

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ESTATE OF JAMES APONE,  
DECEASED

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: PETER APONE

No. 1499 WDA 2011

Appeal from the Order Entered August 8, 2011  
In the Court of Common Pleas of Fayette County  
Orphans' Court at No(s): 0701 of 2005

BEFORE: MUSMANNO, J., BOWES, J., and WECHT, J.

MEMORANDUM BY WECHT, J.

Filed: March 5, 2013

Peter Apone ["Appellant"] appeals the August 8, 2011 order denying his petition to remove his sister, Cecilia Apone ["Ms. Apone"], as administratrix of his father's estate.<sup>1</sup> Upon review, we affirm.

The trial court summarized the relevant factual history as follows:

The late Mr. Apone was somewhat of a recluse, living in substandard housing amid piles of rubbish and estranged from his children. To all the world he would have appeared to be a pauper, but he had accumulated a multimillion dollar stock portfolio, the records of which were strewn haphazardly throughout his home, in total disarray.

Although it has taken nearly six years to administer the Estate, this is largely the result of two factors. First, the complete and

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<sup>1</sup> Paul Apone, brother of Appellant and Ms. Apone, filed a brief indicating that he joined in all of Appellant's arguments on appeal.

utter chaos Ms. Apone found following her father's death, and secondly, her decision to seek a federal tax credit for unpaid child support she claimed was owed by her father. This latter factor is the basis for most of [Appellant's] objections. The thrust of his petition is that his sister should be removed as administratrix due to the length of the administration process, that she should be surcharged and/or have her claimed administratrix's fees reduced, and that counsel fees incurred should be her personal expense.

The generally simple process of liquidating assets and distributing the same to the heirs was complicated herein because there was no logical starting point to the process since there was no way to discern what the decedent owned without sorting through the piles of garbage inside his residence. Ms. Apone claims to have spent in excess of forty hours per week on the task. While it appears possible that numerous hours were necessary at least initially, it is not plausible that so many hours were necessary in the succeeding years.

The real crux of [Appellant's] complaint is the decision of Ms. Apone to seek a federal income tax credit for unpaid child support. In filing the federal IRS Form 70 K, Ms. Apone claimed a deduction of \$707,402.54 on account of said unpaid child support. A similar claim was included on Pennsylvania Department of Revenue Form 1500 and approved, thus saving the Estate in excess of \$430,000.00 in Pennsylvania inheritance taxes. The IRS, however, initially disallowed the claim despite a mountainous compilation of records prepared by Ms. Apone.

Ms. Apone appealed the denial of the claim and hired a tax attorney, Martin L. Fried ["Attorney Fried"], on behalf of the Estate. Attorney Fried ultimately negotiated a settlement with the IRS which resulted in a federal estate tax savings of \$90,657.00. Attorney Fried was paid \$20,770.89, and there were no objections to the amount of his fees or their reasonableness. Additionally, during the pendency of the tax claim, the Estate received \$55,617.00 in stock dividends and \$39,305.00 in capital gains on the stocks themselves. The time lapse due to the claim for unpaid child support and the appeal of its denial actually resulted in an increase of the Estate assets available for distribution. Upon receipt of the IRS closing letter, Ms. Apone prepared and filed, on May 24, 2010, her First and Final Account, and then filed on, December 30, 2010, a pre-

distribution account. Additionally, she also prepared and filed the appropriate state and federal tax returns for Estate income and then distributed income to the heirs.

Trial Court Opinion ["T.C.O."], 8/15/11, at 1-3.

The trial court denied the petition in part, finding that Ms. Apone was not negligent and did not cause any financial loss to the estate. The trial court granted Appellant's request that Ms. Apone's administratrix fees be lowered.

Appellant raises the following questions for our review:

- 1) Whether the Court erred by not removing the Administratrix considering the uncontroverted testimony of the nonfeasance and malfeasance of the Administratrix?
- 2) Whether the Court erred by not surcharging the Administratrix for the payment to a tax attorney of \$20,770.89 for services related to a disallowed, nonexistent child support deduction, on Federal Inheritance Tax.
- 3) Whether the Court erred by finding that the Administratrix *saved the estate \$430,000.00 in Pennsylvania Estate Tax?*
- 4) Whether the Court erred by not assessing counsel fees of Watson, Mundorff, Brooks and Sepic, LLC, to the Administratrix individually?

Appellant's Brief at 3 (emphasis in original).

Appellant argues that the trial court erred in failing to remove Ms. Apone as administratrix, claiming that there was uncontroverted testimony of Ms. Apone's nonfeasance and malfeasance. The orphan's court's denial of Appellant's petition cannot be disturbed absent an abuse of discretion, lack of evidentiary support, or legal error. ***In re: Estate of Schultheis***, 747

A.2d 918, 922 (Pa. Super. 2000). Appellant argues that removal of Ms. Apone was proper pursuant to 20 Pa.C.S.A. § 3182, which reads, in pertinent part, as follows:

The court shall have exclusive power to remove a personal representative when he:

(1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

\* \* \*

(4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or

\* \* \*

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

20 Pa.C.S.A. § 3182. Our courts have held that removal is permitted only when an administrator is “wasting or mismanaging the property or estate under his charge, or that for any reason the interests of the estate or property are likely to be jeopardized by the continuance of such executor.” ***Hurley’s Estate***, 169 A. 81, 82 (Pa. 1933).

Appellant lists several reasons that Ms. Apone should have been removed. Appellant’s Brief at 10-12. However, he fails to supply case law indicating whether the reasons he posits are sufficient to warrant removal.<sup>2</sup>

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<sup>2</sup> Ms. Apone also has difficulty in evaluating Appellant’s argument:  
(Footnote Continued Next Page)

**Id.** Failure adequately to develop a legal argument will result in waiver of the undeveloped issue:

When briefing the various issues that have been preserved, it is an appellant's duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities. We will not act as counsel and will not develop arguments on behalf of an appellant. Moreover, when defects in a brief impede our ability to conduct meaningful appellate review, we may dismiss the appeal entirely or find certain issues to be waived.

**In re R.D.**, 44 A.3d 657, 674 (Pa. Super. 2012), *reargument denied* (June 18, 2012), *appeal denied*, 56 A.3d 398 (Pa. 2012) (citations and quotations omitted). Because Appellant's arguments pertaining to this issue are underdeveloped and do not contain citations to meaningful legal authority, we are constrained to find this issue waived.

Appellant argues next that the court erred in failing to surcharge Ms. Apone the cost of the tax attorney's fee. Appellant asserts that the tax attorney was unnecessary because there was no legally enforceable child

(Footnote Continued) \_\_\_\_\_

In Appellant's brief after setting forth the legal standard to be applied to this argument, Appellant alleges 10 different areas wherein he alleges the trial court abused its discretion. However, following these general allegations, Appellant's argument is underdeveloped and contains only 6 sentences addressing all 10 alleged areas of abuse of discretion. As the argument is not developed, it is difficult for [Ms. Apone] to respond.

Appellee's Brief at 2.

support judgment or lien available to be argued as an inheritance tax deduction. Therefore, Appellant asserts that hiring Attorney Fried caused the estate unnecessary expense. In evaluating this claim, we must determine whether Ms. Apone was negligent in her role as administratrix:

When the executor of an estate fails to fulfill his fiduciary duty of care, the court may impose a surcharge against him. A surcharge is a penalty imposed to compensate the beneficiaries for loss of estate assets due to the fiduciary's failure to meet his duty of care; however, a surcharge cannot be imposed merely for an error in judgment. Our Supreme Court has held that a standard of negligence is applied when evaluating whether an executor's management of an estate warrants a surcharge.

*In re Padezanin*, 937 A.2d 475, 486 (Pa. Super. 2007) (internal citations omitted).

Appellant is incorrect in arguing that there was no potential tax deduction. Attorney Fried was able to appeal the IRS's denial of Ms. Apone's tax deduction claim, resulting in a settlement that ultimately caused the estate to gain approximately \$120,000.00. Notes of Testimony, 12/30/10, at 19. As a result of the settlement, the estate assets increased by \$90,657.00 in estate tax savings, \$55,617.00 in dividends, and \$39,305.00 in capital gains; the estate was charged \$65,398.00 in interest. *Id.* at 84-89. Thus, Ms. Apone was not negligent in hiring Attorney Fried. Rather, Ms. Apone saved the estate substantial money. The record supports the orphan's court's finding that Appellant's claim is without merit.

Appellant next argues that the court erred in finding that Ms. Apone saved the estate \$430,000.00 in Pennsylvania Estate tax. Appellant's

argument is a single paragraph in length and contains no citations to the record or legal authority. Appellant's Brief at 13. He baldly asserts that the trial court's computation was in error, but he does not explain how this error impacted the outcome of the case. **See Fred E. Young, Inc. v. Brush Mountain Sportsmen's Ass'n**, 697 A.2d 984, 993 (Pa. Super. 1997) ("Because the trial court's error had no effect upon the outcome of this case, the error must be deemed harmless."). Moreover, Ms. Apone explains that "the trial judge may have made a mathematical error in the amount of savings ... regardless of the amount, the trial court did not abuse its discretion in finding that the child support deduction did result in a Pennsylvania inheritance tax savings." Appellee's Brief at 14. Appellant does not put forth a legal argument. Accordingly, this issue is waived. **In re R.D.**, 44 A.3d at 674.

Finally, Appellant argues that the trial court erred by not holding Ms. Apone personally responsible for the attorney's fees incurred in defending the petitions brought against her by Appellant as a result of her role as administratrix of the estate in question. This claim is without merit.

"It is well established that whenever there is an unsuccessful attempt by a beneficiary to surcharge a fiduciary the latter is entitled to an allowance out of the Estate to pay for counsel fees and necessary expenditures in defending himself against the attack." **In re Browarsky's Estate**, 263 A.2d 365, 366 (Pa. 1970). Thus, Appellant's claim is unavailing.

The orphan's court did not abuse its discretion in denying Appellant's petition.

Order affirmed. Jurisdiction relinquished.