

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ESTATE OF VINCENT V.  
RODGERS, DECEASED

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: MARK D. BRADLEY

No. 1929 WDA 2011

Appeal from the Order Entered on November 14, 2011  
In the Court of Common Pleas of Westmoreland County  
Orphans' Court at No: 65-09-02133

IN RE: ESTATE OF VINCENT V.  
RODGERS, DECEASED  
IN RE: ESTATE OF ELIZABETH J.  
RODGERS, DECEASED

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: MARK D. BRADLEY,  
EXECUTOR OF THE ESTATE OF  
ELIZABETH J. RODGERS

No. 159, 160 WDA 2012

Appeal from the Order Entered on January 3, 2012  
In the Court of Common Pleas of Westmoreland County  
Orphans' Court at Nos: 65-09-02133, 65-09-0250

BEFORE: MUSMANNO, J., WECHT, J., and COLVILLE, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JUNE 03, 2013**

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\* Retired Senior Judge assigned to the Superior Court.

Mark Bradley (“Appellant”) appeals the Orphans’ Court order entered on November 14, 2011 in the Court of Common Pleas of Westmoreland County denying Appellant’s “Amended Claim” for an interest in Vincent V. Rodgers’ estate. Appellant also appeals the January 3, 2012 order from the same court partitioning a property owned by Vincent V. Rodgers’ and Elizabeth J. Rodgers’ estates.<sup>1</sup> We affirm.

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<sup>1</sup> These cases were consolidated *sua sponte* by this Court in an order dated February 17, 2012.

### **Amended Claim Case**

Through a Pennsylvania Limited Partnership known as the Rodgers First Family Limited Partnership, Vincent and Elizabeth Rodgers owned and operated two funeral homes, one located in Irwin and another located in Manor. Collectively, the two funeral homes were known as the "Rodgers Funeral Homes." In 1988, Appellant was hired to work part-time for the Rodgers Funeral Homes. In 1991, Appellant was promoted to a full-time employee, after attending and completing mortuary school. Appellant continued to work for the funeral homes at least until the filing of this appeal.

In 1997, Vincent and Elizabeth Rodgers created a series of trusts. Vincent Rodgers created the "Vincent V. Rodgers Family Irrevocable Trust" and the "Vincent V. Rodgers Trust." The latter was freely revocable; the former was not. While not freely revocable, the "Vincent V. Rodgers Family Irrevocable Trust" explicitly reserved a limited power of appointment, so that, during his lifetime, Vincent Rodgers was able to direct the distribution of the assets of the trust. That same year, Elizabeth Rodgers created the "Elizabeth J. Rodgers Family Irrevocable Trust." Each trust originally contained a provision providing that, upon the death of Vincent and/or Elizabeth, Appellant would receive 10% of the funeral business. The trusts further provided that Appellant's interest in the business would increase by 1% each year, commencing in 1997, and continuing until his interest reached a total of 25%. Additionally, Appellant's entire interest was

conditioned upon his continued employment for the Rodgers Funeral homes. If Appellant terminated his employment, Appellant would forfeit his entire interest in the funeral homes. These provisions appeared in each of the three original trusts.

On February 4, 2005, Vincent Rodgers amended the "Vincent V. Rodgers Trust," eliminating the bequest to Appellant. On February 11, 2005, Vincent Rodgers exercised the limited power of appointment in the "Vincent V. Rodgers Family Irrevocable Trust," to eliminate the bequest to Appellant. Also in 2005, Elizabeth Rodgers amended the "Elizabeth J. Rodgers Family Irrevocable Trust." However, rather than eliminating Appellant's interest, Elizabeth Rodgers conveyed her entire 50% interest in the funeral home business to Appellant. Elizabeth Rodgers' amendment also eliminated the requirement that Appellant work continuously for the funeral homes as a condition to inheriting the 50% ownership in the business.

In 2009, Vincent and Elizabeth Rodgers both died. Pursuant to the trusts as amended, upon the deaths of Mr. and Mrs. Rodgers, Appellant inherited 50% of the Rodgers Funeral Homes.

On February 11, 2011, Appellant filed a "Claim" in the Orphans' Court division of the Westmoreland County Court of Common Pleas seeking the 25% interest in the funeral homes as contemplated in the original trusts, over and above the 50% he had acquired by virtue of Elizabeth Rodgers' bequest. On February 24, 2011, Appellant filed an "Amended Claim" seeking same.

On June 8 and 9, 2011, the trial court conducted a hearing on, among other issues, Appellant's "Amended Claim." During that hearing, Appellant sought to demonstrate that the provision in the original "Vincent V. Rodgers Family Irrevocable Trust" bequeathing a 25% interest in the funeral homes was binding. Thus, Appellant sought an additional 25% interest in the funeral home above the 50% that he received per the "Elizabeth J. Rodgers Family Irrevocable Trust." Appellant introduced a purported copy of the "Vincent V. Rodgers Family Irrevocable Trust" at the hearing. Appellant's submission conspicuously lacked the limited power of appointment that was contained in the original trust documents.<sup>2</sup> Gregory V. Rodgers ("Appellee"), the executor of Vincent Rodgers' estate, introduced a copy of the trust bearing the limited power of appointment language.

The discrepancy in the two documents was not explained sufficiently to satisfy the trial court. The court found Appellant's copy to lack credibility, and deemed it an inaccurate copy of the trust documentation. **See** Trial Court Opinion ("T.C.O."), 11/14/2011, at 2-3. By order and opinion dated November 14, 2011, the trial court denied Appellant's "Amended Claim." On December 13, 2011, Appellant filed a notice of appeal. The trial court did not order Appellant to file a concise statement of errors complained of on

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<sup>2</sup> Appellant also introduced a copy of the amended "Elizabeth J. Rodgers Family Irrevocable Trust," in which Appellant was granted a 50% interest in the funeral homes. Notably, this trust documentation did contain the limited power of appointment language.

appeal pursuant to Pa.R.A.P. 1925(b). However, for purposes of rationale and explanation, the trial court did issue a statement pursuant to Pa.R.A.P. 1925(a) directing this Court's attention to the trial court's November 14, 2011 order and opinion.

### **Partition Case**

On March 28, 2011, Appellee, as executor of Vincent Rodgers' estate, filed a "Petition for Partition" in regard to the funeral home located in Manor, Pennsylvania. The property was owned at all times by Vincent and Elizabeth Rodgers, with each party owning a 50% share. Appellant, who is the executor of Elizabeth Rodgers' estate, also has an interest in this property as he has inherited Elizabeth Rodgers' 50% share of the property. Appellant also has lived at this property since 1991. The funeral home at this Manor location has not been conducting business since April 2009. Appellant and Appellee could not agree as to how the property should be disposed of now that Vincent and Elizabeth Rodgers are both deceased. Appellant was unwilling to either purchase the interest held by Vincent Rodgers' estate or sell the interest held by Elizabeth Rodgers' estate. Thus, Appellee filed a petition to have the Manor property partitioned by the trial court.

Following a hearing, the trial court entered an order dated January 3, 2012. Therein, the trial court named the interested parties as the estates of both Vincent and Elizabeth Rodgers, noting a 50% interest in the property owned by each, and ordered the property to be partitioned. The court also scheduled a conference to determine how the property would be partitioned.

On January 27, 2012, Appellant filed a notice of appeal from the January 3, 2012 order requiring the Manor property to be partitioned. Once again, the trial court did not direct Appellant to file a Rule 1925(b) statement. The trial court directed this Court to its January 3, 2012 opinion and order for its explanation and reasons supporting its decision regarding the partition of the property.

Appellant now raises the following issues for our consideration:

**Claim Case:**

1. Whether or not the trial court erred in dismissing Appellant's Amended Claim seeking a 25% interest in the Funeral Home Partnership owned by Vincent V. Rodgers?
2. Whether or not the Decision and Order of November 14, 2011, is a final appealable order under the Rules of Appellate Procedure?<sup>3</sup>

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<sup>3</sup> On January 5, 2012, we issued a rule to show cause to Appellant as to whether the November 14, 2011 order constituted a final order from which Appellant properly could appeal. Typically, in a case involving a decedent's estate, confirmation of the final account constitutes the final appealable order, subject to any exceptions filed and disposed of by the trial court. ***In re Estate of Allen***, 960 A.2d 470 (Pa. Super. 2008). Appellant responded to the rule to show cause by arguing that, because he would not be a party to the final accounting of the Rodgers' estates, the November 14, 2011 order disposed of all the claims of all the parties involved in his "Amended Claim." Thus, Appellant contended, the order was a "final order" pursuant to Pa.R.A.P. 341(b)(1) ("A final order is any order that . . . disposes of all claims and of all parties.").

We note that Pa.R.A.P. 342 generally governs appeals from Orphans' Court orders, and that the November 14, 2011 order does not appear to fall within any of the delineated categories of appealable orders. **See** Pa.R.A.P. 342(a)(1-8). However, the Comment to the rule provides that Rule 342 is not the exclusive means for appealing Orphans' Court orders, so long as the  
*(Footnote Continued Next Page)*

**Partition Case:**

1. Must the trial court determine the identity of all co-tenants of the property and the nature and extent of the interests of the co-tenants' interest in the property before an Order for Partition can be entered?
2. Did the trial court make a determination as to the identity of all the co-tenants and the nature and extent of the co-tenants' interest in the property?
3. Should the trial court have entered an Order in Partition when the exact identity of the co-tenants has not yet been determined and when the exact share of the co-tenants has not yet been determined?

Brief for Appellant at 5.

We first address Appellant's contention that the trial court erred in dismissing his "Amended Claim." Our standard of review of the findings of an Orphans' Court is deferential.

When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion.

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

order meets the criteria of another section of Chapter 3 of the Rules of Appellate Procedure. Pa.R.A.P. 342, cmt. We conclude that the order is a final order pursuant to Pa.R.A.P. 341, as it disposes of all claims and all parties to the "Amended Claim."

Notably, Appellee does not dispute that the November 14, 2011 order is a final order. **See** Brief for Appellee, at 7. Thus, in the absence of any opposition, we are satisfied that the challenged order is a final order pursuant to Pa.R.A.P. 341(b)(1). We need not address this matter any further.



***In re Estate of Geniviva***, 675 A.2d 306, 310 (Pa. Super. 1996). However, “we are not constrained to give the same deference to any resulting legal conclusions.” ***Id.*** “Where the rules of law on which the court relied are palpably wrong or clearly inapplicable, we will reverse the court’s decree.”

***In re Smith***, 890 A.2d 1082, 1086 (Pa. Super. 2006) (quoting ***In re Estate of Harrison***, 745 A.2d 676, 678-79 (Pa. Super. 2000)).

Generally, a trust executed by a settlor who does not reserve the right to revoke or reform that trust constitutes an irrevocable trust. ***Rebidas v. Murasko***, 677 A.2d 331, 333 (Pa. Super. 1996). (citing ***Harding v. Harding***, 158 A. 253 (Pa. 1932)). However, the settlor of a trust generally has the power to modify a trust, even an irrevocable one, if and to the extent that the settlor has explicitly reserved the power to do so clearly within the terms of the trust itself. ***In re C.D. Harader Trust for Ben. of Harader***, 449 A.2d 52, 53 (Pa. Super. 1982). “The language or conduct creating the trust must be clear and unambiguous.” ***Rebidas***, 677 A.2d at 333.

On February 11, 1997, Vincent Rodgers executed the “Vincent V. Rodgers Family Irrevocable Trust,” undeniably an irrevocable trust. At the hearing on Appellant’s “Amended Claim,” Appellant introduced a purported copy of that trust, which did not contain a limited power of appointment clause. The trial court found this copy to be inauthentic, and determined that the true copy of the trust was the copy submitted by Appellee, which contained the following clause:

Limited Power of Appointment.

By either a last will or by a living trust agreement, the Trustor shall have the limited testamentary power to appoint to or for the benefit of the Trustor's descendants some or all, of the principal and any accrued but undistributed net income as it exists at the death of the Trustor. The Trustor may appoint trust assets under this limited testamentary power among the Trustor's descendants in equal or unequal amounts, either directly or in trust, as the Trustor directs.

The limited testamentary power of appointment shall not be exercised in favor of the Trustor's Estate, the creditors of the Trustor, or in any way, which would result in any economic benefit to the Trustor.

Vincent V. Rodgers Family Irrevocable Trust, Art. XI, C.

Because we are bound by the credibility determinations of the trial court, **see *Estate of Smith*, supra**, we too must consider the version of the trust containing this clause to be the accurate, and controlling, document. By these clear terms, even though the trust is irrevocable, Vincent Rodgers reserved the power to direct the specific distribution of the trust's assets. **See *In re C.D. Harader Trust for Ben. of Harader*, supra**. On February 11, 2005, Vincent Rodgers did just that, eliminating Appellant as a beneficiary as detailed in the initial trust document.

Appellant argues that the original trust constituted an express contract which entitles him to the 25% interest provided in the original trust. Without citation to a single case construing an irrevocable trust as an enforceable contract and without any meaningful development of this claim, Appellant baldly asserts that "Appellant has established the contract through the provisions of the revocable and irrevocable trusts executed by [Vincent Rodgers] in 1997. The terms are clear and unambiguous." Brief for

Appellant at 17. Appellant utterly fails to cite and discuss those alleged terms, explain how those terms created a contract, identify what constituted consideration for that alleged contract, or provide any legal authority in support of his argument apart from a citation to 20 Pa.C.S. § 2701(a). Appellant's undeveloped and unsupported argument is waived. **See Fletcher-Harlee Corp. v. Szymanski**, 936 A.2d 87, 103 (Pa. Super. 2007) (deeming a claim that is undeveloped and unsupported by relevant authority to be waived).

Appellant also argues that the terms of the trust should be enforced pursuant to the theory of promissory estoppel. **See** Brief for Appellant at 17. Appellant cites two cases in support of his argument: **Travers v. Cameron County School District**, 544 A.2d 547 (Pa. Cmwlth. 1988), and **Peluso v. Kistner**, 970 A.2d 530 (Pa. Cmwlth. 2009). Neither of these cases is binding on this Court.<sup>4</sup> Moreover, neither case involves the terms of a trust. Appellant cites no case in which a court has applied promissory estoppel to the terms of a trust. In fact, in **In re Steinsapir**, 572 A.2d 1270 (Pa. Super. 1990), we rejected this very argument:

As to the second basis for the orphans' court decision, promissory estoppel, we reject application of the doctrine in this instance. We are examining a trust, not a contract, and cannot

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<sup>4</sup> It is well-settled that decisions rendered by the Commonwealth Court are not binding on this Court. **Beaston v. Ebersole**, 986 A.2d 876, 881 (Pa. Super. 2009).

give effect to an amendment which is invalid under the trust agreement by applying a principle of contract law.

***Id.*** at 1274. We again reject this argument.

Instantly, the trial court determined that the accurate trust contained a limited power to appoint the assets of the trust. The trial court further determined that Vincent Rodgers properly exercised this power of appointment eliminating Appellant's bequest under the original terms of the trust. Consequently, Appellant was not entitled to the additional 25% interest in the funeral homes. There is support in the record for the trial court's determination, and Appellant has failed to demonstrate otherwise. Thus, no relief is due.

We turn now to the claims raised by Appellant pertaining to the partition case. While Appellant raises three issues, the individual arguments that he presents are intertwined and build upon each other. Thus, we consider them together.

Relying upon Pa.R.C.P. 1557, Appellant argues that the trial court failed to identify all of the persons having an interest in the property. Moreover, Appellant contends that the trial court erred in ordering the partition and determining the relevant interests in the property while multiple petitions were pending which were filed in an effort to determine all of the relative interests in the property and/or in the entity that owns that property. Specifically, Appellant points to the following matters that were still pending at the time that the partition order was entered:

1. The Amended Claim of [Appellant] filed in the Estate of Vincent V. Rodgers. In this proceeding, [Appellant] is asserting that he is the owner of a portion of Decedent Vincent V. Rodgers' interest in the partnership and the partnership property.
2. The petition filed by [Appellant] for declaratory relief and to quiet title as to the real estate requesting that the Court declare that the real estate is owned by the funeral home general partnership as opposed to the individual decedents/partners. This petition is currently pending before the Trial Court.
3. [Appellant's] Petition for Reformation of Deed and to Quiet Title requesting declaration that the title to the subject property is held by Vincent V. Rodgers and Elizabeth J. Rodgers, General Partners under the Rodgers Family Limited Partnership. This petition has been decided against [Appellant] and Exceptions were filed. The Exceptions were just recently dismissed by the Trial Court. [Appellant] intends to file an appeal from the Trial Court's decision to this Court.
4. The proceedings before the American Arbitration Association in which the parties are litigating the relative values or percentage interests of the capital account of Elizabeth J. Rodgers in and to the Rodgers Funeral Home Partnership or Partnerships.

Brief for Appellant at 21.

Thus, Appellant argues that the trial court acted prematurely in granting the partition without resolving the open issues and without fully determining all potential co-tenants of the property. In Appellant's view, the title to the property is still unclear and all interests in the property are not yet clarified, precluding a proper partition of the property. We disagree.

Pennsylvania Rule of Civil Procedure 1557 provides, in pertinent part, the following regarding a trial court's obligation with respect to a partition determination:

If the Court determines that there shall be partition because of a default or admission or after a hearing or trial, the court shall enter an order directing partition which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property.

Pa.R.C.P. 1557.

The property in question in this appeal is the funeral home located in Manor, Pennsylvania. Following a hearing, the trial court concluded, and memorialized in an order, that the property should be partitioned and that the two co-tenants with an ownership interest in the property were the estate of Vincent V. Rodgers and the estate of Elizabeth J. Rodgers. The trial court explained the basis for its decision as follows:

Those interested in the land to be partitioned are the estate of Vincent V. Rodgers and the estate of Elizabeth J. Rodgers. At their deaths Vincent and Elizabeth each owned a fifty percent (50%) ownership interest in the subject real estate used by the Funeral Home Partnership in Manor, Pennsylvania. This fifty percent (50%) interest was owned by them, during their lifetime, either individually as tenants in common or, in the alternative, as fifty percent (50%) partners in a general partnership. This fifty percent (50%) interest is now in their estates as either a fifty percent (50%) interest in real estate formerly held as tenants in common with the other or as a fifty percent (50%) interest in real estate owned by a general partnership formerly comprised of Vincent and Elizabeth. In either event the estate holds only a fifty percent (50%) interest in the subject real estate.

The Funeral Home Partnership has not conducted business at the Manor location since April, 2009. The Executor of the Estate of Vincent and the Executor of the Estate of Elizabeth are unable to reach an agreement concerning the disposition of the respective interest of each estate in the subject real estate. [Appellant], the Executor of the Estate of Elizabeth, is unwilling to either purchase the interest held by the Estate of Vincent or sell the interest held by the Estate of Elizabeth. Thus, in order to

properly administer the estates in question it is necessary that the subject property be partitioned between the distributees of the estates and/or disposed of in some manner.

T.C.O., 1/3/2012, at 1-2. We detect no error in the trial court's analysis, which is well-supported by the record.

The trial court did precisely what Pa.R.C.P. 1557 compels the court to do: order partition and identify the interests in the land being partitioned. Appellant maintains that the trial court's somewhat equivocal language as to the precise nature of the interest held by each estate renders the division of interests deficient under the rule. Specifically, Appellant underscores the trial court's statement that the fifty percent interest owned each by Vincent Rodgers and Elizabeth Rodgers was owned "**either** individually as tenants in common **or** . . . in a general partnership." Brief for Appellant at 20 (citing T.C.O., 1/3/2012, at 2). However, Appellant ignores the trial court's ultimate finding that the nature of the ownership while the Rodgers' were living was immaterial because the interests passed to their estates upon their deaths. Thus, no matter the nature of the interests, those interests now are owned and controlled by the estates. The trial court quite clearly concluded that, pursuant to Pa.R.C.P. 1557, the two parties having an interest in the partitioned land are the estates of Vincent and Elizabeth Rodgers, with each estate owning a fifty percent interest. Hence, the trial court complied with the dictates of Pa.R.C.P. 1557.

Lastly, it was not error for the trial court to order a partition of the land while Appellant's multiple petitions were pending. Appellant cites

**Lombardo v. DeMarco**, 504 A.2d 1256 (Pa. Super. 1986), wherein we stated:

We can envision a possible refusal to partition under circumstances, e.g., where the rules of civil procedure are not followed, where the parties are not all before the court, where the legal title to the land is unclear, where the interests of each party cannot be determined, where there was waiver of, or an agreement concerning the right to partition, or where a decree in partition would violate public policy.

**Id.** at 1261. Appellant believes that this is the type of case that we envisioned in **Lombardo**, particularly because Appellant believes that legal title to the land remains unclear. However, in **Lombardo**, we also stated the following:

[A] co-tenant does not possess the right to tie the hands of a fellow co-tenant from realizing his undivided property interest.

The right to have partition of property is one of the longstanding rules of property ownership under which persons acquire and continue to hold ownership of real estate in common with other person, and its existence and the right to resort to it are necessary to prevent such ownership from becoming, in many cases, entirely useless and burdensome, for without it, one tenant in common could by his unwillingness or inability to act, entirely deprive his cotenants of the benefits of ownership.

**Id.** at 1261 (citing 23 Standard Pennsylvania Practice 2d § 122:15).

We disagree with Appellant that this is a case where the title to the property was so unclear as to render the trial court's partition order erroneous under **Lombardo**. To the contrary, we find this situation analogous to the latter-quoted passage from our **Lombardo** opinion. The



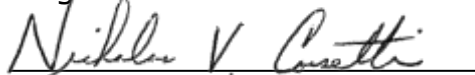
trial court, without error, determined the interests in the Manor, Pennsylvania property. Thus, contrary to Appellant's assertions, all of the relevant interests to the property have been determined. Vincent Rodgers' estate clearly owns a fifty percent interest in that property. The Manor property has not been used for funeral purposes since 2009. That property is only being used as a residence for Appellant. Vincent Rodgers' estate has the right to seek and obtain the benefits its half-ownership of that property. Appellant has been unwilling to agree to any action regarding the disposition or division of that property. Per **Lombardo**, Appellant's actions "entirely deprive[s] his cotenants of the benefits of ownership." **Id.** The trial court's partition order was supported by the record. We find no error.

Finally, Appellant's pending petitions do not alter our conclusion. First, in resolving Appellant's "Amended Claim" in this memorandum, we have concluded that Appellant does not have an interest in Vincent Rodgers' estate. Second, Appellant has not convinced us that anything in the three other petitions that he cites in his brief should have prevented the trial court from partitioning the property. As the trial court determined, no matter the relationship of Vincent and Elizabeth during their lifetimes, whether as individuals or as partners in a general or limited partnership, their interests passed to their respective estates at the time of their deaths. Appellant's petitions seek to have the trial court declare that the title to the property is owned by the funeral home limited partnership or by an alleged general partnership between Vincent and Elizabeth Rodgers. However, the trial

court, following a hearing, already has determined the parties owning an interest in the property. That property, as found by the trial court, is owned by the respective estates equally. Thus, ownership having been determined, the trial court did not act prematurely by partitioning the property before resolving Appellant's other petitions, which sought yet another ownership determination.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 6/3/2013