

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ESTATE OF LEO FERNANDEZ,  
DECEASED; : IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: JOSEPHINE DIANO  
CATANZARO AND JOSEPH DIANO

No. 1476 MDA 2013

Appeal from the Order Entered July 10, 2013  
in the Court of Common Pleas of Lackawanna County  
Orphans' Court at No(s): 2004-00786

BEFORE: FORD ELLIOTT, P.J.E., OLSON, and STRASSBURGER,\* JJ.

MEMORANDUM BY STRASSBURGER, J.:

**FILED JUNE 25, 2014**

Josephine Diano Catanzaro and Joseph Diano (Appellants) appeal from the order entered by the orphans' court with respect to the Estate of Leo Fernandez (Fernandez Estate). Upon review, we quash this appeal.

We provide the following summary of the tortured and protracted history of this case. Leo Fernandez died intestate on June 23, 2004. His friend, Paul Kwiatkowski (Kwiatkowski), through Attorney Thomas Jones, was granted letters of administration by the Lackawanna County Register of Wills on June 29, 2004. The sole known relative and heir of the Fernandez Estate was Pauline Tanana (Tanana) who was not interested in serving as administrator. In October 2004, Kwiatkowski transferred the assets of the Fernandez Estate to Tanana.

\* Retired Senior Judge assigned to the Superior Court

In February 2005, Mr. Diano contacted Jones and informed him that he and his mother, Ms. Catanzaro, are beneficial heirs of the Fernandez Estate. The orphans' court heard testimony on this matter, and ordered that Tanana return the assets she received back to the Fernandez Estate. The orphans' court further ordered that the assets of the Fernandez Estate, including certain real estate, be redistributed to the rightful heirs.<sup>1</sup> Appeals were filed by both the Fernandez Estate and Tanana from this order. A panel of this Court determined, in relevant part, that one parcel of real estate, situated at 811 Washington Street, was owned by Tanana prior to the death of Fernandez. Thus, this Court concluded the orphans' court erred in ordering that Tanana return that parcel to the Fernandez Estate. ***In re: Estate of Leo Fernandez***, 226 MDA 2006 (Pa. Super. 2007), at 8. This Court affirmed the orphans' court order in all other respects. ***Id.*** at 12.

Implementation of the order became complicated further by the death of Tanana during the pendency of that appeal. Thus, the Fernandez Estate spent the next several years attempting to recoup the money owed to it by the Tanana Estate. Additionally, Attorney Thomas Nolan made the orphans' court aware that other heirs of the Fernandez Estate may exist.

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<sup>1</sup> This order was authored by the Honorable James J. Walsh, Senior Judge, who had heard testimony on December 31, 2005. Judge Walsh reached mandatory retirement age, and the orphans' court opinion was authored by the Honorable Chester T. Harhut, Senior Judge.

Subsequently, on July 10, 2013, the orphans' court entered an order, which states as follows.

NOW, this 10<sup>th</sup> day of July, 2013, this Court HEREBY ORDERS as follows:

As the Court has been made aware by Atty. Thomas Nolan, who represented certain would-be heirs earlier in this proceeding and never in fact withdrew his appearance as counsel from this matter, of the existence of other heirs who may be closer in consanguinity to [Fernandez] than the heirs previously identified; and

This particular issue of consanguinity was not decided earlier by this Court in that the existence of possible additional heirs was first brought to the Court's attention *after* Judges Walsh and Harhut issued rulings on other issues in this Court case; and

There is ample precedent for the Orphans' Court division of this Court to consider the issue of who are the proper intestate heirs, in that a Court may review an estate matter on the ground of after-discovered evidence even after distribution has been made and the matter closed; and

The resolution of the identities of the proper heirs is indispensable to the merits and justice of the matter;

We direct that Attorney Thomas Jones, Jr., Esq., SHALL SECURE from First American Title Company the monies to be paid from claim No. PA-1109402765, concerning the property at 811 Washington Street, Scranton, PA 18512, and REQUEST from the Register of Wills/Clerk of the Orphans' Court to hold those funds, together with the remaining monies Attorney Jones has recouped with respect to the Estate, until further determination is made as to the identities of the heirs and their respective shares of the Estate.

Further, Attorney Jones IS PERMITTED to use Estate funds to utilize the services of either an heir-finder service, or an online service which provides Court-certified documentation of genealogy if appropriate, to determine the rightful heirs, whether they be the heirs currently identified and known to the Court, or the persons identified by Attorney Nolan, or a combination of

those persons, and Attorney Jones WILL NOTIFY the court and other counsel of the findings.

Court Order, 7/10/2013 (footnotes omitted).

On August 9, 2013, Appellants filed a notice of appeal from that order. The orphans' court did not order a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, and none was filed.

Appellants set forth four issues for our review; however, before we reach the substantive issues set forth by Appellants, we consider the appealability of the order of the orphans' court. "We examine the issue of appealability *sua sponte* because it affects our jurisdiction over the case." **In re Estate of Fritts**, 906 A.2d 601, 605 (Pa. Super. 2006).

"It is fundamental law in this Commonwealth that an appeal will lie only from final orders, unless otherwise expressly permitted by statute." **In re Estate of Stricker**, 977 A.2d 1115, 1118 (Pa. 2009). In their statement of jurisdiction, Appellants state that this order is appealable pursuant to Pa.R.A.P. 342(a)(5) and (6). Appellants' Brief at 1. Those sections provide as follows.

**(a) General rule.** An appeal may be taken as of right from the following orders of the Orphans' Court Division:

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(5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;

(6) An order determining an interest in real or personal property;

Pa.R.A.P. 342(a)(5) and (6).<sup>2</sup>

The crux of the order at issue here is that it permits an attorney to delve into the genealogy of Fernandez and determine exactly who the heirs are and what relationship they are to Fernandez. The plain language of that order does not finally determine the status of any "fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;" rather, the order merely permits the administrator to expend money of the Estate to determine if any such individuals exist. Pa.R.A.P. 342(a)(5). The order then provides that Attorney Jones notify the orphans' court of its findings, implicating the need for further proceedings before actually determining the status of any of these individuals. Moreover, this order cannot be read in any way as "determining an interest in real or personal property[.]" *Id.* at (a)(6). Accordingly, neither Appellants nor the Fernandez Estate has provided a basis for this Court to reach the substantive issues of this appeal as the order being appealed from is not an appealable order.

Appeal quashed. Jurisdiction relinquished.

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<sup>2</sup> The Fernandez Estate states that this is an appeal from a final order pursuant to Pa.R.A.P. 341(a). Fernandez Estate Brief at 4. The appealed-from order, however, specifically provides that there must be a further order of court. Court Order, 7/10/2013 (providing that Attorney Jones should hold money "until further determination is made as to the identities of the heirs and their respective shares of the Estate"). Thus, this order is not a final order; therefore, this Rule does not provide a basis for jurisdiction.