

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Estate of Harry A. Dellenberger, :
Petitioner :
 :
v. : No. 2688 C.D. 2010
 : Argued: June 6, 2011
Bureau of Unclaimed Property, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge (P)

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 11, 2011

National City Bank (Administrator), Administrator of the Estate of Harry A. Dellenberger (Decedent), appeals an order of the Bureau of Unclaimed Property of the Treasury Department denying Administrator's claim to certain unclaimed property. The Bureau found that Administrator's evidence did not prove that Decedent's estate was the rightful owner of the property. We vacate and remand.

In 2002, Compushare, a stock transfer agent, remitted \$629,333.96 to the Bureau as unclaimed property. This amount represented accumulated dividends and cash in lieu of common stock as related to SPX Corporation.¹ The record owner was

¹ Section 1301.2(a) of The Fiscal Code, 72 P.S. § 1301.2(a), Act of April 9, 1929, P.L. 343, *added by Act of December 9, 1982, P.L. 1057, as amended*, 72 P.S. §§1301.1-1301.29, provides as follows:

(Footnote continued on the next page . . .)

identified as “Harry A. Dellenberger” and his address was listed as “GDN 3233 Woodland Ave Philadelphia Pa.” Reproduced Record at 5a (R.R. ___). No social security number, date of birth or other identifying information was provided by Compushare.

In 2009, Administrator filed a claim with the Bureau asserting that the unclaimed property belonged to Decedent. The Bureau denied the claim, noting that Administrator did not provide evidence that Decedent, who lived his life in Ohio, had any connection to Philadelphia. The Bureau also noted that the stock was held “GDN,” which is the usual designation for guardian. Thus, even if Decedent had been the owner of record, he would have only held it as a guardian for the unidentified beneficiary.

(continued . . .)

- (a) All abandoned and unclaimed property and property without a rightful owner as hereafter set forth is subject to the custody and control of the Commonwealth:
1. If it is tangible and physically located within the Commonwealth; or
 2. If it is intangible and (i) the last known address of the owner, as shown by the records of the holder, is within the Commonwealth; or (ii) the last known address of the owner ... is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of such property, and the domicile of the holder is within the Commonwealth; or (iii) no address of the owner appears on the records of the holder and the domicile of the holder is within the Commonwealth ... or (iv) no address of the owner appears on the records of the holder and the domicile of the holder is not within the Commonwealth, but it is proved that the last known address of the owner is in the Commonwealth.

Administrator appealed and requested a hearing. Presiding Officer Gerald S. Smith was assigned to the appeal. Administrator then elected to have the matter decided based solely on the documentary record.

The presiding officer made the following factual findings. Decedent was born on August 16, 1875, in Akron, Ohio, where he lived until his death on December 26, 1937. Decedent was survived by his wife and children. He did not have a social security number, which were not issued before 1936, the year before Dellenberger's death. There was a family by the name of "Dellenberger" or "Dellenbarger" that owned and operated a business in the 3200 block of Woodland Avenue in Philadelphia, and it was this family that owned stock in SPX Corporation.² Noting that Administrator had the burden of proving that Decedent was the rightful owner of the stock, the presiding officer held that Administrator did not prove Decedent had any relationship to Pennsylvania, let alone Philadelphia.

The presiding officer rejected as "rank speculation" Administrator's argument that GDN may have been a reference to a garden apartment, not a guardianship, because it appeared in the address line, not next to the name. The presiding officer noted it was common knowledge that financial institutions use abbreviations and other ownership identifiers in the address field of their records. Accordingly, the presiding officer held that Administrator did not prove its claim.

Administrator appealed to this Court. In response, the Bureau filed a motion to strike and requested that the case be remanded for consideration of new evidence that the Administrator had included in its brief to this Court. This Court agreed to remand the matter.

² SPX Corporation is the corporate successor to General Signal Corporation, which was the stock issued to "Harry A. Dellenberger."

On remand, a new presiding officer, Edward S. Finkelstein, Esq., was appointed to hear the matter. The parties agreed that the matter could be decided without an evidentiary hearing and, thus, it was decided based on the prior record and joint stipulations.

In the second opinion, the presiding officer discussed the fact that Administrator had filed a second unclaimed property claim involving SPX Corporation. This second claim was in the amount of \$209,632.74, for stock and dividends and was brought on behalf of the estate of Elizabeth C. Dellenberger of Ohio.³ The address in Philadelphia was the same as that for Harry Dellenberger. Administrator claimed that the initials C.E. had been transposed and that E.C. Dellenberger was the rightful owner. After Administrator learned that the Philadelphia City Directory had a listing for Chas E. Dellenbarger, the President of the Dellenbarger-Penley Company, Administrator withdrew its claim on behalf of Elizabeth C. Dellenberger.

The presiding officer then discussed Administrator's other evidence. Information obtained from Ancestry.com showed that Charles E. Dellenbarger was born in Akron, Ohio and was close in age to Decedent, who was also born in Akron. Administrator presented birth and death certificates showing that Decedent's father and Charles' father were brothers, making Charles and Decedent first cousins. Administrator claimed that the Ohio Charles E. Dellenbarger was the Pennsylvania "C.E. Dellenbarger." By this relationship to Charles, Decedent's connection to the Pennsylvania Dellenberger family was established. Further, Administrator had conducted a records search throughout the United States and was able to locate only

³ Elizabeth C. Dellenberger was Decedent's niece.

one Harry A. Dellenberger in existence at that time. Because Decedent was the only Harry A. Dellenberger of record, Administrator argued that he should be deemed to be the Philadelphia Dellenberger.

The presiding officer concluded that the evidence did not connect Decedent to Pennsylvania. He also found that the abbreviation “GDN” was the common abbreviation for guardian in stock records. Thus, it was more likely than not that Harry A. Dellenberger of Philadelphia was merely a guardian for another person, which fact alone precluded him from having any claim on the property.⁴ Notably, the address for C.E. Dellenberger, also on Woodland Avenue, did not contain the “GDN” designation. Finally, the presiding officer concluded that Administrator’s failure to locate another Harry A. Dellenberger did not mean another one did not exist.⁵

⁴ “The functions and powers of a guardian or committee cease with the life of the incompetent; there remain only the duty and liability to account.” *In re Estate of Peden*, 409 Pa. 194, 200, 185 A.2d 794, 797 (1962). Further, should the guardian die prior to the accounting or while he was administering an estate,

[t]he personal representative of the estate of a deceased fiduciary or the guardian of an adjudged incapacitated fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or incapacitated fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incapacitated fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incapacitated fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

20 Pa. C.S. §3324. Accordingly, Administrator only has the authority to protect and deliver any asset “which was being administered” by Decedent at the time of his death.

⁵ The presiding officer speculated that “GDN” meant that Harry Dellenberger was a minor and that later in life, he may have used initials, not his full name. This change would explain why Administrator could not find another Harry A. Dellenberger. This speculation does not make it “more likely than not” that Decedent and the Harry A. Dellenberger in SPX Corporation records are different persons.

The presiding officer denied Administrator's claim. Administrator then petitioned for this Court's review.⁶

Administrator has raised one issue in its appeal to this Court, *i.e.*, whether it met its burden of proving that it was "more likely than not" that Harry A. Dellenberger, late of Akron, Ohio, was the person listed on the common stock records of SPX Corporation.⁷ Administrator argues that it has established Decedent's connection to Philadelphia through his first cousin, Charles E. Dellenberger.

Administrator notes in its brief that after-discovered evidence shows that Decedent was indeed listed as a guardian for an incompetent person, his uncle Daniel W. Dellenberger, by the Ohio Summit County Court of Common Pleas, Probate Division from 1926 to 1930. Contained in the application for appointment of guardian is a listing of Daniel's next of kin. It provides the name of Daniel's wife and the names of his six children. One of the children is identified as Charles E. Dellenberger, Philadelphia.⁸

Following this discovery, Administrator contacted the Bureau to discuss its new evidence that Decedent is the first cousin of Charles E. Dellenberger of Philadelphia and, thus, the missing link between Decedent and the Philadelphia

⁶ A final determination of the State Treasurer is heard in the Court's appellate jurisdiction. 72 P.S. §1301.21(a).

⁷ Our scope of review, under administrative agency law, is limited to determining whether constitutional rights were violated, an error of law committed or whether the findings of fact are supported by substantial evidence. *First Federal Savings and Loan Association of Hazleton v. Office of the State Treasurer, Unclaimed Property Review Committee*, 650 A.2d 1166, 1167 n.4 (Pa. Cmwlth. 1994).

⁸ Administrator did not provide the actual documents to this Court. Instead, it is the Bureau that has attached the documents to its brief. The photocopies provided by the Bureau are of very poor quality, but it does appear that the application for appointment of guardian contains the stated information. Bureau's Brief, Attachment 1, page 4.

Dellenbergers. The Bureau responded that the new evidence did not establish that Harry A. Dellenberger was the owner of the property. To the contrary, it confirmed that Decedent was, in fact, the guardian of the property of another. As such, it was suggested that most likely the unclaimed property belonged to the heirs of Daniel Dellenberger. The Bureau advised Administrator to withdraw its petition for review.⁹

Presently, the Bureau requests this Court to remand the matter for a hearing on the new evidence. Alternatively, the Bureau argues that Administrator's appeal lacks merit because it failed to present sufficient evidence that Decedent was the Harry A. Dellenberger listed at the Philadelphia address.

We turn to the issue before us on appeal, *i.e.*, Administrator's argument that the evidence presented at the hearing was sufficient to support a finding that the Decedent was the owner of the unclaimed property in question.¹⁰ It is the Administrator's burden to establish its entitlement by the "preponderance of the evidence." *Agostino v. Township of Collier*, 968 A.2d 258, 269 (Pa. Cmwlth. 2009). The "[p]reponderance of the evidence is tantamount to a 'more likely than not standard.' ... Proof by a preponderance of the evidence is 'often alluded to as a weighing of the evidence and a determination based upon which way the mythical scales are tipped.'" *Id.* (quoting *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. 2002)). Further, it is the agency that is the fact-finder and that resolves issues of credibility and the weight to be assigned the evidence. *Balshy v.*

⁹ The Bureau filed an application to strike Administrator's petition for review with this Court, based on the new evidence. On March 14, 2011, this Court denied the application to strike, finding that to the extent the motion raised issues regarding the merits of the petition, consideration of those issues prior to briefing was premature.

¹⁰ Administrator makes no attempt to use the newly discovered evidence in support of this argument. It relies solely on the evidence it submitted to Presiding Officer Finkelstein.

Pennsylvania State Police, 988 A.2d 813, 835 (Pa. Cmwlth. 2010). This Court may not retry a case or make its own factual findings. If the agency’s determinations are supported by substantial evidence, then they are binding on this Court. *Id.*

Administrator’s evidence before the presiding officer established that Decedent had a cousin named Charles E. Dellenberger. In addition, Administrator’s evidence showed that there is no record in any census, death registry, or genealogical record that another “Harry A. Dellenberger” existed anywhere in the United States at the relevant time.¹¹ The Administrator argues that this evidence, which was not contradicted, is enough to establish the connection between Decedent and the Philadelphia Dellenbergers shown on the SPX Corporation records.

The presiding officer did not disbelieve the evidence of Administrator; rather, he held that it was not adequate as a matter of law to show a connection between Decedent and the Philadelphia Dellenbergers. We disagree. The burden of proof should not be so high that a claim for unclaimed property can never be made out. Administrator’s evidence is not perfect, but it cannot be in a case such as this one, where the parties in interest are long dead. The absence of a social security number actually supports the inference that Decedent and the “Harry A. Dellenberger” shown on SPX Corporation’s records are one and the same. Accordingly, we reverse the Bureau conclusion that Administrator’s evidence, as a matter of law, failed to show a connection between Decedent and the Philadelphia

¹¹ The record in this case contains a report from International Genealogical Search, Inc. Certified Record, Exhibit 6, Final Reporting at 1-2. The search agency provides that it was authorized to perform, and did perform, 8 total hours of work for Administrator searching for records regarding Harry A. and Elizabeth J. Dellenberger. The agency states that, during the course of its search, it did not locate another individual named Harry Dellenberger in the United States.

Dellenbergers. Its evidence meets the “more likely than not” standard. *Agostino*, 968 A.2d at 269.

Administrator, for its own reasons, did not challenge the finding that Harry A. Dellenberger, designated “GDN,” held the stock as a guardian. The Bureau has requested that the matter be remanded for an evidentiary hearing on the newly discovered evidence. It is not clear that this new evidence will advance Administrator’s claim, in light of its apparent agreement that Harry A. Dellenberger acted as a guardian. However, we will grant a remand for a hearing on the new evidence, as requested by the Bureau.

MARY HANNAH LEAVITT, Judge

