

COPY

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

IN RE: :
ESTATE OF FREDERICK R. SCOTT : No. 20-9180
A/K/A FRED R. SCOTT A/K/A :
FRED SCOTT, Decedent :
:

Jason M. Rapa, Esquire Counsel for Dylan Scott, Executor
Michael P. Gough, Esquire Counsel for V.S.
Julie Ann Jablonsky Pro Se

MEMORANDUM OPINION

Serfass, J. - September 14, 2023

Here before the Court is the appeal of our Final Decree of June 23, 2023, denying the "Exceptions to Arguments" filed by Julie Ann Jablonsky and adopting the recommendations contained within the Report of the Master. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), respectfully recommending that our Final Decree of June 23, 2023, be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Frederick R. Scott died in his residence at 200 Sunrise Drive, Lehighton, Carbon County, Pennsylvania on May 27, 2020. On June 8, 2020, Dylan Scott filed a Petition for Probate and Grant of Letters Testamentary pursuant to the Last Will and Testament of Frederick R. Scott (hereinafter "Decedent"). The probate petition

2023 SEP 14 A.D.B.P.
CARBON COUNTY
REGISTER OF WILLS
CLERK OF ORPHANS' COURT

FILED

avers that in the ninth article of the aforesaid will, dated February 23, 2018, Decedent appointed his grandson, Dylan Scott (hereinafter "Executor"), to serve as executor of his estate.

On June 22, 2020, Julie Ann Jablonsky (hereinafter "Appellant"), filed a "Petition for the Removal of Executor". The petition averred that Appellant is the daughter of Decedent and that he had two wills at the time of his death; one dated October 9, 2012, and the other dated February 23, 2018. The petition alleges that the will dated February 23, 2018 was drafted without the knowledge or permission of Decedent. Therefore, Appellant requested that this Court remove Dylan Scott as Executor of the Estate. Executor filed an "Answer to the Petition for Removal of Executor" on August 7, 2020, in which he denied all of Appellant's allegations and requested that this Court deny the petition and assess all costs and reasonable attorney's fees incurred in responding to the same upon Appellant. Following an evidentiary hearing, we issued an Order on June 30, 2021, which denied Appellant's "Petition for the Removal of Executor".

On November 15, 2021, Executor filed a "First and Partial Account" which provided a summary of the estate account; receipts of principal; gains and losses on sales or other dispositions; disbursements of principal; principal balance on hand; changes in principal holding; combined balance on hand; and proposed distributions to beneficiaries. Executor also filed a "Petition

for Abatement of Specific Bequest" on November 15, 2021, requesting that this Court issue an order which would permit the sale of the specific bequests outlined in Articles Second and Third of Decedent's will at fair market value with the proceeds to be abated proportionally prior to final distribution in order to pay the remaining claimants of the Estate.

On December 9, 2021, Appellant filed "Objections to the First and Partial Account of Dylan Frederick Scott, Executor" averring that the Account did not comply with the Orphans' Court Rules. Appellant averred that the Account violated Rule 2.1 which provides, "the Account must list the dates of all receipts, disbursements and distributions, the sources of the receipts and the persons to who disbursements and distributions were made and the purpose thereof", because Executor did not provide the date of the receipt or the distribution of funds received for Decedent's 2016 Volkswagen Tiguan sport utility vehicle. Appellant further objected to the majority of Executor's accounting such as: the sale of the 2016 Volkswagen Tiguan for the sum of twelve thousand dollars (\$12,000.00) because she believed that the fair market value was higher; and the failure of the Executor to include the Decedent's personal property, specifically a quilt and a saxophone. Appellant also filed an "Answer to Petition for Abatement of Specific Bequest" on December 29, 2021, requesting that "the tax clause be determined to be legally insufficient to

abut (sic) the statutory presumption and that abatement of the non-probate assets be allowed".

On January 5, 2022, we appointed Eric R. Strauss, Esquire, as Master (hereinafter "the Master") to examine the Objections to the Account and the Petition for Abatement of Specific Bequests and Answer thereto, schedule/hold hearings as deemed necessary, and issue recommendations to the Court¹. The Master filed an Interim Report on February 22, 2022 with recommendations to the Court for the appointment of counsel for a minor beneficiary, V.S. (hereinafter "V.S."), directing that the parties complete discovery and that the Executor provide certain documentation through counsel to Appellant, and that the parties provide the Master with a statement of stipulated facts and memorandum of law prior to a follow-up telephone conference between the parties and the Master on April 6, 2022. The Court entered an Order based on the Master's recommendations on February 25, 2022, which included the appointment of Michael P. Gough, Esquire, as counsel for the minor beneficiary, V.S.

Following the aforesaid telephone conference with the Master on April 6, 2022, a Second Interim Report was filed including further discovery directives, and setting a hearing date before the Master on June 14, 2022.

¹ Pursuant to 20 Pa.C.S. §751(1), the orphans' court divisions of the courts of common pleas may appoint masters "to investigate any issue of fact and to report his findings of fact, conclusions of law and recommendations to the court."

On September 14, 2022, a "Report of Master" was prepared and filed by Attorney Strauss. In his Report, the Master recommended that "...the Court grant the Executor's Petition and direct that the specific devise and bequests provided under the Decedent's Will be abated under PEF Code Section 3541 and that the Executor is authorized and directed to sell the Decedent's real property located at 200 Sunrise Drive, Franklin Township, Carbon County, Pennsylvania, and use the proceeds thereof to pay all reasonable debts, administrative expenses and inheritance tax, including to tax attributable to the non-probate "in trust for" accounts and annuities listed on Schedule G of the inheritance tax return filed by the Executor." The Master further recommended that the Court "...order Julie Ann Jablonsky to cooperate with the Executor in promptly vacating 200 Sunrise Drive and removing her personal belongings within thirty (30) days following the confirmation of a Decree Nisi." In absence of an agreement between the parties, the Master also recommended that any remaining proceeds following the sale and payment of the aforementioned items be the subject of a Second and Final Account which shall include a schedule of proposed distribution. It was further recommended that Appellant's objections be dismissed with prejudice, with the exception of her objection to the Executor's counsel fees. In the absence of an agreement between the parties, the Master recommended

that the reasonableness of the Executor's counsel fees be deferred and addressed upon review of the Second and Final Account.

On September 19, 2022, a Decree Nisi was entered by this Court which adopted the factual findings and legal conclusions of the Master. The Decree Nisi provided that the objections of Julie Ann Jablonsky were dismissed, with the exception of her objection relating to the Executor's legal fees. In the absence of an agreement between the parties, a ruling on this objection would be addressed upon the filing of the Second and Final Estate Account. The Decree Nisi also granted the "Petition for Abatement of Specific Bequests" filed by Executor and ordered Appellant to vacate Decedent's real property within thirty (30) days following the confirmation of the Decree Nisi.

On October 5, 2022, Appellant filed Exceptions to the Decree Nisi. In these Exceptions, Appellant challenged: the validity of the Decedent's February 2018 Will, stated that, "the context had been altered"; the amount of expenses, fabricated accounting, and legal fees; the assignment of a Master without notice; the appointment of counsel for minor beneficiary, V.S.; the distribution of the Decedent's property; and many other issues which are not applicable nor relevant in the present case. On October 21, 2022, Executor filed a "Response to Exceptions to Decree Nisi Filed by Appellant" which denied all allegations

contained within the Appellant's Exceptions and requested that this Court enter an appropriate order denying said Exceptions.

Appellant also filed a "Petition to Intervene" in this matter on April 18, 2023 and an "Amended Petition to Intervene" on May 5, 2023. The Petitions allege that Executor was issuing checks on the Decedent's behalf without his knowledge while he was hospitalized and that Executor did not provide any aid when the Decedent's health began to decline. Appellant further alleged that there is a substantial amount of evidence to show "dereliction of duty, extortion, and fraud" on the part of the Executor and V.S. On May 1, 2023, Executor filed a "Response to Petition to Intervene" and on May 16, 2023, filed a "Response to Amended Petition to Intervene" which both averred that Appellant failed to articulate any permitted basis under 231 Pa. Code §2327 to intervene in the pending action, and requested that the "Petition to Intervene" and "Amended Petition to Intervene" both be denied. Counsel on behalf of V.S. filed a "Response to Petition to Intervene and Amended Petition to Intervene" which averred, *inter alia*, that Appellant failed to articulate any basis to intervene in the instant action and requested that this Court deny the petitions.

Appellant also filed a "Motion for Nunc Pro Tunc to Correct Omissions" on May 12, 2023, which alleged that her prior counsel

omitted a proposal and objections to an accounting filed by opposing counsel and had done so without Appellant's consent.

On June 20, 2023, this Court entered two Orders in this matter. The first Order denied both the "Petition to Intervene" and the "Amended Petition to Intervene". The second Order denied Appellant's "Motion for Nunc Pro Tunc to Correct Omissions". No appeal has been taken from either Order.

On June 23, 2023, we entered a Final Decree in this matter which provided that Appellant's exceptions were denied and dismissed and that the Master's findings of fact, conclusions of law and recommendations were accepted in full, the petition for abatement of specific bequests was granted and that the Decree Nisi issued by this Court on September 19, 2022 was confirmed absolutely as was the First and Partial Account filed by the executor on November 15, 2021, subject to the objection related to the executor's legal fees which would be addressed upon the filing of the Second and Final Estate Account.

On July 17, 2023, Appellant filed a Notice of Appeal of our Order of June 23, 2023, to the Pennsylvania Superior Court. On July 24, 2023, this Court ordered Appellant to file of record and serve upon the undersigned a concise statement of matters complained of in her appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). In response to our Order, Appellant filed a twenty-one (21) page "Concise Statement of Matters

Complained of on Appeal" on August 10, 2023. This statement contains fifty-two (52) separate matters which Appellant seeks to raise on appeal. An Amended Concise Statement containing sixty (60) matters complained of on appeal was filed on August 11, 2023.

DISCUSSION

In the case of Kanter v. Epstein, 866 A.2d 394, 401 (Pa.Super. 2004), the defendants filed separate fifteen (15) page Rule 1925(b) Statements which together identified one hundred four (104) issues on appeal. Citing Pennsylvania Rule of Appellate Procedure 2116(a), the Superior Court found that the defendants' Rule 1925(b) Statement identified significantly more issues than they could have possibly raised on appeal and, thus, the Court held that "[b]y raising an outrageous number of issues, the Defendants have deliberately circumvented the meaning and purpose of Rule 1925(b) and have thereby effectively precluded appellate review of the issues they now seek to raise". Id. Concluding that the motive underlying the defendants' conduct was "...to overwhelm the court system to such an extent that the courts are forced to throw up their proverbial hands in frustration," the Superior Court held that the defendants had failed to preserve any of their issues for appellate review and quashed the appeal. Id. at 402.

In the instant matter, the "Concise Statement of Matters Complained of on Appeal" filed by Appellant is anything but concise. Appellant's twenty-one (21) page Rule 1925(b) Statement

contains sixty (60) issues that she seeks to raise on appeal. While we recognize that the 2013 amendments to Pennsylvania Rule of Appellate Procedure 2116(a) eliminated the page limit for the statement of questions involved, we note that "verbosity continues to be discouraged" and that "[t]he appellate courts strongly disfavor a statement that is not concise". See Pa.R.A.P. 2116, Note: Paragraph (a).

The Superior Court explained in Riley v. Foley, 783 A.2d 807, 813 (Pa.Super. 2001), that a Rule 1925(b) Statement is a crucial component of the appellate process because it allows the trial court to identify and focus on those issues the parties plan to raise on appeal. "When an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues." Commonwealth v. Dowling, 778 A.2d 683, 686 (Pa.Super. 2001). We recognize that not all lengthy 1925(b) Statements require waiver and dismissal. See Eiser v. Brown & Williamson Tobacco Corp., 938 A.2d 417 (Pa. 2007). Here, while the number of issues identified in Appellant's 1925(b) Statement, by itself is not dispositive, when compared to the complexity of the case and the limited number of issues before the Master, we cannot find that this case, involving a one hour Master's hearing, warrants the number of errors alleged by Appellant. Again, we note that a Rule 1925(b) Statement "...must

be sufficiently "concise" and "coherent" such that the trial judge may be able to identify the issues to be raised on appeal...". Commonwealth v. Vurimindi, 200 A.3d 1031, 1038 (Pa.Super. 2018). Rather than assisting this Court in preparing an opinion, Appellant's voluminous Rule 1925(b) Statement has hindered our ability to address the issues she seeks to raise before the Superior Court. Many of the issues raised by Appellant are redundant, frivolous and provide lengthy explanations concerning errors asserted. Such a statement is contrary to Rule 1925(b)(4) and circumvents the purpose of the Rule, effectively precluding meaningful appellate review. "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review". Commonwealth v. McCree, 857 A.2d 188, 192 (Pa.Super. 2004). Therefore, we conclude that Appellant has failed to preserve any issues for appellate review.

However, for the convenience of the Honorable Superior Court, we have attached hereto a copy of the Report of the Master which was adopted by this Court and addresses all issues raised by Appellant in her "Objections to the First and Partial Account of Dylan Frederick Scott, Executor", as well as the Petition for Abatement of Specific Bequests.

The record before this Court reflects that the Master conducted a thorough hearing on June 14, 2022, following which he submitted a detailed fourteen (14) page report in conformity with

Pennsylvania Rule of Orphans' Court Procedure 9.4. Thereafter, this Court reviewed the case, examined the report and recommendations, adopted the same and issued a decree nisi adopting the factual findings and legal conclusions of the master as our own.

Appellant timely filed "Exceptions to Arguments" which generally challenge the validity of the Decedent's Last Will and Testament, raise claims of ineffectiveness of counsel, and attempt to address matters which are pending in the separate civil litigation initiated by the Executor against Appellant for ejectment and replevin docketed to Carbon County Case No. 20-1883. We note that "...exceptions to master's findings or reports must be set forth separately and be stated precisely and without discussion." In re Sweeney, 695 A.2d 426, 430 (Pa.Super. 1997). While Appellant's exceptions were separately set forth in sequentially numbered paragraphs, they are imprecise and stated with extensive discussion. Indeed, Appellant seems to be seeking further judicial hearings or *de novo* review of the matters considered by the Master. As we elected to accept the findings of fact, conclusions of law and recommendations of the master *in toto*, she is entitled to neither.

The role of the orphans' court judge in reviewing a master's report is similar to a review by a judge of the findings of a jury.

In re Krepunovich's Estate, 248 A.2d 844 (Pa. 1969). In that

regard, we found that the master's report was supported by competent and adequate evidence as reflected in the record, that the master committed no error in applying the law to the relevant facts and that Appellant's exceptions were without merit.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Final Decree of June 23, 2023, be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.

Eric R. Strauss, Esquire
2610 Walbert Avenue
Allentown, PA 18104
Telephone: (610) 437-4896
Facsimile: (610) 433-3955
estrauss@worthlawoffices.com

Court Appointed Master

IN RE: ESTATE OF FREDERICK R. SCOTT :
a/k/a FRED R. SCOTT : NO. 2020-9180
a/k/a FRED SCOTT, deceased :

REPORT OF MASTER

AND NOW, comes the undersigned, Eric R. Strauss, Esquire, of Worth, Magee and Fisher, P.C., Court appointed Master per Order of this Honorable Court dated January 5, 2021 and makes the following Report pursuant to Carbon County Local Orphans' Court Rule 8.6.1:

A. Procedural History

1. Dylan Frederick Scott, Executor of the within Estate (the "Executor"), by and through his counsel, Jason M. Rapa, Esquire filed a First and Partial Account (the "Account") and a related Petition for Adjudication on November 15, 2021.

2. Julie Ann Jablonsky (the "Objector"), a beneficiary of the Estate and specific devisee of real property located at 200 Sunrise Drive, Franklin Township, Carbon County, Pennsylvania under Article SECOND of the Decedent's Last Will and Testament dated February 23, 2018 (the "Will"), timely filed Objections to the

and Testament dated February 23, 2018 (the “Will”), timely filed Objections to the Account on December 29, 2021, by and through her counsel, Jane S. Sebelin, Esquire.

3. The Executor, through Attorney Rapa, filed a Response to Objections on January 18, 2022.

4. In a related proceeding under the within term and docket number, the Executor filed a Petition for Abatement of Specific Bequests on November 15, 2021, the gist of which is Executor’s contention that the estate assets currently under probate are insufficient to pay the Decedent’s debts, administrative expenses, and the inheritance tax. As to the latter, he directs the Court’s attention to Article FIFTH of the Decedent’s Will, which directs that all inheritance tax on the assets forming the gross taxable estate “whether or not passing under [the] Will” are to be paid from residue as an administrative expense.

5. Objector, through her counsel, filed an Answer to Petition for Abatement of Specific Bequests on December 29, 2021.

6. Both parties filed supporting briefs on the issues raised in the pleadings on the issue of abatement.

7. The Court entered an Order on January 5, 2022, appointing the undersigned as Master to examine the Objections and the Petition for Abatement of Specific Bequests, conduct any necessary hearings, and make recommendations to the Court.

8. Upon the recommendation of the undersigned Master, the Court entered an Order of February 25, 2022 appointing Michael P. Gough, Esquire to represent the interests of Veronica Scott, a minor beneficiary of the within Estate and he filed an entry of appearance on March 9, 2022. That Order further directed the parties to submit a statement of stipulated facts and statement of facts in dispute to the Master on or before April 6, 2022.

9. On March 9, 2022, Attorney Gough filed an Answer by Minor Beneficiary to Petition for Abatement of Specific Bequests on behalf of Veronica Scott in which he joined in the Executor's prayer for relief that the real estate specifically devised to Julie Ann Jablonsky and vehicles specifically bequeathed to Dylan Frederick Scott and Veronica Scott be sold at fair market value and abated proportionally prior to distribution.

10. On April 5, 2022, the Objector, through counsel, filed a Joint Statement of Disputed Facts indicating that the factual issues raised in her Objections had been resolved, with the exception of the allegation that the Executor took possession of a quilt and a saxophone and failed to list them on the Inventory.

11. A hearing was held before the undersigned Master on June 14, 2022. In attendance were the parties and counsel. The issues before the Master were limited to testimony as to the whereabouts of the quilt and saxophone referenced above and oral argument on the abatement issue. Objector offered no evidence in support of her remaining Objections.

B. Factual Background

The undisputed factual background can be gleaned from the inheritance tax return, the Account, the probate record, and the transcript of the Master's hearing, which is attached as Exhibit "A".

The Decedent died testate on May 27, 2020 leaving a Last Will and Testament dated February 23, 2018 (the "Will"). Under the terms of the Will, he specifically devised his real property located at 200 Sunrise Drive, Franklin Township, Pennsylvania, to his daughter, Julie Ann Jablonsky (the Objector). Any vehicles owned by the Decedent (the only vehicle owned by the Decedent was a 2016 VW Tiguan, which was sold by the Executor for \$12,000.00) were specifically bequeathed to the Decedent's grandchildren, Dylan Frederick Scott (the Executor) and Veronica Marie Scott, a Minor. The residue of the estate was to be divided in three parts—one fourth to Dylan Frederick Scott, one-fourth to Veronica Marie Scott, and one half to Julie Ann Jablonsky.

Of significance is the tax apportionment clause of the Will in Article FIFTH, which provides that all inheritance tax, including tax on assets not disposed of by the Will, be paid from the residue of the estate as an administrative expense.

As the Pennsylvania Inheritance Tax return dated September 22 and filed on September 23, 2021, and supporting documentation reflect, the Decedent owned substantial assets that passed outside of probate at the time of his death. Specifically, the Decedent owned multiple accounts that were held "in trust for" (ITF)

Dylan and Veronica Scott valued at \$204,976.93. The bank signature cards that the Decedent signed to open those accounts in January and October 2017 (prior to the date of the Will) contain a check-the-box “revocable trust” designation and specifically name Dylan, Veronica, or both of them as beneficiaries. There were also two annuities valued at \$128,677.33 that listed Julie Ann Jablonsky, Veronica Scott, and Dylan Scott as beneficiaries. No evidence was presented as to when the beneficiary designation forms associated with these accounts were executed. The total date-of-death value of these non-probate assets is \$333,654.26.

The relatively modest assets that form the probate estate include the real estate on Sunrise Drive that was specifically devised to Julie Ann Jablonsky, valued at \$105,896.00 along with household contents, a small refund from an insurance company, various firearms and a vehicle—all of which were collectively valued at \$25,403.00 in the Inheritance Tax Return and Account. In her Objections, Objector also asserts that there was a quilt and saxophone that should have been included in the Inventory.

The Inheritance Tax Return also lists funeral and administrative expenses in the total amount of \$33,717.39 and a small amount of debts in the total amount of \$978.13. In addition, the return also shows a Pennsylvania Inheritance Tax liability in the amount of \$19,361.60, which includes approximately \$15,014.00 of tax attributable to the non-probate assets referenced above.

In summary, if the specifically devised real estate is removed from the estate, the Executor is left with approximately \$25,000.00 of cash from which he is called upon to satisfy debts, administrative expenses, and Inheritance Tax in the combined total amount of \$54,057.12.

The Master notes that there are expenses listed on Schedule H of the Inheritance Tax Return that do not appear in the Account—notably “Accountant fees” in the amount of \$5,000.00. No testimony was offered on this and the Master will assume that either this was an estimate for inheritance tax purposes or is a bill that has not yet been paid and is therefore not entered in the Account, which is filed as a First and Partial Account. However, this amount should be explained when Executor files his final account upon concluding the administration of the within estate. If accounting fees are listed on a later-filed account that is before the undersigned, they should be substantiated in detail, as the figure appears to be high relative to what appears to be an estate with few assets that earned no significant income. For purposes of the within Master’s Report, even if the accountant fees are removed from the equation, the Executor still lacks the available cash to pay the debts, administrative expenses, and inheritance tax.

A brief hearing was held before the Master on June 14, 2022. The Objector presented testimony on one issue—her belief that the Executor unlawfully took possession of a quilt and saxophone that she had purchased as gifts for the Decedent. As the brief transcript of the hearing reveals, she did not see him take these items

and offered no facts indicating that they were in his possession at any time. She testified that the last time she saw these items was approximately 6 years prior to the Decedent's death. The Executor denied having any knowledge of these items. Based upon the scant evidence presented, the Master concludes that the evidence does not support the conclusion that the Executor removed the quilt and saxophone from the Decedent's home or otherwise took possession of them.

Objector's counsel also raised an issue concerning the reasonableness of the legal fees charged by Executor's counsel—particularly the fees related to the Executor's efforts to have Objector removed from the property so that it can be sold to pay debts, administrative expenses and inheritance tax. Executor's counsel explained the basis for his fees but offered no itemized listing. It is recommended that, in the absence of an agreement between the parties, a ruling on the reasonableness of counsel fees paid by the estate be deferred until the filing of the Second and Final Account.

The remainder of the hearing consisted of oral argument by counsel on the issue of whether the specific bequest of the real property on Sunrise Drive to Objector should abate so that the property can be sold to generate cash from which the Executor can pay the debts, administrative expenses, and inheritance tax due.

C. Abatement of Specific Bequest of Real Property to Julie Ann Jablonsky

The Source of Payment provisions in the Pennsylvania Inheritance Tax Act generally require that, in the absence of a contrary intent appearing in the Will, the

ultimate liability for inheritance tax falls upon the transferee. 72 P.S. Section 9144(f). Objector argues that the Will contains conflicting provisions—a specific devise of real estate, on one hand, and on the other hand a “pay all tax from residue” clause in an estate that lacks sufficient liquidity to pay all of the expenses without first selling the specifically devised real estate. In view of this conflict, Objector suggests that the tax apportionment clause in the Decedent’s Will is not clear enough to override the statutory presumption that the individually named beneficiaries of the non-probate assets valued at \$333,654.26 pay the inheritance tax in the approximate amount of \$15,014.00 out of their own pockets. Her suggested approach would substantially lessen the tax burden that falls upon the residuary estate and would enable the Executor to distribute to her the specifically devised real property on Sunrise Drive.

Though Objector’s counsel skillfully argued this point, the Master does not agree with her conclusion. The tax clause in the within case is abundantly clear. It provides “[A]ll Federal, State and other death taxes payable because of my death, with respect to property forming my gross estate for tax purposes, *whether or not passing under the will*, including any interest or penalty imposed in connection with such tax, shall be considered a part of the expense of administration of my estate and shall be paid out of the principal of my estate without apportionment or right of reimbursement”. (emphasis added), see Will, Item 5.

The Objector cites some of the leading cases where Pennsylvania Courts have found the language of a tax clause to be sufficiently clear to override the statutory presumption regarding the source from which inheritance tax is paid. See, In re: Estate of Leo Davis, 128 A.3d 819 (Pa. Super 2015), In re Estate of Jones, 796 A.2d 1003 (Pa. Super 2002). She also cites cases where the courts have concluded that the language of a tax clause was not deemed to be sufficient to override the statutory presumption. See, In re: Estate of Pyle , 570 A.2d 1074 (Pa.Super. 1990). (*Note by Master: typo in Objector's Brief misspells "Pyle" as "Pile"*). The Master disagrees with Objector as to the application of those cases to the language of the tax clause in this case. The Master concludes that the tax clause in the within case is abundantly clear and more closely resembles the language of the tax clauses in Davis and Jones and sufficiently overrides the statutory presumption in 72 P.S. Section 9144(f). As such the Will clearly requires that the inheritance tax on the non-probate assets in this case be paid from the principal of the Decedent's estate.

Unfortunately for Objector, the estate lacks the available cash to pay the inheritance tax, debts, and administrative expenses. This inescapable conclusion requires an examination of the abatement provisions of 20 Pa.C.S.A. Section 3541. Objector asserts that the statutory reference in 20 Pa.C.S.A. Section 3541 (a)(7) to “[p]roperty not disposed of by the will” as having the lowest priority of distribution (i.e. the first assets to abate), is a reference to non-probate assets like the annuities and “in-trust for” accounts involved in this case. She cites no authority for this

conclusion and the Master's research found none. By the same token, the Master's research found no authority or legislative comments that define or shed light on what the term "property not disposed of by the will" refers to.

A careful analysis of related provisions of the Pennsylvania Probate, Estates and Fiduciaries Code ("PEF Code") offers guidance and leads to the conclusion that "property not disposed of by the will", as used in the statute, does not include non-probate assets. Rather, the term would apply to a case where a will contained no residuary clause and there are assets which pass by partial intestacy. This interpretation is in harmony with several other provisions in the PEF Code.

First, PEF Code Section 301 provides that "Legal title to a Decedent's real estate passes at death to his heirs or devisees, *subject, however, to all powers granted to the personal representative* by this title and lawfully by the will and to all orders of the court". (emphasis added). The italicized phrase clearly anticipates the potential need for the personal representative to exercise control over specifically devised real estate if required to complete the estate administration and authorizes him to do so. Several cases discuss the right of specific devisees to in-kind distribution where sale *is not* reasonably necessary to pay debts or to make distribution. See Minichello Estate, 368 Pa. 369, 84 A.2d 511 (1951) and cases cited therein. In this case, however, sale *is* necessary and the italicized phrase of the statute would have no meaning if Objector's argument were to prevail.

Second, PEF Code Section 3542 provides that where an abatement occurs, the court “may make orders of contribution among *legatees or devisees* to accomplish an abatement in accordance with the provisions of Section 3541...”. (Emphasis added). Under the express language of the statute, the court’s power to require contribution only applies to legatees and devisees (i.e., heirs who take under the will) and does not extend to transferees of non-probate property.

Finally, as to the non-probate “in trust for” bank deposits in the within case, the provisions of Pennsylvania Multi-Party Accounts statute must be taken into consideration. Counsel for the Executor directs our attention to PEF Code Section 6301 *et seq.*, and Sections 6304(b) and 6306, in particular. Under these sections, beneficiary designated “trust accounts” are not testamentary and pass at death to the designated beneficiary unless there is clear and convincing evidence of a different intent at the time the account is created. 20 Pa.C.S.A. Section 6304(b). The forms that the Decedent signed to open the “in trust for” accounts in this case contain clear “check the box” language that designate his grandchildren as beneficiaries. Objector offered no “evidence of a contrary intent at the time the account was created”, so the clear language of the statute controls. It should be noted that individuals have tried to argue that the provisions of a will can be used as “evidence of a contrary intent”, but that argument has been squarely rejected. In re Estate of Novosielski, 2007 PA Super 292, 937 A.2d 449, 2007 Pa. Super. LEXIS 3110 (Pa. Super. Ct. 2007), reversed by, remanded by 605 Pa. 508, 992 A.2d 89, 2010 Pa. LEXIS 795 (2010). Also, in the

within case, the beneficiary forms under which the non-probate accounts pass were completed prior to the execution of the Decedent's Will.

However, the analysis does not end there. Unlike the provisions of the Pennsylvania Transfer on Death Security Registration statute found in PEF Code Section 6409(b), the provisions of the Multi-Party Accounts statute do not reference the rights of creditors or other claimants against non-probate "in trust for" accounts paid to a named beneficiary outside of probate. Though not cited by either party, Comment (d) to §58 of the Restatement of Trusts, Second, dealing with tentative trusts of bank accounts and savings deposits, states that the creditors of the depositor can reach his interests in the account and, upon the death of the depositor, the depositor's creditors can reach the account if the deposit is needed to pay the depositor's debts. The comment goes on to state that the account can be applied to the payment of funeral expenses and the expenses of the administration of the estate if the estate does not have sufficient other property to pay those expenses. This comment was adopted by the Pennsylvania Superior Court in In re Estate of Stevenson, 436 Pa. Super. 576, 648 A. 2d 559 (1994), the court holding that a decedent's "in trust for" accounts were liable for the decedent's administrative expenses to the extent those expenses exceeded estate assets.

The facts of Stevenson are distinguishable from the facts of the within case. In Stevenson, the estate was *insolvent* and lacked the assets necessary to pay the decedent's debts, burial, and administrative expenses. In the within case, the estate

is *solvent, though it is illiquid* and lacks available cash needed to pay the bills. The Master declines to extend the holding of Stevenson to cases where the estate is solvent.

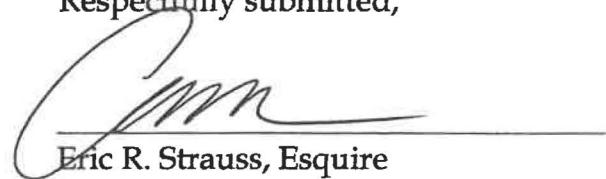
For the reasons stated above, the Master recommends that the Court grant the Executor's Petition and direct that the specific devise and bequests provided under the Decedent's Will be abated under PEF Code Section 3541 and that the Executor is authorized and directed to sell the Decedent's real property located at 200 Sunrise Drive, Franklin Township, Carbon County, Pennsylvania and use the proceeds thereof to pay all reasonable debts, administrative expenses, and inheritance tax, including to tax attributable to the non-probate "in trust for" accounts and annuities listed on Schedule G of the inheritance tax return filed by the Executor. It is further recommended that the Court order Julie Ann Jablonsky to cooperate with the Executor in promptly vacating 200 Sunrise Drive and removing her personal belongings within 30 days from the confirmation of a Decree Nisi.

In the absence of an agreement between the parties, any remaining proceeds following sale and payment of the aforementioned items shall be the subject of a Second and Final Account which shall include a schedule of proposed distribution. It is further recommended that Objector's Objections be dismissed with prejudice, with the exception of her Objection to the Executor's counsel fees. In the absence of an agreement between the parties, the reasonableness of the Executor's counsel fees shall be addressed upon review of the Second and Final Account.

D. Master's Fees and Expenses

The Master has expended 19 hours of time in the within matter and a statement of the Master's time and costs advanced is attached hereto as Exhibit "B". The Auditor respectfully requests that the Court approve payment to the Auditor in the amount of \$1,430.38 (based upon customary rate of \$75.00 per hour) which includes expenses itemized thereon in the amount of \$5.38, to be paid from the Estate as an administrative expense. It is further recommended that the Court direct the Estate to reimburse the Master for any and all customary filing, postage fees, and other out of pocket costs incurred or advanced by him in the course of transmitting and serving this report upon the parties.

Respectfully submitted,



Eric R. Strauss, Esquire
Master