

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

IN RE: THE ESTATE OF )  
FRANCIS E. TINLEY, ) C.M. No. 1920-K  
DECEASED. )

MASTER'S REPORT  
(Elective Share)

Date Submitted: November 22, 2006  
Draft Issued from the Bench: November 22, 2006  
Final Report: July 19, 2007

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GLASSCOCK, Master

On November 22, 2006, I issued a draft bench report in this matter addressing some outstanding issues in this elective share litigation. Exceptions were taken to that draft bench report and briefing followed. This is my final report on those issues addressed in my bench report of November 22, 2006 and this report together with the transcription of that bench report shall serve as my final report on those issues.

The facts in this matter are set out in detail in numerous prior decisions of this Court and the Supreme Court. *See e.g. In Re: The Estate of Francis E. Tinley*, Del.Ch. C.M. No. 1920-K, Glasscock, M. (Sept. 11, 2002)(Master's Report). A brief recitation of the facts may be helpful in limning the issues of the current action. Francis E. Tinley married Sandra Barnes Tinley (the "petitioner") late in his life. He had children by a prior marriage. During his terminal illness, he had his attorney prepare a will leaving the bulk of his estate, consisting principally of a Kent County farm, to his children. He executed this will and asked his attorney not to send him a copy because he wanted to keep its contents from the petitioner. Shortly after this will (the "current will") was executed, the petitioner, through the exercise of undue influence, caused Mr. Tinley to execute a second will, largely disinheriting his children and leaving the bulk of his estate to the petitioner. After Mr. Tinley's death, the petitioner admitted this will (the "tainted will") to probate and remained on the farm, excluding the heirs/beneficiaries of the current will. Those individuals challenged the validity of the tainted will. After a trial and lengthy series of appeals, the tainted will, in favor of the petitioner, was found to be invalid as the fruit of the exercise of undue influence. The will drafted for Mr. Tinley by

his attorney, the current will, was admitted to probate. The petitioner then made a timely election against that will, and this litigation commenced.

The issues addressed in this report involve the calculation of the petitioner's elective share. The respondents, executors of the estate (the "estate") contend that the doctrine of unclean hands should prevent any recovery by Mrs. Tinley against the estate. The parties also dispute as of what date the farm should be valued for purposes of calculating the elective estate, and what amounts should be deducted from the elective share because of the petitioner's retention of possession of the farm for several years after Mr. Tinley's death, and because of her retention of some personalty belonging to the decedent.

### Unclean Hands

Mrs. Tinley, at a time when her husband was house-bound and dying, had a close friend (who was an unlicensed practitioner of law) draft a will contrary to Mr. Tinley's wishes and wholly advantageous to her at the expense of Mr. Tinley's children. She then caused Mr. Tinley to execute that will, through exertion of her influence in a way that overrode Mr. Tinley's own intentions and desires as expressed by the then-newly-executed current will, which now has been admitted to probate. In other words, Mrs. Tinley's hands were manifestly unclean with respect to her creation of the tainted will and her possession and employment of the estate property after Mr. Tinley's death under the now-discredited authority of that tainted will. The Court of Chancery jealously guards its

domain as a court of equity, and will not allow a litigant with unclean hands to benefit based on the assertion of equitable rights before the Court. There is no more venerable principal of this Court than that he who seeks equity must do equity. “Reprehensible conduct on the part of a party litigant which violates the fundamental concepts of equity jurisprudence will not be tolerated. A Court of Equity is a Court of Conscience.” Bodley v. Jones, Del. Supr., 59 A.2d 463, 469 (1947). Therefore, a litigant seeking equitable relief who appears with unclean hands will find that relief barred to her. On the other hand, the vindication of purely statutory rights represents an exercise of the prerogative of the legislature, and not this equity Court. Such a purely statutory right, therefore, will be enforced by this Court not as a matter of equity, but of law, even where (as here) the claimant has acted inequitably in a collateral matter. While the estate has directed me to cases in which inequitable litigants were denied mixed equitable and legal relief due to application of the doctrine of unclean hands, I do not find those cases persuasive in this discreet situation. Here, when the petitioner married Mr. Tinley, legislatively-created legal rights attached, and among these was her right to elect against any will of Mr. Tinley. That right was conditional only on her surviving Mr. Tinley, and her election to exercise the right. Despite her subsequent wrongful actions, therefore, this Court is not required to sully its equitable jurisdiction in vindicating that right. For that reason, Mrs. Tinley is entitled to her elective share notwithstanding her manifest turpitude with respect to the tainted will.

## The Timing of the Valuation of the Tinley Farm

By statute, a will must be provided to the Register of Wills within ten days of the death of the testator, and any election against that will must be made within six months of its admission to probate. 12 Del.C. §§1301, 906. But for the petitioner's presentation to the Register of Wills for Kent County, and ultimately to this Court, of the tainted will which was the product of her own inequitable actions, this estate would have been administered in a timely fashion under the terms of the current will. In that instance, an election by the petitioner in favor of her widow's share would have resulted in a valuation of the estate based on the value of the farm as of the time of Mr. Tinley's death. Instead, Mrs. Tinley remained on the farm for six years as the will contest dragged on. As it happened, land values in Kent County rose dramatically during this period. Previously in this litigation, the parties rigorously contested whether Mrs. Tinley's election against the current will was timely made in light of the fact that no election against the tainted will had been made upon its admission to probate years before. Ultimately, I resolved that issue in the petitioner's favor, but it is clear that the elective share statutes do not contemplate or address the question of a several-year delay in valuing the elective estate caused by the inequitable behavior of the petitioner. *See* 12 Del.C. Ch. 9. Because this delay was manifestly the product of the petitioner's creation and advocacy of the tainted will, and thus directly the result of her inequitable behavior, she is not entitled to reap the windfall of the increased value of the farm. The farm shall be valued for purposes of the elective estate as of the time of the death of Francis Tinley.

### Deductions from the Elective Share

#### *i) Rental value during the period of petitioner's tenure.*

It is clear to me that those benefits which the petitioner enjoyed as the result of her advocacy of the tainted will, at the expense of the true beneficiaries, must be deducted from her elective share. This is true both as a matter of law (because these benefits were effectively distributions from the estate, which she has already received) and equity (because the petitioner should not benefit from her inequitable behavior). The petitioner lived on the farm and enjoyed its fruits and profits during six years following her husband's death. While the parties have debated the amount and application of alleged profits, losses, capital improvements and waste, etc., during her tenure under the tainted will, I find that it is unnecessary to delve into those factual matters. What Mrs. Tinley received from the estate during those six years was the rental value of that property. This amount was in fact a distribution to her by the estate which must be set-off against the elective share. *See* 12 Del.C. §901. Any improvements Mrs. Tinley made to the farm she made as a volunteer during a tenancy that was the result of her wrongful behavior in connection with the tainted will. She is not entitled to invoke equity to recover the value of such improvements.

#### *ii) Mortgage payments.*

Mrs. Tinley seeks to reduce the amount of the rental value she has received, which must be set off against her share as described above, by the amount of the mortgage payments she made during her tenure, ultimately on behalf of the estate. The estate argues that this reduction should be barred by the doctrine of unclean hands, like recovery against the estate for improvements to the farm, as discussed above. I disagree. The petitioner does not seek to recover the amount of the mortgage payments from the estate. Instead, she simply points out that a proper calculation of the distribution from the estate that she has already received, which must be deducted from her elective share, must account for the mortgage payments in determining the net rental value that has been distributed to her. I find that the mortgage payments should reduce the rental value deducted from the elective share because the value of that which she received—use of the farm for six years—includes as a feature of its value the requirement that mortgage payments be made. In other words, allowing the estate to receive the rental value of the farm from the petitioner (by allowing the estate to deduct that amount from her elective share) and at the same time not reducing that off-set by the mortgage payments which the estate would have had to incur to realize that rental value had it been in possession of the farm, would result in a “double dip” in favor of the estate. If the estate had been constituted under the current will (that is, had Mrs. Tinley not interposed the tainted will) the value of the farm to the estate would have been reduced by the amount of the mortgage payments due. It is true that (absent probate of the tainted will) the farm could have been sold shortly after Mr. Tinley’s death, avoiding thereby that portion of the

mortgage payments paid by the petitioner during her tenure which were allocated to interest. As a practical matter, however, the estate, fortuitously, has been handsomely compensated by the rise in real estate prices. Having directed the benefits of that growth in value to the estate rather than Mrs. Tinley, and for the reasons above, I find it equitable to reduce the amount of the rental value that must be deducted from the remaining elective share by the amount of mortgage payments made by the petitioner.

*Res Judicata*

The petitioner has raised an interesting objection to the consideration of the rental value of the farm as a distribution already made by the estate for purposes of calculating the size of the elective share that remains to be paid to Mrs. Tinley. In the initial will contest, the beneficiaries of the current will contended that Mrs. Tinley's occupation of the farm under the purported authority of the tainted will was unlawful, and sought damages therefor. The report of the trial court and the opinions of the courts on appeal were silent on this issue, and no recovery was made for wrongful possession in that action. Because it was plead, however, and because the will-caveators in that action did not take exception to the fact that no decision or recovery for the wrongful possession was forthcoming from the Court, the petitioner here claims that the matter is *res judicata* and cannot be raised again in this action. In order to successfully assert *res judicata* as a bar to litigation, a litigant must demonstrate that

(1) the court making the prior adjudication had jurisdiction, (2) the parties in the present action are either the same parties or in privity with the parties from the prior adjudication, (3) the cause of action must be the same in both cases or the issues decided in the prior action must be the same as those raised in the present case, (4) the issues in the prior action must have been decided adversely to the [opponent's] contentions in the instant case, and (5) the prior adjudication must be final.

Bailey v. City of Wilmington, Del.Supr., 766 A.2d 477, 481 (2001)(citations omitted). I

find the *res judicata* bar inapplicable here for at least two reasons.<sup>1</sup> First, as the trial judge in that previous action, it was never my intent in any decision to find that the continued possession of the farm by Mrs. Tinley under color of the tainted will was anything other than wrongful, and I did not address or decide the issue of damages for that wrongful possession. More fundamentally, the issues here are different from those presented in a wrongful possession case. The question here is not whether an action for wrongful possession could have resulted in an affirmative recovery on behalf of the plaintiffs in the will contest. Instead, the current issue are: what is the size of the elective share and to what extent has that share already been distributed? The only related issues conceivably adjudicated in the will contest involved the affirmative right of recovery for wrongful possession, not the amount of any distribution from Mr. Tinley's estate to petitioner which has been made and must therefore be taken into account in determining the size of the elective share remaining to be distributed. As a result, I find insufficient

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<sup>1</sup> Because of my decision here, I need not address whether caveators to a will in one action, and a decedent's estate in a later action, are the same parties, or in privity, so as to support application of the doctrine of *res judicata*.

identity of issues for the prior action to have a preclusive effect here. *See, e.g. Bailey*, 766 A.2d at 481.

#### Other Off-sets

According to the estate, items of personalty belonging to Mr. Tinley's estate were retained, sold or lost by Mrs. Tinley during her possession of those items under color of the tainted will. To the extent that is the case, the value of those items must also be regarded as a distribution made to Mrs. Tinley and deducted from the elective share to which she is due.

#### Conclusion

For the foregoing reasons, the parties' exceptions to my bench report are denied and the transcript of that report together with this report shall constitute my final report on the issues here addressed. All exceptions to this report are preserved pending the resolution of all remaining issues in this case, and the exceptions period shall not begin to run until that time. Counsel should confer and schedule a telephone conference concerning resolution of the remaining issues and whether mediation would be useful in that resolution.

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Master in Chancery

oc: Register in Chancery (Kent County)