

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIZABETH M. SUTOR-BANKS	§
and DEAN A. BANKS, D.D.,	§ No. 242, 2013
	§
Defendants Below,	§
Appellants,	§ Court Below-Court of Chancery
	§ of the State of Delaware
v.	§ C.A. No. 6879
	§
ELLA MOFFETT,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: July 3, 2013
Decided: August 22, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 22nd day of August 2013, upon consideration of the appellants' opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendants-appellants, Elizabeth M. Sutor-Banks and Dean A. Banks, D.D. (collectively, the "Bankses"), appeal from the Court of Chancery's April 15, 2013 order adopting the Master in Chancery's final report. The plaintiff-appellee, Ella Moffett, moves to affirm the judgment of

the Court of Chancery on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, on May 4, 2011, Moffett, ninety-five years old and recuperating in a nursing home after an arm injury, signed several legal documents prepared at the direction of her niece, Elizabeth M. Sutor (“Sutor”), and Sutor’s then-boyfriend, Dean A. Banks (“Banks”). The first was a durable power of attorney naming Sutor as Moffett’s agent. The second was a purported will naming Banks as executor. Based upon Sutor’s representation that Moffett’s financial advisor, David J. Durham (“Durham”), was untrustworthy, Moffett also signed a “termination of employment” document purporting to terminate Durham’s employment as her financial advisor.² In addition, Sutor later was added as a co-owner on the deed to Moffett’s home.

(3) Following the signing of the durable power of attorney, Sutor removed over \$7,000 from Moffett’s WSFS account and deposited the money in her Wells Fargo checking account. The money was used to pay her and Banks’s personal expenses. Sutor and Banks also removed cash and personal property from Moffett’s home.

¹ SUPR. CT. R. 25(a).

² On July 28, 2011, after being discharged from the nursing home, Moffett executed a new durable power of attorney naming Durham as her agent.

(4) In September 2011, Moffett filed a complaint in the Court of Chancery, alleging that Sutor had breached her fiduciary duty by misappropriating her (“Moffett’s”) money and personal property. Moffett also sought to invalidate the deed to her home that designated Sutor as a co-owner.

(5) At trial before the Master in Chancery on September 26, 2012, Moffett testified that she designated her niece as her agent while she was in the nursing home because her niece lived nearby and was available, along with her boyfriend, to help handle her affairs. Moffett had no recollection that she had signed any documents other than the durable power of attorney and denied giving her niece approval to remove more than \$7,000 from Moffett’s bank account. Moffett also testified that she did not believe Durham was untrustworthy. Sutor and Banks testified that they were simply following Moffett’s instructions regarding the disposition of Moffett’s property after they had told Moffett that Durham was not to be trusted.

(6) Following the September 26, 2012 trial, the Master in Chancery issued a draft report from the bench ordering the Bankses to provide an accounting of the disposition of Moffett’s property. At the conclusion of the draft report, the Master in Chancery stated that any party could take exceptions to the report. The record reflects that no exceptions were taken.

On October 17, 2012, the Chancellor, stating that the draft report was now final, issued a final order approving the Master's final report and adopting the findings of fact made therein.

(7) Also on that date, the Master issued a second order requiring the Bankses to return Moffett's personal property to Moffett's counsel, to sign all documents required for cancellation of the deed to Moffett's home, and provide an accounting of all funds taken from Moffett's home and her bank account. The Bankses filed an accounting on November 14, 2012. Moffett filed exceptions to the accounting on January 8, 2013. A hearing on the exceptions was held on February 19, 2013. The Master issued a draft report sustaining Moffett's exceptions on March 28, 2013. The record reflects that no exceptions were taken to the Master's March 28, 2013 report. On April 15, 2013, the Chancellor, stating that the draft report was now final, issued a final order approving the Master's final report and adopting the findings of fact made therein. This appeal followed.

(8) In their appeal, the Bankses assert a number of claims, which may fairly be summarized as follows: The Master's reports should not have been approved by the Chancellor because the Master made erroneous evidentiary rulings and the evidence presented at trial did not support the Master's findings. They request that the Chancellor's orders be vacated, that this Court

discipline Moffett's attorney for failing to act in her best interest and that a guardian *ad litem* be appointed to conduct Moffett's affairs.

(9) As provided in the Rules governing practice in the Court of Chancery, a party wishing to take exception to either a draft report or a final report issued by a Master must file a notice of exception within one week of the date of the report.³ In addition, any party failing to file such a notice of exception shall be deemed to have waived the right to review of the report.⁴ Because the Bankses took no exceptions to the Master's reports in accordance with the Court of Chancery Rules, any claims they purport to assert in this appeal are procedurally barred.⁵ Because the Bankses' claims may not be considered in this appeal, the judgment of the Court of Chancery must be affirmed.

NOW, THEREFORE, IT IS ORDERED that Moffett's motion to affirm is GRANTED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ CT. CH. R. 144(a)(1).

⁴ *Id.*

⁵ SUPR. CT. R. 8; *In re Kostyshyn*, Del. Supr., No. 207, 2012, Jacobs, J. (Nov. 13, 2012) (citing *Matter of Marta*, 672 A.2d 984, 986 (Del. 1996)).