

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF PETER                   § No. 117, 2011  
KOSTYSHYN FOR A WRIT OF       §  
MANDAMUS                               §

Submitted: April 8, 2011

Decided: April 19, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 19<sup>th</sup> day of April 2011, it appears to the Court that:

(1) The petitioner, Peter Kostyshyn, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Court of Chancery to schedule a hearing and to give him access to all records of the Court of Chancery and the Register of Wills regarding the Estate of Kataryna Kostyshyn. The State of Delaware and New Castle County have jointly filed an answer requesting that the petition be dismissed. We find that Kostyshyn's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that Kostyshyn is an inmate in the custody of the Delaware Department of Correction. In October 2001, the

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<sup>1</sup> Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

Register of Wills determined that Kostyshyn and two of his siblings, John and Patricia (collectively, the “Siblings”) had willfully failed to include another sibling, Miroslaw Kostyshyn, on their sworn petition requesting letters of administration with respect to the Estate of Kataryna Kostyshyn, their mother (the “Estate”). As a result, the Court of Chancery appointed a Delaware attorney to serve as successor administrator of the Estate. Patricia’s subsequent petition to remove the attorney from the position of administrator was denied.

(3) In July 2003, the Court of Chancery authorized the sale of real property from the Estate to pay death taxes, penalties, interest and other expenses in connection with the administration of the Estate. After the Siblings contributed sufficient funds to cover the debts and expenses of the Estate, the Court of Chancery revoked its order authorizing the sale of the real property.

(4) The Estate was closed on October 21, 2003. No exceptions were filed. The final accounting was approved by the Court of Chancery on March 8, 2004. The successor administrator paid into the Court of Chancery the remainder of the funds that had been advanced by the Siblings. A deduction was made for attorney’s fees. Since that time, Kostyshyn has made several requests for payment of his share of the funds paid into the

Court of Chancery. By letter dated June 20, 2005, he was advised by the Register of Wills to request payment in writing and was provided with a copy of a sample petition. The Register of Wills informed Kostyshyn that he did not have to appear in person at the Register's Office.

(5) In January 2011, Patricia made a request in writing for payment of her share of the funds. In February 2011, Patricia and John appeared before the Court of Chancery to formally request payment of the funds. By order dated February 10, 2011, a check for the remaining funds made payable jointly to the Siblings was sent to them via certified mail and was signed for by Patricia. All matters relating to the Estate are now closed.

(6) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>2</sup> As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.<sup>3</sup>

(7) There is no basis for the issuance of a writ of mandamus in this case. Kostyshyn has failed to demonstrate that the Court of Chancery has arbitrarily failed or refused to perform a duty to which he has a clear right.

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<sup>2</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>3</sup> *Id.*

The record before us reflects that the Estate is now closed, all remaining funds advanced by the Siblings have been returned to them and, therefore, Kostyshyn's requests regarding the Estate are moot. As such, we conclude that the instant petition for a writ of mandamus must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice