class of those entitled to serve as executrix. See Nearhoof's Estate, 8 Pa. D. & C. 2d 199.

7. The Court finds that, at the time of David Russell's death, he had an outstanding balance owed to Magnolias, a nursing home center. Pursuant to 23 Pa. C.S.A. § 4603(a)(1)(ii), one of the persons within the class of individuals having "the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge," is "the child of an indigent person." It is undisputed that Donald Russell is the natural son of David Russell. Rochelle Ott Beegle, the decedent's stepdaughter, is not a child of the decedent, and thus, would not statutorily be liable for the decedent's debts to Magnolias. Pennsylvania cases have found that a son can be held responsible for and required to support an indigent parent, provided he has sufficient assets to do so. Healthcare & Retirement Corp. of America v. Pittas, 46 A.3d 719 (Pa. Super. 2012). Therefore, it appears to this Court that by Rochelle Ott Beegle's own testimony, at the time of the decedent's death, David E. Russell had no assets, yet had outstanding debts to a nursing home.

8. Rochelle Ott Beegle's actions as attorney-in-fact in disbursing the decedent's assets for her benefit and that of her daughter without ensuring adequate assets were preserved to pay for his nursing home care created a circumstance in which the decedent's indigency exposed his natural children to potential litigation and claims by either the nursing home or the Pennsylvania Department of Welfare. Her actions of decimating his estate created Donald Russell's interest. Rochelle Ott Beegle's acts as agent of spending the decedent's cash for herself, and by paying off her debts by the purchase of automobiles, tractors, and other items for both herself or other family members, created a scenario by which Donald Russell, although otherwise specifically excluded from a right of inheritance of his father's estate, could now properly be considered a party in interest. Thus, this Court finds that under the fact scenario presented to it, the Register of Wills was required to provide notice to Donald Russell and give him the opportunity to file a caveat challenging the admission of probate of the will, and specifically the decision to appoint Rochelle Ott Beegle as personal representative based upon her actions while acting as attorney-in-fact for the decedent.

9. The Court also wishes to comment upon the actions taken by Rochelle Ott Beegle pursuant to the power of attorney dated June 16, 2009 by David E. Russell. Under paragraph 3, Power Concerning Gifts, the language states as follows: "to make unlimited gifts to my spouse, my issue, or a spouse of my issue, including my agent if a member of such class." Gifts and payments to the agent were not authorized by that language as she was not a member of the classes identified, so any gift she made was not authorized by David Russell. As agent, she was authorized to make gifts under subsequent language to ensure that the decedent would qualify for public or private benefits including medical assistance, SSI, or any other benefits for nursing home and other healthcare related expenses.

10. This Court questions how the two provisions must be read in the absence of case law addressing the issue: Can a parent not only lawfully disinherit an adult child, but also permit an agent to effectuate testamentary intent by gifting away the parent's estate, thus exposing a child to a statutory obligation to support the indigent parent? It appears that a child may not only be denied an inheritance, but may also be compelled to pay for parental care. This results in a double penalty for the adult child. Doesn't a child have a right to seek preservation of the parent's estate to avoid a claim, especially where the child received no distribution from the parent's estate prior to or after death? Current statutes do not recognize the possibility of just such a scheme.

11. This Court must conclude that if Rochelle Ott Beegle, in her capacity as agent for David E. Russell, had preserved adequate assets to pay for his nursing home care, she may rightfully argue that Donald Russell was not a party in interest, and thus not entitled to pursue a caveat challenging her actions as personal representative of his estate, or as agent under his durable power of attorney. It was her own lack of appreciation of the carefulness with which a fiduciary must act that led to the current result. This Court finds that she has steadfastly filed challenge after challenge to the claims of Donald Russell and his counsel, hoping to defer

having to answer for her actions while agent under the durable power of attorney executed by David E. Russell. Her counsel often analogized that, because any surcharge would only diminish her inheritance, it is a “no harm no foul” circumstance. Here, the Court finds there is harm to Donald Russell, so a foul has occurred.

12. While this Court issued a prior opinion indicating that, based upon the initial preliminary objections and arguments presented, Donald Russell did not have standing to pursue an accounting, in retrospect, the Court must now conclude, based upon the testimony offered, that the prior ruling is in error. Sitting as a court in equity, this Orphans’ Court directed the filing of an accounting, and having now heard testimony regarding the request for notice and an opportunity to file a caveat and challenge to the Register of Wills’ decision to issue letters testamentary and revoke the letters of administration without a hearing, has now been provided with more than adequate evidence to validate its findings that the Register of Wills should have provided notice to Donald Russell as a party in interest, and permitted him an opportunity to challenge through caveat the letters of administration granted to Rochelle Ott Beegle pursuant to the will of David E. Russell.

13. The ultimate question, though, is now what, if any, harm exists regarding the interests of Donald Russell and those of Rochelle Ott Beegle, as it is clear to this Court that David E. Russell, by his will and testament executed in 2002, did not wish to see his son inherit anything from him. The only interest Donald Russell may have, or his estate may have, is to ensure that he is not subject to defend litigation or claims for payment of David E. Russell’s nursing home care. Accordingly, this Court will issue a separate order of court finding, based upon the testimony offered, that Rochelle Ott Beegle has failed to appreciate the lawful requirements of a fiduciary while serving as an agent under a durable power of attorney, has failed to appreciate the requirements of an appointed personal representative of an estate in timely securing the assets of David Russell, including paying his debts and properly paying the Pennsylvania Inheritance Tax.

14. She obtained informal opinions from counsel based upon inaccurate and incomplete information, and therefore induced attorneys to give her advice that no estate administration was necessary, despite the fact that there appears to be gifts made within one year of the date of death, in the form of payment of debt or other outright cash distributions, which should have been reported, and if reported there would likely have needed to be, if there were any assets available, a payment of Pennsylvania Inheritance Tax. For these reasons, it is necessary for this Court, in order to protect the Estate of David E. Russell, and ultimately the interest of his natural son, Donald Russell, issue an order compelling Rochelle Ott Beegle to pledge by either bond or mortgage of her personal real estate or personal property filed of record with the Orphans’ Court in an amount one and one-half times the amount of the outstanding debt owed to the nursing home or to the Pennsylvania Department of Welfare for David Russell’s care. Such bond or pledge of assets as approved by this Court, and subject to immediate forfeiture and attachment, may only be relieved in the event Rochelle Ott Beegle can secure a full waiver and release of any and all claims of liability against Donald Russell or Ann Garman under Section 23 Pa. C.S.A. § 4603 from both the Pennsylvania Department of Welfare and any nursing home and facility which had claims against David E. Russell. The Court will not accept the averments by Ms. Beegle that she has made adequate provisions for payment of the nursing home debt, because if she were to become incapacitated or is deceased, she may be unable to honor the agreement with the nursing home.

15. This Court must point out that it is unexplainable how statutes permit a party who is not subject to surcharge or claim by the nursing home or Department of Welfare, created just such a hazard or jeopardy for the decedent’s natural children. Thus, it is only proper for this Court to ensure that the interest of the natural child are now protected against claims which were created specifically by the action of his agent under the durable power of attorney and personal representative of his estate.

Appearances:

Mark Mateya, Esq., *for the Estate*

Donald Kornfield, Esq.,

George Wenger, Esq., *for Rochelle Ott Beegle*

**AMENDED OPINION IN SUPPORT OF PREVIOUSLY ENTERED
ORDER**

Before Meyers, J.

The Court issued an order of relief in the above-captioned action on June 30, 2014. In reviewing the previous opinion, the Court identified a few scrivener's errors and citation corrections, and also omitted facts regarding the lack of participation in this matter by interested parties, which will aid those who read the opinion to gain a better understanding of the Court's decision. Nothing in the original order for relief has been altered, and nothing in the prior opinion has been removed. Aside from the corrections of some scrivener's errors and the addition of a footnote in the factual history, the opinion is otherwise identical in all respects. For ease of reference, a final footnote to this opinion contains the content of the Court's order of court entered June 30, 2014.

PROCEDURAL HISTORY

This discussion and decision regards both the Estate of David E. Russell who died on March 7, 2011, and the actions of his agent appointed under a durable power of attorney prior to his death. Prior to his death, David E. Russell executed a durable power of attorney appointing Rochelle Ott Beegle as his attorney-in-fact on June 16, 2009. Subsequent to the death of David E. Russell, his son Donald Russell appeared before the Register of Wills for the County of Franklin and filed a petition for letters of administration, which was granted by the Register of Wills on August 31, 2012.

Subsequent to the grant of letters, Donald Russell in his capacity as administrator, filed a petition for special relief seeking an accounting from the attorney-in-fact, Rochelle Ott Beegle, for her actions as agent for David E. Russell during his lifetime.

Subsequent to receiving the petition seeking an accounting, Rochelle

Ott Beegle, through her counsel, George E. Wenger, presented a will executed by David E. Russell to the Register of Wills on December 3, 2012, and requested that the Register of Wills simultaneously revoke the letters of administration granted to Donald Russell and grant letters testamentary to Rochelle Ott Beegle.

There is no dispute that the Register of Wills honored the petition of Rochelle Ott Beegle and revoked the letters of administration issued to Donald Russell and granted Rochelle Ott Beegle letters testamentary. David E. Russell's will of 2002 was admitted to probate on December 3, 2012. The Register received a letter from Mr. Mateya on December 5, 2012 advising her he objected to the probate of the will and requested an opportunity to be heard on the issue. The Register of Wills issued a citation in the matter to this Court for further hearing.

Following the filing of the petition for an accounting, preliminary objections were filed on December 13, 2012 by Rochelle Ott Beegle, arguing Donald Russell lacked standing to sue.

On December 7, 2012, Donald Russell filed a petition to review the Register of Wills' decision to revoke his letters of administration and to remove Executrix, Rochelle Ott Beegle. Although the Court initially scheduled the petition for review of the grant of letters for a hearing on January 18 2013, based upon the preliminary objections regarding standing having been filed by Rochelle Ott Beegle, the Court struck the hearing from the Court's calendar on January 18, 2013 in order to provide Counsel the opportunity to brief the preliminary objections and to submit them for decision to the Court.

On January 2, 2013, Rochelle Ott Beegle filed a response to the petition for review submitted by Donald Russell. Following an order of court on January 7, 2013, a status conference was scheduled for January 24, 2013.

On January 9, 2013, Petitioner, Donald Russell filed a response to the new matter set forth in Respondent, Rochelle Ott Beegle's petition for special relief seeking an accounting. Donald Russell filed preliminary objections to the preliminary objections filed by Rochelle Ott Beegle on January 9, 2013. Donald Russell filed a brief in support of his standing to seek an accounting on March 5, 2013.

On May 1, 2013, the Court in reviewing the preliminary objections, the answer thereto, and the brief, issued an order granting Respondent's objection to petitioner's standing to seek an accounting, but given the possibilities raised to deficiencies in the action of the agent, the Court on its own motion issued an order directing Rochelle Ott Beegle to file an

accounting. Her counsel, George E. Wenger, requested an extension and was granted until August 27, 2013 to perform the accounting.

On August 27, 2013, Mr. Wenger filed an accounting on behalf of Rochelle Ott Beegle. On October 2, 2013, following receipt of the accounting, Donald Russell filed an amended petition to review the Register of Wills' decision to revoke the letters of administration, citing information contained in the accounting.

On October 14, 2013, Rochelle Ott Beegle filed an amended answer to the petition to review the Register of Wills' decision to revoke filed letters of administration and remove Executrix Rochelle Ott Beegle, and included new matter. A hearing was scheduled for December 20, 2013 to commence before this Court. Based upon a motion for continuance citing personal reasons, counsel for petitioner, Donald E. Russell, was granted an extension of hearing until January 28, 2014. Based upon actions of the personal representative, Rochelle Ott Beegle, petitioner, Donald Russell, sought a petition seeking enforcement of the Court's order regarding administration, which was filed on December 23, 2013. The Court issued an order on December 27, 2013.

On December 31, 2013, an answer to petition to enforce discovery was filed by Rochelle Ott Beegle. In addition, there were requests for discovery sought by Donald Russell, to which objections were filed by Rochelle Ott Beegle. A hearing on that matter was scheduled for February 28, 2014. A subsequent motion to compel discovery was sought by Donald Russell. Objections to the motion to compel were filed by Rochelle Ott Beegle.

Ultimately, on March 18, 2014, the Court issued a motion directing the settlement agent who handled the real estate settlement at Black & Davison for the sale of David E. Russell's real estate to produce the settlement file. Prior to the time scheduled for hearing, a motion in limine was filed by Rochelle Ott Beegle as to the introduction of evidence. There was a pre-hearing brief submitted by petitioner, Donald Russell. A reply brief was supplied by Donald Russell to the motion in limine, along with his response.

On April 23, 2014, the Court having considered the briefs, set the matter for hearing. The Court having determined that the matter was ripe for a final decision, specifically on the issue of the decision of the Register of Wills to revoke the letters of administration issued to Petitioner David Russell without notice and hearing, and failing to conduct a hearing to consider why letters of administration should not be issued to Rochelle Ott Beegle. It was agreed by the parties that Linda Miller, Register of Wills, would not be called as a witness at the hearing. The matter was scheduled

by the Court for an ultimate factual hearing on the issue on May 9, 2014.

FACTUAL HISTORY

The following facts are not in dispute:

Decedent, David E. Russell, died on March 7, 2011 in Franklin County, Pennsylvania. At the time of his death, he was survived by his natural issue, his son, Donald Russell, and his natural daughter, Ann Garman. As of August 31, 2012, approximately 17 months following the death of David E. Russell, no estate administration was sought by any party.

On August 31, 2012, Donald Russell petitioned the Franklin County Register of Wills for letters of administration for his late father's estate. He was granted letters of administration by the Franklin County Register of Wills.

On December 3, 2012, Rochelle Ott Beegle presented a last will and testament of David E. Russell, dated June 14, 2002, for probate. The will distributed David Russell's estate to his wife Hazel, and to Rochelle Ott Beegle and Barbara Timmons, his stepdaughters, if Hazel did not survive him. Rochelle Ott Beegle was named as the only executor. The Register of Wills granted Rochelle Ott Beegle letters testamentary, and revoked the letters of administration granted to Donald Russell without any notice to Donald Russell of her intent to do so.¹

The following are facts the Court determines to be relevant to reaching its decision and that the testimony supporting the facts was credible.

The Court heard testimony from Mark Mateya, counsel for the petitioner, Donald Russell. Attorney Mateya testified that his client, Donald Russell, is suffering from dementia, so he was not present for the hearing. (The Court questions why a guardian for Donald Russell has not been appointed and now seeks to pursue his interests, but ultimately that is a procedural technicality on the way to this Court's ultimate decision.) Mr. Mateya testified credibly that subsequent to the death of David Russell, he was hired by Donald Russell to serve as attorney for the estate. He testified that in August, 2012 he and Donald traveled to the Franklin County Courthouse to the Register of Wills Office with a petition for grant of letters of administration, explaining that to their knowledge there was no will. Short certificates were granted by the Register of Wills to Donald Russell. Mr. Mateya and Donald Russell traveled to Magnolias nursing facility and

¹ The Court notes that although the Petitioner, Donald Russell, has a natural sister, Ann Garman, she did not participate in any of these proceedings seeking any relief from the Orphans' Court. The Court also notes that although entitled to a receipt of benefits under the last will of David E. Russell, the decedent's stepdaughter and named beneficiary in his last will and testament, Barbara Timmons, also did not come forward and seek relief from the Orphans' Court. Counsel for Rochelle Ott Beegle continuously represented to this Court that Barbara Timmons did not object to any actions taken by Rochelle Ott Beegle.

to Manor Care nursing facility. While at Magnolias, the executive director provided some paperwork and indicated that additional paperwork would be sent to Mr. Mateya in a couple of weeks, indicating that there was a balance due on Mr. David Russell's account. A similar response was received from Manor Care. In addition, Mr. Mateya and Mr. Russell went to 6 or 7 banks, including Orrstown, Susquehanna, M&T, Patriot Federal Credit Union, and possibly F&M Trust. Mr. Mateya acknowledged that he did not make any effort to see if Rochelle Ott Beegle was in fact in possession of a will, because he had been told by Donald Russell that there was no will. Mr. Mateya testified that Donald Russell signed a limited power of attorney granting The Mateya Law Firm the right to handle the day-to-day administration of the estate. Most of the administration was handled by Ann Aumiller, a paralegal for The Mateya Law Firm. Mr. Mateya understood that he would proceed with the normal duties of securing the assets of the estate, determining debts, and determining what, if anything, would need to be paid, including Pennsylvania inheritance tax. Mr. Mateya learned that in reviewing the assets of David Russell that Rochelle Ott Beegle had used a power of attorney executed on behalf of David Russell to sell David Russell's real estate for \$240,000. It was determined that the sale of the real estate occurred within one year of death. Furthermore, it was thought that the sale of the real estate resulted in monies being disbursed to individuals other than for the benefit of David Russell. The belief was that the proceeds of the sale went to pay for a mortgage on a parcel of real estate owned by Rochelle Ott Beegle. Mr. Mateya testified that he could not see a benefit being derived for David Russell. If so, gift taxes should have been paid, or were payable, as part of inheritance taxes to the Commonwealth.

On cross examination, Mr. Mateya was questioned as to why timely advertisement was not made of the estate in compliance with PEF Code Section 3162. Mr. Mateya indicated that at the time of the opening of the estate, Donald Russell had limited funds and did not advance funds for that purpose, and until and unless he determined there were assets in the estate, he did not pursue advertising. (The Court notes that this line of questioning appears to be part of a continuing attempt by counsel for Rochelle Ott Beegle to divert the Court's analysis from the real issues regarding the actions of the durable power of attorney during David Russell's lifetime. Furthermore, arguments have been consistently made that no monies exist in the estate, and if they did, they would go to Rochelle Ott Beegle.)

The Court heard from Rochelle Ott Beegle. Ms. Beegle, on direct examination, testified that she is a real estate broker. Ms. Beegle testified that she has siblings, a sister, Margaret Timmons, two half-brothers, and a step-sibling, Donald Russell. David Russell was her stepfather. She testified that David and Donald Russell did not have a relationship as

adults. She testified that David Russell was difficult to deal with. He had a difficult personality and he was not generally someone who had favorable interactions with others. Despite those shortcomings, Ms. Beegle testified she looked after David Russell because her mother had married him. For those reasons, she explained she was appointed agent for David Russell under his durable power of attorney. She acknowledged and testified that during David Russell's lifetime she purchased a tractor at auction that was not specifically for his benefit. She stated that she invested some of the money, but ultimately sold the tractor and deposited those monies into her account. The monies were not directly spent for the benefit of David Russell. She also testified that she expended multiple sums of money from David Russell's account to pay her personal bills. Her reasoning was that David could not take care of himself, he could not read or write, and that her survival justified the spending of his money for her benefit so that she could ensure that she was able to take care of him. She acknowledged that she purchased a car for her daughter. She asserted that she asked David if it was all right with him, and that he indicated that it was. She claimed that he stated: "You do whatever you like. My money is your money." She acknowledged paying various debts for her daughter and acquired a car from Kyner's Autos on April 7, 2010. David at that point was a resident of Magnolias and did not drive. She stated that the car was purchased to ensure that she had a car so that she could take care of David Russell. She indicated that she did not complete a gift tax return for the monies. She also testified that she bought an additional car for her daughter so that her daughter, Jennifer Ott, a CNA, could provide care for David.

As to the distribution of monies from the sale of David Russell's real estate, she acknowledged that a mortgage on real estate that she owned was paid from the proceeds. She also acknowledged that at the time of David Russell's death he had an outstanding balance payable to Magnolias for which a payment plan was set up to pay for his care. She was making payments towards his outstanding debt. She acknowledged that she was aware that there was a will that David Russell had executed appointing her as personal representative. The decedent's will provided that his estate would be distributed to his wife, Hazel M. Russell, if she survived him by a period of ninety days, and if not, then his estate was bequeathed to his stepdaughters, Rochelle R. Ott and Barbara A. Timmons. No provision was made for Donald Russell. She testified that she was aware that she was appointed as personal representative under David Russell's will. She testified that she contacted Attorney Robert Schollaert of Black & Davison and asked whether or not she needed to probate the will and proceed with estate administration. She advised Attorney Schollaert that there was no property left in the estate, to which he responded that no estate needed to be

probated. She testified that similar advice was provided to her by Attorney Wenger based upon similar information provided to him by her.

The Court heard from Stacy Lynn Shindle, currently an employee with the Orrstown Bank, and formerly a paralegal with Black & Davison for approximately 17 years. Ms. Shindle testified she processed real estate settlements under attorney supervision. At the time of the sale of David Russell's real estate, Ms. Shindle's name was Stacy Wagaman. She indicated she signed as agent for David E. Russell on the settlement sheet, but that was a scrivener's error. She indicated she was not aware that the payment of the \$53,500.00 shown on the disbursement sheet was for a debt of David Russell, or perhaps the debt of a third party.

The Court also heard testimony by an agent of Magnolias, confirming that there were outstanding balances due and owing to Magnolias as of the time of the decedent's death. Rochelle Ott Beegle confirmed that she entered into a payment agreement with Magnolias and was making payments to ensure that the last debt for the nursing home would be paid by her.

DISCUSSION

Issue #1 – Should the Register of Wills have revoked the previous letters of administration granted to the administrator, Donald Russell, for the estate of his father, David Russell, upon the presentation of a will for probate without having given the prior petitioner notice of the intent to revoke letters of administration and proceeding to grant letters testamentary?

In this instance, this Court must consider the decisions of the Register in light of 20 Pa. C.S.A. §3155 (a) and (b), which provide that letters testamentary shall be granted by the Register to the Executor designated in the will, or letters of administration shall be granted by the Register in such form as the case shall require based upon an order set forth in the statute. In this instance, the Register of Wills had initially been advised that a will did not exist by Donald Russell approximately 17 months following David Russell's death. Given the averments in the petition, the Register granted letters of administration to Donald Russell, the decedent's natural son on August 31, 2012. Once the Register of Wills was presented with a valid will on December 3, 2014, the Register subsequently honored the petition for letters testamentary and for revocation of letters of administration previously granted.

This Court, in issuing a prior order establishing hearing, took guidance from the case of In Re Nearhoof's Estate, 8 Pa. D. & C. 2d 199

(Orph. Ct. Mifflin County, 1957). There, the Orphans' Court ruled that: "The Register may not revoke letters of administration granted and admit to probate an alleged will without giving due and proper notice to the administrator and any proper parties in interest of such proceedings, so that they may be given a chance to be heard and file a caveat against the probate of the alleged will, if they see fit." 8 Pa. D. & C. 2d at 205 (citing McQuade Estate, 1 Fiduc. Rep. 579).

This Court, in addition to citing to Nearhoof's Estate, also takes guidance from In Re Neidig's Estate, 38 A. 1033 (Pa. 1898). In that instance, where letters of administration were initially granted by the Register of Wills, upon a request for revocation of the letters in the absence of a will, the Register issued a citation to the party previously issued letters of administration, and after hearing, made a decision. This Court acknowledges that the Register of Wills, in accordance with 20 Pa. C.S.A. §901, has jurisdiction for the determination of probate of wills and the grant of letters to a personal representative in any other matter as provided by law. The Court notes under 20 Pa. C.S.A. §907, **Caveat**, that "when a caveat has been filed, the Register shall not delay the probate of a will or the grant of letters for more than 10 days after the filing of the petition for probate or for the grant of letters, or after the filing of the caveat, whichever shall be later."

By failing to provide notice to the administrator who previously had been granted letters of administration, that party is without an option to file a caveat. The word "caveat" is defined in Black's Law Dictionary as Latin for "Let him beware. Warning to one to be careful. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration." BLACK'S LAW DICTIONARY 201 (West Publishing Co., 5th ed., 1979). Moreover, in the case of In Re Crider's Estate, 85 Pa. D. & C 443 (Orph. Ct. Union County, 1953), the Orphans' Court found that: "Caveat, let him beware, is a notice given by a party having *an interest*, to some officer not to do an act till the party giving the notice has a chance to be heard, as to the register of wills not to permit a will to be proved, or not to grant letters of administration"

The cases dealing with caveats are unanimous in defining the purpose of a caveat, and limiting its availability to a party *in interest*. In failing to give notice to Donald Russell, the natural son, the Register of Wills created a scenario where Donald Russell was denied the opportunity to challenge the fitness of Rochelle Ott Beegle to serve as personal

representative for the estate of David Russell. While the Register of Wills would be expected and anticipated to honor a request for the probate of a will, the ultimate decision as to who to issue letters to under that will is certainly something within her right to determine within the class of those entitled to serve as executrix. See *Nearhoof's Estate*, 8 Pa. D. & C. 2d 199. The issue was of such concern to the Register that on December 5, 2012, she issued a citation in the matter to the Orphans' Court for determination.

The Court has considered the testimony that was offered in the hearing before it to determine if the Register of Wills had given notice to Donald Russell, and having been presented with evidence offered at the hearing, would have determined: A) whether or not he was a person in interest, thus one properly able to file a caveat, or B) whether or not sufficient evidence existed to question the grant of letters of testamentary to Rochelle Ott Beegle.

This Court finds that, based upon the testimony offered at hearing, at the time of David E. Russell's death, he had outstanding balances owed to a nursing home. The Court finds that it is clearly stated in 23 Pa. C.S.A. § 4603, **Relatives' Liability; Procedure (a) Liability**:“(1) except as set forth in paragraph (2), all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge: (i) the spouse of the indigent person. (ii) a child of the indigent person. (iii) a parent of the indigent person. (2) Paragraph (1) does not apply in any of the following cases: (i) if an individual does not have sufficient financial ability to support the indigent person. (ii) a child should not be liable for the support of a parent who abandoned the child and persisted in the abandonment for a period of 10 years during the child's minority.”

Based upon the testimony offered at hearing, it is undisputed that Donald Russell is the natural son of David E. Russell. The Court also finds that at the time of David Russell's death, he had an outstanding balance owed to Magnolias, a nursing center. Rochelle Ott Beegle, the decedent's stepdaughter, is not a child of the decedent, and thus, would not statutorily be liable for the decedent's debts to Magnolias. Furthermore, under case law interpreting and supporting the statutory construction of 23 Pa. C.S.A. §4603, a son can be held responsible for and required to support an indigent parent, provided he has sufficient assets to do so. *Healthcare & Retirement Corp. of America v. Pittas*, 46 A.3d 719 (Pa. Super. 2012). It appears to this Court that by Rochelle Ott Beegle's own testimony, at the time of the decedent's death, David E. Russell had no assets, yet had outstanding debts to a nursing home. Her actions as attorney-in-fact in disbursing the decedent's assets for her benefit and that of her daughter without ensuring

adequate assets were preserved to pay for his nursing home care created a circumstance in which the decedent's indigency exposed his natural children to potential litigation and claims by either the nursing home or the Pennsylvania Department of Welfare. Her actions of decimating his estate created Donald Russell's interest. There is nothing of proof in the testimony offered to the Court to indicate that Donald Russell had been determined to not be able to support or pay for his father's care, nor was there any indication that there was a period of abandonment during Donald Russell's period of minority, which would provide a defense to a claim for support. Rochelle Ott Beegle's acts as agent of spending the decedent's cash for herself, and by paying off her debts by the purchase of automobiles, tractors, and other items for both herself or other family members, created a scenario by which Donald Russell, although otherwise specifically excluded from a right of inheritance of his father's estate, could now properly be considered a party in interest. Thus, this Court finds that under the fact scenario presented to it, the Register of Wills was required to provide notice to Donald Russell and give him the opportunity to file a caveat challenging the admission of probate of the will, and specifically the decision to appoint Rochelle Ott Beegle as personal representative based upon her actions while acting as attorney-in-fact for the decedent.

Issue #2 – The Actions of Rochelle Ott Beegle as the Agent for David E. Russell and his Estate

The Court also wishes to comment upon the actions taken by Rochelle Ott Beegle pursuant to the power of attorney dated June 16, 2009 by David E. Russell. Under paragraph 3, Power Concerning Gifts, the language states as follows: "to make unlimited gifts to my spouse, my issue, or a spouse of my issue, including my agent if a member of such class." Gifts and payments to the agent were not authorized by that language as she was not a member of the classes identified, so any gift she made was not authorized by David Russell. As agent, she was authorized to make gifts under subsequent language to ensure that the decedent would qualify for public or private benefits including medical assistance, SSI, or any other benefits for nursing home and other healthcare related expenses. This Court questions how the two provisions must be read in the absence of case law addressing the issue: Can a parent not only lawfully disinherit an adult child, but also permit an agent to effectuate testamentary intent by gifting away the parent's estate, thus exposing a child to a statutory obligation to support the indigent parent? It appears that a child may not only be denied an inheritance, but may also be compelled to pay for parental care. This results in a double penalty for the adult child. Doesn't a child have a

right to seek preservation of the parent's estate to avoid a claim, especially where the child received no distribution from the parent's estate prior to or after death? Current statutes do not recognize the possibility of just such a scheme.

This Court must conclude that if Rochelle Ott Beegle, in her capacity as agent for David E. Russell, had preserved adequate assets to pay for his nursing home care, she may rightfully argue that Donald Russell was not a party in interest, and thus not entitled to pursue a caveat challenging her actions as personal representative of his estate, or as agent under his durable power of attorney. It was her own lack of appreciation of the carefulness with which a fiduciary must act that led to the current result. This Court finds that she has steadfastly filed challenge after challenge to the claims of Donald Russell and his counsel, hoping to defer having to answer for her actions while agent under the durable power of attorney executed by David E. Russell. Her counsel often analogized that, because any surcharge would only diminish her inheritance, it is a "no harm no foul" circumstance. Here, the Court finds there is harm to Donald Russell, so a foul has occurred.

While this Court issued a prior opinion indicating that, based upon the initial preliminary objections and arguments presented, Donald Russell did not have standing to pursue an accounting, in retrospect, the Court must now conclude, based upon the testimony offered, that the prior ruling is in error. Sitting as a court in equity, this Orphans' Court directed the filing of an accounting, and having now heard testimony regarding the request for notice and an opportunity to file a caveat and challenge to the Register of Wills' decision to issue letters testamentary and revoke the letters of administration without a hearing, has now been provided with more than adequate evidence to validate its findings that the Register of Wills should have provided notice to Donald Russell as a party in interest, and permitted him an opportunity to challenge through caveat the letters of administration granted to Rochelle Ott Beegle pursuant to the will of David E. Russell.

The ultimate question, though, is now what, if any, harm exists regarding the interests of Donald Russell and those of Rochelle Ott Beegle, as it is clear to this Court that David E. Russell, by his will and testament executed in 2002, did not wish to see his son inherit anything from him. The only interest Donald Russell may have, or his estate may have, is to ensure that he is not subject to defend litigation or claims for payment of David E. Russell's nursing home care. Accordingly, this Court will issue a separate order of court finding, based upon the testimony offered, that Rochelle Ott Beegle has failed to appreciate the lawful requirements of a fiduciary while serving as an agent under a durable power of attorney, has failed to appreciate the requirements of an appointed personal representative of an

estate in timely securing the assets of David Russell, including paying his debts and properly paying the Pennsylvania Inheritance Tax. She obtained informal opinions from counsel based upon inaccurate and incomplete information, and therefore induced attorneys to give her advice that no estate administration was necessary, despite the fact that there appears to be gifts made within one year of the date of death, in the form of payment of debt or other outright cash distributions, which should have been reported, and if reported there would likely have needed to be, if there were any assets available, a payment of Pennsylvania Inheritance Tax. For these reasons, it is necessary for this Court, in order to protect the Estate of David E. Russell, and ultimately the interest of his natural son, Donald Russell, issue an order compelling Rochelle Ott Beegle to pledge by either bond or mortgage of her personal real estate or personal property filed of record with the Orphans' Court in an amount one and one-half times the amount of the outstanding debt owed to the nursing home or to the Pennsylvania Department of Welfare for David Russell's care. Such bond or pledge of assets as approved by this Court, and subject to immediate forfeiture and attachment, may only be relieved in the event Rochelle Ott Beegle can secure a full waiver and release of any and all claims of liability against Donald Russell or Ann Garman under Section 23 Pa. C.S.A. § 4603 from both the Pennsylvania Department of Welfare and any nursing home and facility which had claims against David E. Russell. The Court will not accept the averments by Ms. Beegle that she has made adequate provisions for payment of the nursing home debt, because if she were to become incapacitated or is deceased, she may be unable to honor the agreement with the nursing home. This Court must point out that it is unexplainable how statutes permit a party who is not subject to surcharge or claim by the nursing home or Department of Welfare, created just such a hazard or jeopardy for the decedent's natural children. Thus, it is only proper for this Court to ensure that the interests of the decedent's natural child are now protected against claims which were created specifically by the action of his agent under the durable power of attorney and personal representative of his estate.²

2 ORDER OF COURT - Consistent with the Court's opinion issued this date, it is hereby ordered that Rochelle Ott Beegle, personal representative for the Estate of David E. Russell shall:

1. Within thirty (30) days of the date of this order obtain a full satisfaction and release of any and all claims by the Pennsylvania Department of Welfare or any healthcare provider, nursing home or residential nursing home provider of David E. Russell under 23 Pa. C.S.A. §4603, against Donald Russell and Ann Garman, the natural children of the decedent. The release shall be filed of record as part of the Estate of David E. Russell. Furthermore, a fully executed release subject to and approved by the attorneys for Donald Russell and Ann Garman shall be provided to Donald Russell. The costs for obtaining the release shall be paid by Rochelle Ott Beegle, including the attorneys' fees incurred by Donald Russell or Ann Garman for approval of the review and release.

2. In the event Rochelle Ott Beegle, within thirty (30) days of the date of this order, cannot secure a full release of liability on behalf of Donald Russell and Ann Garman, under 4603, Rochelle Ott Beegle shall file of record with this Court the outstanding balance due to any nursing home facility or to the Pennsylvania Department of Welfare or any other entity which has a right of claim under 23 Pa. C.S.A. §4603 against Donald Russell or Ann Garman. Rochelle Ott Beegle shall obtain a bond in the amount of one and one-half times the amount of any outstanding balance due, and in the event that she is unable to obtain a bond, shall post in the form of a mortgage as a first lien on real estate of which she is sole and exclusive owner or such other personal property in the form of cash, automobiles,

Pursuant to the requirements of Pa. R.C.P. 236 (a)(2), (b), (d), the Clerk of the Orphan's Court shall immediately give written notice of this Amended Opinion, 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.

tangible or intangible property such as certificates of deposit or cash that may otherwise be pledged and secured as collateral for the bond. Rochelle Ott Beegle shall not be relieved of this obligation and may only obtain release of the collateral upon full payment of the outstanding nursing home debt of the decedent, David E. Russell. All costs of the preparation of a mortgage or the payment of the premiums for a bond shall be paid by Rochelle Ott Beegle.