

[J-176-2008][M.O. - Greenspan, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: ESTATE OF CATHERINE M. : No. 54 MAP 2008
STRICKER, :
Deceased :
: Appeal from the Order of the Superior
: Court at No. 1085 MDA 2006 dated
: 8/10/07 reargument denied 10/19/07
: quashing the appeal from the order of
: Dauphin County Court of Common Pleas,
: Orphans' Court Division, at No. 132-2001,
: dated 6/7/06
:
APPEAL OF: APPEAL OF: RONALD E. :
STRICKER : ARGUED: December 4, 2008

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: August 17, 2009

I join the majority's holding that the order under review is neither a final order nor a collateral one. My main difference with the majority's analysis lies with its discussion of the primary method for obtaining what is effectively interlocutory appellate review of orders determining interests in estate property.

Initially, I note that all parties to this appeal favor immediate appellate review of the Orphans' Court's order, rather than postponing it until the closing of the estate at some indefinite time in the future. See, e.g., Brief of Appellee Linda K. Stricker, at 8 ("Linda Stricker, co-executor and appellee herein, agrees with Ronald Stricker, the other co-executor and appellate herein, that an early disposition by the Superior Court of the merits of Ronald Stricker's concerns about the lower court's orders should facilitate the completion of the administration of the Estate."). This is unsurprising, of course. As a

general rule, a purchaser of real property seeks certainty in the title acquired, and the seller seeks to maximize the sale price. In the context of sales, mortgages, leases, and/or options involving estate property, the interests on all sides of transactions are adversely affected by the cloud created when an appeal is delayed until the closing of an estate, an event which may occur many years after the disposition of any individual estate asset.

The majority aptly observes that our Rules of Appellate Procedure contain a vehicle to address the particularized concerns arising from orders determining interests in estate property. Specifically, Rule 342 permits an appeal from a distribution order or an order determining an interest in estate property to proceed as of right, inter alia, upon a determination of finality by the orphans' court. See Pa.R.A.P. 342(1).¹ The majority correctly interprets the rule as investing absolute, largely standardless discretion in the orphans' court. I differ, however, with the majority's categorical assessment regarding the wisdom of the rule in this regard. See Majority Opinion, slip op. at 4.

In my view, there are substantial arguments to be made that estate administration would be better served by a rule providing for the general appealability of estate-related orders determining property interests at least in the real property setting. Notably, the present "determination of finality" procedure does not closely align with the justifications for permitting immediate appeals (facilitating the prompt resolution of

¹ Some passages of the majority opinion suggest that Rule 342 is the exclusive mechanism for securing immediate review in the relevant context. See, e.g., Majority Opinion, slip op. at 5 (indicating, with regard to an order authorizing a sale of personal property, "our rules do not permit immediate appeal under such circumstances, unless the Orphans' Court decides its order approving the sale is final pursuant to Pa.R.A.P. 342(1)."). It should be borne in mind, however, that Rule 342 expressly recognizes that there may be other available avenues for securing immediate appellate review, for example, a permissive appeal. See Pa.R.A.P. 342(2) & Note.

potential title disputes to benefit purchasers, the estate, and beneficiaries). Further, the vesting of absolute, standardless discretion in our orphans' courts yields the potential for disparate treatment. Cf. Commonwealth v. Castillo, 585 Pa. 395, 401, 888 A.2d 775, 779 (2005) (rejecting the exercise of appellate discretion to review issues on appeal where the appellant has failed to comply with the obligation to file a statement of matters complained of on appeal, where such discretion yields "inconsistent results and uneven justice").

The majority's counter-position is that "if we accepted Appellant's argument that any claim on or about property that might be sold during the probate process should be immediately appealable, the appellate court system would be flooded with such appeals and the administration of decedents' estates would be unreasonably delayed." Majority Opinion, slip op. at 4. The majority does not provide evidence to support its floodgates concern; further, it is significantly diffused by the recognition that the Appellate Rules' requirement of finality delays appeals but does not foreclose them. I also differ with the belief that immediate appeals from orders determining interests in estate property unreasonably delay administration. Instead, I believe, consistent with the understanding of all parties to this appeal (and I suspect many other participants in the estate administration process), that allowing appeals as of right most frequently would result in a net benefit.

There are obviously substantial interests in tension in this setting (again, for example, those of the intermediate appellate courts in containing their workload and minimizing piecemeal appeals versus the interests of participants in the estate administration process in maximizing certainty of title). Thus, I believe our Appellate and Orphans' Court Procedural Rules Committees should continue to study the application of the present rule in practice and make recommendations for improvements

where appropriate, particularly given the troubling implications of maintaining a system based on absolute, largely standardless discretion.