

real estate, for it cannot be determined from the evidence presented by the plaintiffs whether or where their eastern boundary line would close with their northern boundary line, and whether it would include some or all of the disputed tract and whether it might also include additional real estate of the defendants or other unknown parties. The evidence presented will not support an action to quiet title by the plaintiffs, and the defendants may not in the interest of justice be required to initiate an action of ejectment for an unknown tract.

Parenthetically, we feel it important to note that this decision should not be construed as establishing the boundary lines of the parties on the basis of either survey presented to the Court.

DECREE NISI

NOW, this 6th day of February, 1984, the complaint of Gervas William Robinson and Soon B. Robinson, his wife, and Florence Marie Robinson Clapper, plaintiffs, is dismissed for failure of the plaintiffs to prove their title to the disputed real estate by a preponderance of the evidence.

This Decree Nisi shall become absolute pursuant to the applicable Rules of Civil Procedure unless exceptions are filed within ten (10) days after notice of the filing of the adjudication.

ESTATE OF GEORGE W. GEYER, (NO. 2), C.P. Franklin County Branch, No. 54-1982

Orphans Court - Estate of Decedent - Advance Distribution - Bond

1. The Court has the discretionary authority to make an award for advance distribution from an estate.
2. Where there is the possibility that a claimant may be assessed for counsel fees and costs, the Court may require a bond be posted to ensure the estate is reimbursed should such a contingency arise.

Thomas J. Finucane, Esquire, Counsel for Petitioner



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LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing with the Department of State of the Commonwealth of Pennsylvania, on June 5, 1984, an application for a certificate for the conducting of a business under the assumed or fictitious name of SHULL-KOONTZ CEMETERY MEMORIAL with its principal place of business at 130 East Queen Street, Chambersburg, PA 17201. The name and address of the person owning or interested in said business is Everett Marble & Granite Works, Inc. R. D. #1, Box 56, Everett, PA 15537.

6-15

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing with the Department of State of the Commonwealth of Pennsylvania, on May 30, 1984, an application for a certificate for the conducting of a business under the assumed or fictitious name of SITES BROS. T/A YOUSE GARAGE, with its principal place of business at 9272 Mercersburg Road, Mercersburg, PA 17236. The names and addresses of the persons owning or interested in said business is Stanley D. Sites, 10003 Mercersburg Road, Mercersburg, PA 17236 and Silvan J. Sites, 9433 Mercersburg Road, Mercersburg, PA 17236.

6-15

IN THE COURT OF COMMON PLEAS OF THE 39th JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 5, 1984.

PISLE First and final account, statement of proposed distribution and notice to the creditors of The Valley Bank & Trust Company, Eugene G. Pisle and Doris E. Pisle, Executors of the estate of Eber H. Pisle late of Antrim Township, Franklin County, Pennsylvania deceased.

SMITH First and final account, statement of proposed distribution and notice to the creditors of Eleanor M. Smith, Executrix of the Estate of Mildred K. Smith late of the

LEGAL NOTICES, cont.

Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
6-15, 6-22, 6-29, 7-6

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing with the Department of State of the Commonwealth of Pennsylvania, on May 17, 1984, an application for a certificate for the conducting of a business under the assumed or fictitious name of JAGAD ENTERPRISES, with its principal place of business at 975 South Main Street, Chambersburg, Pennsylvania 17201. The names and addresses of the persons owning or interested in said business are Eugene R. Eberly, 2071 Mt. Pleasant Rd., Fayetteville, PA 17222; Kenneth E. Shuman, 9635 Forest Ridge Rd., Shippensburg, PA 17257; A. Henry Brechbill, 2545 Mont Alto Rd., Chambersburg, PA 17201; Leshier Poultry Farm, 1153 Swamp Fox Road, Chambersburg, PA 17201 - Melvin R. Leshier, partner, Kenneth A. Leshier, partner, Willis M. Leshier, partner; J. Paul Lytle, 205 Pine Stump Road, Chambersburg, PA 17201; Norman J. Brechbill, 6470 LeMar Road, Mercersburg, PA 17222; Ken-Mel Farms, 6470 LeMar Road, Mercersburg, PA 17236 - Kenneth Mellott, partner, T. June Mellott, partner; F. Michael Koons, 408 W. Baltimore St., Greencastle, PA 17225; Marlin L. Maclay, 254 Edgewater Drive, Chambersburg, PA 17201; Dennis C. Brechbill, 3830 Fetterhoff Chapel Rd., Chambersburg, PA 17201; Amos A. Gayman, 1545 Edgar Avenue, Chambersburg, PA 17201; Glenn G. Hissong, 12109 Karper Road, Mercersburg, PA 17236; Benjamin T. Davis, P.O. Box 251, Marion, PA 17235; L. Marion Leshier, 6007 Bikle Road, Chambersburg, PA 17201; John C. McKenzie, 5038 Fetterhoff Chapel Rd., Chambersburg, PA 17201; M. Dice Statler, 369 Social Island Rd., Chambersburg, PA 17201; Phillip R. Hammond, 896 Forrest Road, Chambersburg, PA 17201; Raymond C. Wingert, 3681 New Franklin Rd., Chambersburg, PA 17201; and Kenneth H. Mummert, 6353 Rowe Run Road, Chambersburg PA 17201.

Richard K. Hoskinson of
Mower, Hoskinson and Nelson
232 Lincoln Way Esat
Chambersburg, PA 17201

6-15

Joseph F. Roda, Esquire, Counsel for Estate of George W. Geyer, Deceased.

OPINION AND DECREE

KELLER, J., February 17, 1984:

On November 3, 1983, counsel for the surviving spouse of George W. Geyer, deceased, presented her petition for partial distribution of the sum of \$20,000 from the estate of her deceased husband. On the same date an Order was signed directing the issuance of a citation upon George W. Geyer, III, Executor, to show cause why he should not be ordered to make distribution pursuant to the prayer of the petition. Hearing was scheduled for December 6, 1983 at 1:30 o'clock p.m. if an answer was filed objecting to the distribution. On November 30, 1983, the Executor's Answer denying the surviving spouse's request was filed. The hearing scheduled for December 6, 1983 was continued until December 16, 1983, and held commencing at 9:30 a.m.

We make the following Findings of Fact.

FINDINGS OF FACT

1. The petitioner, Rosalie S. Geyer, is the widow of George W. Geyer, deceased.
2. George W. Geyer died May 1, 1982, and letters testamentary on his estate were issued to his son, George W. Geyer, III on May 7, 1983.
3. By his Last Will and Testament George W. Geyer bequeathed the sum of \$20,000 to his widow and devised his home property at 542 Guilford Avenue, Chambersburg, Pa. to her. The home was appraised by the Executor in his initial Inventory and Appraisal at \$74,000, and in a supplemental Inventory and Appraisal at \$57,500.
4. The widow elected to take against the will despite a prenuptial settlement agreement and after protracted litigation, the executor's petition to set aside the election was dismissed. The executor has appealed the decision of the trial court.
5. If the executor's appeal is unsuccessful and the widow's election stands, she will be entitled to one-third of the net estate.
6. The executor on September 12, 1983, filed a first and partial account which showed a balance of \$1,056,208.71 as of April 30, 1983.

7. The widow has filed objections to the executor's first and partial account, and the executor admits if the objections are sustained, the balance shown on the account will be increased.

8. The executor testified that the estate has ongoing expenses which are paid periodically but no significant debts, and no creditor has made any claim within one year of the date of death of George W. Geyer that has not been paid.

9. The inheritance taxes and estate taxes on the estate have been paid.

10. At the time of the death of George W. Geyer, the widow was living in the home property and continued to reside there until June 1, 1983.

11. Prior to May 3, 1983, counsel for the executor had given the widow notice that she would be required to pay rent to continue living in the family home or she would have to vacate it. Counsel for the widow, also prior to May 3, 1983, advised executor's counsel that the widow refused to vacate the home or commence paying rent, because she believed herself to be entitled to live there rent-free as long as she wished or until it was sold.

12. During the week preceding May 21, 1983, the widow agreed to buy the home at 50 Woodland Way, Chambersburg, Pennsylvania, and settled for that home on May 21, 1983. The purchase price for the home was \$59,900. The widow's mother gave her the down-payment of \$12,900 and the widow borrowed the remaining \$47,000 on a mortgage to the Farmers & Merchants Trust Company.

13. The widow's new home has a living room, kitchen, kitchenette, three bedrooms, bath, basement, carport and a large yard. It is a much smaller home than the family home had been.

14. While the widow lived in the family home, she had paid the real estate taxes in 1982 of \$500.00, utilities of \$200.00 per month and yard and pool upkeep of \$100.00 to \$150.00 per month, and the heating expense of \$4,000.00.

15. The widow may have felt she should leave the family home after she received the request to pay rent or vacate, but the real reason for her move was the expense of the upkeep of the family home.

16. Immediately following the death of her husband the widow had \$80.00 in a joint checking account, \$2,000 in a personal account, and a \$15,000 certificate of deposit. She received \$5,000 in life insurance by reason of his death and approximately \$9,000 as a profit-sharing distribution from the decedent's corporation. She also received income tax refund at a later date of approximately \$7,000. Therefore, she had cash or readily convertible assets



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totalling \$38,000 within a short time of Mr. Geyer's death.

17. The widow received Social Security as a result of her husband's death in the amount of \$664.00 per month, and that was increased to \$785.00 in approximately July 1983.

18. Mrs. Geyer teaches piano lessons and earns \$15.00 to \$20.00 per week from that activity.

19. Mrs. Geyer has received no distribution from her husband's estate.

20. She testified that as of the date of the hearing she had approximately \$5,000 of the \$38,000 left, and had spent the remainder on attorneys' fees, upkeep of the family home, living expenses, and auto repairs and improvements to the new home and the expense of the new home including mortgage payments.

21. On cross-examination the widow itemized her monthly expenses, and they totalled approximately \$1,500.

22. The monthly mortgage payments of the widow are \$510.83.

23. Mrs. Geyer's mother has helped her financially by giving her the downpayment on her new home. On cross-examination she testified that she anticipates that she and her two siblings will share in the mother's assets which she estimates to be approximately \$60,000. However, this is merely an expectancy.

24. Mrs. Geyer testified that the tenants who occupied the rental property at the rear of the Geyer home had been ordered to vacate the property in June 1982, and she had received no rental income from the property after that date.

25. Upon being shown a letter from counsel for the Executor dated April 28, 1983, the widow testified she had been wrong and the tenants occupied the premises until around 1983.

26. The letter from executor's counsel to widow's counsel confirmed an agreement that the widow had been receiving rental payments from the tenants for "approximately the past year," and Mrs. Geyer would repay all rental payments she had received from the tenants through an adjustment to the portion of the estate due her when distribution of the estate is made. It further confirmed that she would accept no more rental payments and would direct that they be made to the executor.

27. Counsel for the executor and the widow agree that the rental payments she received will require an adjustment to the portion of the estate due her when distribution is made in the amount of \$1,200.00.

28. The law firm of Sharpe & Sharpe initially represented the executor in his administration of the estate, and also in all aspects of the litigation involving the widow's election to take against the will. Subsequent to the executor's appeal from the adverse decision of the trial court, the executor discharged his then counsel and retained new counsel. The executor and the original counsel for the estate negotiated a total fee for all services rendered in the amount of \$35,000 and the same was paid from assets of the estate. The senior partner of the law firm of Sharpe & Sharpe testified that 60% of the total fee or \$21,000 would properly be allocated to the litigation aspects of the matter, and the remaining \$14,000 to representation of the executor in the administration of the estate.

29. The certified public accountant firm of Smith, Elliott, Kearns & Company was retained by the executor to value the stock of the Geyer Lumber Company, and to testify at the hearing involving the widow's election to take against the will on the matter of the stock evaluation and also concerning the agenda at a meeting held on January 12, 1982. The executor paid Smith, Elliott, Kearns & Company the sum of \$180.00 from assets of the estate for services rendered the estate.

30. The executor testified that he has paid present counsel, Joseph F. Roda, Esq., \$14,700 for attorney's fee and for costs advanced. That entire expenditure is properly attributed either to the appeal or to other proceedings initiated by the widow concerning the estate.

31. No indication has been given by counsel as to when the Superior Court will hear arguments on the appeal, and therefore there is no possible indication as to when the Superior Court will dispose of the appeal.

32. The widow's out-of-pocket expenses substantially exceed her income.

33. In all of the proceedings initiated by the widow and involving the estate, she has either prevailed or the matters have been withdrawn and the issues resolved by compromise.

34. The widow has filed a petition for the removal of the executor, and that proceeding will not be concluded until the Auditor appointed to rule on the objections to the First and Partial Account has filed his report, because certain of the objections to the account are also alleged as grounds for removal.

DISCUSSION

Counsel for the executor contends that the widow's various proceedings have caused the estate to incur substantial expenses by

way of attorney fees and costs, and if it is determined that she brought any or all of the proceedings arbitrarily or in bad faith or for dilatory, obdurate or vexatious reasons, the estate would be entitled to an award of fees and costs from her. 42 Pa. C.S.A. Sec. 2503. Therefore, counsel argues that if the trial court should be reversed by the Superior Court on the widow's election issue, she would only be entitled to recover the residence plus the \$20,000 bequest and those assets could be substantially depleted or even exhausted by awards of counsel fees and costs to the estate.

To the contrary, counsel for the widow contends that Mr. Geyer had been deceased for almost 20 months as the date of the hearing, and Mrs. Geyer has received no distribution from the estate and she is in financial need at this time. He directed the attention of the Court to the fact that the executor had borrowed funds from the estate, and since only the executor in his individual capacity and the widow are entitled to share in the estate, it is fair and equitable that the widow be given at least an advance partial distribution of her interest in the estate.

Counsel for the executor contends there is no right to an advance distribution out of an estate, but concedes the court does have discretionary authority to make such an award, and if the widow's request is to be granted in whole or in part, he urges that it should be conditioned upon a bond to insure reimbursement to the estate, if such should later be held necessary.

While we have no intention of prejudging the issue of whether the share of the widow in this estate may be assessed for counsel fees and costs as a result of litigation initiated by her and her counsel, it does seem rather unlikely that such an assessment would be made in those proceedings where she has either prevailed or the matter has been satisfactorily resolved by a compromise. Of course in the matters not yet resolved or if new proceedings are commenced, the potential for such assessments cannot be disregarded. In addition, it has been conceded that Mrs. Geyer's share of the estate will be charged with a \$1,200.00 in rental payments she received that were due the estate. On the other side of the coin is the undisputed fact that Mrs. Geyer's liquid assets have been severely depleted, and her living expenses substantially exceed her income and there are no prospects for an early distribution.

Under the circumstances, we feel it would be appropriate to order an advance distribution of \$15,000.00 to Rosalie S. Geyer, widow, on the condition that she post a bond in the full amount of the advance distribution in favor of the estate, and payable on the condition that she is required to reimburse the estate for expenses and counsel fees as the Court may determine.



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LEGAL NOTICES, cont.

Pennsylvania Guardian for Esther McNeal Hess, of Washington Township, Franklin County, Pennsylvania, an Incompetent.
Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania
6-22, 6-29, 7-7

IN THE COURT OF COMMON PLEAS OF
THE 39th JUDICIAL DISTRICT OF
FRANKLIN COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

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SMITH First and final account, statement of proposed distribution and notice to the creditors of Eleanor M. Smith, Executrix of the Estate of Mildred K. Smith late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.
Glenn E. Shadle
Clerk of Orphans' Court of
6-15, 6-22, 6-29, 7-6

DECREE

NOW, this 17th day of February, 1984, the Executor is directed to make an advance distribution of \$15,000 to Rosalie S. Geyer, widow, from the assets of the Estate of George W. Geyer, Deceased, on the condition that the said Rosalie S. Geyer shall execute a bond in favor of the estate in the amount of \$15,000 payable on the condition that she is required to reimburse the estate for expenses and counsel fees as the Court may determine.

Exceptions are granted the Petitioner and Respondent.

HALL V. BLUE RIDGE ENERGY, INC., C.P. Franklin County Branch, No. A.D. 1983) 322

Assumpsit - Employment Agreement - Breach by Employer

1. When one party breaches part of a contract, it cannot later demand compliance by the non-breaching party to other terms of the same contract.
2. Where employer terminated a contract without giving the required 90 day notice, employee is not bound to provisions allowing the company 180 days to repurchase his stock.

J. Dennis Guyer, Esquire, Attorney for Plaintiff

Jan G. Sulcove, Esquire, Attorney for Defendant

Joseph L. Doyle, Esquire, Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., February 21, 1984:

J. Michael Hall was employed by Blue Ridge Energy, Inc. for a period of five years from December 1, 1981, under a written agreement.

Blue Ridge fired Hall effective August 19, 1983, before the five-year term expired, and Hall sued. Among other things he asks that Blue Ridge pay him the agreed price for the sale-back of his stock and medical expenses he incurred for his daughter at a time when he