

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

IN RE: THE MATTER OF THE)
ESTATE OF VIRGINIA M. BAKER) C.M. No. 3871-S

MASTER'S REPORT

Date Submitted: July 27, 2004
Draft Report: July 27, 2004
Final Report: August 4, 2004

Harold W. T. Purnell, II, Esquire, Tunnell & Raysor, P.A., Georgetown, Delaware;
Attorney for Petitioner.

Mark D. Olson, Esquire, David C. Hutt, Esquire, Wilson, Hallbrook and Bayard, P.A.,
Georgetown, Delaware; Attorneys for Respondent.

GLASSCOCK, Master

This matter is before me on a petition to remove Guy C. Baker, Sr. as executor of the estate of Virginia M. Baker, and to appoint Cynthia M. Hill as successor administratrix. The facts of this matter are tragic. Mr. Baker, the respondent, was the husband of Virginia M. Baker and named executor in her will. On September 2, 2003 Mr. Baker was driving an automobile in which his wife was a passenger. He was involved in an accident in which Virginia Baker was killed. Mrs. Baker's will was admitted to probate and her husband was appointed executor.

Among the assets of the estate is a potential personal injury claim against Mr. Baker and his liability insurance carrier, State Farm Insurance Company. Before paying out on the policy, State Farm requires a release of liability to be signed. State Farm has determined that Mr. Baker cannot be the individual who signs the release on behalf on the Estate of Virginia Baker, due to his conflict of interest.

Cynthia Hill, the decedent's daughter, is a beneficiary under the will and is named in the will as alternate executrix. She filed the petition at issue, contending that Mr. Baker's inability to sign the release rendered him unfit to serve as executor. Mr. Baker resisted the petition. In a telephone conference with me and with counsel for the petitioner, the respondent's counsel suggested that the petitioner be appointed a special administrator for the limited purpose of execution of the release required by State Farm. Respondent's counsel has since represented to me that State Farm is

willing to accept a release by a special administrator. At the conclusion of the telephone conference, I asked counsel to supply me with letter memoranda on their various positions, which they have done. This is my decision on the motion to remove the executor.

The petitioner contends that the facts surrounding the death of Mrs. Baker make Mr. Baker unfit to serve as fiduciary for the estate. The petitioner points to the fact that Guy Baker was driving at the time of the accident in which Mrs. Baker died, and that he pled no contest to the offense of “operation of a vehicle causing death” in connection with that accident. The petitioner raises essentially two issues with respect to Mr. Baker’s fitness to serve as a fiduciary for the estate. First, she raises the conflict of interest issue involving the release of liability. As stated above, however, it appears from the representation of respondent’s counsel that this matter is easily resolved by the appointment of a special administrator. Having resolved that problem with respect to marshaling assets, there appears to remain no issue of conflict of interest with respect to Mr. Baker’s service as executor sufficient to cause me to remove him from that role. *See* 12 Del. C. §1541.

The petitioner also suggests that “a court may remove an administrator if there is a proper factual showing of an administrator’s involvement in the decedent’s death.”

Petitioner's Memorandum at 1-2, *citing* 31 Am.Jur. 2d Executors and Administrators, §285 (203). There is nothing in the record before me that indicates that Mr. Baker's involvement in his wife's death was anything other than a tragic accident, although admittedly an accident for which he has been found legally culpable. I am quite aware that there are understandable emotional reasons why the petitioner would rather Mr. Baker be removed as administrator, and it might have been wise and beneficial to all concerned had some third party been chosen to administer this estate from the outset. However, it was the decedent's will that Mr. Baker administer her estate. I also note that Mr. Baker has filed an inventory and partially distributed the estate, and that there is no suggestion that he has done so improperly. Therefore, I think that at this stage it is in the best interest of the estate that a special administrator be appointed to execute the State Farm release and to distribute the proceeds.¹ Mr. Baker can then complete the relatively minor remaining duties of the executor, and this matter may be closed.² I do, however, retain jurisdiction in case any additional problems arise with respect to

¹The parties have agreed that no portion of the insurance settlement is to be allocated to the estate's potential claim.

²I held a brief second teleconference before issuing the draft version of this report. Ms. Hill is willing to serve as a special administratrix in accordance with the report, with certain conditions agreed to by both parties at the teleconference. Once this report becomes final, the petitioner should submit a form of order appointing Ms. Hill, consistent with the teleconference of July, 27, 2004.

the insurance policy and the distribution of the benefits. In that case I shall, on application of the petitioner, revisit this issue.

/s/ Sam Glasscock, III
Master in Chancery

cc: Register in Chancery (SC)