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ESTATE OF NANCY A. STERNER, DECEASED



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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 27th day of August 2015, the petition on behalf of Trent Alan Souders, a minor, son of Jeffrey Eugene Kefauver, was filed in the Court of Common Pleas of Adams County, Pennsylvania, for a decree to change the name of the minor to Trent Alan Kefauver.

The court has affixed the 13th day of November 2015 at 8:30 A.M. in the Courtroom No. 4, Third Floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause why the said petition should not be granted.

Jeffrey Kefauver
Petitioner

9/18

ESTATE OF NANCY A. STERNER, DECEASED

1. The removal of a personal representative is matter within the discretion of the court; however, removal is a drastic action which should be taken only when the estate is endangered and intervention is necessary to protect property of the estate. This is especially true when, as here, the executrix was chosen by the testator, because that appointment represents an expression of trust and confidence in the person.
2. The drastic remedy of removal of an appointed personal representative usually requires actual proof of a breach of a fiduciary duty.
3. A fiduciary can be removed when it is found that her personal interest is in conflict with that of the estate such that the two interests cannot be served at the same time. Although reasons for removal of a fiduciary must be clearly proven, proof of a conflict of interest can be inferred from the circumstances. When the conflict is so inferred, bad faith or fraudulent intent on the part of the fiduciary need not be proven.
4. The executrixes have a fiduciary duty not only to move to have the real estate sold but also to obtain fair rental value for the real estate which is occupied during the administration of the estate.
5. There is an acknowledged antagonism or ill-feeling between Petitioner and Respondent. Those kinds of feelings, standing alone, do not justify the removal of an executrix absent a showing that those feelings caused injury to or endangers the best interest of the estate.
6. When there are multiple personal representatives and a dispute arises, the decision of the majority shall prevail. Here, a majority cannot be achieved. There is authority in such a circumstance for the parties to petition the court for direction on how to proceed. In this case, that approach should not be encouraged because the Court will likely end up unnecessarily micromanaging the remainder of the estate administration.
7. There are cases which espouse the general rule that each party to adversary litigation is required to pay his/her own counsel fees and that in the absence of a statute, recovery of counsel fees is permitted only in exceptional circumstances.
8. Respondent's actions have delayed finalization of the estate and may have cost the estate loss of some fair rental. Under the circumstances, an award of counsel fees in the amount of \$1,000.00 seems equitable.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, ORPHANS' COURT, OC-46-2015, ESTATE
OF NANCY A. STERNER, DECEASED

Robert McQuaide, Esq., Attorney for Petitioner
Rhonda J. Huff, Respondent

Kuhn, J., July 21, 2015

OPINION

Before the Court for disposition is a Petition For Removal of Rhonda J. Huff As Co-Executrix. After hearing and for the reasons set forth herein, said Petition is granted.

BACKGROUND

1. Decedent, Nancy A. Sterner, died on April 1, 2013.
2. At the time of her death, Decedent owned real estate and resided at 1916 Carroll's Tract Road, Orrtanna, Adams County.
3. Decedent was survived by two daughters, Petitioner, Betty L. Bond of Angleton, Texas, and Respondent, Rhonda J. Huff of Fairfield, Pennsylvania.
4. Respondent is the mother of Shannon Huff.
5. Shannon Huff was raised by Decedent and has resided in Decedent's home for her entire life.
6. When Decedent was receiving hospice care during her last illness, Shannon Huff quit her job to provide Decedent with assistance.
7. At the time of Decedent's death, Shannon Huff, her boyfriend and her daughter, Sierra, were living in Decedent's home and continue to do so.
8. Robert Teeter, Esquire, represented the estate of Decedent's aunt and was prepared to distribute \$38,000.00 from that estate to Decedent but could not do so because of Decedent's death and because no estate had been opened for her.
9. Attorney Teeter contacted Petitioner and advised her of the need to open Decedent's estate.
10. Attorney Teeter was subsequently hired to represent Decedent's estate.
11. Despite numerous requests, Shannon Huff refused and/or failed to produce Decedent's Will until after Attorney Teeter was required to file a Petition for her to produce the same.
12. Decedent's Last Will and Testament is dated October 13, 1987. Therein, Petitioner and Respondent were appointed co-executrixes of the estate. In addition, they were to receive the remain-

der of Decedent's estate in equal shares per stirpes.

13. On May 5, 2014, letters testamentary were granted to Petitioner and Respondent.
14. Petitioner and Respondent have a strained relationship and do not communicate with each other. From the beginning, Respondent instructed Attorney Teeter not to share her contact information with Petitioner.
15. Attorney Teeter was able to determine that Decedent's assets consisted of the real estate (\$70,000.00 approximate value), the distribution from the aunt's estate (\$38,000.00) and a sum possessed by Petitioner that belonged to Decedent (\$6,000.00). The estate obligations included, inter alia, Decedent's nursing home bill (\$21,000.00), a Discover credit card account, real estate taxes (\$3,000.00), and a sewer bill. Taking into account the cost of administration, Attorney Teeter recognized that the real estate would have to be sold in order for Petitioner and Respondent to realize their respective shares of the estate.
16. Attorney Teeter advised Respondent that the executrixes needed to sell the real estate and to have Shannon Huff vacate the residence. He further advised Respondent that if she was unable to do this that she should consider renouncing her position as co-executrix.
17. Respondent advised Attorney Teeter that Shannon Huff was litigating a wrongful death action respecting the death of her husband who died in September 2012, and expected to use the settlement proceeds to purchase the real estate. Neither Respondent nor Shannon Huff has produced any evidence of the existence of a lawsuit or the likelihood of a settlement to Attorney Teeter.
18. Attorney Teeter sent numerous letters to Shannon Huff and requested Respondent to speak to her about the real estate, but has received no responses.
19. In December 2014, Attorney Teeter again advised Respondent that the real estate needed to be sold and Shannon Huff needed to vacate the premises. Respondent wanted to wait until after the holidays and Petitioner was in agreement. Respondent did not communicate with Attorney Teeter again until mid-February, 2015.

20. On January 29, 2015, Attorney Teeter sent his last letter to Shannon Huff requesting that she vacate the real estate.
21. On February 11, 2015, Attorney Teeter had his last conversation with Respondent until this hearing. Respondent indicated that she wanted to transfer her share of the estate to her daughter, Shannon. She was advised that the bills had to be paid first and the real estate had to be sold in order for Petitioner to receive her share of the estate. Attorney Teeter again suggested that Respondent resign as co-executrix if she was unable to deal with her daughter's situation or it was likely that Petitioner would request her removal.
22. In April 2015, Attorney Teeter wrote to Respondent and included a renunciation form therein but received no response.
23. It has been very difficult for Attorney Teeter to reach Respondent and it takes a long time for her to respond to his messages. Respondent blames the delay on her long work hours and lack of transportation.
24. Shannon Huff has not paid any rent to the estate for her occupancy of the real estate.
25. The estate is unable to move forward with the sale of the real estate and/or to have Shannon Huff removed from the premises without the agreement and cooperation of both executrices.
26. Petitioner filed the instant Petition on June 1, 2015.
27. By Order dated June 3, 2015, a citation was issued upon Respondent to file an answer to the Petition within 20 days of service.
28. Respondent did not answer the Petition but appeared at hearing on July 9, 2015, pro se.
29. Petitioner is ready to move the estate forward immediately.
30. Respondent wants to remain as co-executrix, agrees that the real estate needs to be sold but wants to provide her daughter with 3-6 months to vacate the premises.
31. Petition claims to have incurred legal fees and costs to prosecute this Petition in the amount of \$2,270.00.

DISCUSSION

The Probate Estate and Fiduciaries Code of Pennsylvania provides for the removal of an executrix under certain circumstances. Specifically the Code states that,

The court shall have exclusive power to remove a personal representative when he:

(1) Is wasting or mismanaging the estate ... or has failed to perform any duty imposed by law; or

...

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

20 Pa. C.S.A. §3182. (Grounds for removal).

The removal of a personal representative is matter within the discretion of the court; however, removal is a drastic action which should be taken only when the estate is endangered and intervention is necessary to protect property of the estate. This is especially true when, as here, the executrix was chosen by the testator, because that appointment represents an expression of trust and confidence in the person. In *Re Pitone's Estate*, 413 A.2d 1012, 1016 (Pa. Super. 1980). The drastic remedy of removal of an appointed personal representative usually requires actual proof of a breach of a fiduciary duty. *In Re Estate of Mumma*, 41 A.3d 41, 51 (Pa. Super. 2012).

Petitioner's primary reason for requesting the removal of her sister as co-executrix concerns Respondent's alleged failure to properly address Decedent's real estate. The estate accounting in this matter appears as if it will be rather straight forward. According to Attorney Teeter, the estate consists of the real estate and some liquid assets.¹ There are only a few debts reported that must be satisfied. The Court assumes that there will be customary costs of administration and inheritance taxes to pay. Attorney

¹ I assume Decedent also possessed some personal property.

Teeter testified that Petitioner does not want to take her share of the estate in kind in real estate and, therefore, he advised the executrixes many months ago that the real estate had to be sold for the estate expenses to be paid and the respective shares to be distributed.²

Nevertheless, 21 months after Decedent's death, and 14 months after the granting of the letters testamentary, the docket reveals that no inventory or accounting has been filed. Immediately after the granting of letters, the personal representatives are required to advertise the same for three successive weeks. 20 Pa. C.S.A. §3162. The personal representatives are to then take possession of all the real and personal estate of the decedent. 20 Pa. C.S.A. §3311. An inventory of the estate is to be filed no later than the date the personal representatives file their account or the due date for the filing of the inheritance tax return for the estate, whichever is earlier. 20 Pa. C.S.A. §3301(c). Here, the account has not yet been filed. The inheritance tax return is due within nine months after the death of the decedent (in this case by July 1, 2014) unless an extension is granted. 72 P.S. §9136(d). The Court has not been informed whether an extension has been granted but it is somewhat obvious that the only matter delaying the finalization of the estate is the disposition of the real estate.

Petitioner and Respondent have the fiduciary responsibility to take control of the real estate and effectuate a sale of the same. Testimony makes clear that Respondent has not wanted to move this forward. Legal authority to initiate the sale of the real estate requires the agreement of both fiduciaries for such things as the engagement of the realtor, the setting of the list price and whether to accept any offer. However, these executrixes do not communicate with each other and it is unclear whether they will be able to agree on

² The real estate appears to comprise at least 60% of the gross estate.

any of those issues. Respondent is, therefore, at least partially, responsible for delay in the administration of this estate.

Petitioner also argues that Respondent is burdened by a personal interest that conflicts with her fiduciary duty as to the real estate. A fiduciary can be removed when it is found that her personal interest is in conflict with that of the estate such that the two interests cannot be served at the same time. Although reasons for removal of a fiduciary must be clearly proven, proof of a conflict of interest can be inferred from the circumstances. When the conflict is so inferred, bad faith or fraudulent intent on the part of the fiduciary need not be proven. In *Re Estate of Westin*, 874 A.2d 139, 143 (Pa. Super. 2005).

Attorney Teeter has suggested to Respondent that she needs to have Shannon Huff vacate the real estate. The Code provides that where real estate is occupied at the time of death by an heir or devisee with the consent of the decedent, the personal representatives are not required to maintain and administer that property. 20 Pa. C.S.A. §3311. Although Shannon Huff resided in the home at the time of Decedent's death and is Decedent's granddaughter, Respondent has not argued that she is an heir of the estate³ nor a devisee under Decedent's Will. Accordingly, Shannon Huff only has a right to live in the residence pursuant to arrangements with the executrixes. The executrixes have a fiduciary duty not only to move to have the real estate sold but also to obtain fair rental value for the real estate which is occupied during the administration of the estate. Shannon Huff has occupied the premises rent free for 21 months (or 14 months since the opening of the estate). Petitioner resides in Texas and has no contact information for Respondent or Shannon Huff. Respondent resides in

³ She would only become an heir if her mother was deceased.

Adams County and, as the mother of Shannon Huff, is in the best position to communicate and negotiate a reasonable arrangement for her continued occupancy. Respondent, understandably, has an interest in having her daughter to continue to reside in the home in which she was raised. She testified that her daughter is unemployed and receiving Social Security benefits for herself and her child. She wants her daughter to be able to purchase the property but has not been able to get her to respond to Attorney Teeter or to produce any evidence of the existence of the lawsuit upon which she is supposedly relying for the necessary financing. The situation became so detrimental to the administration of the estate that Attorney Teeter took the significant step of encouraging Respondent to resign as personal representative. Even in the face of this proceeding, Respondent continues advocating on behalf of her daughter being granted an additional six months of occupancy. Respondent's personal interests have been and continue to conflict with her fiduciary duty.

Furthermore, there is an acknowledged antagonism or ill-feeling between Petitioner and Respondent. Those kinds of feelings, standing alone, do not justify the removal of an executrix absent a showing that those feelings caused injury to or endangers the best interest of the estate. *Scientific Living, Inc. v. Hohensee*, 270 A.2d 216, 224 (Pa. 1970); *In Re DiMarco's Estate*, 257 A.2d 849, 854 (Pa. 1969). As noted, the fact that the co-executrices cannot communicate with each other raises serious question whether they will be able to work together effectively to resolve the real estate issue and the estate.⁴ Where there are multiple personal representatives and a dispute arises,

⁴ The issue before the Court does not involve whether, in fact, Shannon Huff should be charged fair rental value for her occupancy of the residence or whether she should be forced to vacate the premises. However, it is not likely that these executrices will be able to agree on whether to pursue either potential claim.

the decision of the majority shall prevail. Here, a majority cannot be achieved. There is authority in such a circumstance for the parties to petition the court for direction on how to proceed. 20 Pa. C.S.A. §3328. In this case, that approach should not be encouraged because the Court will likely end up unnecessarily micromanaging the remainder of the estate administration.

Furthermore, it appears to the Court that Respondent, for personal, employment, or other reasons, does not have the time to devote to administering the estate. Although Petitioner resides in Texas, it appears that she is the personal representative best situated and motivated to bring the estate to timely conclusion.

For these reasons, the Court concludes that the Petition For Removal should be granted.

Finally, Petitioner has also requested that Respondent be responsible for the legal fees and costs she incurred to initiate and litigate this Petition. Our research has not disclosed any case where a court has awarded counsel fees to a successful petitioner seeking the removal of an executor. There are cases which espouse the general rule that each party to adversary litigation is required to pay his/her own counsel fees and that in the absence of a statute, recovery of counsel fees is permitted only in exceptional circumstances. *Estate of Wanamaker*, 460 A.2d 824, 825 (Pa. Super. 1983). Counsel fees may be awarded as part of the taxable costs of a matter under circumstances which do not appear in this case. 42 Pa. C.S.A. §2503 (Right of participants to receive counsel fees).

The issue is whether the circumstances before the Court are of such exceptional nature that fees should be awarded. I think some sanction is warranted. As discussed above, Respondent's fiduciary duty to the estate was comprised by her conflicting interest in the welfare of her daughter.

This conflict should have been obvious, at least after it was brought to her attention. Respondent failed to heed the advice of counsel nearly a year ago concerning the need to sell the real estate and the recommendation that she resign as co-executrix if she was unable to deal with her daughter's situation. Counsel also warned her that a request for her removal would likely be filed by Petitioner if she did not act voluntarily. Respondent's actions have likely delayed finalization of the estate and may have cost the estate loss of some fair rental. Under the circumstances, an award of counsel fees in the amount of \$1,000.00 seems equitable.

Accordingly, the attached Order is entered.⁵

BY THE COURT:

JOHN D. KUHN

Judge

⁵ The Court is not aware of the reason(s) for the estrangement between Petitioner and Respondent. Sometimes the death of a parent spurs the reconciliation of siblings who use that occasion to recognize their own mortality and the overall insignificance of their differences. Other times, the passing serves to entrench the animosity because the parent is no longer alive to moderate the dysfunction. Certainly this litigation and the award of counsel fees will likely extinguish any spark of reconciliation that might have been glowing between these sisters. Perhaps, and hopefully, I am wrong. However, as is often the case, these family members must sleep in the bed they have made for themselves.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claim or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF RICHARD W. GLADFELTER, DEC'D**

Late of Abbottstown, Hamilton Township, Adams County

Executor: David R. Gladfelter, 384 Honda Road, Littlestown, PA 17340

Attorney: George W. Swartz, II, Esquire, Mooney & Associates, (717) 398-2205, 18 E. Middle Street, Gettysburg, PA 17325

ESTATE OF LORRAINE A. RUNK, DEC'D

Late of New Oxford Borough, Adams County, Pennsylvania

Executor: Rodger W. Dubbs, Jr., 1408 Chami Dr., Spring Grove, PA 17362

Attorney: Keith R. Nonemaker, Esquire, Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331, (717) 632-5315

ESTATE OF VIOLET ANN SHRADER, DEC'D

Late of New Oxford, Straban Township, Adams County, Pennsylvania

Co-Executors: Earl R. Shrader, Jr., 275 Manor Drive, New Oxford, PA 17350; Keith Shrader, 2935 Oxford Road, New Oxford, PA 17350

Attorney: Clayton A. Lingg, Esquire, Mooney & Associates, (717) 846-4722, 40 E. Philadelphia Street, York, PA 17401

ESTATE OF GLENN E. WIMSETT, DEC'D

Late of Union Township, Adams County, Pennsylvania

Personal Representative: Mrs. Kristen D. McKain, 720 Sells Station Road, Littlestown, PA 17340

Attorney: Arthur J. Becker, Jr., Esquire, Becker & Strausbaugh, P.C. 544 Carlisle Street, Hanover, PA 17331

ESTATE OF CHARLES EDWARD WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Timothy Edward Wolf, 224 Navajo Drive, Red Lion, PA 17356

SECOND PUBLICATION**ESTATE OF WILBUR L. KEENER, SR., DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Carolyn L. Zeigler, 1065 Canal Road Ext., Manchester, PA 17345

Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF NORA FRANCES SAUM, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Donald Avery Saum, 2387 Idaville-York Springs Road, York Springs, PA 17372; Joseph Harold Saum, 138 Liberty Lane, Aspers, PA 17304

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF JANET S. WICKERHAM, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF FREDERICK L. ANDREW, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Clarence L. Andrew, 199 Blacksmith Shop Road, Gettysburg, PA 17325; Joel B. Redding, 347 Bull Valley Road, Aspers, PA 17304

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY GENEVIEVE BELINSKI A/K/A GENEVIEVE MARY BELINSKI A/K/A MARY G. BELINSKI, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Cheryl Ann Richmond 348 Orchard Road Wyckoff, NJ 07481

ESTATE OF RUSH T. BENSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Marjorie V. Benson, 1075 Harrisburg Road, Unit 121, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF EILEEN F. COOPER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representatives: Carolyn Bigelow Harman, 167 Northview Dr., Hanover, PA 17331; Kenneth Cooper, 271 Thornhill Dr., Hanover, PA 17331

Attorney: G. Steven McKonley, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF HOWARD E. HUGHES, II, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Personal Representative: Howard E. Hughes, 17 East Locust Lane, New Oxford, PA 17350

Attorney: Edward E. Knauss, IV, P.O. Box 69200, Harrisburg, PA 17106

ESTATE OF FRED S. RICHSTIEN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Fred S. Richstien II, 4213 York Rd., New Oxford, PA 17350

Attorney: Keith R. Nonemaker, Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331, (717) 632-5315

ESTATE OF RONALD J. SHRADER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: Linda K. Martin, 3025 Buchanan Valley Road, Orrtanna, PA 17353

Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

2015 ADAMS COUNTY BENCH-BAR CONFERENCE

Date: Friday, October 30, 2015

Place: Gettysburg Hotel, Lincoln Square, Gettysburg, Pennsylvania

Time: Registration and breakfast begin at 8:00 a.m.

CLE: This program has been approved by the Pennsylvania Continuing Legal Education Board for up to 4.0 hours of substantive law, practice and procedure CLE credit and 1.0 hour of ethics, professional or substance abuse CLE credit.

CLE Speakers: Prof. Randy Lee – Plenary session: Lessons from Abe Lincoln
Ellen Freedman – The Top Legal Technologies and The Paperless Office
J. Paul Dibert – Pennsylvania Inheritance Tax Update
Melissa P. Tanguay, Esq. & Sherri R. DePasqua, M.S.W. – An Attorney’s Guide to CYS
Stuart B. Suss, Esq. – Criminal Law Update
Arnold T. Shienvold, Ph.D. – Domestic Violence, Alienation, Abuse, and Custody Evaluations

Cost for Adams County Bar Association members is \$35.00 for the Conference. Cost for non-members is \$300.00 for the Conference or \$60.00 per credit hour. Full conference registration fee includes a light breakfast and lunch in addition to CLE credit. Registration form and payment must be received by Friday, October 16, 2015. Space is limited, so register early!

For registration inquiries and to make requests for reduced tuition due to economic hardship, please contact:

Cecelia Brown
117 Baltimore Street, Room 305
Gettysburg, PA 17325
717-337-9812
cbrown@adamscounty.us