

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Lemual A. Frye, Intervivos Trust
O.C. No. 1380 IV of 2012
Control No. 123037

OPINION

Introduction

The petition to file an accounting for the trust established by Lemual A. Frye, Deceased, raises the issue of standing. For the reasons set forth below, petitioners lack the requisite standing to compel an accounting based on the undocumented facts alleged in their petition.

Factual and Procedural Background

Teresa Frye, Daniel Frye and Lemual Frye (“petitioners”) are seeking an accounting of an intervivos trust established by their uncle, Lemual A. Frye, who died after their petition was filed. The petitioners did not attach a copy of the trust document. Many key facts are missing or unclear in their petition, but they appear to be seeking an accounting from the attorney who prepared the trust document, Robert Hendren.¹ Nowhere in their petition do Teresa, Daniel or Lemual Frye assert that they are beneficiaries, creditors or other parties with a substantial interest in the trust. Rather they base their right to an accounting on their relationship as niece and nephews to the decedent or, in the case of Teresa, her alleged position as “successor trustee, Guardian for Self,” and executor of Uncle Lemual’s last will.²

Robert Hendren opposed this petition, asserting that the petitioners lack standing to seek an accounting because they are not beneficiaries of the Trust or the estate of Lemual Frye.³ The only concrete facts about the trust are set forth in Respondent’s answer. According to respondent, Lemual Frye executed his Intervivos trust document on September 17, 2010 and then restated it on August 3, 2012. In those documents and his Will, respondent notes, Lemual Frye named

¹ The Petitioners also seek an accounting of the estate of Daniel Frye, who died on August 5, 2010, from the “attorney who handing his estate matters....” Apparently, Daniel Frye, the brother of Lemual Frye, left Lemual a large estate. It was, however, improper to seek that accounting in this indirect manner through the estate of Lemual Frye. For this reason, by decree dated February 19, 2013, the petition was denied without prejudice insofar as it sought an accounting for the Daniel Frye Estate. The petitioners may seek such an accounting from the fiduciary filed under Daniel Frye’s name.

² 9/27/12 Petition, ¶10

³ 2/1/13 Hendren Answer, ¶23.

Linda Frye and Benjamin Frye as his Trustees, Executors and beneficiaries.⁴ Moreover, Mr. Hendren asserts that he “never acted in any capacity other than as the attorney for the now deceased Lemual A. Frye.”⁵

In response to the confused petition and the lack of the key document—the Trust document-- by decree dated February 19, 2013, this court ordered the petitioners to file a copy of the document they claim established Mr. Hendren as the fiduciary for their uncle’s trust as well as a memorandum of law addressing the standing issue. Once again, no trust document was presented to support their memorandum. Once again, petitioners’ memorandum fails to assert that they are beneficiaries identified in the applicable trust document, creditors or other parties with a substantial interest in the trust.⁶ Instead, Teresa states that she was previously named successor trustee, “Guardian for self and Executor in Lemual A. Frye’s living trust dated September 17, 2010. She also claims she was vested with a durable power of attorney on September 17, 2010. The petitioners’ essential claim for standing, however, is that they “are the next living kin of Lemual A. Frye, now deceased, and therefore have an interest in the trust estate as well as the decedent’s estate. Accordingly, Petitioners have standing to bring the instant action.”⁷ This assertion, however, is contrary to the law. Based on the present record, petitioners have no standing unless they can establish that they are beneficiaries, creditors or some other party with a substantial interest in the trust.

Legal Analysis

Under Pennsylvania law, standing to assert a claim against a Trust requires that “an aggrieved party have an interest that is substantial, direct, and immediate.” In re: Francis McGillick Found., 537 Pa. 194, 199, 642 A.2d 467, 469 (1994). In seeking an accounting, a petitioner must have an interest “which is recognized as sufficiently immediate to compel an accounting of the trust. In re Green Trust, 2001 Pa. Super. 186, 779 A.2d 1152, 1158 (2001). Generally, a “court may cite the trustee, on application of a person in interest, to file an account of the management of the trust estate.” Rock v. Pyle, 1978 Pa. Super. LEXIS 378, 720 A.2d 137, 142 (Pa. Super. 1998)(emphasis added).

⁴ 2/1/13 Hendren Memorandum of Law at 1- 2.

⁵ 2/1/13 Hendren Answer, ¶12.

⁶ Although the memorandum makes a reference to an Ex. A, none is attached.

⁷ 4/4/13 Petitioners’ Memorandum of Law at 2.

The PEF code provides that a “Trustee shall file an account of his administration whenever directed to do so by the court and may file an account at any other time.” 20 Pa.C.S. §7797(a). In cases where an accounting is sought, claimants “only need make out a prima facie case to entitle them to an accounting in an estate, and, if there is any doubt about the validity of the claim, the benefit of the doubt should be resolved in favor of the claimant.” Wedler Estate, 22 Fid. Rep. 2d 7 (Centre. Cty. O.C. 2001). Based on the present record, however, petitioners have failed to establish a prima facie case for an accounting in two respects.

First, they have failed to identify the trustee responsible for providing such an account. The mere fact that Mr. Hendren served as the attorney who prepared the trust document does not establish his responsibility for providing an account. As section 7797 states, it is the trustee who may be ordered to file an accounting. Second, petitioners have failed to establish—or even aver—that they are beneficiaries with an actual stake in the trust. Although Teresa Frye avers that she was “previously named as Successor trustee,”⁸ Pennsylvania courts consistently emphasize that fiduciaries such as executors and trustees are not parties in interest with a personal stake in the trust. First, and most obviously, a trustee does not enjoy any personal financial benefit from the trust unless named a beneficiary. Second, a trustee is a fiduciary who “should remain neutral in any controversy between the beneficiaries who are the real parties in interest.” In re: Keiser Trust, 392 Pa. Super. 146, 149, 572 A.2d 734, 736 (1990). Petitioner’s claim to standing on the theory she was “previously named as Successor trustee” lacks merit. As such, she is merely an “unaggrieved stakeholder” with no immediate interest in the trust. See generally In re: Simon, 2012 Pa. Dist & Cnty, Dec. LEXIS 270, *13 (Berks Cty. O.C. 2012)(as a co-trustee, plaintiff lacked standing to seek a trust accounting).⁹

Similarly, the petitioners’ claim to standing based on their family relation as Lemual Frye’s niece and nephews is unconvincing. In Rock v. Pyle, 720 A.2d 137 (Pa. Super 1998), for instance, a father’s request for an account of a life insurance trust to which he contributed for the benefit of his minor children was denied due to his lack of standing. Because the father was not a beneficiary of the trust, he lacked a stake in that trust even though he had been required to contribute to it. Instead, the “minor beneficiaries of this trust are the only real parties in interest to the trust. It is only to them or a party acting on their behalf that appellee (i.e. the Trustee)

⁸ 9/27/12 Petition at ¶10.

⁹ The petitioner in Simon had initially attempted to establish standing as a beneficiary.

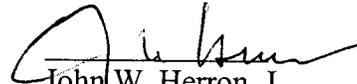
must account.” Id., 720 A.2d at 143. See also In re Green Trust, 779 A.2d 1152 (Pa. Super. 2001)(estranged wife of beneficiary lacked sufficient interest in the trust to compel accounting).

Conclusion

For all of these reasons, the petition to compel an accounting is denied, but without prejudice. If the petitioners produce the appropriate trust document and establish that they are beneficiaries or some other parties with a substantial interest in the trust, they may file another petition for an accounting.

Date: April 22, 2013

BY THE COURT:


John W. Herron, J.

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APR 22 2013

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