

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 55

Lebanon, Pennsylvania, February 28, 2018

No. 31

Public Notices

**DECEDENTS' ESTATES
ORPHANS COURT DIVISION NOTICES
NOTICE OF DEBT COLLECTION**

Opinion

Bartal Vs. Bartal No. 2016-0-0214

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**Paul W. Kilgore, Esq., Chair
Stephanie Axarlis, Esq., Editor
Jennifer Wentzel, Esq., Editor**

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF MARSHALL L. BEERS, late of Lebanon County, PA, deceased February 3, 2018. Letters Testamentary have been granted to the undersigned Executor.

Vicky Ann Trimmer, Executor
Vicky Ann Trimmer, Esquire, Attorney
Daley Zucker Meilton & Miner, LLC
635 N. 12th Street, Suite 101
Lemoyne, PA 17043

ESTATE OF MARYANN BRANDT, late of the City of Lebanon, Lebanon County, PA. Letters of Administration have been granted to the undersigned Administrators.

Lisa Marie Longenecker, Administrator
Todd Sheetz, Administrator

c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF EARL R. LEHMAN, late of North Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Susan F. Tucker and David B. Lehman,
Co-Executors
c/o Gerald J. Brinser
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF JEANNE E. LONGENECKER, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jonestown Bank & Trust Company,
Executor
Charles A. Ritchie, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF RUTH E. PATTON, a/k/a RUTH EILEEN PATTON, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Martin D. Waldensberger, Executor
Charles A. Ritchie, Jr.
Esquire Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

SECOND PUBLICATION

ESTATE OF JOHN A. BANEY, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Susan B. Potter, Executrix
John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF DUANE M. PERKINS, late of West Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Linda M. Boyd-Jones, Executor
13334 East Coast Highway, Suite 603
Corona Del Mar, CA 92625
Thomas S. Long, Attorney

ESTATE OF LLOYD R. SONNON, late of North Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard L. Sonnon, Executor
913 Miller Street
Lebanon, PA 17046

Edward J. Coyle, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF JOAN L. SMITH, late of the City of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Lois A. Smith, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF JANE L. STEVENS, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Douglas G. Stevens
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF CORNELIA M. WHITTLE, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Executor: Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

Daryl J. Gerber, Esquire,
The Law Office of Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

THIRD PUBLICATION

ESTATE OF GALEN S. BOLLINGER, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Galen L. Bollinger, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

ESTATE OF THERESA FERRETTI, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Contina Ferretti, Executor
Louis Ferretti, Executor
107 S. Cherry Street
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF LINDA S. HIBSHMAN, late of Myerstown, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Warren J. Hibshman, Administrator
35 East Main Avenue
Myerstown PA 17067

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF EUGENE D. LONGENECKER, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Donna Kreiser, Executrix
c/o Jon Arnold, Esq.
Ehrgood and Arnold
410 Chestnut Street
Lebanon PA 17042

ESTATE OF RUSSELL E. LYONS, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrators.

Danielle L. Bender and Corey M. Lyons –
Administrators
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF JOSEPH W. PETRY, late of South Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administratrix.

Jennifer Swanson, Administratrix
123 South 5th Avenue
Lebanon, PA 17042

Jason J. Schibinger, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF CAROLYN L. MARIANI, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Bernadette Huey, Executrix
16 Cambridge Drive
Hershey PA 17033

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF LEROY A. MEASE, late of the Township of West Lebanon, County of Lebanon, and Commonwealth of Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Beverly A. Stuckey, Administrator
111 N. Ramona Rd., Lot 61
Myerstown, PA 17067

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ALBERT W. MOSSER, JR., late of Annville, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Gail E. Forbes, Executrix
2163 Gelder Park Drive
Hummelstown PA 17036

Deborah L. Packer, Esq.
1135 E. Chocolate Ave.
Hershey PA 17033
Attorney

**ORPHANS' COURT DIVISION
NOTICES**

Court of Common Pleas of Lebanon
County

Notice is hereby given that the following accounts in decedent's estates, guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented of the Court of Common Pleas-Orphans' Court Division of said County for confirmation NISI on Monday, March 5, 2018 at 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon.

**FIRST AND FINAL ACCOUNTS
WITH PROPOSED SCHEDULE
OF DISTRIBUTION FILED BY
EXECUTORS OR ADMINISTRATORS**

1. Albright, Donna M., dec'd., Dennis Firestone, Admr., Horace M. Ehrgood, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed ABSOLUTELY as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

**BRIAN CRAIG
REGISTER OF WILLS AND CLERK OF
ORPHANS' COURT
LEBANON COUNTY, PENNSYLVANIA**

NOTICE

**In the Court of Common Pleas of
Lebanon County, Pennsylvania Civil
Action Law**

No. 2017-01732

Jonestown Bank & Trust Co., Plaintiff

Vs.

Beth Ann Evans, Defendant

TO: Beth Ann Evans, Defendant

371 Dressler Road

McAlisterville PA 17049

371 Deer Run Drive

McAlisterville PA 17049

YOU ARE HEREBY NOTIFIED that Jonestown Bank & Trust Co. has commenced a legal action against you for the collection of monies due and owing based upon a Note dated April 12, 2014. The bank demands payment in the amount of \$4,994.21 plus accruing costs and interest. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses and

objections in writing with the Court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

MidPenn Legal Services
513 Chestnut Street
Lebanon PA 17042
717-274-2834

Paul C. Bametzreider, Esq.
Reilly Wolfson
1601 Cornwall Road
Lebanon PA 17042
717-273-3733

Civil Action-Equity-Elder Care-Constructive Trust-Guardianship-Social Security Income-Attorney's Fees

A house previously owned by Plaintiff Betty Bartal (“Mother”) and her late husband was deeded to their four (4) sons, Plaintiffs Douglas J. Bartal, Scott E. Bartal and Jeffrey Bartal and Defendant Keith B. Bartal as part of estate planning designed to minimize the Bartal family’s tax liability. The house subsequently was sold with the proceeds of the sale placed into an account titled in the four (4) sons’ names with the intention that the proceeds of the account were to be used for the benefit of Mother, who resides at an assisted living community, during her lifetime. Defendant unilaterally removed one-fourth (1/4) of the proceeds of the account with the belief that the account was being depleted for reasons other than Mother’s well being. Defendant placed those proceeds in another account that could not be accessed by his three (3) brothers, and he used the proceeds for the benefit of Mother. Plaintiffs filed a Request for a Constructive Trust with regard to the proceeds removed from the account by Defendant.

1. A request for a constructive trust is an equitable cause of action.
2. Whenever a party seeks to invoke a court’s equitable powers, the court enjoys very broad discretion to fashion a remedy that accomplishes justice for all those concerned.
3. Under Pennsylvania law, a process exists by which guardians can be appointed for those who lack the ability to make decisions for themselves.
4. Title 20 Pa.C.S. § 5512.1 provides that in order to appoint a guardian, the court must render a factual finding that the individual who is the focus of the guardianship petition lacks the physical or mental capacity to make appropriate decisions.
5. In light of the fact that the record does not establish that Mother lacked the capacity to make decisions for herself, it would be inappropriate for the Court to appoint a guardian on behalf of Mother to manage the proceeds from the sale of the house, and appointment of a trusted family friend to maintain a single account holding the proceeds of the sale of the house for the well being and continued care of Mother is appropriate.
6. A portion of Mother’s Social Security income will be used to defray the cost of Mother’s care at the assisted living community at which she resides so as to avoid depletion of the account when other monies are available for Mother’s wellbeing and care.
7. The account holding the proceeds from the sale of the house may be accessed to pay the parties’ attorney’s fees in this case.

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BARTAL VS. BARTAL NO. 2016-0-0214

L.C.C.C.P. No. 2016-0-0214, Opinion by Bradford H. Charles, Judge, March 3, 2017.

IN THE COURT OF COMMON PLEAS LEBANON COUNTY
PENNSYLVANIA
CIVIL DIVISION No. 2016-0-0214
Civil Action – Equity

DOUGLAS J. BARTAL, SCOTTE E. BARTAL, and BETTY BARTAL, JEFFREY BARTAL,
Plaintiffs

v.

KEITH B. BARTAL

ORDER OF COURT

AND NOW THIS 3rd day of March, 2017, in accordance with the attached Opinion, the Order of this Court is as follows:

1. Plaintiffs’ request for relief in the nature of a Request for a Constructive Trust in GRANTED in part as set forth below.

2. Thomas Hermansky is appointed as manager of a fund to be comprised of all monies generated from the sale of Betty Bartal’s former home. (Said monies will hereafter be referred to as the “house fund.”)

3. Within sixty (60) days of the date of this Order, all parties are to transfer to Thomas Hermansky all funds within their control that were originally derived from the sale of Betty Bartal’s home ¹. In the event that any party believes that any other party has withheld any portion of these funds from Mr. Hermansky, leave is granted to submit an appropriate motion to this Court and this Court will conduct a hearing on this issue.

¹ We recognize that some funds were already paid by Plaintiffs to Kindred Place and for other legitimate expenses of Betty Bartal. The amount to be paid by Plaintiffs to Thomas Hermansky shall be the net amount that remains after the payment of moneys already expended for Betty Bartal’s benefit.

BARTAL VS. BARTAL NO. 2016-0-0214

4. Commencing on May 1, 2017, Thomas Hermansky shall manage the fund to be created by this Order. Thomas Hermansky shall have plenary authority to create appropriate checking accounts, savings accounts, or investment accounts for said funds. In addition, Thomas Hermansky shall be authorized to pay expenses necessary to maintain the well-being of Betty Bartal from the funds he will be managing. On a quarterly basis, Thomas Hermansky shall provide statements of account to all parties in this litigation outlining all income and expenses of the house fund.

5. In determining how much to pay each month from the house fund to Kindred Place, Thomas Hermansky shall consider \$750.00 per month of Betty Bartal's Social Security income to be available to contribute toward the housing and food cost of Betty Bartal at Kindred Place.

6. Thomas Hermansky shall have the ability to release \$4,000.00 to Plaintiff's counsel and \$4,000.00 to Defendant's counsel for the legal fees incurred in this action. No other funds shall be deducted from the house fund for legal expenses pertaining to this dispute.

BY THE COURT:

BRADFORD H. CHARLES, J.

APPEARANCES

Loren A. Schrum, Esquire For Plaintiffs

Andrew J. Race, Esquire

REILLY WOLFSON

Jeffrey A. Arnold, Esquire For Defendant

CHRISTIANSON MEYER

OPINION BY CHARLES, J. , March 3, 2017.

This is a sad case involving familial discord. Despite the fact that the four sons of Betty Bartal are all motivated by their mother's well-being, they unfortunately cannot come together to develop a plan that accomplishes what all say they want. Because of this, a lawsuit was filed and we have been injected into the Bartal family feud.

I. FACTS AND PROCEDURAL BACKGROUND

The lawsuit initiated by Douglas Bartal, Scott Bartal, Jeffrey Bartal, and Betty Bartal against Keith Bartal was predicated upon several legal theories. Among these theories was a claim for unjust enrichment and a request for a constructive trust. (See Count II and III of Complaint). A request for a constructive trust is an equitable cause of action (See, e.g. *Denny v. Cavalieri*, 443 A.2d 333 (Pa.Super. 1982)), as is an unjust enrichment claim. (See, e.g. *Meehan v. Cheltenham Twp.*, 189 A.2d 593 (Pa. Super. 1963)). Whenever parties seek to invoke a Court's equitable powers, those Courts enjoy very broad discretion to fashion a remedy that accomplishes justice for all those concerned. See, e.g. *Christo v. Tuscanney*, 533 A.2d 461 (Pa. Super. 1987).

In this case, there is little disagreement about the facts and about the general goal of all parties. Everyone agrees that a house that had previously been owned by Betty Bartal and her late husband was deeded to all four sons as part of an estate plan designed to minimize the Bartal family's collective tax liability. Everyone also agrees that the house was subsequently sold and that all proceeds were placed into an account that was titled in the name of all four Bartal brothers. Most important, all four brothers testified that this account is intended to be used for the benefit of Betty Bartal for as long as she remains alive.

Unfortunately, at some unknown period of time, and for some unknown reason, there was a falling out between Keith and his other three brothers. Keith became concerned that the money inside the so-called "house account" was being depleted for reasons other than Betty Bartal's well-being. Because of this, Keith unilaterally removed one quarter of the house account and placed the funds inside another bank account that could not be accessed by his three brothers. Unfortunately, Keith did not tell his brothers that he was maintaining the money for his mother, and they began to fear that he would use the removed funds for his own purposes. This fear led to the lawsuit now before this court.

We presided over a factual hearing on October 18, 2016. All four brothers testified. Somewhat to our surprise, the testimony was identical, as was the goal that the house fund be preserved for Betty Bartal's benefit so long as she remains alive. Because everyone's recollection alligned and because everyone's heart seemed to be in the right place, we attempted to broker an agreement by "suggesting" that a neutral third party be appointed to manage the house account for Betty Bartal's benefit. At least initially, everyone seemed to be satisfied with the "compromise" we suggested. In fact, everyone agreed that a family

friend by the name of Tom Hermansky could be appointed to serve as the neutral manager of the house fund.

The framework we proposed to resolve the above-referenced dispute required consensus about logistical details. Unfortunately, consensus was not easy to achieve. On several occasions, we met with counsel in an effort to refine the resolution framework into a final solution. After these meetings and after several rounds of correspondence, we have identified two major issues about which the Bartal brothers will probably not agree. Those issues are:

- (1) Whether Tom Hermansky should be tasked with the responsibility of managing assets of Betty Bartal beyond those contained in the “house fund.”
- (2) Whether Betty Bartal’s Social Security Income should be depleted before assets in the “house fund” are assessed for Betty Bartal’s benefit?

We author this Opinion to address to two issues outlined above and to formally enter an Order that brings closure to the above-referenced dispute.

II. DISCUSSION

(1) Scope of Tom Hermansky’s Authority

During one of our meetings with counsel, we proposed naming Tom Hermansky as Guardian of Betty Bartal’s estate. Under that proposal, Mr. Hermansky would have been responsible for managing all of Betty Bartal’s assets. Plaintiffs opposed this proposal for several reasons. First, the Plaintiffs did not believe that Betty Bartal needs a Guardian. Plaintiffs also suggested that using the above-referenced case would transcend the relief requested in the Complaint. Upon reflection, we agree with Plaintiff’s position.

Under Pennsylvania law, a process exists by which Guardians can be appointed for those who lack the ability to make decisions for themselves. See, e.g. 20 Pa.C.S.A. § 5511; *In re Estate of Vanoni*, 798 A.2d 203 (Pa. Super. 2002); *In re Estate of Haertsch*, 649 A.2d 719 (Pa. Super. 1994). In order to appoint a Guardian, a Court must render a factual finding that the individual who was the focus of the Guardianship petition lacked physical or mental capacity to make appropriate decisions. See, e.g. 20 Pa.C.S.A. § 5512.1. No such evidence was presented in this case, nor does this Court have the ability based upon the current record to declare that Betty Bartal lacked the capacity to make decisions for herself. Because of this, it would not be appropriate for this Court to appoint Tom Hermansky as

BARTAL VS. BARTAL NO. 2016-0-0214

Betty Bartal's Guardian.

(2) Interplay Between Social Security and the House Fund

More difficult to address is Keith Bartal's concern that the house fund will be totally depleted while Betty Bartal's Social Security Income accumulates in another fund over which he will have no control. Keith is concerned that his brothers will effectively disinherit him by paying all of Betty Bartal's current expenses from the house fund to which he has a $\frac{1}{4}$ interest, while growing a separate account with Betty Bartal's Social Security money that would then be divided among the three other brothers at the time Betty Bartal passes.

Initially, this Court wishes to emphasize that it does not believe that Douglas Bartal, Scott Bartal, and Jeffrey Bartal have the intent to effectively cheat their brother Keith out of his inheritance rights. We simply do not believe that this type of greed underlies the above-referenced dispute. That being said, we recognize that from a purely legal standpoint, there is nothing that would prevent Plaintiffs from accomplishing the type of scenario that Keith fears other than Plaintiffs' own good will... and we recognize that Keith does not share our opinion of his brothers' motivation.

Having articulated the above, we wish to emphasize that one of our goals today will be to minimize the possibility that the Bartal family will end up in Court again in either the near or the long-term future. The Bartals are a good family who have been temporarily estranged by an unfortunate dispute. We do not wish to see this family further torn apart by unnecessary litigation.

As we contemplated the goal of avoiding future litigation, it became clear that we could not completely ignore Keith's concerns. If we decided to permit unfettered depletion of the house fund without considering Betty Bartal's Social Security Income, at some point Keith would likely initiate a Guardianship Motion or Complaint seeking equitable relief of his own.

Based upon the information presented in Court, Betty Bartal currently resides at the Kindred Place Assisted Living Community. Her monthly cost for lodging and meals at Kindred Place is \$2,572.21. Each month, Betty Bartal receives \$1,242.00 in Social Security Income. Some of Betty Bartal's assets are needed for expenses beyond the cost of Kindred Place ². Giving due allowance for Betty Bartal's expenses beyond that paid to Kindred

² For example, Mrs. Bartal has a monthly cleaning expense of \$40.00, monthly medication costs of between \$20.00 and \$60.00 and various other expenses that were outlined in an Accounting submitted to the Court.

Place, it is clear that at least some of Betty Bartal's Social Security Income could be used to defray the cost of her care at Kindred Place. Therefore, there should be no need for the house fund to pay the entirety of Betty Bartal's living expenses at Kindred Place. We will make some allowance for this fact when we craft instructions for Tom Hermansky in our final Order.

III. CONCLUSION

After considering everything presented to us by the parties, we remain convinced that appointing Tom Hermansky is the best of all options available to us. The parties trust Mr. Hermansky, and so does this Court. We are confident that Mr. Hermansky will maintain the house fund in a manner that accomplishes the stated goal of all parties --- the well-being and continued care of Betty Bartal. In addition, appointing Tom Hermansky will facilitate the consolidation of all monies derived from the house fund into one location instead of several as now exists.

To address the concerns of Keith about Betty Bartal's Social Security Income, we will direct that Tom Hermansky should consider \$750.00 per month from Betty Bartal's Social Security Income to be available to contribute toward Betty Bartal's Kindred Place expenses. This amount admittedly represents less than what Keith wanted, but is undoubtedly more than Plaintiffs desire. Setting the \$750.00 per month threshold reflects our desire not to encumber all of Betty Bartal's Social Security Income. We believe that Mrs. Bartal should retain unfettered discretion to choose how at least some of her Social Security is going to be spent.

At the request of all parties, we will also permit the "house fund" to be accessed to pay attorney's fees incurred in this case. Eight thousand dollars may be deducted from the account. Half should be paid to Plaintiff's counsel and half should be paid to Defendant's lawyer³.

An Order, consistent with the contents of this Opinion, will be entered today's date.

³ We believe the parties themselves should bear some of the cost of fighting this matter in Court and we hope that everyone will remember this cost when deciding in the future whether to file anything else.