

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ESTATE OF MARILYN JEAN  
TRUITT,

Appellee

APPEAL OF: GEORGE WILLIAM TRUITT,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 847 WDA 2013

Appeal from the Order entered April 19, 2013,  
in the Court of Common Pleas of Clarion County,  
Orphans' Court at No(s): 150 OC 2007

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY ALLEN, J.: FILED: December 10, 2013

George William Truitt ("Appellant") appeals from the Orphans' Court order, which after an evidentiary hearing, completed the affairs of the Estate of Marilyn Jean Truitt. We affirm.

The Orphans' Court explained:

Marilyn Jean Truitt, a resident of Clarion County, Pennsylvania, died [on] June 10, 2007. On July 24, 2007, the register of wills of Clarion County admitted to probate a writing dated May 5, 2007, as the last will and testament of Marilyn Jean Truitt. At the time of her death, Marilyn Jean Truitt was married to [Appellant,] who was the executor under the last will and testament. At the time of her death, Marilyn Jean Truitt and [Appellant] had been married less than two years. The petitioners in this matter, Julie A. Hagan and Jenny L. Sturgeon ("Petitioners") are the adult children of Marilyn Jean Truitt by a prior marriage.

On October 9, 2007, petitioners filed an appeal from the register's order admitting the aforesaid last will and testament to probate. The petition alleged that because of the advanced

nature of the illness which eventually led to her death and the incapacity caused thereby, that Marilyn Jean Truitt lacked testamentary capacity to sign and execute the aforesaid last will and testament; that Marilyn Jean Truitt executed the aforesaid last will and testament as a result of undue influence; that the aforesaid last will and testament is not the last will and testament of Marilyn Jean Truitt for the reason that it was procured by fraud and misrepresentation; and, that the last will and testament is not the last will and testament of Marilyn Jean Truitt for the reason that the signature thereon is a forgery and is not the signature of Marilyn Jean Truitt. The petition further alleged that if the last will and testament were vacated, [Appellant] would be entitled to one half intestate share and the petitioners would be entitled to the remaining one half of the intestate share pursuant to 20 Pa.C.S.A. 2102(4). The only other person interested in the estate is Angela N. Truitt who was bequeathed 38 shares of Met Life Stock under the aforesaid last will and testament.

After the petitioners obtained an opinion from a handwriting expert that the purported signature of Marilyn Jean Truitt on the aforesaid last will and testament was a forgery, [Appellant] and Angela N. Truitt joined in a petition to settle the will contest by agreeing that the court would order that the last will and testament of Marilyn Jean Truitt be vacated and rendered void and of no legal effect; that the letters testamentary which were issued pursuant to the aforesaid last will and testament would be revoked; and, that the letters of administration would be issued by the register of wills of Clarion County, Pennsylvania to the petitioners and [Appellant]. The court order was duly entered April 16, 2009.

From the time of the probate of the will up to and through the petition and order vacating the will, [Appellant] was represented by William E. Hagar, III, Esquire. On December 1[3], 2011, Attorney Hagar filed a motion to withdraw as counsel. In the said [motion], Attorney Hagar represented that he had received a letter from John C. Dennison, Esquire, attorney for Julie Hagan and Jennifer L. Sturgeon, questioning whether Mr. Hagar should continue to represent [Appellant]. Mr. Hagar said that through the Pennsylvania Bar Ethics hotline, Mr. Hagar had learned that continued representation of [Appellant]'s interest would represent "a conflict of interest." On December 13, 2011, Attorney Hagar's motion to withdraw was granted.

On March 11, 2013, the petitioners filed a petition to complete the affairs of the estate, alleging that the only remaining acts to be accomplished by the administrators was the distribution of the remainder of funds and assets and an amended inheritance tax return. An order was entered March 12, 2013, issuing a rule upon [Appellant] and William E. Hagar, III, Esquire to show cause why the petitioners were not entitled to the relief requested. The court ordered that the respondents file an answer to the petition within twenty days of service; that the petition would be decided under Pa.R.C.P. 206.7; and that an evidentiary hearing on disputed issues of material fact would be held April 19, 2013, at 2:00 p.m. At the time of hearing, [Appellant] appeared pro se and requested a continuance in order that he should be able to hire an attorney to represent him. Appellant had filed no answer to the motion and Attorney Hagar had reached an agreement with Petitioners concerning attorney fees. ***As the [A]ppellant had had sixteen months since the entry of a court order granting the request of William E. Hagar, III, Esquire to withdraw as the [A]ppellant's attorney, and as it appeared that the only request being made by the petitioners was that the estate assets should be distributed in accordance with the intestate laws, the court denied the continuance and proceeded to conduct the hearing.*** Following the hearing and for the reasons hereinabove set forth, the court entered the order of April 19, 2013.

Orphans' Court Opinion, 7/2/13, at 1-3 (unnumbered) (emphasis added).

This appeal followed. Both Appellant and the Orphans' Court have complied with Pa.R.A.P. 1925. Appellant raises a single issue for our review:

Whether the lower court abused its discretion in denying Appellant's first continuance request?

Appellant's Brief at 3.

The Superior Court reviews a trial court's decision to grant or deny a continuance for an abuse of discretion. ***Ferko-Fox v. Fox***, 68 A.3d 917,

925 (Pa. Super. 2013) *citing Baysmore v Brownstein*, 771 A.2d 54, 57 (Pa. Super. 2001). Our standard of review is well settled:

The trial court is vested with broad discretion in the determination of whether a request for a continuance should be granted, and an appellate court should not disturb such a decision unless an abuse of that discretion is apparent. An abuse of discretion is more than just an error of judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.

***Baysmore, supra.***

We have reviewed the record, including the hearing transcript from April 19, 2013, and find no abuse of discretion. Appellant essentially argued that he was entitled to a continuance because, "I was not aware of [any] of this until this morning." N.T., 4/19/13, at 5. Counsel for petitioners countered:

I think the record reflects that I filed a Certificate of Service pursuant to the Order of March 18, where I did serve [Appellant] and Mr. Hagar with a certified copy of the Order dated March 12, 2013, as well as a copy of the Petition. The Order then stated that [Appellant] and Mr. Hagar shall file an answer to the Petition within 20 days of service upon them. So, that would have been April 8, 2013. We worked out a deal with Mr. Hagar, so therefore, it wasn't necessary for him to file an answer.

Secondly, I'd like to just report to the Court that [Appellant] had retained separate counsel, and as of May 12, 2012, his counsel did write me a letter and said that they were no longer representing [Appellant]. And then Mr. Hagar just told me the other day that the reason was that [Appellant] did not want to pay his attorney any money, so that's why his counsel resigned. So for all those reasons, we're ready to go, Your

Honor, and there's absolutely no reason to postpone this hearing.

I think the other thing that's important too is that we're here about disputed facts. I think that's what the Order of Court says, that we're here on disputed issues of material facts. I think once the Court hears all the evidence, I don't really think there's going to be much of a dispute anyway.

*Id.* at 6-7.

Appellant then responded:

Regarding my counsel of last year, there was a monetary problem; I had some health problems, and I was still hopeful that this could be settled out of court. And regarding Mr. Hagar, I think I've been misled. I was under the understanding you and him were going to try to work this out and file for a continuance at which time I could obtain legal counsel.

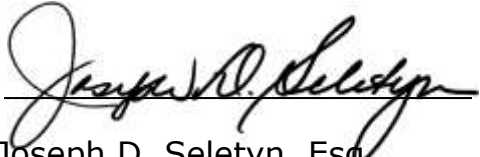
*Id.* at 7.

Immediately thereafter, the court denied Appellant's request for a continuance and proceeded with the hearing. *Id.* As reflected in the record, including the Orphans' Court opinion, Appellant had from the time of Mr. Hagar's withdrawal in December of 2011 until the day of the hearing in April of 2013 to retain counsel. Appellant did not request a continuance until the day of the April 19, 2013 hearing. Upon review of the record and pertinent case law, we discern no abuse of discretion by the trial court in denying Appellant's request for a continuance.

Order affirmed.

J-S69027-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/10/2013