

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF WILLIAM F.
SCHRADER, A/K/A WILLIAM F.
SCHRADER, JR., A/K/A WILLIAM
FREDERICK SCHRADER, JR., A/K/A
WILLIAM SCHRADER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 461 MDA 2012

Appeal from the Order Entered January 30, 2012
In the Court of Common Pleas of Luzerne County
Orphans' Court at No(s): 4010-0694

BEFORE: SHOGAN, J., LAZARUS, J., and OTT, J.

MEMORANDUM BY OTT, J.

Filed: February 26, 2013

Michael Snovitch and Elaine Snovitch (collectively, "Co-Executors"), as Co-Executors of the Estate of William F. Schrader, Jr. ("Estate" and "Decedent," respectively) appeal the order of the Court of Common Pleas of Luzerne County, Orphans' Court Division, entered on January 30, 2012 which denied and dismissed their exceptions to the order entered on November 14, 2010. After a thorough review of the record, the parties' briefs, and applicable law, we affirm.

The orphans' court comprehensively addresses the facts of this case in its Pa.R.A.P. 1925(a) opinion of March 20, 2012, at 2-5. We summarize the relevant facts herein:

On December 14, 2007, Decedent and his fiancée, Bernadine Fendrick ("Fendrick"), opened a joint account at PNC Bank intending to use the funds for their future wedding and other expenses. However, in January 2009, Decedent was diagnosed as having lung cancer. When his health continued to decline, on January 26, 2010, Decedent sold his business, the Hello Again Bar and Grille. Decedent received \$28,000.00¹ for the sale of the liquor license and \$133,143.13² in net proceeds for the sale of the business and property. Decedent deposited the monies from the liquor license sale into his KNBT³ business account. Fendrick was not in any way associated with the KNBT account. The remaining monies, \$133,143.13 Decedent deposited into the joint PNC account.

On February 5, 2010, Decedent withdrew \$133,143.00 by cashier's check from the PNC Bank account. The cashier's check was made payable to "William Schrader **or** Bernadine Fendrick". Petition for the Turnover of

¹ The settlement check for this amount was made out to Hello Again, Inc.

² The settlement check for this amount was made out to Decedent individually.

³ A division of National Penn Bank.

Assets, 5/27/2010, Exhibit C (emphasis added). Decedent died testate on March 21, 2010, the cashier's check having never been cashed.

Letters Testamentary were granted to the Co-Executors on April 18, 2010. On March 22, 2010, the Co-Executors found the cashier's check in Decedent's home. Fendrick's request to divide the proceeds of the check was refused. Thereafter the Co-Executors endorsed and delivered the check to counsel for the Estate, Thomas J. Carlyon, Esquire. On May 4, 2010, Fendrick requested PNC Bank place a stop payment order on the cashier's check to prevent the Estate from cashing it. On May 7, 2010, counsel for the Estate attempted to deposit the funds into his Trust Account and was informed of the May 5, 2010 stop payment order. On May 25, 2010, the Estate filed a petition to turn over assets and a hearing was held on July 14, 2010.⁴ On November 14, 2010, an order was entered granting Fendrick the proceeds from the check, \$133,144.00. This timely appeal followed the January 30, 2012 denial and dismissal of Co-Executor's 40 exceptions.

On appeal the Co-Executors argue the orphans' court erred: 1) when it applied the Multiple Party Accounts Act (MMPA) rather than the Uniform

⁴ Following the hearing, the orphans' court directed in its order of July 25, 2010 the record remain open for 45 days to permit the parties to submit briefs and oral deposition transcripts. The order was amended on September 6, 2010 directing all submissions be filed no later than September 17, 2010. The Co-Executors filed the deposition transcripts on September 23, 2010 and their supplemental brief on September 30, 2010.

Commercial Code to determine ownership of the cashier's check; and 2) when it "misstate[d] the parties' burden of proof, undermine[d] the statutory duties of the [Co-]Executor[s], and fail[ed] to acknowledge [Fendrick's] undisputed dishonesty and conversion of the cashier's check which was, at all relevant times, in the possession of the [Co-]Executor[s]." Appellant's Brief at 4. We will address the issues together.

[O]ur standard of review of the orphans' court findings 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. *In re Estate of Geniviva*, 450 Pa. Super. 54, 675 A.2d 306, 310 (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)). *In re Padezanin*, 937 A.2d 475, 479 (Pa. Super. 2007).

In re Estate of Pendergrass, 26 A.3d 1151, 1153 (Pa. Super. 2011).

An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be ... manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused.

In re Estate of Cella, 12 A.3d 374, 378 (Pa. Super. 2010) *reargument denied* (internal citations and quotations omitted).

Further, “we may affirm the trial court's order on any valid basis.” *Plasticert, Inc. v. Westfield Ins. Co.*, 923 A.2d 489, 492 (Pa. Super. 2007) (internal citations omitted).

The orphans' court determined the cashier's check found among the personal effects of the Decedent, belonged to Fendrick. Basing its decision upon the theory that the cashier's check represented funds removed from a multi-party account, which is governed by the Multiple Party Account Act (MPAA), 20 Pa.C.S. §§ 6301-6306. Pursuant to the MPAA, Section 6304(a) Fendrick as the surviving party owned the monies in the account.

The Co-Executors contend the trial court erred in applying the MPAA because the monies had been withdrawn from the account at the time of Decedent's death. We agree that Section 6304 only applies to sums on deposit at the time of death of a joint owner; because the funds were in a cashier's check, a negotiable instrument, the Commercial Code⁵ applies as to ownership rights.

(d) Instrument payable to two or more persons.--If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged or enforced by any or all of them in possession of the instrument. ...

13 Pa.C.S. § 3110(d).

⁵ Title 13 Pa.C.S. §§ 1103 *et seq.*

The cashier's check was made payable to "[Decedent] **or** [Fendrick]". The Commercial Code permits the party in "possession of the instrument" control over it. Therefore, we must determine who had possession of the cashier's check at the time of Decedent's death.

On February 5, 2010, Decedent in agreement with Fendrick "temporarily" withdrew \$133,144.00 from the joint account pending an upcoming child support hearing.⁶ Thereafter, at all times, the cashier's check was kept in Decedent's bedroom, in a box containing approximately \$17,000.00 of both his and Fendrick's cash. Fendrick testified they intended to deposit the money back into the joint account after the support hearing but Decedent's health quickly declined and he died before the deposit was made. N.T., 7/14/2010 at 53. Fendrick cared for and was with Decedent at the time of his death and knew the cashier's check was in the box with their cash. The day after Decedent's death, while Fendrick waited for Co-Executors to meet her at her home, they were in Decedent's house and took the strong box containing the cashier's check and cash placed therein by both Fendrick and Decedent. Thereafter Fendrick appears to have been excluded from Decedent's house by Co-Executors.

⁶ The record reflects it was Decedent who knowing other accounts had been attached for child support purposes, decided to withdraw the funds from the joint account so as to lower the balance to approximately \$20.00.

The orphans' court found Fendrick's testimony that she had possession of the cashier's check at Decedent's death credible. The court stated,

[Fendrick] testified that she did not give the check to anyone else and that she knew it was in the house on the day that [D]ecedent died and even though [Fendrick] may have known Executor [Michael Snovitch] had the check in his possession; [Fendrick] credibly testified that Executor [Michael Snovitch] had no right to the check. N.T. at 38.

Orphans' Court Opinion, 3/30/2012 at 3. We may not reverse the trial court's credibility determinations absent an abuse of discretion⁷ and after review of the record; we find no abuse of discretion.

Co-Executors argue the court, in awarding Fendrick the check proceeds, failed to consider "[Fendrick's] undisputed dishonesty and conversion of the cashier's check." Appellant's Brief, at 4. The record shows Co-Executors entered Decedent's home on March 22, 2010, the day after his death and took the cashier's check from the box where it was held. For six weeks, between March 22, 2010 and May 7, 2010, Co-Executors did nothing with the cashier's check.

On May 4, 2010, Fendrick, as claimant pursuant to the Commercial Code⁸, requested PNC Bank issue a stop payment on the check.⁹ PNC Bank

⁷ ***See Estate of Pendergrass, supra.***

⁸ A person who claims the right to receive the amount of a cashier's check, teller's check or certified check that was lost, destroyed or stolen.

13 Pa.C.S. § 3312(a).

(Footnote Continued Next Page)

required Fendrick to execute an Indemnification Agreement. This agreement was signed by Fendrick on May 4, 2010. The stop payment order became effective on May 5, 2010. While Fendrick, as claimant, did not execute a written "Declaration of Loss" form pursuant to the Commercial Code, Section 3312(a)¹⁰ it was not requested by PNC Bank. There is nothing on the record showing Fendrick received special treatment from PNC Bank during the process. The orphans' court found,

(Footnote Continued) _____

⁹ (b) Claims.—

(1) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if:

(i) the claimant is the drawer or payee of a certified check or remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(iv) the claimant provides reasonable identification if requested by the obligated bank.

13 Pa.C.S. 3312(b).

¹⁰ Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. 13 Pa.C.S. § 3312.

Bettie Sitoski, the [PNC] Bank Manager, testified at her deposition as to the requirements of properly issuing a stop payment on a cashier's check. A remitter of the original check can put a stop payment on the check and if there were two remitters, as in this case, either can place a stop payment. Accordingly, [Fendrick] was an authorized person to stop payment on the cashier's check. Also, the person requesting the stop payment must allege the check is either lost, stolen, or damaged and if the check was stolen, the fact that the remitter requesting the stop payment may indeed know who took the check, does not prohibit the bank from properly issuing the stop payment. (Sitoski Deposition pages 13 through 18.)

Orphans' Court Opinion, 3/30/2012 at 4. The testimony of Fendrick was she did not give the check to Co-Executors and she informed the PNC Bank personnel on May 4, 2010 that it had been stolen by Co-Executors. On cross examination Michael Snovitch acknowledged Fendrick took issue with his removal of the check from the money box following Decedent's death and requested its return. N.T. 7/14/2010 at 25-26.

Co-Executors assert the court failed to require Fendrick prove by clear and convincing evidence that the cashier's check was lost before awarding her the proceeds. While the orphans' court did not directly address the burden of proof regarding a lost or stolen cashier's check, the role of an executor is to take possession of, maintain and administer the personal estate of the decedent. **See** 20 Pa.C.S. § 3311(a). The court determined that at the time of Decedent's death Fendrick was in possession of the cashier's check and Co-Executors were in possession only after they had improperly removed it from her. It was the Co-Executors', as the

petitioners, burden to prove the check was an asset of the Estate and they failed to meet that burden.

Accordingly, because we do not discern an abuse of discretion with the orphans' court's finding Fendrick was entitled to the proceeds of the cashier's check, we affirm the order.

Order affirmed.