

In Re: Helen A. Goodyear Charitable Remainder Unitrust
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, ORPHANS
COURT No. 174-OC-2013

HEADNOTES

Orphans' Court; Presumption of Death: Exposure to a Specific Peril; Burden of Proof

Presumption of Death - Generally

1. Under Pennsylvania law, where a person has been absent from his last known place of residence and has not been heard from for seven years, there are grounds for a presumption of death. 20 Pa. C.S.A. § 5701(b). The general rule is that an heir who has been absent and unheard-of for less than seven years at the death of decedent is presumed to have lived until the death of testator.

Presumption of Death – Exposure to a Specific Peril

2. Where a person has been absent for less than seven years, the fact that the absentee was exposed to a specific peril of death may be sufficient ground for finding that he died less than seven years after he was last heard of. 20 Pa. C.S.A. § 5701(c). Thus, to accelerate the presumption of death, there must be proof that the presumed decedent was exposed to a particular and immediate danger of death.

3. The burden of showing exposure to a peril of death is on the petitioner, who must show by a fair preponderance of the evidence, that the absent person had been exposed to a specific peril of death. In the absence of evidence from which the occurrence of death on a specific date can be inferred, the presumption of life must prevail.

Exposure to a Specific Peril – Insufficient Evidence in this Case

4. A declaration by the Court that the absentee in this case died on January 12, 2010, the date of the 7.0 magnitude earthquake that hit Haiti, must be supported by specific facts and evidence. This Court could not find, based upon a fair preponderance of the evidence, that William Goodyear was exposed to a peril of death on that date, which was both specific and immediate, and that his death resulted from that peril.

5. Although the record contains evidence of the efforts made to determine the whereabouts of the person, absent from the record was proof that his death resulted from the specific peril alleged.

6. The evidence provided to the Court was as follows: absentee had not been heard from since June of 2007, until which time he had received quarterly payments under a trust. In 2009, Petitioner was told that absentee got married and moved to Haiti. After various searches of the geological records, no confirmation of this was ever found. Petitioner averred that the ex-wife of the absentee's late brother received a phone call from absentee's wife in Haiti, indicating that he had moved to Haiti and died in a remote village from alcohol poisoning. After several attempts, Petitioner obtained a single document from the Social Security Administration which listed absentee's date of death as January 10, 2010. That information was provided by a family member, not through a certificate of death, and no details of death were stated.

7. The exposure to a specific peril doctrine is designed to explain unexplained absences. Evidence relating to person's absence prior to the specific peril alleged would not establish his exposure to that peril. Thus, absentee's absence prior to January 2010 is only relevant to whether he moved to Haiti. Exposure to an earthquake in 2010 would not explain any absence before that earthquake occurred. The applicable prior cases involve persons who, after exposed to a specific danger, are never heard from again.

8. The evidence of absentee's death appears to be found in layers of hearsay. This Court was not presented with any witness testimony, through in court or deposition, nor any signed affidavits. This is in contrast to the evidence presented in prior cases. This Court also notes the multitude of inconsistencies and the enigma surrounding the disappearance of the absentee.

9. In the age of internet searches, GPS, electronic monitoring, cellular tracking devices, and all other such gadgets that represent the digital era, it seems impossible that someone could completely fall off the grid. Yet it seems that someone could disappear for months or years at a time, for reasons good or bad, to live remotely and cut off from all sources of communication. Such a person could appear to be beyond the reach of the conventional methods of tracking and pursuit, but where exposure to a specific peril is the grounds to accelerate the presumption of death, the law requires evidence of that person's specific exposure to that peril, not merely evidence of efforts to obtain that proof.

10. The evidence presented does not compel the inference that the only reason the absentee would not have contacted the trustee to obtain his missing payments was because he met his end. There is no proof that he died based on his exposure to a specific peril.

11. Therefore, the presumption of life prevails until the evidence shows that the absentee has been absent and unheard of for at least seven years.

Appearances:

David J. Winkowski, Esq., *Attorney for Petitioner*

OPINION

Before Meyers, J.

“There is nothing so frequently unattended with the ordinary means of proof, and yet so essential to the determination of a right, as the time of an individual’s death.” Burr v. Sim, 4 Whart. 150, 170 (Pa. 1838).

This Opinion addresses whether William Craig Goodyear should be declared deceased less than seven years after he was last heard from. Petitioner is Reliance Trust Company of Delaware, the Trustee of the Helen A. Goodyear Charitable Remainder Unitrust. On August 26, 2013, Reliance Trust Company filed a *Petition for Declaration of Death of William Craig Goodyear*. This Court issued a citation on Lavanie Thelusma Castella, the wife of William Craig Goodyear, to appear and show cause why William Goodyear should not be declared as having died on January 12, 2010. A hearing was held on November 14, 2013, where local counsel appeared on behalf of the Petitioner and Petitioner’s counsel of record. No evidence was presented to the Court other than the materials and attachments already included with the Petition.

FACTS

The relevant facts this Court has gleaned from the Petition are as follows. Helen A. Goodyear executed a Revocable Living Trust Agreement on September 19, 1999, which provided that upon her death the Revocable Trust would be created. On October 12 of that year, Helen died survived by her two sons, William Craig Goodyear and Benjamin Franklin Goodyear. Petitioner Reliance Trust Company is the successor company of the original Trustee appointed.

Under the trust, Reliance Trust Company was directed to make quarterly payments to William Goodyear for his life. The trust also gave Reliance Trust Company discretion to make payments to Benjamin Goodyear, as it deemed necessary for his maintenance and support. Since Helen’s death, Reliance Trust Company made distributions to both Benjamin and William. Benjamin Goodyear died on March 4, 2008, and letters of administration were granted thereafter to the administrators of Benjamin’s estate.

Under the terms of the trust, upon William’s death the remaining principal income is to be held in further trust for the benefit of the Salvation Army Corps of Chambersburg, Pennsylvania and the American Red Cross. At William’s direction, Reliance Trust Company paid the quarterly payments directly to William’s personal checking account, at Bank of America in Orlando, Florida. According to the Petition, William would only contact the Trustee if he did not receive those payments. Petitioner avers that William’s last contact was in June of 2007.

In July of 2009, Reliance Trust Company conducted an annual review of the trust and attempted to update its contact information for William. Upon contacting William’s banker, Reliance Trust Company learned that William had married Lavanie Thelusma Castella and had moved to Haiti. Because William left no contact information, Reliance Trust Company withheld the next quarterly payment in December of 2009. In February of 2010, after not having heard from William, Reliance Trust Company sent a letter to his last known address, a P.O. Box in Orlando, Florida. That letter was returned, indicating that no such number existed. Reliance Trust Company then attempted to locate William using the resources of International Genealogical Search, Inc. (“IGS”), which drafted a report in July of 2010. According to that report, William was not found.

On November 30, 2010, Reliance Trust Company received a telephone call from Marie Goodyear Picking, the ex-wife of Benjamin Goodyear. Marie Goodyear told Reliance Trust Company that she had previously received a telephone call from Lavanie Thelusma Castella, William’s wife. According to Marie, Lavanie Castella told her that William had lived in a remote village in Haiti, and that he died in that village of alcohol poisoning. The exact date of this telephone conversation is not stated in the Petition. Reliance Trust Company then called Lavanie Castella using the phone number provided by Marie Goodyear. No one answered the phone at the number provided, and after repeated attempts Reliance Trust Company could not confirm William’s death.

In January of 2011, Reliance Trust Company received a letter from IGS, which stated that the search for William had been discontinued because no leads had developed as to his whereabouts. In February of 2011, Reliance

Trust Company contacted the American Citizens Services Unit, located in the United States Embassy in Port Au Prince, Haiti, but was unable to confirm the death of William. Reliance Trust Company received another letter from IGS on April 27, 2011. According to that letter, a death record of William had been located in the Social Security Administration (“SSA”) death index. The report indicated that the SSA received proof of death by a family member, or someone acting on behalf of a family member, but did not actually receive a copy of William’s death certificate.

According to that record, William’s date of death was January 12, 2010. That was the date the 7.0 magnitude earthquake that hit Haiti. Reliance Trust Company avers that as a result of the earthquake’s destruction, it has been unable to obtain William’s death certificate from the public records in Haiti. Reliance Trust Company has been unable to verify William’s death other than the report by IGS, which references the SSA death index.

Based on the facts set forth above, Reliance Trust Company petitions to have William Goodyear declared to have died on January 12, 2010, which would terminate his interest in the trust. Reliance Trust Company has obtained the consent of the Senior Deputy Attorney General for the Commonwealth of Pennsylvania, the Salvation Army, and the American Red Cross. This Court must determine whether sufficient evidence has been presented within the petition and its attachments to warrant a finding that William Goodyear died on January 12, 2010.

DISCUSSION

This Court’s authority to declare a person dead is found in Section 5701 of the Probate, Estates and Fiduciaries Code.¹ Where a person has been absent from his last known place of residence and has not been heard from for seven years, there are grounds for a presumption of death. 20 Pa. C.S.A. § 5701(b). There is no such presumption where the person has been absent for less than seven years. Reliance Trust Company argues that this Court declare William Goodyear deceased pursuant to Section 5701(c), exposure to specific peril. Specifically, that subsection states: “The fact that an absentee was exposed to a specific peril of death may be sufficient ground for finding that he died less than seven years after he was last heard of.” 20 Pa. C.S.A. § 5701(c). Reliance Trust Company argues that William Goodyear’s presence in Haiti during the 2010 earthquake, combined with his lack of contact since 2007, warrants a finding of death. This Court will first examine the meaning of exposure to a specific peril, and determine whether the threshold has been met to declare William Goodyear dead.

I. Presumption of Death – The Standard

The general rule in Pennsylvania is that “an heir who has been absent and unheard-of for less than seven years at the death of decedent is presumed to have lived until the death of testator.” In re Ruben’s Estate, 87 Pa. D. & C. 78, 80 (Orph. 1954). In order to “accelerate the presumption of death, there must be proof that the presumed decedent was exposed to a particular and immediate danger of death.” Id. The burden of showing that the absentee has been exposed to a peril of death is on the petitioner. See In re Kerstetter, 582 A.2d 1122, 1124 (Pa. Super. 1990); Burr v. Sim, 4 Whart. 150, 166 (Pa. 1838) (“[T]he proof of the fact of death lies on the party asserting it.”). The petitioner must prove, by a fair preponderance of the evidence, that “the absent person had been exposed to a specific peril of death.” In re Kerstetter, 582 A.2d at 1124. Most importantly, “[i]n the absence of evidence from which the occurrence of death on a specific date can be inferred, the presumption of life must prevail.” Id.

Thus, unless the seven year mark has passed, there exists a presumption of life. To overcome this presumption, the court must have before it “proof of circumstances of specific peril to which the person disappearing was subjected.” Cont’l Life Ins Co v. Searing, 240 F. 653, 657 (3d Cir. 1917). The “specific peril” under the statute is a “particular and immediate danger of death.” In re Ruben’s Estate, 87 Pa. D. & C. 78, 80 (Orph. 1954). “Mere general perils are not sufficient.” Id. In addressing this inquiry, the Pennsylvania Supreme Court has stated as follows:

It is undoubtedly true that additional circumstances of probability may justify a presumption that the death was still sooner [than seven years]; but [the fact-finder] cannot presume death to have been at an intermediate period, unless we discover in the case at least a spark of evidence that the individual was, at some particular date, in contact with a specific peril, as a circumstance to quicken the operation of time. To accelerate the presumption from time, or more properly to turn it from an

¹ 20 Pa. C.S.A. § 5701(a) **Finding of death.**--When a person domiciled in the Commonwealth disappears and is absent from his place of residence without being heard of after diligent inquiry, the court of the county where the last resided . . . upon the petition of any party in interest, and, if a trustee has been appointed for the absentee, at any time during the trusteeship, may make a finding and decree that the absentee is dead and of the date of his death, provided the notice required by section 5704 of this code . . . has been given to the absentee.

artificial into a natural one, it is necessary to bring the person within the range of a particular and immediate danger.

Fanning v. Equitable Life Assur. Soc. of the United States, 107 A. 715, 716 (Pa. 1919).

There is a plethora of relevant Pennsylvania cases that address this issue of exposure to a specific peril of death. These decisions are very fact specific, as the presumption of death is not applied lightly. *See, e.g., Cont'l Life Ins Co v. Searing*, 240 F. 653, 657 (3d Cir. 1917) (“Each case of disappearance has its own individual facts, and affords no controlling precedent for a case of disappearance under different facts.”). This Court will examine several cases that provide helpful instruction in the current matter.

II. Exposure to a Specific Peril – The Legal Landscape

In In re Silverstein’s Estate, 64 Pa. D. & C. 174 (Orph. 1948), the presumed decedent was a military pilot during World War II. His plane was “shot down by the enemy and exploded in flames.” 64 Pa. D. & C. at 175. His co-pilot parachuted out of the plane and survived, but the pilot was not heard from again. *Id.* His mother died a year later, and three years later the Orphan’s Court of Philadelphia County had to determine whether he predeceased her. *Id.* The Court outlined the distinction between a person that is merely absent, and a person that is absent due to a specific peril:

If we were dealing with an individual who was simply absent from home and not heard from, there would be no presumption of death until seven years had passed, and it would then be presumed that the individual had died at the end of the seven years. **But when the missing person has disappeared in the face of an imminent and specific peril to his life, the inference may be drawn after a reasonable time that death resulted from the peril and at the time of its occurrence.**

Id. at 175 (emphasis added). The court found sufficient evidence to establish that the pilot was exposed to a specific and immediate peril, his plane being shot down, and that his disappearance resulted from its explosion.

In the case In re Ruben’s Estate, *supra*, a beneficiary to a will had been in several concentration camps beginning in 1940. 87 Pa. D. & C. 78, 79. According to a signed affidavit by one witness, he was said to have last been seen on January 27, 1945, at Buchenwald concentration camp. *Id.* That witness had also been a prisoner there and had survived the war. A master declared the beneficiary dead based on exposure to a specific peril, and his children appealed that decision. *Id.* The Orphans’ Court of Allegheny County found that the facts did not present sufficient evidence that the beneficiary “was exposed to any specific or immediate danger of death as defined by the decided cases.” *Id.* at 81. The court described the “general and continuing danger of death in the concentration camps,” but noted that the beneficiary stayed alive in those camps for four years. *Id.* The court found no evidence that “there was any greater danger of his meeting death the week of January 27, 1945, than any time prior thereto.” *Id.* Additionally, the court took the fact that the witness had survived Buchenwald as “strong evidence that [the beneficiary] was not exposed to a particular and immediate danger of death.” *Id.* The court noted the existence of other alternatives,² and applied the general rule that the beneficiary’s death would be presumed to be seven years after he was last seen alive. *Id.*³

In In re Kerstetter, *supra*, a security guard went missing after a theft of platinum from the building in which he worked. 582 A.2d at 1122. Video surveillance of the building showed a masked man approach the security guard and speak with him for a few minutes. *Id.* The man was then seen approaching the area where platinum worth \$250,000 was stored. *Id.* The next day the security guard was missing, and it was later discovered that the platinum was missing. There was no evidence of a struggle or forced entry nor of a gun being fired. *Id.* The incident continued to be investigated by state and federal authorities, and by the time the case reached the Superior Court, it had been three years since anyone had seen or heard from the security guard. *Id.* at 1123. One of the guard’s children petitioned the court to declare him as having died during the theft of the platinum, arguing that he was exposed to a specific peril of death. *Id.*

The Superior Court found insufficient evidence to issue such a declaration. *Id.* at 1124. Specially, the Court highlighted the fact that there was no evidence of a shooting, no evidence of a struggle, and that the guard’s involvement was still under investigation. *Id.* The Court noted the existence of other possibilities, and stated that

² The court stated: “Mere general perils are not sufficient to accelerate the date of death. . . . Any presumption that he was removed to another camp or to parts unknown within that week is just as logical as the presumption that he was put to death or died during that week.” 87 Pa. D. & C. at 81.

³ It should be noted that the factual situation was as follows: The master declared the beneficiary to have died in Buchenwald on January 27, 1945. That date was prior to the death of decedent, Carrie Ruben, who died on March 3, 1951. That finding caused a lapse of the legacy of the beneficiary, which would have gone to his children if the general rule of absence for seven years for the establishment of presumed death was applied. The children filed exceptions to the decree. 87 Pa. D. & C. at 79. Perhaps the court was unmoved by an inequitable result.

based on the evidence presented, “it could not be said with confidence that [the guard] died on September 13, 1987.”

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III. William Goodyear’s Exposure to a Specific Peril

For this Court to declare William Goodyear as having died on January 12, 2010, it must find that based upon a fair preponderance of the evidence, that William Goodyear was exposed to a peril of death on that date that was both specific and immediate, and that his death resulted from that peril. For the reasons set forth below, this Court cannot find with confidence that William Goodyear died on January 12, 2010 as a result of the 2010 Haiti earthquake.

The Court notes that in a case like this one, where seven years has yet to pass, the burden is a high one to meet. “Exposure to a specific peril does not of itself create the presumption of death. It is only when that presumption has ripened through the lapse of seven years that evidence of such exposure may have the effect of moving the date of the presumed death back from the end of the seven-year period to the date of the exposure.” Meadville Prod. Credit Ass’n v. Haskell, 40 Pa. D. & C. 145, 150 (Com. Pl. 1941). It appears from this case that extensive efforts were made to locate William or obtain confirmation of his death. Absent from the record however, is the proof of William’s death from a specific peril.

According to the Petition, William’s last contact was in June of 2007, when he didn’t receive his quarterly payment. In June of 2009, Reliance Trust Company conducted its annual review of the trust, and learned from William’s bank in Florida that William had gotten married to Lavanie Thelusma Castella and moved to Haiti, leaving no contact information.⁵ Reliance Trust Company withheld the December 2009 payment and sent a letter to William’s P.O. box in Florida, which was returned. IGS located the cousin of William’s wife in July of 2010, who stated that she had not been in contact with Lavanie for several years and that she was unaware of the marriage to William. She did say that she heard Lavanie had moved to Haiti, but refused to provide any names of persons who might have known Lavanie’s whereabouts.⁶ The cousin also stated that Lavanie had two daughters. IGS located an address for one of Lavanie’s daughters and sent her a letter, but did not receive a response. No working telephone numbers for William or Lavanie were found during the investigation.

On November 30, 2010, Reliance Trust Company received a telephone call from Marie Goodyear Picking, the ex-wife of William’s deceased brother. Marie stated that she received a call from William’s wife Lavanie. According to Lavanie, William had lived in a remote village in Haiti where he died of alcohol poisoning. The date of death and exact city of death was not provided. Marie provided Reliance Trust Company with Lavanie’s phone number, but after several attempts the company could not reach her.

It is the Opinion of this Court that the evidence does not meet the standard as set forth in the prior case law. The Court first notes that the facts recounting William’s absence as of 2007 but before January 2010 only seem to be relevant to whether William moved to Haiti. His absence during this time does not establish his exposure to the specific peril of death alleged, as any exposure to the 2010 earthquake would not explain his absence before that earthquake occurred. Indeed, the applicable prior cases involve persons who, after exposed to a specific danger, are never heard from again.

Additionally, it is not clear that William in fact lived in Haiti, by a fair preponderance of the evidence, much less died in Haiti. Moreover, the nature of the evidence presented seems to fall short of what the prior case law requires. For example, in In re Ruben’s Estate, *supra*, the court was presented with a signed affidavit by an eyewitness, who placed the beneficiary in Buchenwald concentration camp during the relevant time period. 87 Pa. D. & C. 78, 79. See also In re Holst, Presumed Decedent, 17 Pa. D. & C.4th 645, 651 (Com. Pl. 1992) (where absentee was last seen on small boat, court heard testimony by expert seamen regarding absentee’s ability to survive if he had been swept out to sea); Wheelock Estate, 5 Fid. Rep. 553 (Montg., 1955) (testimony from four witnesses describing severe weather and search of missing vessel that vanished in storm); York Estate, 3 Fid. Rep. 1 (Lehigh, 1952) (testimony regarding severe weather conditions during decedent’s flight time, and testimony describing search for the plane).

The evidence of William’s death appears to be found in layers of hearsay. The evidence that William moved to Haiti was gleaned from third parties, none of whom were brought into Court to testify as to their information. This Court notes the difficulty in reaching some of those parties, i.e., William’s wife or her cousin, but also notes that no efforts were made to present testimony from Marie Goodyear, the ex-wife of William’s brother. The only evidence

⁴ “Indeed, the evidence can as readily be interpreted as creating an inference that (1) Kerstetter disappeared voluntarily after having cooperated with an unknown intruder who removed the platinum or (2) that he was abducted by the intruder and is still alive.” 582 A.2d at 1124.

⁵ The Petition does not discuss any issues with the quarterly payments made during 2008, nor does it discuss what information, if any, was gleaned by the 2008 annual review. It is fair to assume therefore, that the 2008 payments were made directly into William’s personal checking account as before.

⁶ The cousin also stated that Lavanie had two daughters. IGS located an address for one of Lavanie’s daughters and sent her a letter but did not receive a response.

this Court has of the telephone conversation between Marie Goodyear and William's wife was the summary of a second conversation with Reliance Trust Company.

The nature of the evidence presented in this case is in stark contrast to the evidence described in our prior case law. For example, the court in In re Silverstein's Estate, *supra*, was presented with specific facts that put the pilot in the face of a specific and immediate peril, i.e., his plane being shot down by the enemy in wartime. 64 Pa. D. & C. 174 (Orph. 1948). It is this specific evidence that drives these decisions. Compare Fanning v. Equitable Life Assur. Soc. of the United States, 264 Pa. 333 (1919) (decendent was seen going to fight a forest fire, after which was never heard from again); Wheelock Estate, 5 Fid. Rep. 553 (Montg., 1955) (persons set sail from Bermuda to British West Indies presumed dead after vessel lost at sea during "severe storm of hurricane proportions"); York Estate, 3 Fid. Rep. 1 (Lehigh, 1952) (person presumed dead after he disappeared in his plane during a violent storm "of hurricane proportions"); with Meadville Prod. Credit Ass'n v. Haskell, 40 Pa. D. & C. 145, 151 (Com. Pl. 1941) (the only evidence of death was letter indicating intention to commit suicide, but no evidence that person did so).

This Court also considered the value of the social security documents obtained by IGS. In its report dated July 2010, "Exhibit C", IGS contacted the SSA but no information on William could be released because he had not been reported as deceased. The exact date of this contact is not stated. In December of 2010, IGS contacted the SSA again to obtain information on William's death. Specifically, IGS requested William's Numident information. The SSA informed IGS that William had not been reported as deceased and thus no records regarding his death were available. IGS discontinued the search in January of 2011. In April of 2011, it appears that IGS was able to obtain the Numident information for William from the SSA. See Petitioner's "Exhibit F." William's date of death is listed on those documents as January 12, 2010. The location of death is not stated. According to the Petition, the SSA was notified of William's death through a family member, not through an actual certificate of death. It is unclear whether the SSA received this information.

It is not clear from the Petition what weight this Court should give this date of death by the SSA. Nothing in the case law requires that the Court accept this documentation as proof that the decendent died on the date specified, in the manner argued by Petitioner. Such documentation should bolster other evidence establishing the person's exposure to a specific peril. For example, in In re Silverstein's Estate, 64 Pa. D. & C. 174 (Orph. 1948), the military pilot had been declared dead by the Secretary of War after his plane was shot down and never heard from again. That official finding "[did] not establish an actual or probable date of death," but instead "includes a presumptive date of death for the termination of pay and allowance, settlement of accounts and payment of death gratuities." 64 Pa. D. & C. at 176. The Court took this finding as prima facie evidence of the date of disappearance, which was "the day following the expiration of twelve months' absence." *Id.*

This Court also notes "the multitude of inconsistencies and the enigma surrounding the disappearance" of William Goodyear. See In re Holst, Presumed Decendent, 17 Pa. D. & C.4th 645, 651 (Com. Pl. 1992). According to the Petition, William married Lavanie and moved to Haiti. It appears that no marriage record was actually found. During the November 2010 telephone conversation, William's wife told Marie Goodyear that William died of alcohol poisoning, not an earthquake. Upon a search with the phone number provided to Marie, IGS found that it was listed to a Lucienne Etienne. The IGS reports indicate that in December of 2010, the SSA refused to provide William's Numident information because William had not been reported as deceased. It was not until April of 2011 that IGS obtained this information from the SSA. William's date of death was listed as January 12, 2010. It is unclear when the SSA received this information, but it would have been after the telephone call received by Marie Goodyear. It is also unclear who provided this date of death to the SSA, but the Petition avers that it was a family member or someone acting on behalf of one. That there is no certificate of death is not dispositive, as such is not required in cases where the certificate may not be accessible. There are no eyewitness accounts of William being present in Haiti at the time of the earthquake. Even if he was in Haiti, there is no evidence that William was in a town or place that sustained extensive damage as compared to others. See, e.g., In re Ruben's Estate, 87 Pa. D. & C. 78, 79 (no evidence that "there was any greater danger of his meeting death the week of January 27, 1945, than any time prior thereto" in the concentration camp).

Reliance Trust Company also places great weight on the fact that, prior to 2009, William Goodyear would contact Reliance Trust Company when he did not receive his quarterly payments. The argument seems to be that this Court should accept William's failure to reach out regarding his December 2009 payment as strong evidence of his death. While the situation may be curious, there are many possibilities that could account for his disappearance. There are numerous motivations that could cause a person to drop off the grid, which could undoubtedly interfere with the desire to reach back and receive these payments.

In the age of internet searches, GPS, electronic monitoring, cellular tracking devices, and all other such gadgets that represent the digital era, it seems impossible that someone could completely fall off the grid. Yet it seems that someone could disappear for months or years at a time, for reasons good or bad, to live remotely and cut off from all sources of communication. Such a person could appear to be beyond the reach of the conventional methods of tracking and pursuit, but where exposure to a specific peril is the grounds to accelerate the presumption of death, the law requires evidence of that person's specific exposure to that peril, not merely evidence of efforts to obtain that proof.

The problem is no one knows for sure what is the truth regarding William Goodyear's disappearance. In this case, the evidence presented does not compel the inference that the only reason William would not have contacted the trustee to obtain his missing payments was because he met his end. The evidence does not prove that William died based on his exposure to a specific peril. Nor does it establish with all certainty that he will not be returning after all this time to stake his claim, however unlikely that may be. Indeed, media sources are replete with cases in which persons presumed missing or dead are found.⁷ Even Odysseus, who was absent from his homeland for twenty years, during which time he was presumed dead by those who enjoyed the hospitality of his home, eventually returned to his home on Ithaca.⁸

CONCLUSION

This Court finds that the evidence described above does not prove that William Goodyear was exposed to a specific peril and died because of that peril. That he may have lived in Haiti at the time of the 2010 earthquake is not enough to bring William "within the range of a particular and immediate danger." Fanning, 107 A. at 716. Even if it was, that he died from that danger has not been proven by a fair preponderance of the evidence. The fact that William was in danger of death, due to the 2010 Haiti earthquake, must have been clear to this Court. The presumption of death here could only arise "from a violent probability, because it is a conclusion drawn by experience from the usual current of things; but no violent probability of death arises from a peril, which, though possible, is remote. Burr v. Sim, 4 Whart. 150, 172 (Pa. 1838).

Based on the foregoing, this Court cannot find with confidence that William Goodyear died on January 12, 2010 as a result of the earthquake in Haiti. Therefore, the presumption of life prevails until the evidence shows that William Goodyear has been absent and unheard of for at least seven years.

ORDER OF COURT

AND NOW THIS 12th day of December, 2013, the Court having reviewed *Petition for Declaration of Death of William Craig Goodyear*, and the Court having held a hearing in the matter;

IT IS HEREBY ORDERED that the Petition is **DENIED**.

The attached Opinion shall be filed and attached in support of this Order.

Pursuant to the requirements of Pa. R.C.P. 236 (a)(2), (b), (d), the Clerk of the Orphan's Court shall immediately give written notice of the entry of this Order, including a copy of this Order, to each party's attorney of record, or if unrepresented, to each party; and shall note in the docket the giving of such notice and the time and manner thereof.

⁷ See, e.g., Laura Ly, Missing Pennsylvania Woman Reappears 11 Years Later in Florida Keys, CNN (May 3, 2013), available at <http://www.cnn.com/2013/05/01/us/pennsylvania-woman-reappears/>; Colorado Floods: Man Presumed Dead Found Alive, 9 NEWS (Sept. 23, 2013), available at <http://www.9news.com/news/article/356590/339/Man-presumed-dead-found-alive-6-still-missing>.

⁸ Homer, *The Odyssey*.