

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
THE ESTATE OF BESSIE M.SEXTON) C.M. No. 12929-N
)

MASTER'S REPORT

Date Submitted: May 1, 2007

Draft Report: July 31, 2007

Final Report: August 8, 2007

I. Jay Katz, Jay Katz LLM Taxation, LLC, 200 Continental Drive, Suite 100,
Newark, DE 19713
Attorney for the Petitioner

And

Sheila M. Lyons, 809 Walnut Ct. Hockessin, DE 19707, *pro se*
Rebecca L. Tinnerello, 27 Mattes Avenue, Wilmington, DE 19804 and
604 Hazeldell Avenue, New Castle, DE 19720, *pro se*
Respondents

AYVAZIAN, Master

On February 15, 2007, Petitioner Tammy L. Pack (“Pack”), Executrix of the Estate of Bessie M. Sexton, filed a petition to sell real property in order to pay the debts of the estate. Respondents Sheila M. Lyons (“Lyons”) and Rebecca L. Tinnerello (“Tinnerello”) opposed the petition, alleging that Pack had misused estate funds, and that there were sufficient personal assets in the estate to pay its debts without requiring a sale of real property. A hearing took place on May 1, 2007. This is my decision on the Executrix’s request for an order allowing her to sell the real property that was owned by the decedent at the time of her death.

Factual Background

Bessie M. Sexton, a resident of New Castle County, died on October 27, 2006. In her Last Will and Testament, which was executed on October 1, 2006, the decedent appointed Pack as her Executrix, and directed her:

to pay all my funeral expenses, administration expenses of my estate, including inheritance and succession taxes, state or federal, which may be occasioned by the passage of or succession to any interest in my estate under the terms of either this instrument or a separate inter vivos trust instrument, and all my just debts, excepting mortgage notes secured by mortgages upon real estate.¹

The decedent then directed her residuary estate to be divided into five equal parts and one part each to be given to Tinnerello, Lonnie A. Dickens, Gary

¹ The decedent used a preprinted document for her Last Will and Testament.

L. Dickens, Pack, and Lyons. These individuals are the decedent's five children. Of the five children, only Tinnerello and Lyons have taken issue with the way Pack has been administering the estate and have contested Pack's petition to sell the real property.

Discussion

Without a specific grant of authority to sell real estate in a will, title to the real estate of a decedent does not pass to the executor but passes directly to the heirs. *In re Parsons v. Garrison*, 1979 WL 178570, letter op. at *1 (Del. Ch.). Pack contends that under Paragraph Four of the Will, she has the authority to sell the real estate. However, Paragraph Four simply states: "I authorize my Executor/Executrix to sell, either at public or private sale, any assets or property of the estate as he/she deems proper to pay for the costs of probating the estate, and maintaining my family after my death." It does not expressly authorize the Executrix to sell real property. *See* 12 Del. C. § 207(c).² Nevertheless, "[i]t is well settled in Delaware that the title to real estate descends to the heirs or vests in the devisees immediately upon the death of the testator **subject to be divested if it be necessary to sell it for**

² 12 Del. C. § 207(c) provides:

Where, by the terms of a will, an express power to sell real property is granted to an executor, such executor may sell or exchange such real property as is not specifically devised, and as the executor reasonably believes, at the time of such sale or exchange, is necessary to be sold in order to pay the debts of the decedent or the expenses of administration ... of the estate In any sale of real estate authorized by this subsection (c) of this section, it shall not be necessary for the executor to obtain an Order from the Court of Chancery authorizing the sale pursuant to Chapter 27 of this title.

the payment of debts of the deceased.” *In re Harris’ Estate*, 44 A.2d 18, 19 (Del. Orph. 1945), quoted in *In re Estate of Morrell*, 1995 WL 783075 (Del. Ch.) (emphasis added). *See* 12 Del. C. § 2701(a). The issues presented in this case are the validity of the estate debts challenged by Lyons and Tinnerello, and whether there are sufficient assets in the personal estate to pay its debts without having to sell the real estate.

A. The assets of the estate

The evidence presented at the hearing showed that at her death, the decedent had only \$1734.11 in her bank account. *See* Plaintiff’s Ex. No. 1, Tab 4. Other personal assets consisted of two cars, a 1988 Buick which the Executrix sold for \$650, and a 1992 Buick which she sold for \$50 as scrap metal. The Executrix sold the decedent’s household goods at a yard sale for a total of \$793.00. At the hearing, Pack entered into evidence numerous bills and receipts, as well as bank statements, documenting the refunds she had received and bills she had paid on behalf of the estate.³ *See* Plaintiff’s Ex. No. 1, Tabs 5-7. According to Pack, however, the estate owes her approximately \$9100 for the decedent’s funeral expenses that Pack paid with her own funds, and since the estate lacks sufficient assets to pay this debt,

³ By April 20, 2007, shortly before the hearing in this matter took place, there was only \$38.03 remaining in the estate’s checking account

she seeks an order allowing her to sell the real estate for \$49,900.00, the price offered by P.J. Bale, Inc..⁴

In their response to the petition to sell real estate, Tinnerello and Lyons alleged that Pack had misused funds and had created additional expenses not related to the estate. They focused on the following categories of assets and debts:

1. Decedent's automobiles. Tinnerello testified that she had been promised by her sisters before the decedent's death that Tinnerello could purchase one of their mother's automobiles since she needed a car. Instead, she testified, Pack sold the car to their brother's girlfriend without offering it to Tinnerello.⁵ Tinnerello, however, has not claimed that the automobiles were worth more than the amount of money the Executrix received from their sale. The complaint that Pack sold one of the automobiles to a person other than Tinnerello, therefore, does not constitute misuse of any estate assets. Pack, as Executrix, acted within her authority in converting the automobiles into cash to be applied toward the payment of the estate's debts. *See In re Spicer's Estate*, 120 A. 90, 91 (Del. Orph. 1923).

⁴ On December 4, 2006, Pack listed the decedent's former residence -- real property consisting of a singlewide mobile home and one-car garage on a 40' x 100' lot, located at 604 E. Hazeldell Avenue, New Castle, Delaware 19720 -- for sale with a realtor at a price of \$49,900.00. On December 6, 2006, Pack received a full price offer for the property from P.J. Bale, Inc., which she accepted the following day. *See* Plaintiff's Ex. No. 1, Tab 3.

⁵ The record shows, however, that Pack listed the buyers of the automobile as Gary Dickens and Crystal Reynolds in the State of Delaware Division of Motor Vehicles "Sellers Report of Sale" form. *See* Plaintiff's Ex. No. 1, Tab 4.

2. Decedent's personal and household items. Tinnerello and Lyons also alleged that Pack was responsible for the loss of numerous personal assets of the decedent that were not listed in the estate's inventory, such as the decedent's jewelry, televisions, furniture, appliances, guns, and sundry other items. In turn, Pack accused Tinnerello and Lyons of stealing items from the decedent's residence. *See* Plaintiff's Ex. No. 2. Pack testified that she found her brother and a woman present in her mother's home while her mother was in the hospital, and that after her mother's death, the house was broken into by Lyons, Tinnerello, and unknown persons. Pack provided a police report to substantiate her testimony that someone had pried the padlock off the front door and removed TV/VCR equipment from the house. *See* Plaintiff's Ex. No. 1, Tab 10. Tinnerello and Lyons presented no documentary evidence to substantiate their claims that other items were missing from the decedent's estate, and that Pack was responsible for their loss. On the other hand, Tinnerello admitted during cross-examination that she had taken some things from the residence before her mother's death that her mother had told Tinnerello she could have. From the record, it appears that Pack did what she could to protect the estate assets, but that some estate assets may have been removed or stolen regardless of Pack's efforts. However, even if the estate included the personal assets that were listed as stolen (Plaintiff's Ex.

No. 2), the personal estate of the decedent still would be insufficient to cover the funeral expenses that were incurred.⁶

3. Funeral expenses. Tinnerello and Lyons alleged that persons other than Pack paid for the flowers and the interment fee, and that it was understood by the family that the proceeds from their mother's life insurance policy were to be used for her funeral. They further alleged that Pack had paid for additional funeral items that should not be treated as estate expenses, such as necklaces and candles. At the hearing, however, Pack testified that she was the named beneficiary of the life insurance policy, and that the proceeds were intended as a gift. According to Pack's testimony, because no one else offered to help pay for the funeral, she used the insurance policy to pay for the funeral arrangements the family had agreed upon. Total funeral services came to \$7809.50, and the remainder of the \$10,000 life insurance policy was returned to her. Pack also testified that she paid \$420 for flowers for the funeral with her debit card and some cash. The interment fee (\$870), according to Pack, was a loan from her brother's ex-girlfriend, Debbie Smallwood, but Pack was unable to obtain documentation of the loan because Debbie Smallwood was incarcerated. Pack's other testimony was supported by documentary evidence, including receipts from the funeral

⁶ I have not made any finding that these items were, in fact, stolen or by whom. The alleged total value of the items listed in Plaintiff's Ex. No. 2 is \$6240.

home, florist, and cemetery. *See* Plaintiff's Ex. No. 1, Tab 8. Tinnerello, in turn, testified that she saw Lyons give Pack \$700 in cash to pay for the flowers, and that Larry Copeland, a person who had known the decedent very well, had paid the interment fee as a donation to help the decedent's children with the funeral expenses. Tinnerello also testified that her mother had told her that the life insurance was meant to cover her burial expenses.

During the hearing, Pack placed into evidence a copy of the life insurance policy that had been issued by United of Omaha Life Insurance Company on February 28, 2002. *See* Plaintiff's Ex. No. 1, Tab 9. Although page 2 of the policy was missing, there was a photocopy of the application for life insurance coverage that the decedent had signed on February 2, 2002, in which she named Pack as her beneficiary. Underneath the beneficiary designation was the following printed statement: "NOTE: If no beneficiary has been named, the proceeds will be paid into the estate of the Insured."

Life insurance proceeds do not pass through the estate unless made payable to the estate. *In re Estate of Vestle L. England, Sr.*, 2000 WL 128854 (Del. Ch.) (citing *In re Estate of Martin Cohen*, Del. Ch., Reg. of Wills Fol. No. 94460, Kiger, Master (April 4, 1996)). In this case, the decedent named Pack as the beneficiary, not her estate - either explicitly or

by default. The fact that Pack was also her Executrix does not alter this conclusion. *See Estate of England*, Master's Report at **4-5, *supra*, citing 12 Del. C. § 1901(c). Without documentary proof that the insurance policy was somehow restricted so that Pack was not entitled to the proceeds, the respondents' claim that Pack is not entitled to be repaid \$7809.50 from estate assets is without legal merit. Similarly, the respondents have provided no documentation to counter Pack's receipts showing that she had paid \$420 for flowers for the decedent's funeral and \$870 for the interment fee.⁷

4. The real property. Both parties agree that the fair value of the real property is \$49,900.00. Pack signed a contract for sale of the real property at this price to a third party who, according to Pack's testimony, intends to tear down the mobile home and build a house on the property. Tinnerello testified that she wants to purchase her mother's property to keep it in the family. According to Tinnerello, she has been pre-approved for a loan by a mortgage company and wants to purchase the property for \$46,900.00, i.e., the listed price less the \$3000 real estate commission.⁸

Conclusion

⁷ Pack failed to provide any documentary support for her contention that the interment fee was paid with money lent to her by Debbie Smallwood. The receipt bears only Pack's name. In the absence of any evidence supporting Tinnerello's testimony that the money for the fee was a gift from Larry Copeland, I have simply concluded that the \$870 interment fee is a valid estate debt.

⁸ In fact, the listing contract provides for a \$2500 commission. *See* Plaintiff's Ex. No. 1, Tab 3.

Pack is seeking reimbursement for \$9099 in funeral expenses that she paid with her own funds (and possibly borrowed funds in the amount of \$870).

The funeral of a deceased person is a work of necessity, as well as of charity and piety. 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; and if this duty is performed by the personal representative, ... the law implies a promise of reimbursement out of the assets of the estate for the reasonable expenses incurred and paid[.]

Smolka v. James T. Chandler & Son, Inc., 20 A.2d 131, 133-34 (Del. 1941).

Pack has demonstrated through her testimony and supporting documentation that the personal estate of the decedent lacks sufficient assets to pay its debts. Accordingly, pursuant to 12 Del. C. § 2701(a), the Executrix is entitled to sell the real estate formerly owned by the decedent to pay the debts of the estate.

On December 7, 2006, the Executrix entered into a contract for sale with a third party under the mistaken belief that she had the authority to sell real property under the Will. She had no such authority at that time.

Tinnerello has expressed her desire to purchase the real property in order to keep it in the family. Since both parties agree that a fair value for the real property is the sales price less the realtor's commission, I am giving Tinnerello 45 days to demonstrate her ability to produce \$47,400.00

(\$49,900.00 less \$2500) at a closing in order for Tinnerello to purchase her mother's home. Should Tinnerello fail to provide the necessary documentation within 45 days from the date this report becomes final, the Executrix may otherwise dispose of the real property at market value.