

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Effie Stevens, Deceased
No. 2125 DE of 1990
Control No. 085352

Sur account entitled First and Final Account of Diana P. Napier, Administratrix

The account was called for audit July 7, 2008 By: **HERRON, J.**

Counsel appeared as follows:

Alfred D. Whitman, Esquire - for the Accountant
Helen L. McCrary, Esquire – for the Objectant

ADJUDICATION

Effie Stevens died intestate on January 4, 1990. She was survived by two daughters, Diana Napier and Agnes Walker, a son, James Stevens, who died in 2002, as well as by the six children of her deceased daughter, Minnie Mae Jones. Not until 15 years after Effie Stevens' death were Letters of Administration obtained. On October 11, 2005 decedent's daughter, Diana Napier, was named administratrix of the Estate of Effie Stevens. Slightly less than a year later on September 14, 2006, decedent's other daughter, Agnes Walker, filed a petition seeking the removal of Diana Napier as well as an accounting by her.¹ On January 14, 2008, a decree was issued awarding a citation directed to Diana Napier to show cause why she should not file an account and why she should not sell the decedent's real property so that the proceeds could be distributed to the beneficiaries.

On May 21, 2008, Ms. Napier filed an account of her administration of the Effie Stevens Estate covering the period October 11, 2005 to May 1, 2008. The sole principal asset listed in

¹ By decree dated November 20, 2006, this petition was dismissed without prejudice to refile in the event the administration of the estate was not completed within 4 months. Ms. Walker waited more than a year to seek that

the account was real property located at 2002 W. Bellevue Street (“Bellevue Street property”) in Philadelphia with a date of death value of \$20,000. According to the Account, the debts of the decedent totaled \$46,007.65, thereby rendering this presently an insolvent estate. The accountant proposed that the Bellevue Street property be distributed to herself since she was the estate’s creditor who had advanced nearly the entire \$46,007.65 to the Estate.

Agnes Walker filed objections to the Account. In particular, she noted that Ms. Napier had lived at the Bellevue Street property since the death of Effie Stevens in 1990 and she objected to the accountant’s charging the estate with the cost of unpaid taxes due from 1991 to 2001 as well as the mortgage payments in the amount of \$21,434.27 on the property.² Ms. Walker also objected to the charging to the estate of every repair made on the property since the decedent’s death and claimed that the accountant had understated the value of the property, which the objectant asserted was \$60,000 based on comparable neighborhood sales.³

A hearing was held on those objections, during which the parties resolved objections 1, 2, 4 and 5.⁴ They also made the following stipulations. The 2002 Bellevue Street property has a present value of \$28,000, with a date of death value of \$20,000. The accountant had resided on that property since the time of the decedent’s death. The balance due on the mortgage at the time of decedent’s death was \$10,881.07. The fair monthly rental value for the premises was \$500. Based on these figures, objectant seeks to recover a total of \$114,000 from the accountant as rent for the period that she had resided alone in the decedent’s property.⁵ She agreed, however, that the accountant was entitled to a credit of \$30,504.70 for the expenses she had

relief.

2 6/11/08 Objections, ¶ 3.

3 6/11/08 Objections, ¶¶ 4 & 5.

4 1/22/09 N.T. at 11-13 & 29.

incurred for the mortgage, taxes and repairs on the Bellevue Street property.⁶ The parties concurred that after the decedent's death, the Bellevue Street property was put in foreclosure, until Ms. Napier filed for bankruptcy and paid off the mortgage.⁷ At that time, she had not been administratrix of the estate.

The sole issue remaining, therefore, was whether Ms. Napier should be required to pay rent in the amount of \$500 a month for 228 months for a total of \$114,000.⁸ The parties submitted memoranda of law to address that issue.

Legal Analysis

Both parties invoke the same PEF code provision, Section 3311, to support their opposing positions. While the objectant claims that section 3311 supports her claim for rental payments, the accountant presents various, nuanced arguments against the imposition of rental payments upon her.

Any resolution of this dispute must therefore begin with section 3311 which provides:

- (a) **PERSONAL REPRESENTATIVE** – A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied at the time of the death by an heir or devisee with the consent of the decedent. He shall collect the rents and income from each asset in his possession until it is sold or distributed, and, during the administration of the estate, shall have the right to maintain any action with respect to it and shall make all reasonable expenditures necessary to preserve it. The court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or devisee if this is necessary to protect the rights of claimants or other parties. Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee.
20 Pa.C.S. § 3311(a)(emphasis added).

On its face, therefore, section 3311 contains a potential contradiction. While it states that a personal representative shall have the right to take possession of real property of a decedent, it

5 1/22/09 N.T. at 7-9; 2/19/09 Agnes Walker Brief at 6.

6 1/22/09 N.T. at 27-28.

7 2/19/09 Agnes Walker Brief at 2; 3/11/09 Diana Napier Brief at 1.

initially limits that authority as to “the real estate occupied at the time of death by an heir or devisee with the consent of the decedent.” Alternatively, it concludes that “[n]othing in this section shall affect the personal representative’s power to sell real estate occupied by an heir or devisee.” 20 Pa.C.S. § 3311(a). To further complicate the issue, the 1949 Comment states that “[i]t is not contemplated that rents shall be collected by the personal representative from real estate occupied by an heir or devisee unless needed for payment of claims.” 20 Pa.C.S. §3311 (Jt. St. Govt. Comm. Comment-1949).

In the instant case, Ms. Napier had been living in the Bellevue Street property with the decedent at the time of her death, and continued to do so for nearly nineteen years. No one raised an estate until 2005, when Ms. Napier did so. Since Effie Stevens died intestate, any of her heirs had the opportunity to take responsibility for the administration of her estate and the disposition of her property but none of her other children elected to take on that responsibility despite the passage of 15 years. Slightly less than a year after Ms. Napier obtained letters of administration, her sister Agnes Walker petitioned to have Ms. Napier removed as administratrix. Since this petition was premature, it was dismissed without prejudice to refile in the event the administration was not completed within four months. Upon a petition filed in January 2008 by Ms. Walker, this court issued an order requiring Ms. Napier to file an account and show cause why the real property should not be sold. The account that was subsequently filed by Ms. Napier identified the sole asset of the estate as the Bellevue Street property.

By seeking the removal of Ms. Napier with her September 2006 petition and the sale of the estate’s sole asset with her January 9, 2008 petition, Ms. Walker essentially invoked those

provisions of Section 3311 that “[t]he court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or a devisee if this is necessary to protect the rights of claimants or other parties.” 20 Pa.C.S. § 3311(a). Since the rules of intestacy would control the disposition of the Bellevue Street property, to protect the rights of all the heirs, the court had authority to order the sale of that property even though it was occupied by another heir, Ms. Napier. In addition to the sale of the property, in her post-hearing memorandum Ms. Walker now demands rental payments from Ms. Napier going back to 1990 nearly sixteen years before she filed her petition seeking the removal of the administratrix and the 2008 petition seeking the sale of the property. There are several reasons why this claim for rent back to 1990 is denied.

First, as the accountant notes in her brief, she sought—and obtained—discharge from this specific rental debt in bankruptcy court. Documents attached to Ms. Napier’s brief demonstrate that she listed the “Estate of Effie Stevens, c/o Agnes Walker, James Stevens, Velma Johnson, Esq. as “creditors” for “rent for 2002 W. Belleview St., Phila. PA from 1/1990-8/2001 at approximately \$650/month.”⁹ By order dated April 12, 2007, Judge Bruce Fox of the United States Bankruptcy Court for the Eastern District of Pennsylvania concluded: “It appearing that the debtor is entitled to discharge, it is ordered: The debtor is granted a discharge under section 1328(a) of title 11, United States Code (the Bankruptcy Code).”¹⁰ The objectant does not address—or refute—the legal implications of this discharge of Ms. Napier’s rental obligations which would extend at least until the claim for January 1990 through August 2001.

Second, as the accountant emphasizes in her brief, no estate was raised until she obtained

9 3/11/09 Diana Napier Brief, Ex. B, Schedule F. This rent is \$150 more than the parties’ stipulation of a fair

letters of administration in October 2005. Not until 2005, therefore, was there a personal representative to administer the estate in accordance with section 3311 to collect rents on the decedent's real property until it was sold. Moreover, the property was occupied by an heir, Ms. Napier, who had resided with the decedent at the time of her death which has been interpreted by courts as evidencing the decedent's consent to that habitation without rent. See, e.g. In re Estate of Padezanin, 2007 Pa. Super. 350, 937 A.2d 475, 482 (2007) (“The case authority we have uncovered confirms that as long as the estate is solvent, rental is not awarded to an estate from an heir or devisee occupying land to the decedent when the decedent died”). According to the Comment accompanying section 3311 “[i]t is not contemplated that rents shall be collected by the personal representative from real estate occupied by an heir or a devisee unless needed for payment of claims.” 20 Pa.C.S. § 3311, 1949 Comment.

There is, moreover, precedent to support the accountant's claim that rent should not be charged to a beneficiary living at decedent's real property at the time of his death with his consent unless rental payments would be necessary to pay debts. See, e.g., In re Padezanin, 2007 Pa. Super. 350, 937 A.2d. 475 (2007)(rental could not be charged against beneficiary living at decedent's residence at his time of death but could be charged as to a beneficiary who moved into the premises 3 months after the date of death). There is, however, precedent that if a beneficiary/executor is responsible for the delay in selling decedent's property, she may be charged rent after the passage of a reasonable period of 6 months. See, e.g., In re Estate of Bouks, 2008 Pa. Super. 273, 964 A.2d 4 (2008). The Bouks opinion emphasized, however, that neither it nor the Padezanin opinion should be construed “so as to permit the beneficiary of an

market rent of \$500 for the premises.

estate to reside on the estate real property free for an unlimited period of time.” Bouks, 964 A.2d at 6. But the facts of both Bouks and Padezanin differ significantly from the Effie Stevens Estate since in both of those cases a personal representative had taken charge at the respective estates fairly soon after the decedent’s death and could thus be held accountable for the delay in the administration of the assets or sale of property.

In the present case, in contrast, all of the intestate heirs allowed the administration of the estate to languish 15 years. Under the unique facts of this case plagued by the sublime neglect of its intestate heirs, Ms. Napier would not be obliged to pay rent until October 2005 when a personal representative finally assumed responsibility for the management of the estate of Effie Stevens. The accountant has computed the rents that would be owed from that October 2005 date which would be significantly less than the \$114,000 sought by objectant. Instead, the accountant calculates that the rental due from October 2005 for 40 months would total \$20,000. If that calculation was extended from October 2005 to October 2009, the amount due would be \$24,000. This rental due, however, would be significantly less than the credits which the parties stipulate accountant is entitled to for her expenditures of \$30,504.70 on the taxes, repairs and mortgage payments for the Bellevue Street property.

There is no dispute that the accountant is entitled to a credit for these expenditures which preserved the property or the estate. See generally Donnelly’s Estate, 246 Pa. 308, 92 A.2d 306 (1914)(where executor or beneficiaries loan money to the estate to preserve it, they are entitled to repayment). The estate assets would thus be less than the debt it owed to the accountant. Consequently, the accountant, as the estate’s creditor, is entitled to receive the property as set

forth in her proposed statement of distribution.

While this outcome may seem harsh, it reflects the failure of any of the heirs to take an interest in the management of the estate for more than 15 years. The record reflects that the objectant failed to take any formal demands regarding the administration of the estate's sole asset until she filed her September 2007 petition seeking the removal of the administratrix and her January 2008 petition seeking the sale of the property. As an intestate heir she had the option of seeking letters of administration for nearly 15 years before the accountant obtained her letters, but she failed to do so.

The Accountant states that no Pennsylvania Transfer Inheritance and Estate Tax was paid.

According to the Account, the sole principal receipt is the 2002 W. Bellevue Street property with a value of \$20,000, but with debts totaling \$46,007.65 that were advanced by Diana Napier. The parties have stipulated that the accountant advanced \$30,504.70 to the estate. As set forth in the Statement of Proposed Distribution, the premises located at 2002 W. Bellevue Street is hereby awarded to Ms. Napier in partial reimbursement of her payment of the estate's debts, subject to any transfer inheritance tax as may be due and assessed.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this _____ day of SEPTEMBER 2009, the account is confirmed absolutely.

A schedule of distribution, to contain only a recital of the award of real property,

described as provided and containing all certifications required by Philadelphia O.C.Rule 6.11.A (2) and 6.11.A(6)(b), shall be filed within ninety (90) days of absolute confirmation of the account.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

John W. Herron, J.