IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: ESTATE OF EARL L. MILLER, :
DECEASED : No. 06-9200

Edmund J. Healy, Esquire — Counsel for Executor
John M. Ashcraft, III, Esquire — Counsel for Executor
Vance E. Meixsell, Esquire — Counsel for Objector

MEMORANDUM OPINION

Nanovic, P.J. – June 16, 2015

When Earl L. Miller ("Decedent") and Doris E. Snyder ("Wife") married on November 12, 1994, they were, respectively, 60 and 51 years of age. Both had been previously married; both had adult children from their first marriages; both had their own homes; and both were self-sufficient. As is not uncommon in these circumstances, they executed a prenuptial agreement (hereinafter referred to as both the "Prenuptial Agreement" and "Agreement"). This Agreement is dated September 16, 1994. Unfortunately, since Decedent's death on May 12, 2006, litigation over the enforceability and meaning of this Agreement has had the opposite effect of what a prenuptial agreement is intended to accomplish: to simplify and define the rights and obligations of spouses in marital and pre-marital property without the need for extensive and expensive litigation over the distribution and disposition of these assets.[1]

[1] Decedent's Will was probated on June 8, 2006, at which time, Decedent's two sons and primary beneficiaries, Kirby Miller and Kevin Miller, were appointed

In previous decisions we have upheld the facial validity of the Prenuptial Agreement,[2] determined the meaning of a disputed provision,[3] and found Decedent fulfilled his obligations under the Agreement.[4] Two issues remain which we address below: (1) Decedent's Estate's (the "Estate") claim for an award of attorney fees against Wife for breaching the Prenuptial Agreement and (2) the Estate's claim to void Wife's recent conveyance of her home to herself, her new husband, and her three children from her first marriage as a fraudulent conveyance intended to avoid payment of the Estate's attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

This case has a protracted and complicated history which we summarize briefly, focusing on those facts relevant to the two remaining issues to be decided.

When Decedent died on May 12, 2006, he left behind two documents that have been key in this litigation to date: the Prenuptial Agreement and his Will dated February 20, 2002. In addition to Paragraph 5 of the Prenuptial Agreement which provides that each party's pre-marital property would remain their separate property, free and clear of any claim by the

---

as executors. On November 4, 2009, Decedent's son Kirby Miller died, leaving Kevin Miller as the sole executor.

[2] *See* order dated June 26, 2009.

[3] *See* orders dated July 20, 2010 and September 12, 2011.

[4] *See* order dated June 28, 2013.

other, including any rights as surviving spouse to elect to take against the other's will,[5] Paragraph 9 of the Agreement provided:

> [Decedent] agrees to make provisions in his Will or though jointly-owned property to provide [Wife] with the sum of Twenty Thousand Dollars ($20,000.00) upon his death. Said sum shall be payment in full for any and all claims [Wife] may make under the Probate Code regarding her elective share or her intestate rights.

(Prenuptial Agreement, Paragraph 9). Complementing this provision, Paragraph 5 of Decedent's Will stated:

> I direct that my executor(s) distribute the sum of Twenty Thousand Dollars ($20,000.00) to Doris E. Snyder Miller who is my wife. Said sum may come from jointly-owned property and/or from the assets of my Estate so long as the total amount of property she receives upon my death is worth Twenty Thousand Dollars ($20,000.00).

(Decedent's Last Will and Testament, Fifth Clause).

After having found against Wife's challenge to the facial validity of the Prenuptial Agreement on June 26, 2009, by order dated July 20, 2010, we described what had to be proven to determine whether Decedent had complied with Paragraph 9 of the Agreement during his lifetime. Our subsequent order of June 28, 2013, determined that Decedent had complied with this provision

---

[5] Paragraph 5 of the Prenuptial Agreement states in relevant part:

> Each of the parties hereto does hereby waive, release and relinquish any and all rights whatsoever which he or she may now have or hereinafter acquire . . . to share in the property or the estate of the other as surviving spouse, heir-at-law or otherwise, including without limitation . . . any rights as surviving spouse to elect to take against the other's Will (whether heretofore or hereafter made) . . . and any other similar rights granted to him or her by the laws of the Commonwealth of Pennsylvania . . . .

(Prenuptial Agreement, Paragraph 5).

by funding with his own monies after the parties' marriage sufficient jointly-owned assets which passed to Wife upon his death.

At this time, the Estate seeks to recover the attorney fees it has incurred in defense of Wife's claims against the Estate for the period between May 20, 2007 and February 29, 2012, in the amount of $105,393.40. The Estate relies on two provisions of the Prenuptial Agreement to support this request. (*See* Estate's New Matter in the Nature of Counterclaims to Wife's Objections to the Estate's First and Final Formal Account, Paragraph 87). In this respect, Paragraph 21 of the Prenuptial Agreement provides:

> In the event that either party breaches any provision of this Agreement and the other party retains counsel to enforce any provision hereof, the breaching party shall pay the enforcing party's reasonable counsel fees and costs incurred in the enforcement hereof.

(Prenuptial Agreement, Paragraph 21). Paragraph 22 provides:

> In the event that either party seeks to set aside any provision of this Agreement and the other party retains counsel to enforce any provision so sought to be set aside, the party defending the Agreement, if successful in such defense, shall receive all of his or her reasonable counsel fees and costs incurred in such defense from the other party.

(Prenuptial Agreement, Paragraph 22).

Wife filed an election to take against Decedent's Will on August 11, 2006, and further filed objections to the First and

Final Formal Account filed by the Estate on February 4, 2008 (the "Account"). In these objections, Wife contended, *inter alia*, that the Prenuptial Agreement was invalid for various reasons and should be set aside.[6] Whether by being withdrawn, not pursued, or denied by us, Wife's various objections to the Estate's Account challenging the validity of the Prenuptial Agreement have all been resolved in the Estate's favor.[7] Accordingly, as Wife is bound by the Agreement, she is subject to the payment of attorney fees for her unsuccessful attempt to set aside any of its provisions and for her breach of the Agreement by filing an election to take against Decedent's Will. The reasonableness and amount of these attorney fees are in dispute.

In addition, on January 10, 2012, Wife conveyed title to the home which she owned prior to her marriage to Decedent and which was in her name alone to herself, her new husband (Karl A. Sheckler), and her three children, "as tenants by the entirety between husband and wife and as joint tenants with the right of survivorship between the parties." The Estate contends this

---

[6] In her objections, Wife alleged the Prenuptial Agreement was facially invalid for failing to provide a detailed disclosure of the parties' assets, and also that the Agreement was invalid and unenforceable due to mutual mistake, legal duress, undue influence, fraudulent inducement and failure of consideration.

[7] Several objections raised by Wife to the Estate's account requested reimbursement for miscellaneous expenses Wife paid on behalf of the Estate which totaled $415.05 and opposed the Estate's claim for the return of several items of property which Wife kept after Decedent's death. These objections were ultimately resolved in Wife's favor by agreement of the parties. *See* order dated July 20, 2010.

transfer was a fraudulent conveyance under Pennsylvania's Uniform Fraudulent Transfer Act ("UFTA"), 12 Pa.C.S.A. §§ 5101-5110, to avoid payment of the Estate's claim for attorney fees.

Wife and Mr. Sheckler were married on July 2, 2011. On the same date as Wife's transfer of the title to her home, Mr. Sheckler also transferred title to his home and another property owned by him into his and Wife's names as tenants by the entireties. These two properties were worth $199,000.00 and $121,626.00, respectively, at the time of transfer.

DISCUSSION

Attorney Fees

Pursuant to Paragraphs 21 and 22 of the Prenuptial Agreement, Wife is responsible for paying the reasonable attorney fees incurred by the Estate in defending and enforcing the Agreement. This phase of the litigation, however, ended on January 25, 2010.[8] Thereafter, the litigation centered on

[8] At some point after we decided the facial validity of the Agreement, Wife abandoned her remaining challenges to the Agreement and her request to assert her elective share. The question is at what point this occurred. While Wife appears to acknowledge in her post-hearing submissions filed on December 5, 2014, that this concession occurred immediately after we denied Wife's facial challenge to the Prenuptial Agreement by our order dated June 26, 2009 (*See* Wife's Findings of Fact, Argument and Conclusions of Law, p.32), after reviewing the record, we believe this is incorrect.

The June 26, 2009, order only addressed Wife's challenge to the facial validity of the Prenuptial Agreement. If we had accepted Wife's argument that the Agreement was invalid on its face as a matter of law, there would have been no need for further hearings on this issue. Therefore, Wife's facial challenge was considered first. When this challenge failed, a hearing to address Wife's factual averments in support of invalidating the Agreement was scheduled for January 25, 2010. For purposes of this hearing, the scrivener of the Agreement, Edward Vermillion, Esquire, was subpoenaed by Wife's counsel and was present in court.

whether Decedent's obligation to pay Wife $20,000.00 was satisfied by way of jointly-owned property titled in Decedent and Wife's names at the time of Decedent's death, or whether Wife was entitled to receive $20,000.00 from Decedent's Estate by virtue of Paragraph 5 of his Will. Because these latter aspects of the dispute are not encompassed within the subject matter of Paragraphs 21 and 22, they are not a basis for an award of attorney fees. Absent any additional legal basis to hold Wife accountable for payment of the Estate's attorney fees incurred after January 25, 2010, having been presented by the Estate, we find no such liability exists.[9]

Although we are uncertain at this time why the hearing was continued (the Estate's counsel's billing records refer to an unexpected settlement proposal, *see* Estate Exhibit 3A, 1/25/10 entry; *see also* continuance application filed on 1/25/10), we did meet with counsel in conference on January 25, 2010. As best as we can ascertain at this time, it was during this meeting that Wife's counsel advised that because Wife would not be able to overcome the evidentiary bar of the Dead Man's Statute, Wife would not be presenting any evidence on this issue. Unfortunately, no record was made of what occurred at this meeting.

That the hearing on January 25, 2010, was scheduled to take testimony on Wife's challenge to the Prenuptial Agreement is evidenced further by the Estate's counsel's billing records in preparation for this hearing, their reference to the Agreement's scrivener being present in court on January 25, and Attorney Healy's testimony that he recalled discussing the case with Attorney Vermillion at that time. (N.T., 11/21/13, p.72; Estate Exhibit 3A (Estate invoices), 1/25/10 entry). Further, the Estate's invoices evidence no further preparation for this issue after January 25, 2010. It is also clear that after January 25, 2010, Wife never attempted to present evidence on this issue prior to the filing of our September 12, 2011, opinion in which the only issue addressed was the meaning of Paragraph 9 of the Prenuptial Agreement, an issue which would not have been reached had Wife's challenge to the validity of the entire Agreement still been outstanding. See also the transcript for the first hearing date scheduled after January 25, 2010, that on May 7, 2010, where no mention is made of Wife's challenge to the Prenuptial Agreement.

[9] Under the American Rule, each party bears responsibility for the payment of their own attorney fees unless provided otherwise by agreement, statute, or court rule. Trizechahn Gateway LLC v. Titus, 976 A.2d 474, 482-83 (Pa. 2009). Here, the Prenuptial Agreement places the burden of paying the Estate's attorney fees on Wife only with respect to those attorney fees

For the period between May 20, 2007 and January 25, 2010, the Estate's claim for attorney fees and costs is $50,938.30. (*See* Estate Exhibit 3A, Steckel and Stopp invoices dated June 30, 2007 through February 25, 2010). Of this amount $50,326.15 is for attorney fees: 225.57 hours billed by Attorney Healy at a starting rate in 2007 of $180.00 an hour and an ending rate in 2010 of $200.00 an hour for $43,501.65; 2 hours, or $360.00, for work by associates in Attorney Healy's office; and $6,464.50 for 35.15 hours of work by Attorney John Ashcraft, whom Attorney Healy employed as outside counsel to assist him in the case.[10] The balance - $612.15 – is for paralegal work ($485.10) and costs ($127.05). In contrast, the Estate's expert, Ronold Karasek, Esquire, estimated a reasonable attorney fee for the type of work performed by the Estate's counsel, taking into account the amount in controversy, to be between $20,000.00 and $25,000.00.

In determining the reasonableness of an attorney's fee claim, the following must be considered:

---

incurred by it in enforcing a breach of the Agreement or its defense of Wife's attempt to set aside the Agreement, not disputes over whether Decedent has complied with Paragraph 9 by funding jointly-owned assets during his lifetime or through the dispository provision in Paragraph 5 of his will. Moreover, since Decedent's attorney drafted this Agreement and Wife was unrepresented, any ambiguity in the meaning of the Agreement should be interpreted against Decedent. Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Bd., 739 A.2d 133, 139 (Pa. 1999).

[10] According to the invoices submitted to the Estate, Attorney Ashcraft first began doing work for which the Estate was charged on September 24, 2008, at which time Attorney Ashcraft's hourly billing rate was $170.00. By 2010, Attorney Ashcraft's hourly rate had increased to $200.00.

> [T]he amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was "created" by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and very importantly, the amount of money or the value of the property in question.

LaRocca Estate, 246 A.2d 337, 339 (Pa. 1968). It is also appropriate in valuing the reasonableness of attorney fees for the court to take into account whether the attorney fees sought are those of a claimant seeking to recover a principle amount or those of a defendant defending against a claim brought by another party, as is the case here, and to consider the nature, number and merits of the claims being made or defended against. *See, e.g.,* Mountain View Condominium Association v. Bomersbach, 734 A.2d 468, 470-71 (Pa.Cmwlth. 1999). Furthermore, the Court may rely upon "its knowledge of the rate of professional compensation usual at [this] time and place" in determining the amount of counsel fees to award. In re Thompson Estate, 232 A.2d 625, 631 (Pa. 1967); *see also* Wachovia Bank, N.A. v. Gemini Equipment Co., 1 Pa.D.&C.5th 235 (Dauphin Co. 2006) (trial court relied on the evidence presented, the court's own experience, its oversight of the litigation, and the prevailing hourly rates

in the community during the relevant time to set an award of attorney fees).

In this case, Attorney Healy, who has over twenty years' experience as a general civil practitioner and has handled approximately twenty-six orphans' court cases in his career, testified to what work was done and why; the need to research and respond to numerous and sometimes irrelevant issues raised by Wife; various evidentiary issues, including the Dead Man's Statute, which were in play; the number of hours he, associates in his office, and Attorney Ashcraft spent in defending against Wife's claims; and the hourly rates charged the Estate and how these rates compared to the prevailing rates in the community during the relevant time. Made part of the record was a detailed billing statement by Attorney Healy's office which included a description of each service rendered, by whom and the date, and the amount of the charge. Attorney Healy also testified that the amount of the services and costs charged in these billings were all reasonable and necessary, that favorable results were obtained, and that the Estate paid all invoices submitted by his firm.

Still, the hourly rate and the total number of hours charged to the Estate concern us. For instance, the Estate was charged $3,762.00 to prepare an answer to Wife's objections to the Estate's account (Estate Exhibit 3A, entries dated 7/9/08

through 8/29/08); $7,961.00 for a motion *in limine* and supporting brief (Estate Exhibit 3A, entries dated 9/30/08 through 10/15/08); almost $10,000.00 to prepare a memorandum of law (Estate Exhibit 3A, entries dated 3/16/09 through 3/30/09); and $5,577.00 for Attorney Healy to prepare and rehearse for oral argument on the memorandum (Estate Exhibit 3A, entries dated 6/18/09 through 6/26/09). Further, the average hourly attorney rate charged the Estate for the period in question is $191.56. No distinction is made between time in the office or time in court, or even between travel time. Considering the relevant factors outlined in LaRocca and the posture of the Estate as a defendant, as well as a thorough review of the amount charged the Estate for the work done during this period, we believe a reasonable attorney fee for the services and costs for which recovery is allowed under the Prenuptial Agreement is $35,000.00, plus costs.[11]

Fraudulent Conveyance

The paramount purpose of the UFTA is "to protect unsecured creditors against transfers and obligations injurious to their

[11] The gross value of the Decedent's Estate as set forth in the Estate's First and Final Formal Account is $371,235.08. The net amount stated for distribution in this account is $337,950.00. Had Wife been successful in setting aside the Prenuptial Agreement and asserting her one-third elective share pursuant to 20 Pa.C.S.A. § 2203 (a)(1), the value of the elective share, and therefore the amount at stake, is in excess of $110,000.00. In contrast, after the Prenuptial Agreement was upheld the amount at stake, at most, was $20,000.00, for which the Estate expended in excess of $55,000.00 in attorney fees and litigation costs.

rights." 12 Pa.C.S.A. § 5101, cmt.3.[12] In keeping with this objective, the UFTA is concerned primarily with the transfer of assets by a debtor which would otherwise be available to satisfy an unsecured debt. 12 Pa.C.S.A. § 5101, cmt.2. For this reason, the term assets as defined in the UFTA specifically excludes property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under non-bankruptcy law, and an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant. 12 Pa.C.S.A. § 5101 (b) (definitions). Further, when a transfer occurs, whether fair value is received in exchange is viewed from the unsecured creditor's perspective, not from that of the debtor. United States v. Rocky Mountain Holdings, Inc., 782 F.Supp.2d 106, 123 n.12 (W.D.Pa. 2011) (quoting In re R.M.L., Inc., 92 F.3d 139, 150 (3d Cir. 1996)). Accordingly, where the property received by the debtor in exchange for property transferred by the debtor is exempt from execution or solely benefits an entireties' estate in which the debtor is a joint tenant, "reasonably equivalent value" has not been received by the

[12] Pursuant to 1 Pa.C.S.A. § 1939 (use of comments and reports), the detailed Committee Comment that follows each section of the UFTA is not only informative, it bears directly on the interpretation of the statute; *see also* Fid. Bond & Mortg. v. Brand, 371 B.R. 708, 718 (E.D.Pa. 2007) ("Because the Committee Comments were written by the drafters of the UFTA in connection with the enactment of the statute and the Legislature had access to them prior to passing the legislation, the comments inform the meaning and operation of the UFTA's provisions.").

debtor. *See* Klein v. Weidner, 729 F.3d 280, 285 (3d Cir. 2013).

The value of the Wife's home at the time of transfer, as determined from the records maintained by the Carbon County Assessment Office, was $74,793.00. At this time, Wife also had income of approximately $1,400.00 a month (N.T., 5/21/12, pp.195-96) and a checking account in her name alone with a balance of $1,000.00. She was also the joint owner with her husband, Karl A. Sheckler, of four investment accounts with American Funds having a total value as of January 1, 2012, of $21,062.35; the sole owner of an IRS Tax Qualified Individual Retirement Account with American Funds with a balance as of January 1, 2012, of $8,857.16; and the sole owner of a fixed annuity with Liberty Bankers with a value as of January 26, 2012, of $11,686.47.

The Estate claims that the transfer of Wife's home was fraudulent under Sections 5104 and 5015 of the UFTA. Section 5104 provides as follows:

> **§ 5104 Transfers fraudulent as to present and future creditors**
>
> **(a) General rule.** A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) Certain factors. In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

12 Pa.C.S.A. § 5104.

Section 5105 provides:

> **§ 5105 Transfers fraudulent as to present creditors**
>
> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

12 Pa.C.S.A. § 5105. Insolvency under this Section and Section 5104 (b)(9) has the same meaning as defined in 12 Pa.C.S.A. § 5102, "balance sheet insolvency" or its presumptive equivalent - the inability to pay existing debts at the time of the transfer - whereas insolvency under Section 5104 (a)(2)(ii) concerns the debtor's ability to pay existing and future debts.

Section 5104 contains two tests for determining whether a transfer is fraudulent: Actual fraud under Section 5104 (a)(1) and constructive fraud under Section 5104 (a)(2). Section 5105 also deals with constructive fraud. In re Int'l Auction & Appraisal Servs. LLC (Carr v. Loeser), 493 B.R. 460, 468 (Bankr. M.D. Pa. 2013) ("Actual fraud is addressed in § 5104 (a)(1), and constructive fraud is addressed in §§ 5104 (a)(2) and 5105.").

Whether a transfer was made "with actual intent to hinder, delay or to defraud any creditor of the debtor" under Section 5104 (a)(1) is a question of fact. Section 5104 (b) sets forth

eleven, non-exclusive circumstantial factors that are relevant to a determination of this question. In reviewing these subsections, we find that Subsections (1), (2), (4), (5), (8), and (9) support the conclusion that Wife's transfer of her home constituted a fraudulent conveyance. The transfer was to an insider, Wife's husband and her children;[13] Wife retained an interest in the property after the transfer and therefore a right of use, possession and enjoyment;[14] the transfer was made after the Estate had asserted its claim for attorney fees in response to the Estate's First and Final Account and while this claim was still pending before the court; the transfer was of substantially all of Wife's assets since, with the exception of the $1,000.00 checking account, the remaining property held by Wife was all exempt from execution and does not meet the UFTA's definition of an asset;[15] no reasonably equivalent value was

---

[13] A spouse is an insider, Kraisinger v. Kraisinger, 34 A.3d 168, 174 (Pa.Super. 2011), as are children. Mid Penn Bank v. Farhat, 74 A.3d 149, 154 (Pa.Super. 2013).

[14] As a joint tenant, Wife retained the right to use, possess and enjoy the property. In re Estate of Quick, 905 A.2d 471, 474 (Pa. 2006); Madden v. Gosztonyi Savings & Trust Co., 200 A. 624, 627 (Pa. 1938).

[15] Section 5101 (b) of the UFTA excepts from the definition of "asset" property to the extent it is generally exempt from execution and attachment under non-bankruptcy law, or is an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant. 12 Pa.C.S.A. § 5101 (b). As previously noted, the four investments Wife holds in American Funds were jointly titled in her and her husband's names thereby rendering them immune from execution proceedings by the Estate. ISN Bank v. Rajaratnam, 83 A.3d 170, 173-74 (Pa.Super. 2013) (to execute upon property held as a tenancy by the entireties, a creditor must obtain a judgment against both the husband and the wife as joint debtors). The same applies to the two properties deeded by Mr. Sheckler into his and Wife's names as tenants by the entireties. Further, Wife's IRA account and tax-deferred fixed annuity are exempt from execution under Pennsylvania law. 42 Pa.C.S.A. § 8124 (b)(1)(ix)

received by Wife in exchange for the transfer since no consideration was received from Wife's children and the conveyance by Mr. Sheckler of his two properties were titled in his and Wife's names as tenants by the entireties, thereby exempting them as a source of recovery on execution of the debt owed by Wife to the Estate;[16] and Wife was rendered insolvent by the transfer in that she clearly no longer held sufficient assets from which the Estate could collect on payment of the amount owed to it.[17]

Finally, the date when Wife first met with an attorney to have title to her home transferred is extremely suspect, as is her selection of an attorney who had no knowledge of and was provided no information about the instant proceedings. In addition to having previously ruled against Wife on various

---

(cross-referencing to 26 U.S.C. §§ 408 and 408 A); 42 Pa.C.S.A. § 8124 (c) (3) – (4), (6); Pa.R.C.P. 3252 and 3123.1.

16 Consideration which is unreachable by creditors, such as property titled in the name of tenants by the entireties, is not "reasonably equivalent value." Klein v. Weidner, 729 F.3d 280, 285 (3d Cir. 2013).

17 Insolvency as defined in UFTA is "balance sheet insolvency," that is a debtor is insolvent if, "*at fair valuations*, the sum of the debtor's debts is greater than all of the debtor's assets." 12 Pa.C.S.A. § 5102 (a) (emphasis added). Since property which is exempt from execution is not considered an asset, as is property owned by the entireties where only one of the joint owners is a debtor, the only remaining asset which Wife owned following the conveyance of her home was her checking account with a $1,000.00 balance which Wife clearly knew would be insufficient to pay the amount of attorney fees claimed by the Estate. Although Wife appears not to have known the full extent of the Estate's claim for attorney fees at the time she transferred her home, in the First and Final Account filed by the Estate on February 4, 2008, to which Wife filed her objections on April 2, 2008 and supplemental objections on April 4, 2008, the Estate estimated the amount of its claim against Wife for attorney fees at that time to be $7,500.00. This was almost four years before Wife transferred the title to her home. Further, Wife knew that her own attorney fees as charged by her counsel totaled $18,729.42. Consequently, while Wife may not have known the exact amount of the Estate's claim at the time of transfer, she certainly had reason to believe it was far in excess of $1,000.00, and likely at least $20,000.00 to $25,000.00.

issues prior to September 12, 2011, by order dated that same date we determined it was Wife's burden to prove the jointly-owned assets which existed in her and Decedent's names at the time of Decedent's death were not acquired with Decedent's assets if she was to have any success in having the Estate pay her claim of $20,000.00. Approximately one month later, on October 17, 2011, Wife went to counsel to have the title to her home transferred. *Cf.* Iscovitz v. Filderman, 6 A.2d 270 (Pa. 1939) (finding that a guardian's transfer of significant portions of his ward's estate soon after he was cited by the court to file his account as guardian was relevant in determining whether the transfers were intentional acts of fraudulent conveyance).

The factors for determining actual fraud under Section 5104 (a)(1) are to be considered under a totality of the circumstances standard. 12 Pa.C.S.A. § 5104, cmt.6. Here, because six of the eleven factors enumerated in Section 5104 (b) for determining fraudulent intent have been met, we find actual intent to defraud has been established. *Cf.* In re Computer Personalities Systems, Inc. (Lichtenstein v. Aspect Computer Corp.), 362 B.R. 669, 674 (Bankr. E.D. Pa. 2006) (recognizing that while the presence of just one factor may cause suspicion of debtor's intent, several may be sufficient to establish actual intent to defraud); *see also In re* Model Imperial, Inc.

(Development Specialists, Inc. v. Hamilton Bank, N.A.), 250 B.R. 776, 792 (Bankr. S.D. Fl. 2000) (while one specific badge of fraud will be insufficient, the "confluence of several can provide conclusive evidence of an actual intent to defraud").[18] Under the same analysis used in evaluating Subsections (8) and (9) of Section 5104 (b) with respect to actual fraud, we find that constructive fraud has been proven under Section 5104 (a)(2)(ii) in that Wife did not receive a reasonably equivalent value in exchange for the transfer and she believed or reasonably should have believed that her remaining assets would be insufficient to pay her debts as they became due. Similarly, the Estate is entitled to relief under 12 Pa.C.S.A. § 5105, which applies specifically to creditors whose claims arise before a transfer has been made.

CONCLUSION

For the reasons stated, we find the Estate is entitled to recover $35,000.00 in attorney fees plus costs from Wife under the terms of the Prenuptial Agreement for her breach of the Agreement and her attempt to set aside its provisions. Having determined that the conveyance by Wife of her home to her husband and three children was fraudulent, pursuant to 12 Pa.C.S.A § 5107 (a) an order will be entered voiding the January 10, 2012, transfer of Wife's home at 136 Mauch Chunk Street,

[18] Because the UFTA is a uniform law, its interpretation should be consistent with that of other states which have adopted the statute. 1 Pa.C.S.A. § 1927 (construction of uniform laws).

Lehighton, Carbon County, Pennsylvania, and enjoining all grantees of that conveyance from transferring, leasing or encumbering, or damaging, wasting and/or otherwise converting the said property or any interest therein, or attempting to do the same, until further order of court.

BY THE COURT:

_____
P.J.