

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: ESTATE OF MICHAEL P. BURKE : IN THE SUPERIOR COURT OF
A/K/A MICHAEL BURKE, DECEASED, : PENNSYLVANIA
:
:
:
:
:
APPEAL OF: OBJECTIONER, UBEL :
FUNERAL HOME, JOSEPH NEDZA, :
FUNERAL DIRECTOR : No. 127 WDA 2012

Appeal from the Decree January 6, 2012,
Court of Common Pleas, Elk County,
Civil Division at No. 24 of 2011

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 6, 2013

Appellant, Ubel Funeral Home, Joseph Nedza, Funeral Director, appeals from the decree entered by the Court of Common Pleas, Elk County, distributing the estate of Michael P. Burke a/k/a Michael Burke, deceased (“the decedent”). Upon review, we affirm.

The orphans’ court aptly summarized the factual and procedural histories of this case:

The decedent, Michael P. Burke, died on November 13, 2010, at 73 years of age. On April 27, 2011, a petition to settle a small estate pursuant to 20 Pa. C.S.A. [§] 3102 was filed by petitioner James H. DeVittorio, Esq. The petition asserted that the decedent died intestate with no known heirs and that [the] decedent’s estate was insolvent. By order dated April 27, 2011, and filed of record April 29, 2011, petitioner was awarded decedent’s personal property and authorized to, inter alia, pay, deny or compromise estate claims. Petitioner was also directed to serve the small estate settlement petition and proposed distribution pursuant to 20 Pa. C.S.A.

[§] 3392 upon various estate claimants together with a statement requiring that any claimant who objected to petitioner's proposed distribution was to file objections with the Clerk of the Elk County Orphans' Court Division within 20 days of service. Affidavits of service filed June 10, 2011, verified that various claimants, including appellant Ubel Funeral Home, were served on May 11, 2011. Objections were filed to the proposed distribution of petitioner on June 1, 2011, on behalf of appellant Ubel Funeral Home in which the funeral home contested the payment of the 20 Pa. C.S.A. [§] 3392 Class 3 Funeral Expense Claim after payment of a monetary judgment, federal tax lien and state tax lien entered against the decedent during his lifetime.

The hearing on the objections originally scheduled for July 7, 2011, was continued upon motion of counsel for appellant/objector Ubel Funeral Home and rescheduled for July 12, 2011. Following the hearing, the Court entered a discussion and preliminary decree of distribution dated August 12, 2011, which was filed of record on August 15, 2011. The appellant/objector filed exceptions on August 24, 2011, asserting that the proration of the 20 Pa. C.S.A. [§] 3392 Class 3 claims of appellant and the Commonwealth of Pennsylvania Department of Public Welfare was erroneous. On August 31, 2011, a response to appellant's exceptions to the August 15, 2011 preliminary decree was filed by the estate fiduciary which acquiesced to the exceptions regarding the prorated apportionment of the Class 3 claims but otherwise opposed the exceptions. Argument on the exceptions was conducted on November 1, 2011, and the exceptions were deemed to be denied on or about December 24, 2011, pursuant to Pa. O.C. Rule 7.1(1). Appellant timely filed its notice of appeal on January 19, 2012, and thereafter filed a request that the court reporter transcribe the November 1, 2011 proceedings and file the transcript thereafter. Given that the November 1, 2011 proceeding was an argument and no party had requested the presence of a court

reporter, it was subsequently determined that no record of the argument was made such that no transcript could be prepared.

Orphans' Court Opinion, 5/9/12, at 1-2 (record citations omitted).

On appeal, Appellant raises the following issues for our review:

- I. Should a funeral director be paid for services rendered for a decedent's funeral and burial expenses prior to other judgment creditor liens?
 - A. Does 20 Pa.C.S.A. § 3392 allow a funeral director to be paid prior to other judgment creditors?
 - B. As the Pennsylvania Code provisions set forth strict guidelines to funeral directors with respect to time limitations for disposition of a decedent's body, should funeral director's claims come before other judgment creditors?
- II. Did the lower court err when it decided the funeral director's payment for [the] decedent's final burial expenses should be prorated with amounts due to the Department of Public Welfare when funds are not sufficient to pay all of the [the] decedent's debts?

Appellant's Brief at 6.

Appellant raises no issues addressing the orphans' court's fact-finding, and instead focuses entirely on its legal conclusions. Our standard of review therefore requires that we review the rules of law upon which the orphans' court relied, and if "palpably wrong or clearly inapplicable, we will reverse the court's decree." *In re Estate of Strahsmeier*, 54 A.3d 359, 363 (Pa. Super. 2012).

As the first issue on appeal, Appellant asserts that the costs of the decedent's burial provided by the funeral home should have priority over the judgment and liens that existed against the decedent during his lifetime.

Appellant bases this argument on 20 Pa.C.S.A. § 3392, which states:

If the applicable assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative, subject to any preference given by law to claims due the United States, shall pay them in the following order, without priority as between claims of the same class:

(1) The costs of administration.

(2) The family exemption.

(3) **The costs of the decedent's funeral and burial**, and the costs of medicines furnished to him within six months of his death, of medical or nursing services performed for him within that time, of hospital services including maintenance provided him within that time, of services provided under the medical assistance program provided within that time and of services performed for him by any of his employees within that time.

(4) The cost of a gravemarker.

(5) Rents for the occupancy of the decedent's residence for six months immediately prior to his death.

(5.1) Claims by the Commonwealth and the political subdivisions of the Commonwealth.

(6) All other claims.

20 Pa.C.S.A. § 3392 (emphasis added).

Appellant acknowledges, however, that Section 3381 of the same title states: "Nothing in this code shall be construed as impairing any lien or charge on real or personal estate of the decedent which existed at his death." 20 Pa.C.S.A. § 3381. This statute clearly and unambiguously defeats Appellant's claim that the liens in existence during the decedent's lifetime are subordinate to the decedent's burial costs and expenses. **See** 1 Pa.C.S.A. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.").

Furthermore, in *In re Engle's Estate*, 344 Pa. 535, 25 A.2d 717 (1942), a case relied upon by the orphans' court, our Supreme Court stated that the statute "does not apply to or affect judgments entered of record prior to the decedent's death [...] where the proceeds [...] bound by such judgments are being distributed." *In re Engle's Estate*, 344 Pa. at 537, 25 A.2d at 718 (citation omitted).¹ In *In re Engle's Estate*, the Commonwealth secured a judgment against the decedent during her lifetime, which became a lien on real estate she owned. Following her death, the executors sold the subject real estate, with the permission of the orphans' court, to satisfy the decedent's debts. The money from the sale of

¹ The Supreme Court in *In re Engle's Estate* was interpreting the predecessor to Section 3392, Section 13 of the Fiduciaries Act of 1917. The Comment accompanying Section 3392 indicates that Section 3392 does not differ from Section 13 of the Act of 1917 in any respect material to the case at bar. **See** 20 Pa.C.S.A. § 3392 (Jt. St. Govt. Comm. Comment – 1949).

the real estate was used to pay the expenses of administration, a prior judgment, funeral costs, expenses for a grave marker, and other account balances. The remainder, \$32.35, was awarded to the Commonwealth on its pre-mortem claim of \$1,060.70. *Id.* at 536, 25 A.2d at 717. Our Supreme Court reversed and remanded the case for further proceedings.

Appellant attempts to differentiate this case from *In re Engle's Estate* on the basis that the case at bar does not involve a lien on real estate – the majority of the funds distributed came from the decedent's life insurance policy. Appellant's Brief at 13. We find this minor factual distinction does not affect the applicability of the holding of *In re Engle's Estate* to this case. As stated above, Section 3381 applies to pre-mortem liens on both realty and personalty of the decedent. 20 Pa.C.S.A. § 3381.

As case law and the plain language of Section 3381 refute Appellant's claim that the decedent's funeral and burial expenses should be paid before pre-mortem judgments and liens entered against the decedent, no relief is due.²

² Appellant further cites various sections of Pennsylvania Code governing funeral directors in support of this issue, arguing that because of the limited time a funeral director has to bury a decedent, as opposed to the time the judgment creditor has preceding a person's death to collect the debt, fundamental fairness requires that the funeral director's costs be paid prior to preexisting liens. Appellant's Brief at 15-19. The certified record on appeal does not reflect that Appellant raised this argument before the orphans' court. Appellant did not request transcription of the July 12, 2011 hearing, and there was no court reporter present at the November 1, 2011 argument. Furthermore, the orphans' court did not address this argument in

Next, Appellant asserts that the orphans' court erred by ordering, *sua sponte*, that the decedent's funeral expenses be prorated according to the amounts due to the Department of Public Welfare ("DPW") for the decedent's medical care within six months of his death. Appellant's Brief at 20. Appellant argues that this was in error because DPW did not file an objection to the Petition for Settlement of Small Claim which stated that DPW was slotted to receive payment after Appellant. Thus, Appellant "assume[s]" DPW did not oppose this method of distribution. *Id.* at 20-21.

Appellant cites no law in support of this argument thus, it is waived. Moreover, our review of the law relied upon by the orphans' court leads us to conclude that whether DPW opposed this method of distribution or not, the plain language of Section 3392 provides support for the orphans' court's decision. As noted above, Section 3392 states that costs associated with the decedent's burial and costs of medical or nursing services performed within six months of the decedent's death are of the same class, and that there is no "priority [of payment] as between claims of the same class." 20 Pa.C.S.A. § 3392(3). Although the petitioner suggested in the orphans'

any of its written opinions. As such, we conclude that Appellant did not raise this issue below, and therefore, it is waived. Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

court that Appellant be paid before DPW,³ the orphans' court was not obligated to accept that suggestion; rather, the court was required to distribute the decedent's estate as required by the law. Under the law, DPW and Appellant were equally entitled to payment, and thus we discern no error in the orphans' court's decision.

Decree affirmed.

³ Although the petitioner agreed with Appellant below, in his responsive brief on appeal, he concedes that the orphans' court "correctly identified and construed the applicable statute, and its determination on this issue accordingly must be affirmed." Appellee's Brief at 9.