

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
(In the Jurisdiction of the Register of Wills)

IMO THE ESTATE OF)
) REGISTER OF WILLS
ESTATE OF DAISEY MAE) FOLIO NO. 135424-N
EPPERSON JONES)
)

MASTER'S REPORT

Date Submitted: September 25, 2007
Final Report: March 6, 2008

Alethia T. Hickson, Personal Representative of the Estate of Daisey Mae Epperson
Jones, *Pro Se*

And

Kevin S. Epperson, Exceptant, *Pro Se*

AYVAZIAN, Master

On May 10, 2005, Daisy Mae Jones died intestate in Wilmington, Delaware. The decedent was survived by her spouse, three sons and a daughter. Letters testamentary were granted by the Register of Wills to the decedent's daughter, Alethia T. Hickson, on July 13, 2005. Hickson filed an inventory on September 12, 2005, listing the assets of the decedent as real property located in Wilmington at 1003 Liberty Road, valued at \$180,000, and a checking account containing \$200.00. Hickson also filed a first and final accounting of the estate on September 12, 2005, but she did not complete the remainder of the paperwork necessary to close the estate until the spring of 2007. During this time, one of the decedent's sons, Kevin Epperson, was in frequent communication with the Register of Wills Office in New Castle County because he was concerned that the estate was not being properly administered. After Epperson received formal notice of the final accounting, he took exception to both the inventory and accounting, and requested a hearing. A hearing was held on September 25, 2007. Both parties are *pro se* and Epperson, who is currently incarcerated, attended the hearing by telephone. I allowed Epperson to submit additional written exceptions following the hearing. This is my report on the exceptions filed by Epperson to the administration of the Estate of Daisy Mae Jones.

Epperson takes the following exceptions to the administration of the decedent's estate by Hickson: (1) commingling of estate funds with personal

funds; (2) improper accounting and expenditures; (3) failure to make a proper inventory of the estate's assets; (4) real property is in deplorable condition; (5) Hickson and two other brothers illegally spent estate funds; (6) failure to provide the bank account numbers; (7) failure to provide copies of two mortgages and copy of mortgage insurance policy; and (8) failure to provide all documents in connection with the estate. In addition, Epperson has various complaints regarding Marvin Jones, the decedent's surviving spouse.

At the hearing, Hickson testified that she was the beneficiary of the decedent's life insurance policy from the federal government. In addition, Hickson testified that she was the beneficiary of the decedent's accident insurance policy from the Combined Insurance Company of America. Since the decedent's death was not due to any accidental cause, however, the estate only received a premium refund. According to Hickson's testimony, any premium refunds or checks made payable to the Estate of Bessie Jones were used to pay the decedent's debts.

Hickson also testified that the decedent owned bank accounts jointly with her husband, Marvin Jones, and that bank personnel informed her that her stepfather had removed all the funds from those accounts. Hickson testified that she did not list Marvin Jones as an heir in the accounting -- even though she had been told that if any assets were sold Jones would be entitled to a percentage of the

estate as a surviving spouse -- because he and the decedent had legally separated a few years prior to her death.

When questioned about the inventory's failure to list any personal assets of the decedent beyond the small checking account, Hickson testified that the decedent had been a "pack rat." According to Hickson, everything belonging to her mother was in such poor condition that she had thrown out everything except the decedent's dining room set and items that were still located in the basement. Hickson testified that she and her other two brothers had started to renovate the decedent's house, and had installed new windows and a front door. However, the decedent had encumbered her real property with two mortgages that were in arrears, and the decedent had also fallen behind on her trash bill. Hickson testified that she was trying to pay the decedent's bills, and complained that Epperson, unlike her other two brothers, had refused to cooperate with their efforts to renovate the house.

The documentary evidence presented at the hearing shows that Hickson paid \$9819.78 (cash and a check for \$8130.50 from FEGLI) and her brother Marcellus Jones paid \$400 in cash toward the funeral expenses of the decedent, and that Terrence Hickson (presumably Hickson's husband) paid \$229.00 for a door from Home Depot. The documentary evidence also shows that the estate received medical benefit payments totaling \$435.24 from Peoples Benefit Life Insurance

Company for medical services incurred during the last two months of the decedent's life. The estate also received a refund check for an unearned or unused premium in the amount of \$14.91 from the Combined Insurance Company of America. A final statement of a lump sum death benefit payment showed that \$462.04 was paid apparently to Hickson, who had been named the sole beneficiary of the decedent's lump sum Civil Service benefit on a United States Office of Personnel Management ("OPM") form dated February 13, 2002. This form was produced at the hearing with another OPM document dated February 22, 2002, certifying that the decedent was to retire on February 23, 2002, and was covered by Federal Employees' Group Life Insurance (FEGLI).

Hickson also provided copies of tax bills, utility bills, and mortgage statements, as well as copies of receipts documenting cash payments for utilities and mortgage payments made in the months following the decedent's death. According to her testimony, Hickson has been paying nearly \$800 per month in mortgage payments since the decedent's death. The house apparently had been occupied by her brother Marcus Jones until his recent incarceration.

The evidence reveals that Hickson, as administratrix of the Estate of Daisy Mae Jones, failed in her duty to collect and preserve the personal assets of the estate, itemize the debts, and provide a true accounting of the estate administration to the heirs. *See In re Spicer's Estate*, 120 A. 90, 91-92 (Del. Orph. 1923). It does

not appear that Hickson acted in bad faith; rather, it simply appears that Hickson did not understand what was required of her as administratrix of her mother's estate. First, she failed to provide a complete inventory of all the decedent's personal property. See *In re Estate of Lomker*, 1999 WL 1022082, mem. op. at *4, (Del. Ch. Nov. 1, 1999). Unfortunately, Hickson has already thrown out most of the decedent's personal property, and her actions in this regard cannot be undone. Epperson, however, has not challenged Hickson's unsupported testimony that the discarded items had no value. Accordingly, this breach of Hickson's fiduciary duty has resulted in no loss to the estate and, consequently, no harm to Epperson. Because Hickson testified that some personal property of the decedent remains in the house, I am rejecting the inventory filed on September 12, 2005, and ordering Hickson to file an amended inventory, which shall list all the remaining items in the residence that were owned by the decedent on the date of her death and their valuations.

Epperson also challenges the lack of documentation regarding the decedent's bank accounts, i.e., the name of the bank and the actual account numbers. At the hearing, Hickson testified that she had not listed the decedent's bank accounts on the inventory because they were jointly owned with the decedent's spouse, Marvin Jones, who had already withdrawn the money from those accounts. Hickson testified that she had been unable to get any more information from the bank

because her name was not on the accounts. To the extent that Epperson is not challenging Hickson's unsupported testimony that the decedent's accounts were held jointly with the spouse, Hickson's failure to provide the name of the bank and the bank account numbers is immaterial. However, Epperson is also claiming that the decedent's surviving spouse illegally withdrew all the funds from the bank accounts after learning of the death of his spouse. Thus, the real issue is whether the accounts were held as a joint tenancy with right of survivorship. If the decedent and her spouse were joint account holders with the right of survivorship, then all the funds legally passed to the surviving spouse after the death of the decedent. *See, e.g., Kibler v. Wooters*, 2007 WL 1756595, letter op. at *2 (Del. Ch. June 6, 2007). If, on the other hand, the accounts of the decedent and her spouse were held as tenants in common, then upon the death of the decedent, her share of the accounts should have become the property of the estate. *See Speed v. Palmer*, 2000 WL 1800247 (Del. Ch. June 30, 2000). In that event, Hickson would have been remiss in her duty as personal representative in not pursuing a chose in action against the surviving spouse. As the personal representative of the decedent's estate, Hickson should obtain from the bank copies of the forms that created the bank accounts that were owned by the decedent and her spouse. The amended inventory shall reflect the name of the bank, the account numbers and the nature of the accounts, i.e., whether a true joint tenancy or not.

It appears that Hickson has been paying debts of the decedent using her own personal funds as well as estate funds, without furnishing a proper accounting of her administration. I am therefore rejecting the accounting filed on September 12, 2005, and ordering Hickson to file an amended accounting, which shall list both the personal property of the decedent contained in the amended inventory and other property which came into the hands of the administratrix after the decedent's death, i.e., premium refunds or other funds payable to the estate. *See In re Brown's Estate*, 52 A.2d 387, 394 (Del. Orph. 1944). The amended accounting shall enumerate the funeral expenses and the decedent's debts, such as taxes, mortgage payments, utility bills, refuse bills, credit card balances, medical bills, etc. If Hickson and her brothers used their own funds to pay for the decedent's funeral or debts, they are entitled to reimbursement from the estate. *See Smolka v. James T. Chandler & Son, Inc.*, 20 A.2d 131, 133-134 (Del. 1941) (law implies a promise of reimbursement out of estate assets for the reasonable expenses of the funeral). An amended accounting, in all likelihood, will show that the personal property of the decedent was insufficient to pay all the decedent's debts. The only asset of value remaining in the estate is the decedent's real property. Therefore, it will be up to Hickson, as the personal representative of the estate, to decide whether to petition the Court for authority to sell the real property of the decedent in order to pay any remaining debts of the decedent. *See* 12 Del. C. § 2701 *et seq.*

I find Epperson's remaining exceptions to be without merit. Epperson has questioned why his sister was appointed personal representative when the decedent was survived by her spouse. The record is silent whether the decedent's surviving spouse simply failed to petition for letters of administration or was otherwise disqualified from receiving them. *See* 12 Del. C. § 1508¹. As the decedent's daughter, Hickson was also entitled to apply for letters of administration. *See* 12 Del. C. § 1505.² Epperson also complains that Hickson and his brothers illegally spent estate funds, but he does not specify the alleged illegal expenditures. To the extent that estate funds were used to pay for the decedent's funeral, the expenditure would have been appropriate. *See Smolka*, 20 A.2d at 134 ("It is the duty of an executor or administrator to bury the deceased in a manner suitable to his degree and the circumstances of the estate[.]"). Similarly, it is the responsibility of the administrator to use estate funds to pay the debts of the decedent. *See In re Spicer's Estate*, 120 A. at 91 (personal property of the deceased vests in his executor or administrator, who takes such property "in trust for the payment of the debts of the deceased, and the distribution of the remainder to his heirs."). If estate funds were used to renovate the decedent's real estate, which passed by intestate

¹ Section 1508 provides that "Letters testamentary or of administration shall not be granted to ... a person convicted of a crime disqualifying the person from taking an oath."

² Section 1505 provides that: "The persons entitled to letters of administration shall be those in first of the following classes of persons which shall have a member of that class living and not under an incapacity: Spouse of the decedent; children of the decedent; parents of the decedent; siblings of the whole blood and half blood of the decedent."

succession to the four children of the decedent, with the surviving spouse retaining a life estate therein, *see* 12 Del. C. § 502(4), such expenditures would have been improper but harmless in this case. Improvements to real property in the form of new windows and a front door only preserve or enhance the real property's value, which would ultimately benefit the estate if the real property has to be sold to pay the decedent's debts.

Although Hickson did not provide copies of the recorded mortgages, she did provide copies of mortgage statements showing that the real property had been encumbered with two mortgages, and showing the monthly amounts of mortgage payments owed by the decedent. Although Hickson did not provide a copy of a mortgage insurance policy, Epperson never explicitly claimed that a mortgage insurance policy on the decedent's life existed. If such a policy existed, it is unlikely Hickson would have been using her own funds to make the monthly mortgage payments after the decedent's death.

Epperson also complains that the decedent's signature on the Veterans' Administration designation of beneficiary form appears traced, but he does not explain why that matters. The photocopy of the designation of beneficiary form reflects that the decedent's signature was witnessed by two individuals, who also signed the document on February 13, 2002, and the document otherwise appears to be in order.

Epperson is clearly unhappy that he has received nothing so far from his mother's estate since she allegedly told him that each of her children would receive a certain amount of money. Although the debts of the estate are considerable, there may yet be a distribution to the heirs if the estate is properly administered. The personal representative shall have sixty (60) days from the date this report becomes final to file an amended inventory, and shall have until the next anniversary of the date of her letters to file an amended accounting.

To the extent that the foregoing requires an Order to take effect, it is **SO ORDERED**.