

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

IN RE:	:	
ESTATE OF STEPHEN P.	:	No. 16-9256
MARENCHICK, Deceased	:	
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TIMOTHY L. HAUSER,	:	
Plaintiff/Petitioner	:	
	:	
v.	:	
	:	
ESTATE OF STEPHEN P.	:	
MARENCHICK and EDWARD R.	:	
REHRIG, EXECUTOR,	:	
Defendant/Respondent	:	
Marianne S. Lavelle, Esquire & Victor F. Cavacini, Esquire		Co-Counsel for the Estate of Stephen J. Marenchick and Edward R. Rehrig, Executor
Anthony Roberti, Esquire		Counsel for Plaintiff/Petitioner

**MEMORANDUM OPINION**

Serfass, J. - February 13, 2019

Timothy Hauser (hereinafter "Petitioner") has taken this appeal from our decision and decree of June 28, 2018, denying and dismissing his "Petition for Citation" seeking specific performance of an alleged agreement between Petitioner and Stephen P. Marenchick (hereinafter "Decedent") for the sale of 69.92 acres of land located in Jim Thorpe, Carbon County, Pennsylvania, Tax I.D. Number 97-40-A2. We file the following memorandum opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid decision and decree be affirmed for the reasons set forth hereinafter.

**FACTUAL AND PROCEDURAL HISTORY**

On August 26, 2016, Petitioner initiated this action against the Estate of Stephen P. Marenchick and Edward R. Rehrig, Executor, (hereinafter "Respondents") via Petition for Citation seeking specific performance of an alleged agreement between Petitioner and Decedent. On October 18, 2016, Respondents filed an Answer and New Matter denying the validity of any such agreement and raising several arguments in support of that position.

Following a hearing held before this Court on December 7, 2017, proposed Findings of Fact and Conclusions of Law were filed by counsel for both parties on February 15, 2018. Upon review of counsels' submissions and careful consideration of the evidence presented at the hearing, this Court entered a decision and decree on June 28, 2018, summarizing the pertinent facts in this case. We have attached a copy of our decision and decree for the convenience of the Honorable Superior Court.

Based upon these findings of fact, this Court held that Decedent lacked sufficient understanding of the nature and consequences of the agreement of sale due to progressive dementia and lack of executive function. This Court also held that, even if the agreement were valid, Petitioner failed to meet the high burden of showing that he is clearly entitled to the equitable relief of specific performance. Further, the equitable doctrine of laches bars Petitioner's recovery as he failed to exercise due diligence

by waiting more than two (2) years to seek enforcement of the agreement. Accordingly, this Court denied and dismissed Mr. Hauser's petition.

On July 9, 2018, Petitioner filed a motion for reconsideration. On July 16, 2018, Respondents filed an answer to that motion. On August 13, 2018, each party filed briefs in support of their positions, and oral argument was held on August 24, 2018. On December 19, 2018, this Court entered an order denying Petitioner's motion.

On January 3, 2019, Petitioner filed a notice of appeal to the Superior Court. On that same date, this Court entered an order directing Plaintiff to file of record, within twenty-one (21) days, a concise statement of the matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On January 10, 2019, Petitioner filed a concise statement in compliance with our order, and on January 14, 2019, a supplemental statement was filed.

### **DISCUSSION**

Petitioner essentially raises three (3) issues in his concise statements: (1) whether this Court's findings and conclusions are supported by the evidence; (2) whether the doctrine of laches bars Petitioner from recovery; and (3) whether the testimony of the medical experts regarding Decedent was admissible considering that

they did not examine him prior to or around the time of the alleged agreement.

**I. This Court's findings and conclusions are supported by the evidence presented in this case**

Petitioner argues that this Court's findings regarding the degree of Decedent's dementia at the time of the agreement, whether the down payment was returned, and whether the agreement was meant to be a gift to Petitioner were not supported by the evidence.

The findings of a judge of the orphans' court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support. This rule is particularly applicable "to findings of fact which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony."

Berry v. Titus, 499 A.2d 661, 663 (Pa.Super. 1985) (internal citations omitted).

Our findings, which have been attached for the convenience of the Honorable Superior Court, are supported by the evidentiary record in this case, and there has been no abuse of discretion.

**II. Petitioner's claim for specific performance is barred by the doctrine of laches**

Petitioner avers that the death of Decedent limited his case just as much as it limited the Respondents' case, and thus the doctrine of laches does not apply.

The equitable doctrine of laches bars recovery when the complaining party fails to exercise due diligence in promptly instituting an action to the prejudice of another. Sprague v. Casey, 550 A.2d 184, 187 (Pa. 1988). In order to prevail on an assertion of laches, Respondents must establish: 1) a delay arising from Petitioner's failure to exercise due diligence; and, 2) prejudice to the respondents resulting from the delay. *Id.* This question is factual and is determined by examining the circumstances of each case. *Id.* The doctrine of laches does not depend upon a mechanical passage of time, but rather laches may bar a suit in equity where a comparable suit at law would not be barred by an analogous statute of limitations. Kern v. Kern, 892 A.2d 1, 9 (Pa.Super. 2005). It is well-settled law that the doctrine of laches is particularly applicable where the prejudice arises through the death of a principal participant in the complained of transaction. *Id.* at 10.

Here, despite the agreement providing that time was of the essence and that a final settlement was to be held within thirty (30) days, Petitioner waited more than two (2) years to bring this action for its enforcement. During this delay, Decedent, a principal participant in the transaction, suffered from increasingly severe dementia, which ultimately resulted in his death in 2016. Petitioner's failure to exercise due diligence resulted in the inability of Decedent to testify as to the validity

of the agreement. Whether the delaying party was prejudiced by his own delay is not relevant to the doctrine of laches. Thus, Petitioner's claim for specific performance is barred by the doctrine of laches.

**III. This Court did not abuse its discretion by allowing the medical experts, who examined Decedent a year or more after the alleged agreement, to testify regarding Decedent's dementia at the time of examination and how dementia generally progresses**

Petitioner argues that this Court should not have admitted the testimony of Nurse Practitioner Karen Burke, Dr. Hamayun Ahmed, Dr. Donna Lee Miller, and Dr. Barry Follweiler because none of them examined Decedent until a year or more after 2014 when the alleged agreement took place.

Decisions on the admissibility of evidence are within the sound discretion of the trial court and will not be overturned absent an abuse of discretion or misapplication of law. Hatwood v. Hospital of the University of Pennsylvania, 55 A.3d 1229, 1239 (Pa.Super. 2012). In addition, for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party. *Id.* Similarly, the admissibility of expert testimony is soundly committed to the discretion of the trial court, and the trial court's decision will not be overruled absent "a clear abuse of discretion." *Id.*

In this case, Petitioner did not object to the expert testimony of Dr. David O'Neil who provided that Decedent suffered from declining mental acuity, which started long before 2014 and became more severe over time. Thus, evidence regarding the severity of Decedent's dementia years after the agreement can be used by the fact finder to piece together an approximation of Decedent's mental acuity at the time of the agreement based upon the experts' testimony regarding the progression of dementia in general. Each of the remaining experts testified regarding their examinations of Decedent and his medical records and the nature of progressive dementia.

Nurse Practitioner Karen Burke testified that, by the time she examined and provided care for Decedent in 2016, he was diagnosed with and clearly suffering from dementia. Nurse Burke also testified that dementia usually has a slow, progressive course which can be as long as ten years for the moderate stage and three years for the severe stage.

Dr. Donna Lee Miller testified that, while she did not examine or treat Decedent, she did review his medical records from 2006 to his death in 2016 for clues regarding Decedent's history of dementia. Dr. Miller testified that, based on the atrophy on Decedent's CAT scan with no evidence of a stroke, Decedent's dementia progressed over time rather than resulting from an acute incident. Additionally, based upon Decedent's severe dementia in

2016, Dr. Miller opined that Decedent would have had cognitive defects in 2014. Dr. Miller also testified that an early symptom of dementia is loss of executive function, which includes the ability to execute a plan and evaluate complex information.

The testimony to which Petitioner objects was highly relevant regarding the nature of dementia in general and Decedent's level of dementia in 2014 when the agreement was entered. Thus, there has been no abuse of discretion or misapplication of the law in this matter and this Court's decision should not be reversed.

**CONCLUSION**

For the reasons set forth hereinabove, we respectfully recommend that the instant appeal be denied and that our decision and decree of June 28, 2018, be affirmed accordingly.

**BY THE COURT:**

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**Steven R. Serfass, J.**