



On August 21, 2007, Plaintiff Rebecca A. Tuckosh filed a *pro se* complaint challenging the validity of the will of the late Joseph R. Tuckosh, a/k/a Joseph Richard Tuckosh, Jr., (the “decedent”). The complaint alleged that the decedent lacked testamentary capacity at the time he executed his will on December 6, 2006. Defendant Joseph M. Capano, Executor of the decedent’s estate and Trustee of the decedent’s trust, has moved to dismiss the complaint on the grounds that it is time-barred pursuant to 12 Del. C. § 1309, and that Tuckosh lacks standing to bring such an action. This is my report on Capano’s motion to dismiss.

Tuckosh is the ex-wife of the decedent, and the mother of the decedent’s only minor child, Jamie Rae Tuckosh, who was born on January 22, 1990.<sup>1</sup> The decedent executed his self-proved will and revocable trust agreement on December 6, 2006, which together created a testamentary plan of which Jamie Rae Tuckosh is the only beneficiary. The decedent died on December 12, 2006, and letters testamentary were issued to Capano by the Register of Wills for New Castle County on December 21, 2006.<sup>2</sup>

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<sup>1</sup> Complaint at ¶ 1.

<sup>2</sup> Complaint at ¶¶ 1, 3.

12 Del. C. § 1309 governs legal challenges to a will. *See DiSabatino v. DiFerdinando*, 2001 WL 812014, at \*1 (Del. Ch. July 9, 2001). Section 1309(a) provides:

Any person interested who shall not voluntarily appear at the time of taking proof of a will, or be served with citation or notice as provided in § 1303 of this title, shall, at any time within 6 months after the entry of the order of probate, have a right of review which shall on the person's petition be ordered by the Court of Chancery. Upon such review, there shall be the same proceedings as upon a caveat, and the allowance of the will and granting of letters may be affirmed or the will rejected and the letters revoked.

The public policy behind a six-month limitation on the time to attack the validity of a will is to permit the prompt and orderly administration of estates. *Criscoe v. Derooy*, 384 A.2d 627, 629 (Del. Ch. 1978). Section 1309(a) is strictly applied to challenges to wills. *See DiSabatino*, mem. op. at \*2, *supra*. *See also Moore v. Graybeal*, 1998 WL 17430 (Del. Ch. Feb. 24, 1989) (construing Section 1309 as creating a right of review for a set period, at the conclusion of which the right ceases to exist), *aff'd*, 1989 WL 114316 (Del. Aug. 25, 1989).

In this case, the deadline to file a challenge to the decedent's will expired on June 21, 2007, six months after letters testamentary were granted to Capano. According to her complaint, Tuckosh first became aware of the

decedent's will on January 10, 2007.<sup>3</sup> Her *pro se* complaint, however, was not filed until August 21, 2007, two months after the statutory deadline had passed. As a result, Tuckosh's complaint must be dismissed as time-barred.<sup>4</sup>

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<sup>3</sup> Complaint at ¶ 19.

<sup>4</sup> This decision makes it unnecessary for me to address Capano's argument that Tuckosh lacks standing to bring such a complaint.