NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: UNIFIED CREDIT TRUST UNDER WILL OF ABRAHAM TEMKIN, DECEASED, A PENNSYLVANIA TRUST	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: FINEBURG MCCARTHY, P.C. F/K/A EIZEN FINEBURG & MCCARTHY, P.C.	No. 2614 EDA 2012

Appeal from the Order August 22, 2012
In the Court of Common Pleas of Bucks County
Orphans' Court at Nos.: 2011-0030
2011-0135

BEFORE: GANTMAN, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. **FILED AUGUST 23, 2013**

Appellant, the law firm of Fineburg McCarthy, P.C. f/k/a Eizen Fineburg & McCarthy, P.C., appeals from the trial court's order granting Annabelle Temkin's petition to disqualify it from representing her daughters Sheila Davidoff (Davidoff) and Eileen Shoenfeld (Shoenfeld) in this declaratory relief action.[1] Appellant has filed this appeal on its own behalf, and its

---

* Retired Senior Judge assigned to the Superior Court.

[1] We note that the court's disqualification order, entered on March 2, 2012, was interlocutory and not immediately appealable. ***See Vaccone v. Syken***, 899 A.2d 1103, 1105 (Pa. 2006). The order was rendered final following entry of the court's August 22, 2012 order declaring the legal status of the
(Footnote Continued Next Page)

former clients, Davidoff and Shoenfeld, have not challenged the court's disqualification order. We quash for lack of standing.

The facts and procedural history of this matter are taken from the trial court's December 7, 2012 opinion and our own review of the record. This case involves a substantial family conflict centering on management of the Unified Credit Trust (trust) established by the will of Annabelle Temkin's late husband, Abraham Temkin, who died in 1992. The trust owns several New Jersey corporations and names Annabelle Temkin as income beneficiary and co-trustee. The trust also names the couple's three daughters, Davidoff, Shoenfeld, and Roberta Spector, as disinterested trustees.

In or around April and May 2010, Annabelle Temkin and Davidoff discussed several legal issues pertaining to estate planning and the trust with Temkin's nephew, Herbert Fineburg, an attorney with Appellant law firm. Following these discussions, Temkin decided that she did not want Mr. Fineburg to continue to represent her. On May 11, 2010, Mr. Fineburg sent Davidoff a letter "confirm[ing] that [Appellant] is not going to proceed with [Temkin's] desired trust or any other planning we discussed. . . . [P]lease forward a check payable to [Appellant] in the amount of $820." (N.T.

(Footnote Continued) ———————————

parties. ***See Nationwide Mut. Ins. Co. v. Wickett***, 763 A.2d 813, 817 (Pa. 2000) ("Section 7532 [of the Declaratory Judgment Act] defines any order in a declaratory judgment action that either affirmatively or negatively declares rights, status, and other legal relations as a final order.") (internal quotation marks omitted). We have amended the caption accordingly.

Hearing, 12/29/11, at 43). Temkin paid this legal fee using a check from her personal bank account.

On January 3, 2011, Davidoff and Shoenfeld deposited a $12,000.00 retainer for legal fees directly into Appellant's bank account using a check from Annabelle Temkin's personal bank account signed by Davidoff as Temkin's agent.[2]

On January 19, 2011, Davidoff and Shoenfeld, through Appellant law firm, filed a petition seeking declaratory relief, requesting the trial court to provide approval and direction as to the future management of the trust, claiming that the co-trustees were at an impasse due to unilateral actions taken by Roberta Spector. On February 18, 2011, Davidoff and Shoenfeld filed a petition for leave to conduct discovery relating to the trust's assets.

On March 10, 2011, Temkin filed a petition requesting that Davidoff and Shoenfeld account for their actions as trustees of the trust and as her co-agents. On May 16, 2011, Temkin filed a petition to disqualify Appellant from representing Davidoff and Shoenfeld in this matter. On December 23, 2011, Temkin and Spector filed a petition to show cause why Davidoff and Shoenfeld should not be removed as trustees.

---

[2] Temkin executed a durable power of attorney naming her three daughters as her co-agents in May of 2004.

The trial court held evidentiary hearings addressing the disqualification issue on December 29, 2011 and January 30, 2012. On March 2, 2012, Davidoff and Shoenfeld filed preliminary objections to the petition to remove them as trustees. On that same day, the court entered its order disqualifying Appellant from serving as counsel for Davidoff and Shoenfeld. On April 5, 2012, Davidoff and Shoenfeld, through Appellant, filed a motion for reconsideration of the disqualification order. The court denied the motion on May 10, 2012.

On August 22, 2012, the trial court entered an order denying the preliminary objections and removing Temkin, Davidoff, Shoenfeld, and Spector as trustees. The court also appointed an independent trustee to administer the trust.

On September 20, 2012, Appellant filed a notice of appeal challenging the court's order entered March 2, 2012, which disqualified it from serving as counsel in this matter. Appellant identified itself as counsel for Davidoff and Shoenfeld in the notice of appeal, but filed the appeal on its own behalf, not on behalf of its former clients. On October 23, 2012, pursuant to the court's order, Appellant timely filed a Rule 1925(b) statement of errors. ***See*** Pa.R.A.P. 1925(b).

On November 5, 2012, Temkin filed an application to quash Appellant's appeal with this Court, claiming that Appellant lacks standing. Appellant filed a response on November 19, 2012. On December 7, 2012, the trial court filed a Rule 1925(a) opinion in which it concluded that Appellant lacks

standing to initiate this appeal. ***See*** Pa.R.A.P. 1925(a); (***see also*** Trial Court Opinion, 12/07/12, at 2). On December 18, 2012, this Court entered a *per curiam* order denying Temkin's motion to quash without prejudice to raise the issue before this panel.[3]

Appellant raises two issues for our review:

> 1. Where a [m]otion to [d]isqualify [Appellant] was filed on May 24, 2011, but was not decided until March 2, 2012, and in the intervening 10 months all litigation on the merits of the case occurred, such that the [c]ourt issued a final ruling disposing of the merits without any additional filings, hearings or testimony after the [o]rder of [d]isqualification was issued, was disqualification an appropriate remedy, when other less harsh and drastic remedies were available?
>
> 2. Did the events and interaction between Appellant . . . and Annabelle Temkin in April and May, 2010 [sufficiently] establish an implied attorney-client relationship under the test announced in ***Atkinson v. Haug***, 424 Pa. Super. 406, 622 A.2d 983 (Pa. Super. 1993), and ***Minnich v. Yost***, 2003 P[a.] Super. 52, 817 A.2d 538 (Pa. Super. 2003), for purposes of creating a conflict of interest under Pa.R.P.C. 1.9?

(Appellant's Brief, at 5).

Preliminarily, we must consider whether Appellant can properly pursue this appeal. Appellant claims that it has standing because it qualifies as an

---

[3] In its brief, Appellant asserts that this Court "already rejected" Temkin's standing challenge in its *per curiam* order. (Appellant's Reply Brief, at 3). However, this assertion misstates the record, which reflects that this Court denied the motion to quash without prejudice to advance the standing issue before this panel.

aggrieved party under our Rules of Appellate Procedure and relevant caselaw. (***See*** Appellant's Reply Brief, at 3-5). We disagree.

Pennsylvania Rule of Appellate Procedure 501 provides in pertinent part that "any party who is aggrieved by an appealable order . . . may appeal therefrom." Pa.R.A.P. 501. Therefore, only parties to an action have standing to appeal, and appeals by non-parties will be quashed. ***See In re Barnes Found***., 871 A.2d 792, 794-95 (Pa. 2005) (stating that non-parties lack ability to implicate appellate process). The term "party" is defined by the Judicial Code as a "person who commences or against whom relief is sought in a matter[,]" and the term includes a represented person's counsel. 42 Pa.C.S.A. § 102.

The facts of ***In re Estate of Geniviva***, 675 A.2d 306 (Pa. Super. 1996), *appeal denied*, 685 A.2d 545 (Pa. 1996), are instructive to the issue of party status. In ***Estate of Geniviva***, this Court considered whether an estate's former attorney had standing to appeal an order sanctioning the estate's executor for mismanagement. ***See id.*** at 308-09. While the attorney had represented the estate at the initiation of the litigation, he no longer represented the estate or the executor at the time he filed the appeal. ***See id.*** This Court concluded that the attorney was not a party to the action, and that he therefore lacked standing to bring an appeal. ***See id***.

Here, Appellant initially represented Davidoff and Shoenfeld in the proceeding before the trial court, but the court disqualified it from serving as

counsel on March 2, 2012, approximately five months before the court entered its order removing all four trustees and appointing an independent trustee. A review of the record indicates that Davidoff and Shoenfeld did not retain new counsel following Appellant's disqualification, and instead represented themselves. (***See*** Praecipe to Move the Matter Forward, 6/20/12, at 1-2 (filed by Davidoff)). On September 20, 2012, Appellant, despite its disqualification from this matter approximately six months earlier, filed a notice of appeal, in which it identified itself as counsel for Davidoff and Shoenfeld. (***See*** Appellant's Notice of Appeal, 9/20/12). However, while Appellant's former clients, Davidoff and Shoenfeld, are participants in this case, they are not represented by counsel and have not joined Appellant in this appeal. (***See*** Superior Court docket at 2614 WDA 2012).

Based on this record, we conclude that Appellant does not have party status in this case and therefore lacks the ability to implicate the appellate process. ***See Barnes***, ***supra*** at 794; ***In re Estate of Geniviva***, ***supra*** at 309.[4] Accordingly, we quash this appeal.

---

[4] We note that the case on which Appellant primarily relies, ***Green v. SEPTA***, 551 A.2d 578 (Pa. Super. 1988), is inapposite to the facts of this case and did not involve a disqualification order. In ***Green***, the issue before this Court was whether the plaintiffs in a personal injury action had standing to appeal the trial court's order reducing attorney fees distributable to the lawyer who continued to represent them. ***Id.*** at 578-79. This Court held that the plaintiffs lacked standing because the court's order had not aggrieved them and had instead aggrieved counsel. ***Id.*** at 579-80.

(Footnote Continued Next Page)

Appeal quashed.

Judgment Entered.

Prothonotary

Date: 8/23/2013

(Footnote Continued) ———————————

In this case, the trial court's disqualification order potentially aggrieved Davidoff and Shoenfeld because they were required to proceed without counsel of their choice in the trial court. They have chosen not to appeal.