

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF	:	IN THE SUPERIOR COURT OF
GUY L. STRAUSBAUGH, SR.,	:	PENNSYLVANIA
DECEASED	:	
	:	
APPEAL OF:	:	
GUY L. STRAUSBAUGH, JR.,	:	
EXECUTOR	:	No. 138 MDA 2013

Appeal from the Order Entered December 5, 2012,
In the Court of Common Pleas of York County,
Orphans' Court Division, at No. 6711-1355.

BEFORE: BENDER, SHOGAN and MUSMANN, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED SEPTEMBER 25, 2013**

Executor Guy L. Strausbaugh, Jr., on behalf of the estate of Guy L. Strausbaugh, Sr. ("Appellant"), appeals the order granting a motion for nonsuit.¹ Upon review, we reverse and remand.

This case results from claims that Appellee, Denise Hyson ("Hyson"), had breached her fiduciary duty to Guy L. Strausbaugh, Sr. ("Decedent").

The parties stipulated to the following facts:

Petitioner is Guy L. Strausbaugh, Sr. (Guy Sr.) who currently resides with his son, Guy L. Strausbaugh, Jr. (Guy Jr.) at 3450 Duff Ave, Lancaster, PA 17601. Respondent is Denise Hyson (Ms. Hyson), the daughter and former agent for Guy Sr. Ms. Hyson currently resides at 3381 Indian Rock Dam Road, York, PA 17408. From 2001 until February 2011 Guy Sr. resided in the

¹ Guy L. Strausbaugh, Sr., died after the notice of appeal was filed with this Court. By order dated June 12, 2013, this Court granted Guy L. Strausbaugh, Jr.'s application to substitute the Estate of Guy L. Strausbaugh, Sr., Deceased, as Appellant in this matter. The caption was changed pursuant to this order.

trailer currently occupied by Ms. Hyson at the Indian Rock Dam Road address. When Guy Sr. moved into the residence in 2001 it was owned by his sister, Lucy. Upon Lucy's death in 2003, title to the residence was given to Ms. Hyson who agreed to allow Guy Sr. to continue living there. On May 7, 2001, Guy Sr. executed a durable power of attorney appointing Ms. Hyson as his agent and his son, Guy Jr., as successor agent if Ms. Hyson was unwilling or unable to act as agent. Guy Sr. lived in the home until February 26, 2011 when he was hospitalized following a fall. He has not returned to the residence to live since that time. On March 1, 2011, Guy Sr. executed a new Durable Power of Attorney naming Guy Jr. as his agent.

Joint Memorandum, 9/6/12, at 1.

On August 12, 2011, Appellant filed a Petition for Citation to Show Cause Why Account Should Not Be Filed and for Return of Personal Property. The matter proceeded to trial. At the close of Appellant's case-in-chief, Hyson's Attorney made a motion for nonsuit. The orphans' court granted the motion for nonsuit by order dated December 5, 2012. Appellant's exceptions, filed on December 17, 2012, were denied by court order on December 20, 2012. Appellant timely filed a notice of appeal on January 18, 2012.² Pursuant to court order, Appellant timely filed a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The orphans' court filed an opinion and an amended supplemental opinion pursuant to Pa.R.A.P. 1925(a).

² Pa.O.C.R. 7.1(a) provides that exceptions must be filed within twenty days from entry of an otherwise final appealable order. Note to Pa.O.C.R. 7.1 states that the thirty-day appeal period, pursuant to Pa.R.A.P. 903, begins to run from the date of entry of the order disposing of the exceptions. Appellant complied with these time constraints and, thus, the current appeal is timely.

Appellant presents the following issues for our review:

1. Whether the trial court erred in granting a non-suit despite clear evidence at trial that [Hyson] had a durable power of attorney?
2. Whether the trial court erred in granting a non-suit where the evidence at trial established that [Hyson] engaged in self-dealing and breached her fiduciary duty to [Decedent]?

Appellant's Brief at 2.

When reviewing a decision made by the orphans' court:

The findings of an Orphans' Court judge must be accorded the same weight and effect as a jury verdict. This Court can modify an Orphans' Court decree only if it is unsupported by competent or adequate evidence or if an error of law, abuse of discretion or capricious disbelief of competent evidence has taken place.

Salvadia v. Ashbrook, 923 A.2d 436, 441 (Pa. Super. 2007). When reviewing a trial court's grant of a nonsuit, our standard of review is as follows:

A motion for compulsory non-suit allows a defendant to test the sufficiency of a plaintiff's evidence and may be entered only in cases where it is clear that the plaintiff has not established a cause of action; in making this determination, the plaintiff must be given the benefit of all reasonable inferences arising from the evidence. When so viewed, a non-suit is properly entered if the plaintiff has not introduced sufficient evidence to establish the necessary elements to maintain a cause of action; it is the duty of the trial court to make this determination prior to the submission of the case to the jury. When this Court reviews the grant of a non-suit, we must resolve all conflicts in the evidence in favor of the party against whom the non-suit was entered. A compulsory non-suit is proper only where the facts and circumstances compel the conclusion that the defendants are not liable upon the cause of action pleaded by the plaintiff.

Parker v. Freilich, 803 A.2d 738, 744-745 (Pa. Super. 2002).

A fiduciary duty arises from a confidential relationship, which has been described as follows:

The Supreme Court has determined that a confidential relationship and the resulting fiduciary duty may attach wherever one occupies toward another such a position of advisor or counsellor as reasonably to inspire confidence that he will act in good faith for the other's interest. In some cases, as between . . . guardian and ward, attorney and client, and principal and agent, the existence of a confidential relationship is a matter of law. In other cases, where these relationships do not exist, confidential relations may still arise based on the facts and circumstances apparent on the record.

Basile v. H&R Block, Inc., 777 A.2d 95, 101-102 (Pa. Super. 2001)
(internal citations and quotation marks omitted).

With regard to Appellant's first issue, we note that the orphans' court filed a supplemental opinion indicating that it had overlooked the parties' stipulation regarding Hyson's status as attorney-in-fact. Orphans' Court Addendum to Opinion, 1/11/13, at 1. We too acknowledge the stipulation of the parties filed prior to trial and conclude that, at the time relevant to the allegations in this case, Hyson was Decedent's attorney-in-fact pursuant to a durable power of attorney executed by Decedent. Joint Memorandum, 9/6/12, at 1. Because Hyson was acting as Decedent's attorney-in-fact, she had a fiduciary duty to Decedent. Thus, we shall consider Appellant's subsequent claims that the orphans' court erred in granting a non-suit where the evidence established that Hyson engaged in self-dealing and breached her fiduciary duty to Decedent.

Appellant claims essentially four instances in which Hyson breached her fiduciary duty to Decedent: 1) Hyson pressured Decedent into converting money held in a certificate of deposit ("CD") in the approximate amount of \$43,000.00 into a joint account with Hyson at a new bank; 2) Hyson failed to return personal property to Decedent; 3) Hyson cashed out a CD in the approximate amount of \$7,000.00 and failed to follow Decedent's directive regarding some of those funds; and 4) Hyson misappropriated funds from Decedent's account in the amount of \$381.48 in order to pay for property taxes after Decedent was no longer living at the property. Appellant's Brief at 13-17. The orphans' court granted nonsuit as to all four allegations.

We begin with a review of the claim that Hyson unduly influenced Decedent into converting the CD worth approximately \$43,000.00 into a joint account. Appellant asserts that Hyson's transfer of these funds was a violation of her fiduciary duty. Appellant's Brief at 13.

Decedent testified at trial that Hyson had the funds from Decedent's CD converted to a joint account at a new bank of Hyson's choosing. N.T., 11/19/12, at 65-66. Decedent further testified regarding Hyson's threats, made on several occasions, that if Decedent did not transfer the funds from the CD into a new joint account, that Hyson would no longer allow Decedent to live in the trailer owned by Hyson. *Id.* at 24. Decedent stated that he

did not intend for the money in that account to be a gift to Hyson. ***Id.*** at 24-25. Decedent further testified that he wanted Hyson's name removed from the account. ***Id.*** at 25. There was conflicting testimony regarding Decedent's recollection of signing the new account form, but when shown the form, Decedent stated that the signatures were not his. ***Id.*** at 61-62, 149. The evidence presented at trial also established that Decedent's relationship with Hyson was strained. ***Id.*** 118-119.

Based on the evidence presented, and viewing all evidence in favor of the Decedent, we cannot agree with the orphans' court that Decedent failed to establish a *prima facie* case of Hyson's breach of fiduciary duty to Decedent. There was no evidence that Decedent had requested that Hyson convert this money to a new account, and if so, the reason for the conversion. Ironically, if the orphans' court had denied the motion for nonsuit and had allowed Hyson's testimony, that issue may have been clarified. In fact, Decedent testified that he did not want the money moved from his original bank, and Hyson threatened that Decedent would no longer be able to live in the trailer if he did not agree to have the funds transferred to a new account requiring both signatures at a different bank. Decedent testified that he did not intend for the money in this account to be a gift to Hyson and that he wanted Hyson's signature removed from the account. Although no evidence was presented that Hyson had misappropriated funds

from that account, the fact that the money was converted to an account requiring Hyson's signature limited Decedent's access to those funds. Based on the evidence presented, Appellant established a *prima facie* case that those funds were converted against his wishes.

Additionally, we are cognizant of the significant consequences of the creation of this joint account in light of Decedent's death. "Where a sole owner of a bank account **converts the account into a joint one** owned by himself and another, as evidenced by a duly signed signature card, the transaction is *prima facie* one of an *inter vivos* gift." ***In re Estate of Eastman***, 760 A.2d 16, 19 (Pa. Super. 2000) (quoting ***In re Estate of Dziarski***, 296 A.2d 716, 718 (Pa. 1972)) (emphasis added). We cannot conclude that the evidence presented at trial indicated that Decedent wished to make an *inter vivos* gift to Hyson. Furthermore, pursuant to 20 Pa.C.S.A. § 6304(a), sums remaining on deposit at the death of a joint owner belong to the surviving owner and not the estate of the decedent, absent clear and convincing evidence of a different intent at the time the account is created. Thus, as a result of Decedent's death, the remaining sums would arguably belong to Hyson. Viewing the evidence presented at trial most favorably to Appellant, there is clear and convincing evidence that this was not

Decedent's intent.³ Therefore, we conclude that the orphans' court erred in finding that Appellant failed to present evidence that would establish a *prima facie* case that Hyson had breached her fiduciary duty to Decedent regarding conversion of the \$43,000.00 CD into a joint account.

With regard to the personal property Hyson allegedly converted, there was significant testimony establishing a laundry list of items that Decedent claimed were in Hyson's control after Decedent was no longer living at the property. N.T., 11/19/12, at 37-41. Viewing the evidence in the light most favorable to Appellant, there is a *prima facie* case that Hyson still has possession of these items. ***Id.*** at 170, 172-176. Thus, Appellant has established a *prima facie* case that Hyson breached her fiduciary duty to Decedent regarding the personal property. Accordingly, the orphans' court erred in granting a nonsuit as to this claim.

Next, Appellant maintains that in further breach of her fiduciary duty, Hyson deposited the funds from the \$7,000.00 CD into her personal account while Decedent was in the hospital, withdrew \$3,500.00 for herself but failed

³ We note that throughout its opinion, the orphans' court made various factual determinations and found some testimony presented by Appellant's witnesses as not credible. The standard for entry of a nonsuit, as discussed previously, requires that the plaintiff be given the benefit of every fact and all reasonable inferences arising from the evidence and all conflicts in evidence must be resolved in plaintiff's favor. ***Alfonsi v. Huntington Hospital, Inc.***, 798 A.2d 216, 218 (Pa. Super. 2002) (*en banc*). Therefore, it was legal error for the orphans' court to make these factual and credibility determinations and to enter nonsuit on that basis.

to give Guy, Jr. the remaining \$3,500.00 per Decedent's directive. Appellant's Brief at 14. Appellant asserts that Hyson deposited \$3,500.00 into Decedent's checking account with knowledge that Decedent could no longer sign checks. ***Id.***

Evidence at trial established that Decedent had directed Hyson to cash the \$7,000.00 CD and provide one-half to herself and one-half to Decedent's son, Guy, Jr. Hyson complied by cashing the CD and taking for herself \$3,500.00. N.T., 11/19/12, at 30. Hyson did not, however, deliver the other half of the money to Guy, Jr., but instead, placed it in an unidentified bank account. ***Id.*** at 161.

While it has not been represented that Hyson stole the funds intended for Guy, Jr., the evidence establishes that she did not comply with Decedent's directives, as Hyson's fiduciary duty required. Additionally, it is unclear from the testimony whether the account into which the funds intended for Guy Jr. were deposited was one that required the signature of both Decedent and Hyson. If so, Decedent's ability to convey those funds to Guy, Jr., pursuant to his original intent, was impeded.

Finally, we review Appellant's claim regarding payment of property taxes. In exchange for allowing Decedent to live in the mobile home, Decedent agreed to pay the electric, gas and water bills and the taxes for the property. Appellant's Brief at 4. Appellant maintains that Hyson

breached her fiduciary duty to Decedent by issuing a check from Decedent's funds to pay the property taxes on the mobile home after Decedent was no longer living there. Appellant's Brief at 15.

Decedent testified to the arrangement he had with Hyson regarding his residency in the mobile home:

The arrangement was I paid all the bills there, electric, and gas, and water, and whatever it was, and the taxes, and that was supposed to be my rent money.

N.T., 11/19/12, at 13. Testimony at trial established that a check for property taxes on the mobile home was drawn on Decedent's account after Decedent had no longer been living at the mobile home. *Id.* at 31. While it may be rebutted by testimony from Hyson regarding when the check was written and when Hyson had notice that Decedent would no longer be living in the mobile home, such testimony was not provided by Hyson due to the orphans' court's grant of nonsuit. Thus, viewing the evidence in the light most favorable to Appellant, we conclude that Appellant established a *prima facie* case that Hyson breached her fiduciary duty to Decedent by paying property taxes after Decedent had moved from the home.

In conclusion, the orphans' court erred in granting Hyson's motion for nonsuit. Accordingly, we reverse and remand for further proceedings consistent with this memorandum.

Order reversed. Case remanded. Jurisdiction relinquished.

J-S49019-13

Judgment Entered.

Mary A. Graybill
Deputy Prothonotary

Date: 9/25/2013