

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN, PATRICIA	§	
KOSTYSHYN and JOHN J.	§	No. 363, 2003
KOSTYSHYN,	§	
	§	Court Below–Court of Chancery
Respondents Below,	§	of the State of Delaware, in and
Appellants,	§	for New Castle County
	§	
v.	§	C.M. No. 11088
	§	
STATE OF DELAWARE, F.	§	
EDMUND LYNCH, MIROSLAW	§	
KOSTYSHYN, DELAWARE	§	
APPRAISAL GROUP, LLC, and	§	
DIANE CLARKE STREETT,	§	
	§	
Petitioners Below,	§	
Appellees.	§	

Submitted: October 29, 2004  
Decided: January 28, 2005

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

**ORDER**

This 28<sup>th</sup> day of January 2005, upon consideration of the briefs of the parties, it appears to the Court that:

- (1) Kataryna Kostyshyn (the decedent) died intestate on February 18, 2001. The decedent was survived by four children. Three of the children are the *pro se* appellants in this appeal.

(2) On October 1, 2001, the New Castle County Register of Wills granted letters of administration to the appellants.<sup>1</sup> By order dated October 11, 2001, the Register of Wills revoked the letters of administration on the basis that the appellants had “willfully omitted the existence of an additional sibling” on their sworn petition to act as personal representatives of the decedent’s estate.<sup>2</sup> Thereafter, by order dated January 31, 2002, the Register of Wills appointed F. Edmund Lynch, Esquire, to serve as the administrator of the estate.

(3) In June 2003, Lynch filed a petition in the Court of Chancery seeking permission to sell the decedent’s real estate to the extent necessary to pay taxes, penalty and interest and other estate administration expenses.<sup>3</sup> After a hearing on July 25, 2003, the Court issued an order authorizing Lynch to sell “as much of decedent’s real estate as he determined to be necessary in order to pay death taxes, penalties and interest and other estate administration expenses.”<sup>4</sup> This appeal followed.

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<sup>1</sup>*See generally* Del. Code Ann. tit. 12, § 1501 (concerning letters testamentary and letters of administration).

<sup>2</sup>*Estate of Kataryna Kostyshyn*, Register of Wills, File No. 122514.

<sup>3</sup>*See* Del. Code Ann. tit. 12, § 2701 (providing for petition for sale of realty to pay decedent’s debts).

<sup>4</sup>*In re Estate of Kataryna Kostyshyn*, Del. Ch., C.M. No. 11088-NC, Lamb, V.C. (July 25, 2003).

(4) On appeal, the appellants challenge the revocation of their letters of administration and the subsequent appointment of Lynch as administrator. The appellants further challenge the Court of Chancery's order that denied appellant-Patricia Kostyshyn's motion to remove Lynch as administrator.<sup>5</sup> They also allege numerous due process violations and evidentiary concerns arising from the hearing on the petition to sell real estate.

(5) It appears that the appellants did not avail themselves of the opportunity to schedule a hearing in the Court of Chancery on the motion to remove Lynch as administrator of the estate. As a result, the Court denied the motion for failure to pursue the claim and for lack of good cause. On appeal, we conclude that the Court of Chancery did not abuse its discretion when denying the motion to remove.<sup>6</sup>

(6) The appellants have not provided this Court with a transcript of the hearing on the petition to sell real estate, as they were required to do.<sup>7</sup> In the absence

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<sup>5</sup>*In re Estate of Kataryna Kostyshyn*, Del. Ch., C.M. No. 10519-NC, Lamb, V.C. (Nov. 8, 2002).

<sup>6</sup>*Compare Yancey v. Nat'l Trust Co.*, 1993 WL 370844 (Del. Supr.) (providing that review of dismissal for failure to prosecute is limited to abuse of discretion).

<sup>7</sup>The appellant is required to produce such portion of the trial transcript as is necessary to give the Court a fair and accurate account of the context in which the claim of error occurred. *Slater v. State*, 606 A.2d 1334, 1336-37 (Del. 1992).

of the hearing transcript, the Court has no basis of evaluating the merit of the appellants' appellate claims arising from the hearing.<sup>8</sup>

(7) Finally, to the extent the appellants dispute the July 25, 2003 order authorizing Lynch to sell the decedent's real estate, the appeal is now moot. It appears that the appellants provided Lynch with funds with which to pay the outstanding estate taxes and expenses. Thereafter, at Lynch's request, the Court of Chancery revoked its July 25, 2003 order on the basis that it is no longer necessary to sell the realty.<sup>9</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>8</sup>*Id.*

<sup>9</sup>*In re Estate of Kataryna Kostyshyn*, Del. Ch., C.M. No. 11088-NC, Lamb, V.C. (June 22, 2004).