

contrary to the situation where their father, still legally married to their mother, openly kept the company of another woman. Visitation under such conditions would not be in the best interest of the children and such a situation was reasonably avoided by the limitation placed in the court's order.

The order entered providing for visitation by Mr. Somers with his children is not as restrictive as the one entered in *Drum*, supra, and therefore we do not view it as overly broad and/or contrary to the laws of the Commonwealth. Keeping in mind that a parent's visitation rights cannot be limited except in situations where the *severe* mental or moral deficiencies of the parent constitute a real and grave threat to the welfare of the children, *Commonwealth ex rel. Lotz v. Lotz*, 188 Pa. Super. 241, 146 A. 2d 363 (1958), we have limited the condition imposed upon father's visitation rights to specific hours so as not to unreasonably infringe upon his reasonable rights. Balancing these rights against the sincere religious beliefs of respondent concerning her children being exposed to another woman as their father's companion and the best interests of the children, we believe that the restriction imposed upon Mr. Somers' right to visitation is indeed a proper one, particularly in light of its limited scope.

We remain convinced our order was appropriate under the evidence presented to us.

ROCK ESTATE, C.P. O.D. Franklin County Branch, Case No. 79 of 1981

Orphans' Court - Separate Counts - Demurrer - Removal of Personal Representative

1. Pa. R.C.P. 1020 (a) applies to petitions filed in the Orphans' Court Division.
2. Where several causes of action are alleged in a petition, they should be set forth in separate counts.
3. Removal of a personal representative chosen by a testator is a drastic action to be taken only when the estate is endangered.
4. Personal relationship between the executors and a debtor of the estate is not grounds per se for removal of those in whom a testator placed trust.
5. A petitioner can bring before the court the issue of an executor's failure to execute on a debt by requesting a citation to show cause where the executor should not execute on the debt.

Rudolf M. Wertime, Esq. Attorney for Executrices

Patrick J. Redding, Esq., Attorney for Widow, Eva M. Rock

Jay R. Braderman, Esq., Attorney for Petitioner

OPINION AND ORDER

EPPINGER, P.J., November 23, 1982:

Marlin Rock, who is a son of Roy N. Rock, the decedent, and who is also a beneficiary under the latter's will, filed a petition for a citation upon the decedent's personal representatives to show cause why they should not file an account and to show cause why they should not be removed from office.

The executrices, who are the decedent's daughters, filed an answer and preliminary objections. The answer is to the citation to show cause why they should not file an account and the preliminary objections go to the demand that they be removed from office.

The executrices contend that the allegations of the petition are so interwoven as to make it impractical to state a defense to both, that the theories of the two prayers of the petition are entirely different and that therefore separate petitions should have been filed or the causes joined as two separate counts. Pa. R.C.P. 1020(a) which is applicable here requires that in pleading, each cause of action shall be state in separate counts, containing a demand of relief.

We believe that the requests to require the personal representatives to file an account and the request for their removal are separate causes of action. If separate causes of action could be maintained for separate relief, then there is more than one cause of action. 2A Anderson Pa. Civ. Prac. Sec. 1020.1. So we will grant the motion to strike.

In deciding whether to sustain a demurrer, the Court must determine whether the facts which the petitioner avers, assuming they are true, state a claim against the executrices upon which relief could be granted. *Taylor v. Richman*, 395 Pa. 162, 149 A.2d 69 (1959). Before the Court will exercise its power to remove personal representatives, it must appear that the interests of the estate are likely to be jeopardized by the fiduciaries continuing in office. *Breichner Estate*, 432 Pa. 150, 156, 247 A.2d 779 (1968); *Fraiman Estate*, 408 Pa. 442, 449, 184 A.2d 494 (1962). Removal of

a personal representative chosen by the testator is a drastic action to be taken only when the estate is endangered and it is necessary to protect the estate's property. *DiMarco Estate*, 435 Pa. 428, 257 A.2d 849 (1969) *Breichner*, supra. The appointment of personal representatives, which is a testator's power and privilege, represents an expression of trust and confidence in those personal representatives. *Quinlan Estate*, 441 Pa. 266, 273 A.2d 340 (1971), *DiMarco*, supra; *Breichner*, supra; *Fraiman*, supra.

A personal representative should not be removed unless the reasons therefore are clear, *DiMarco*, supra; *Breichner*, supra, and it appears that the personal representatives are wasting or mismanaging the property or estate under their charge and that there is a real danger of substantial loss if they are permitted to remain. *Glessner's Estate*, 343 Pa. 370, 22 A.2d 701, (1941).

The petition alleges that before his death Roy N. Rock conveyed a parcel of real estate and some machinery, equipment and orchard supplies to his grandson, Bradley A. Beaver, and his grandson's wife, Deborah T. Beaver. The deed and bill of sale were secured by a purchase money bond and mortgage in the amount of \$110,000 with interest at 5-½% per annum. The principal sum and accrued interest became due one year after the death of the decedent. The principal sum of \$95,000 and accrued interest is in default as of April 4, 1982. It is stated that the rate of interest on the debt is considerably lower than existing investment rates.

The petition then goes on to say that Bradley Beaver is the son of one of the executrices and the nephew of the other; that there is no evidence that executrices have initiated foreclosure proceedings and that the estate is being deprived of income which could be earned on the principal sum of the debt if it was paid.

For the purposes of this demurrer, all of these allegations must be accepted as being true and the statements in answer that in the present market the property would not bring \$95,000 must be ignored.

We do not think that the allegation that Bradley Beaver is the son of one of the executrices and the nephew of the other establishes that the executrices are acting against the estate, if that is what is intended. The testator's will was dated June 8, 1979, nearly five months after the transfer of the real estate and personal property to Bradley and his wife on January 17, 1979. The executrices were appointed by the testator with full knowledge of

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SHERIFF'S SALES, cont.

seconds East along the centerline of Church Street, 138.60 feet to a railroad spike; thence (2) South 50 degrees 05 minutes 42 seconds West along land now or formerly of Donald Zeger, 288.47 feet to an iron pin in the Easterly line of a gravel alley (12 feet wide); thence (3) North 01 degrees 31 minutes 00 seconds West, along the Easterly line of said alley and the prolongation thereof 227.00 feet to a railroad spike in the centerline of Oregon Street; thence (4) North 73 degrees 59 minutes 00 seconds East along the centerline of Oregon Street, 29.68 feet to a railroad spike at a point of curve; thence (5) on a curve to the left having a radius of 319.62 feet the chord of which bears North 62 degrees 36 minutes 45 seconds East, for a distance of 126.12 feet to the place of beginning.

CONTAINING 29,117.66 square feet, plus or minus.

BEING THE SAME REAL ESTATE which Omer E. Grosh and Margaret E. Grosh, his wife, by deed dated November 26, 1980, and recorded among the Deed Records of Franklin County, Pennsylvania, in Deed Book Volume 825, Page 446, conveyed to Herndon Elevator & Grain Limited, a Pennsylvania Corporation.

TOGETHER with the existing railroad tracks and appurtenances thereto located on the above described premises.

SUBJECT, HOWEVER, to easements of record or otherwise affecting the premises hereinbefore described, and specifically to the storm sewer easement granted to the Borough of Mercersburg as more fully set forth in Franklin County Deed Book Volume 802, Page 49; and the state of facts disclosed by survey made by Nassaux-Hemsley, Inc., Chambersburg, Pennsylvania, dated September 3, 1975.

SUBJECT, HOWEVER, to the restriction that the property herein conveyed shall not be used for the retail sale of lumber, building materials, hardware, paint, millwork, or other products commonly sold in conjunction with the operation of a hardware or building supplies store. It is expressly understood and agreed that the restrictive covenant contained herein shall attach to and run with the land, and it shall be lawful for the grantors, their heirs and assigns to institute and prosecute any

SHERIFF'S SALES, cont.

proceedings at law or in equity against the person or persons violating or threatening to violate the same.

TOGETHER WITH and including all buildings, fixtures, and including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, elevators, and all improvements permanently installed thereon, all personalty and equipment necessary to the operation of the premises as a business.

BEING sold as the property of Herndon Elevator & Grain Limited, Writ DSB 1983-4.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, March 21, 1983 at 4:00 P.M. E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold at the hour at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

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the transaction with his grandson. It seems to us that relationships, like animosity existing between the personal representative and a legatee, is not grounds per se for removal of those in whom a testator placed trust and confidence. See *Breichner Estate*, supra.

The Act of 1972, June 31, P.L. 508, No. 164 Sec. 2, 20 Pa. C.S.A. Sec. 3182 gives the Court exclusive power to remove a personal representative for mismanaging an estate. Since the remedy is a drastic one, and since the objectives of the petitioner could be achieved in another and less drastic way, we are going to sustain the demurrer. The petitioner has already had a citation issued to the executrices to show cause why they should not account. A like method should be pursued in the execution on the debt, so petitioner will be granted leave to amend his petition to include a request for a citation upon the personal representatives to show cause why they should not execute on the debt. See *Richter's Estate*, 20 Pa. Dist. R. 702 O.C. Snyder Co. (1911).

ORDER OF COURT

November 23, 1982, the motion to strike and the demurrer to the petition to remove the personal representatives are granted. The petitioner is granted twenty (20) days from this date in which to file an amended petition to request that a citation be issued upon the executrices of Roy N. Rock to show cause why they should not issue execution of the debt owed to the estate of Bradley A. and Deborah T. Beaver.

HORST V. ANTRIM TOWNSHIP, C.P. Franklin County Branch,
No. A.D. 125, 1982

Township Supervisor - Compensation of Supervisor Employee - Auditors report - equal protection.

1. The compensation of township supervisors, when acting as roadworkers is fixed by the township Auditors.
2. A trial court can change the rate set by Auditors where the rate set by Auditors is capricious.
3. Where a plaintiff supervisor forfeited overtime pay when he became supervisor as a result of a pay scale approved by Auditors, the Auditors'