

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

KIM E. AYVAZIAN  
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 11400  
WILMINGTON, DELAWARE 19801  
AND  
CHANCERY COURT COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DE 19947

May 16, 2011

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Re: *IMO Estate of Esther Bellini; Wallace v. Bellini*  
C.A. No. 3106-MA  
MASTER'S FINAL REPORT

Dear Counsel:

I have reviewed the parties' memoranda in support of and opposition to the exceptions taken by Petitioner Annette Wallace to the Master's Draft Report dated September 9, 2009. For the following reasons, the exceptions are denied.

In her first exception, Petitioner argues that I failed to give sufficient weight to the medical testimony of Dr. Fink, who was Esther Bellini's neurologist. Dr. Fink opined that Mrs. Bellini was mentally incompetent on May 11, 2005, to execute the contested last will and testament (the "Will") because she had had a seizure on May 8<sup>th</sup>, three days before she executed the Will, and would have been in a continuing postictal state that would have made her unable to handle complex problem solving. In reviewing Dr. Fink's opinion, I still find the weight of his opinion diminished by the following factors. First, Dr. Fink had never observed a prolonged postictal state in Mrs. Bellini, and he did not observe her on May 11<sup>th</sup>. Second, Dr. Fink also testified that a person in a postictal state can articulate the nature of her assets and how she wants to dispose of her property. The Will was not a complex document and the only significant difference between this document and an earlier will that was executed on April 11, 2005, concerned the disposition of Mrs. Bellini's house. On April 11<sup>th</sup>, Mrs. Bellini wanted her house to pass after her death to her two children, Respondent Charles Bellini and Petitioner. On May

11<sup>th</sup>, Mrs. Bellini wanted her house to pass to Respondent only. On review, Dr. Fink's opinion as to Mrs. Bellini's mental competence on May 11, 2005, still lacks sufficient weight to rebut the presumption that Mrs. Bellini had the requisite capacity to execute a will under Delaware law. *See In re Estate of Bickling*, 2004 WL 1813291, at \*7 (Del. Ch. Aug. 6, 2004). This exception, therefore, is denied.

Petitioner's second exception concerns the medical testimony of Dr. Barry Rovner, who was called as Respondent's expert witness. According to Petitioner, Dr. Rover's medical opinion as to Mrs. Bellini's mental competency should not have been considered because he did not state or acknowledge that he was providing his opinion with reasonable medical probability as required under Delaware law. Although Dr. Rovner did not express those words on the stand, he did state his opinion "to a reasonable degree of medical certainty" in his report that was admitted into evidence as Respondent's Exhibit No. 4. On page 5 of that report, Dr. Rovner stated:

The presumption that Mrs. Bellini was cognitively impaired, without any evidence to support it, is improbable given that scientific research, rather than subjective opinion or experience, indicates that postictal confusion lasts from 1 to 9 hours and not 3 days. Based on this fact, as well as the clinical evaluations of Dr. Salle [sic] and Dr. Fink himself, Mr. Goodrick's observations, and the absence of any actual evidence that she was cognitively impaired when she signed her revised Will, it is my opinion to a reasonable degree of medical certainty, that Mrs. Bellini's cognitive abilities were intact and sufficient to meet the legal standard of testamentary capacity when she signed her second Will on May 11, 2008 [sic].<sup>1</sup>

In addition, Petitioner argues that Dr. Rovner's opinion should not have been given any weight because it was based on two scientific studies that were not relevant to Mrs. Bellini's condition. In my Draft Report, I noted that Dr. Rovner's own testimony regarding the duration of the postictal state appeared to be contradicted by one of the two studies upon which he had based his opinion. In my Draft Report, I did not give any weight to Dr. Rovner's opinion, but merely recited what his trial testimony had been. This exception, therefore, is denied.

Petitioner's third exception is based on what she considers the "inappropriate weight" the Draft Report placed on the testimony of Michael Goodrick, Esquire. Initially, Petitioner argues that the Court should have given greater weight to the medical testimony of Dr. Fink, rather than the lay testimony of an attorney who lacked medical expertise and had not been aware of Mrs. Bellini's recent seizure. Furthermore, Petitioner argues that Goodrick's testimony should not have been given any material consideration because of numerous inconsistencies between his trial testimony and his earlier deposition.

I have reviewed my Draft Report and the trial transcript, and find no basis for giving Goodrick's testimony any less weight than before. Dr. Fink did not observe Mrs. Bellini on the day she executed the Will. Goodrick, on the other hand, was the only independent witness who

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<sup>1</sup> Counsel for Petitioner originally objected to the admission into evidence of this report, but withdrew his objection during the pretrial conference.

observed Mrs. Bellini that day. He also had the opportunity to meet and observe her a month earlier, when she executed the April will that left the house to her two children. He noticed no difference in her behavior, demeanor, or conversation during their May 11<sup>th</sup> meeting, and based upon his 34 years of experience as an attorney, believed her capable of executing a will. Despite some inconsistencies or omissions in his recollection of events, Goodrick was able to recreate through testimony and documentary evidence his cautious dealings with an elderly client who had changed her mind about the disposition of her property shortly after executing the April will. I do not find it significant that Goodrick could not remember whether it was Mrs. Bellini or Charles who had told him that Mrs. Bellini's grandson had approached her again about a loan. It is undisputed that the Wallaces were in financial distress at the time, and there had been already one request for a loan from Mrs. Bellini that was to be secured by a mortgage on her home.

Petitioner also argues that the Court should ignore Goodrick's testimony because his procedures did not comport with the requirements of Delaware law in that he did not make a preliminary determination of competency through personal contact with Mrs. Bellini before the drafting process began, citing *In re Norton*, 672 A.2d 53 (Del. 1996). However, Goodrick did not meet with Mrs. Bellini personally before drafting the April will, and the Petitioner is not contesting the validity of that will. Having recently ascertained that Mrs. Bellini was competent to execute the April will, Goodrick may have been justified in worrying less about competency and more about undue influence, as his testimony and May 4th letter to Respondent suggest.<sup>2</sup> Nonetheless, Goodrick's failure to follow the preferred practice and meet personally with Mrs. Bellini before drafting the Will which she subsequently executed on May 11, 2005, while perhaps regrettable, does not alone warrant disregarding his testimony and voiding the Will. This exception, therefore, is denied.

Petitioner's fourth exception is that the Draft Report erroneously concludes that the elements of undue influence do not exist. I do not feel it necessary to repeat or reframe my findings of fact and conclusions of law regarding the claim of undue influence. Instead, I will simply adopt this portion of my Draft Report as my Final Report regarding this exception.

Petitioner's last exception concerns Mrs. Bellini's bank accounts and whether or not she intended to place the accounts in joint name with right of survivorship with Respondent. Petitioner relies heavily on the trial testimony of Amy Pope, the PNC Bank representative, who testified that Mrs. Bellini only removed Petitioner's name from the joint PNC bank account to ensure that Petitioner would not be persuaded by her husband to withdraw funds unilaterally from the account. Petitioner also points to Goodrick's deposition testimony in which he recalled vaguely that Mrs. Bellini had joint accounts with Respondent and Petitioner. This testimony, according to Petitioner, is the only proof of Mrs. Bellini's true intent, i.e., she intended her bank accounts to be shared equally by her children after her death. As a result, the argument goes, the Draft Report erroneously found that the PNC and Wachovia accounts were intended to be owned by Respondent upon Mrs. Bellini's death.

The evidence reflects that after March 24, 2005, Mrs. Bellini's account at WSFS was held jointly with Respondent and Petitioner, and her other accounts at PNC and Wachovia were

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<sup>2</sup> Excerpted Trial Transcript – Vol. II, Testimony of Michael J. Goodrick, pp.22-23; Petitioner's Exhibit No. 14.

held jointly with Respondent alone. I have reviewed Goodrick's testimony in which he stated that he was under the impression that all of Mrs. Bellini's accounts were jointly held with one or the other or both of her children.<sup>3</sup> When Mrs. Bellini met with Goodrick in April 2005 and May 2005, Goodrick explained to Mrs. Bellini that her will would not affect her joint bank accounts; that the accounts would pass after her death to the person or persons titled on the accounts.<sup>4</sup> The fact that on March 24, 2005, Mrs. Bellini had changed the names on her accounts at PNC Bank and Wachovia Bank to prevent Petitioner from accessing the funds in Mrs. Bellini's accounts does not lead to the conclusion that Mrs. Bellini's true intent was always for Petitioner to share in the PNC and Wachovia accounts after Mrs. Bellini's death. Goodrick's testimony is evidence of Mrs. Bellini's contrary intent. Thus, there is no basis for the Court to impose a resulting trust over the funds in the PNC and Wachovia accounts for Petitioner's benefit. This exception is, therefore, denied.

I am adopting my Draft Report as my Final Report, except to the extent as modified above.

Yours truly,

*/s/ Kim E. Ayvazian*  
Master in Chancery

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<sup>3</sup> Excerpted Trial Transcript – Vol. II, Testimony of Michael J. Goodrick, pp. 109-112.

<sup>4</sup> *Id.* at 13-15, 19-20, 27-29, 81-82.