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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

In Re: Estate of Anna M. Scutchall, deceased,
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Orphan's Court Division No. 89-OC-2012

HEADNOTES

Estates-Power of Attorney and Insurance

Estates; Commonwealth of Pennsylvania's Parens Patriae Authority

1. In estate actions involving charities, the Commonwealth of Pennsylvania can become a party to the action under its parens patriae authority. Com., ex rel. Corbett v. Citizens Alliance for Better Neighborhoods, Inc., 983 A.2d 1274, 1277 (Pa. Cmwlt. 2009).

Estates; Preliminary Objections Generally

1. When ruling upon Preliminary Objections, a Court must accept as true all well-plead allegations of material fact in the complaint and all inferences that can be reasonably deducted from those facts. Victoria Gardens Condominium Ass'n v. Kennett Twp., Of Chester County, 23 A.3d 1098, 1105 (Pa. Cmwlt. 2011).

Estates; Preliminary Objections Regarding Legal Insufficiency- Pa. R. Civ. P. 1028(a)(4)

1. Preliminary Objections based on Legal Insufficiency should be sustained when it appears with certainty that, even if all the allegations plead are true, the law permits no recovery. Willet v. Pennsylvania Medical Catastrophe Fund, 702 A.2d 850 (Pa. 1997).

2. If there are any doubts as to whether the law permits recovery on the facts as plead, then the Preliminary Objections should be overruled. Willet v. Pennsylvania Medical Catastrophe Fund, 702 A.2d 850 (Pa. 1997).

3. The standard for reviewing a demurrer is determining whether on the facts as plead, the law permits recovery. Mistick, Inc. v. Northwestern Nat'l Cas. Co., 806 A.2d 39, 42 (Pa. Super. 2002).

4. In determining whether Preliminary Objections in the nature of a demurrer should be granted, the only issue to consider is whether the facts as plead are legally sufficient to entitle a claimant to relief. Crozer Chester Med. Center v. Dep't of Labor & Industry, 22 A.3d 189, 194 (Pa. 2011).

5. In order to sustain a Preliminary Objection in the nature of a demurrer, a Court must find that the facts as plead in the Plaintiff's complaint fail to state a legally cognizable cause of action upon which relief can be granted under any theory of law. Gekas v. Shap, 364 A.2d 691, 693 (Pa. 1976); Pittsburgh Nat. Bank v. Perr, 637 A.2d 334, 336 (Pa. Super. 1994).

Estates; An Agent's Power to Engage in Insurance Transactions

1. Pursuant to 20 Pa. C.S.A. §5603(p)(3), a life insurance's "agent" and "beneficiary" shall be liable as required by equity in justice insofar as a court determines that the selection of a beneficiary that is made by the agent is not in accordance with the known or probable intent of the principal.

2. In accordance with 20 Pa. C.S.A. §5603(p) and appellate decisions that were issued before or during the time of the 2010-2014 power of attorney statute was effective, the Pennsylvania Supreme Court held that the "all powers" language in 20 Pa. C.S.A. §5603(p)(3) allows

an agent to participate in retirement planning and gave the agent additional powers such as changing beneficiaries. In Re: The Estate of Slomski, 987 A.2d 141, 143-44 (Pa. 2009).

3. The “all powers” clause found in 20 Pa. C.S.A. §5603(p)(3) provided that a principal was able to draft language in the durable power of attorney to engage in insurance transactions that include “(3) [i]n general, to exercise all powers with respect to insurance . . .” 20 Pa. C.S.A. §5603(p)(3) est. December 27, 2010.

4. An agent should ensure that they are aware of the true testamentary intent of a principal before executing a Change in Beneficiary Form. See 20 Pa. C.S.A. §5603(p).

Estates; Designation of Beneficiaries of Insurance or Employee Death Benefits not Testamentary

1. Pursuant to 20 Pa. C.S.A. §6108, where the selection of beneficiaries has been completed prior to death, a decedent’s testamentary designation should be without any effect as part of an estate administrator. 20 Pa. C.S.A. §6108(a).

2. Co-mingling, inclusion, or altering of selections of beneficiaries with regard to insurance annuities is not permitted in accordance with any language or directives in a decedent’s will. 20 Pa. C.S.A. §6108(a).

3. By preventing any change in selections of beneficiaries of insurance annuities, insurance companies can rely on designations made by principals or agents of principals to assist in an orderly distribution of monies prior to or subsequent to death. See 20 Pa. C.S.A. §6108(a).

Appearances:

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OPINION AND ORDER OF COURT

Before Meyers, J.

Currently before the Court is a set of preliminary objections filed by the Commonwealth of Pennsylvania under its *parens patrie* authority, challenging the Amended Petition to Void Action by Decedent’s Former Power of Attorney and Deposit Funds to the Estate of Anna M. Scutchall. Citations were issued to multiple parties including the intestate heirs of Anna M. Scutchall, the Commonwealth, the charities who received disbursements

of an annuity, and Mrs. Scutchall's financial advisor. The Court notes that there has been a significant delay in movement in this case forward given several intervening factors, not the least of which is that the original petitioner, Chester Grove, Jr. died in March 2014, thus delaying active pursuit of the litigation until issues surrounding the appointment of a new administrator pro tem for the estate of Anna M. Scutchall was approved by this Court. The Court notes that George E. Wenger, Esquire, a licensed attorney having offices within the County of Franklin, Pennsylvania, was appointed by this Court on August 19, 2014 as administrator pro tem. He has sought to continue to advance the claims set forth within the amended petition filed by the attorneys for Anna Scutchall's estate on May 22, 2014. Subsequent to the filing of the amended petition and issuance of citations on May 22, 2014, the Commonwealth filed preliminary objections. The preliminary objections set forth four claims for relief. The issues were ultimately briefed as of November 25, 2014. No party advanced the matter for decision or argument until a stipulation of the parties for argument was filed on March 17, 2015. The Court set the matter down for the next available argument date, May 7, 2015. Following argument, the Court now issues this decision.

BACKGROUND

The amended petition for which preliminary citations were issued was filed following approval by this Court of a petition to amend the original petition to void action by the Decedent's former power of attorney and deposit funds to the Estate of Anna M. Scutchall to include a second annuity. This action revolves around actions taken by Chester Grove, Jr. in his capacity as agent under a durable power of attorney executed by Anna M. Scutchall during the brief period between her husband's Merrill's death on January 15, 2012, but prior to her death on March 29, 2012.

The matter at issue is the distribution of Allianz Annuity *****92 and Allianz Annuity *****90. Annuity *****92 was possessed by Merrill and named Anna as sole beneficiary. If Anna failed to survive him by 30 days, the American Cancer Society and the American Arthritis Foundation each were to receive 50% of the value of the annuity. The total value of the annuity was \$479,600.00. Chester Grove, Jr. served as agent under their respective durable power of attorneys for both Merrill and Anna as they did not have family in the area who could assist them, and they trusted Chester Grove, Jr. to act on their behalf. According to the Amended Petition, Anna has two adult children who reside outside of Pennsylvania, and Merrill was their stepfather. Accepting the Petitioner's averments as true, Annuity *****92 was the only asset owned solely by Merrill, as all other annuities

were owned solely by Anna, and the remaining real and personal property was jointly owned by Anna and Merrill, and presumptively was distributed to Anna subsequent to Merrill's death.

After Merrill's death, Chester received written notice that Annuity *****92 could be claimed by Anna. Chester executed a fixed annuity claim form issued by Allianz as agent for Anna M. Scutchall electing the spousal option to continue the contract under her name. The options for either a five year deferral, receipt of a lump sum, to receive payment over her life expectancy, or other annuity options were not exercised. As part of electing the spousal option to continue distribution under Merrill's spousal option, Chester designated the American Cancer Society and Arthritis Foundation to each receive 50% of the balance upon Anna's death. Chester Grove, Jr. signed the claim form and submitted it on February 25, 2012, indicating he was executing the form as attorney-in-fact for Anna M. Scutchall.

In addition, at or about the same time that Chester Grove submitted the final annuity claim form for Annuity *****92, he also issued a service request on behalf of Anna Scutchall as to Annuity 90, in which he designated the American Cancer Society as the 100% beneficiary of the annuity. Upon the death of Anna M. Scutchall on March 29, 2012, Chester Grove presented the will of Anna M. Scutchall dated October 12, 2011 for probate with the Franklin County Register of Wills, in which within its body it indicates that the beneficiaries of her will were to be her husband, if he survived her, and if not, then her children, Mary Catherine Miller and Robert R. Norris. There were no provisions for charitable gifts within her last will and testament. The Allianz *****92 annuity was paid out equally to the American Cancer Society and the Arthritis Foundation. Chester Grove, presumably having been made aware that his prior activities with the designations of the annuities may not have been consistent with her intent, and accepting the Petitioners' averments that as of the time that Chester Grove, Jr. took such actions, he could not consult with Anna due to her alleged incapacity, commenced litigation within the Orphans' Court to set aside the designations that he had previously entered as agent under her durable power of attorney. Chester Grove, Jr. also issued a notice to Allianz to not disburse Annuity *****90 as he would be taking action to set aside the designations he previously made for Anna as her agent.

The Court will now turn to analyzing each of the preliminary objections filed by the Commonwealth.

In ruling upon preliminary objections, the court is required to accept as true all well-pleaded allegations of material facts and all inferences reasonably deducible therefrom. *Victoria Gardens Condominium Ass'n v. Kennitt Twp, Of Chester County*, 23 A.3.d 1098, 1105 (Pa.Cmwlth.2011).

Count I – Standing – Pa. R.C.P. 1028(a)(5)

The Commonwealth in its first preliminary objection asserts that Chester Grove, Jr. would no longer have standing due to his death on May 28, 2014. The Court notes that by an order of court entered August 19, 2014, George E. Wenger, Jr., was appointed as administrator pro tem of the Anna M. Scutchall Estate, and letters of administration d.b.n.t.a. were granted to Mr. Wenger on September 12, 2014. As a result, the issue of standing on the basis of Mr. Grove's death is rendered moot.

For the foregoing reason, a change in factual circumstances, the Commonwealth's challenge as to Count I is DENIED.

Count II – Legal Insufficiency – Pa. R.C.P. 1028(a)(4)

Preliminary objections on the grounds of legal insufficiency should be sustained when it appears with certainty that the law permits no recovery under the allegations pled and any doubts in the determination should be resolved by overruling the objection. *Willet v. Pennsylvania Medical Catastrophe Fund*, 702 A.2d 850 (Pa. 1997),

Furthermore, the standard for reviewing a demurrer is whether on the facts averred, the law says with certainty that no recovery is possible, *Mistick, Inc. v. Northwester Nat'I Cas.Co.*, 806 A.2d 39, 42 (Pa.Super. 2002). In other words, to determine whether a demurrer should be granted, the only issue is whether the facts in the pleadings are legally sufficient to entitle a claimant to relief, *Crozer Chester Med. Center v. Dep't of Labor & Industry*, 22 A.3d 189, 194 (Pa. 2011). To sustain a preliminary objection in the nature of a demurrer, the court must find that the facts pled in the plaintiff's complaint do not state a legal cause of action upon which relief can be granted under any theory of the law. *Gekas v. Shap*, 364 A.2d 691, 693 (Pa. 1976); *Pittsburgh Nat 7 Bank v. Perr*, 637 A.2d 334, 336 (Pa.Super. 1994). Where doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it, *Taras v. Wausau*, 602 A.2d 882 (Pa.Super. 1992).

The Commonwealth challenges the asserted authority for which Chester Grove, Jr. and the administrator pro tem seek relief from this Court to undo his actions as an agent under the durable power of attorney executed by Anna M. Scutchall on October 12, 2011 in his capacity as her personal representative. This Court will note that due to the length of time over which this litigation has dragged on, the power of attorney statute within the Commonwealth of Pennsylvania has been amended, and revisions were made effective as of January 1, 2015. However, those modifications or amendments are not applicable to this case. Rather, the appropriate

section of the statute which addresses powers of attorney and the actions of Mr. Grove as agent-in-fact for Anna M. Scutchall is correctly cited by the Commonwealth as being 20 Pa. C.S.A. § 5603(p)(3), which was in effect from December 27, 2010 to December 31, 2014.

Under 20 Pa. C.S.A. § 5603(p)(3), Power to Engage in Insurance Transactions:

A power to “engage in insurance transactions” shall mean that the agent may:

(1) Purchase, continue, renew, or terminate any type of insurance, including, but not limited to, life, accident, health, disability or liability insurance and pay premiums and collect benefits and proceeds under insurance policies.

(2) Exercise non-forfeiture provisions under insurance policies.

(3) In general, exercise all powers with respect to insurance that the principal could if present: However, the agent cannot designate himself beneficiary of a life insurance policy unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of life insurance policy shall be liable as equity in justice may require to the extent that, as determined by the Court, a beneficiary designation made by the agent is inconsistent with the known or probably intent of the principal.

In this instance, there is no dispute as to the content of Anna Mae Scutchall’s durable general power of attorney dated October 12, 2011, which was executed approximately 9 months and 12 days following the amendments to 20 Pa. C.S.A. § 5603 in December, 2010. This Court agrees with the Commonwealth that the plain language of the statute provides no option for Chester Grove, Jr. to seek relief from this Court to undo that which he may have done as her agent. Rather, the statute in its language is clear that an “agent” and a “beneficiary” of a life insurance policy shall be liable as equity in justice may require to the extent that as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

Under 20 Pa. C.S.A. § 5603(p) and appellate court opinions issued before or during the time that the 2010-2014 version of the power of attorney statute was in effect, the Pennsylvania Supreme Court in In Re: The Estate of Slomski, 987 A.2d 144, 604 Pa. 649 (Pa. 2009), found that

the “all powers” language authorizing an agent to engage in retirement planning gave the agent powers that would have included the changing of a beneficiary. Id. at 987 A.2d 143, 604 Pa. 653. The Court will note that in two prior versions of 20 Pa. C.S.A. § 5603(p), the “all powers” clause was included in the power of attorney statute prior to 2015. The “all powers” clause permitted a principal to place language within the durable power of attorney “to engage in insurance transactions” which includes “(3) In general, to exercise all powers with respect to insurance...” 20 Pa. C.S.A. § 5603(p)(3) est. December 27, 2010. Under the ruling of In Re: Widener 595 Pa. 263, 938 A.2d 354 (Pa. 2007), this Court construes paragraph 14 of Anna Scutchall’s durable power of attorney, in which she says “to exercise any rights which I have respect to any policies of insurance on my life of which I am the owner or in which I have any rights, including, but not limited to the following for which there are additional specified actions that can be construed” to equal the “to engage in insurance transactions” language of the statute. The Court finds that this language is the equivalent of authorizing Chester Grove, Jr. to engage in insurance transactions as defined under 20 Pa. C.S.A. § 5603(p) in effect at the time that Ms. Scutchall exercised her durable power of attorney. Accepting Chester Grove’s petition as true as filed by his counsel that he 1) did not consult with counsel; 2) he simply consulted with Ms. Scutchall’s financial advisor, David P. Pankiw; this Court must conclude that he proceeded to make changes to the annuity contracts without considering Ms. Scutchall’s testamentary intent at the time of his decision to change the annuity beneficiaries. While it is noble that he may have sought to undo that which he had done once he obtained a copy of her will following her death, to seek relief from this Court solely on the notion of equity is not authorized statutorily or in equity. In fact, his request undermines the very notion of the finality of contracts and third party reliance upon actions of agents under a validly executed durable power of attorney.

This Court agrees with the Commonwealth’s argument that under the cases cited, Horvat v. Jenkins Tp. School Dist., 337 Pa. 193 (1940) and Beaver Dam Outdoors Club v. Hazleton City Authority, 944 A.2d 97 (Pa. Cmmwlth. 2008), there is no basis to undo the actions of Chester Grove, Jr. as agent under the durable power of attorney.

The Court will also direct the parties to 20 Pa. C.S.A. § 6108, which provides in general that:

“The designation of beneficiaries of life insurance, annuity, or endowment contracts, or of any agreement entered into by an insurance company in connection therewith, supplemental thereto, or in settlement thereof and the

designation of beneficiaries of benefits payable upon or after the death of a participant under any pension, bonus, profit sharing, retirement, annuity, or other employee benefit plan, shall not be considered testamentary and shall not be subject to any law governing the transfer of property by will.”

This Court takes added direction from this statute to mean that as part of an estate administrator, where designation of beneficiaries has already been completed prior to death, a decedent’s testamentary designation should have no effect. The statute reaffirms the principle that there is to be no co-mingling, inclusion, or interfering with beneficiary designations when it comes to annuities in insurance products per any language or directives within a decedent’s will. Presumably this is so that insurance companies and agencies can rely upon designations made by principals or their agents for the orderly distribution of those sums of money either prior to or subsequent to death. This supports the language of Section 5603(p)(3) that an agent should take care to insure that they know of the testamentary intent of a principal before executing a change in beneficiary form as Chester Grove, Jr. did in this case. Failure to do so places him in a position of potential liability per the very statute that he cites seeking to undo that which he has done. There is nothing within the statute cited, or that this Court believes is of persuasive case authority or statute to find that the Petitioners have outlined sufficient factual or legal basis to seek relief from this Court. Lacking authority to do so, this Court will GRANT the Commonwealth’s preliminary objection as to Count II – Legal Insufficiency.

Count III – Failure to Join an Indispensable Party – Pa. R.C.P. 1028(a)(5)

The Court having already determined that there is lack of legal sufficiency to proceed in this matter does not believe it must reach a ruling on Count III or Count IV, but will proceed to address the issues out of an abundance of caution. The Court finds there has been failure by the Estate of Anna M. Scutchall to identify and name an indispensable party, specifically Chester Grove, Jr., that there is a potential claim pending against him for his actions as agent, especially given the amended facts as outlined in the Estate’s petition.

For the foregoing reasons, the Court finds that there has been a lack of notice to Chester Grove, Jr. notifying him or his estate that there are potential liabilities for which he or his estate may have to defend.

For the foregoing reasons, the Court will GRANT the

Commonwealth's Count III – Failure to Join an Indispensable Party. The Court finds the Commonwealth's objections as to the balance of other indispensable parties is irrelevant as it appears that the citations are issued to potential parties of interest, and as such, they would have adequate notice to proceed and appear in this matter, and to assert affirmative defenses to any claims set forth in the amended petition.

Count IV – Lack of Jurisdiction – Pa. R.C.P. 1028(a)(1)

The Court asserts that based on the averments of the amended petition, accepting all of the petitioner's statements as true, there is no question Chester Grove, Jr. made designations of beneficiaries under his agent authority set forth in Anna M. Scutchall's durable power of attorney. Presumably these activities provide for the full distribution of the moneys of each annuity without reference to Anna M. Scutchall's estate. Pursuant to 20 Pa. C.S.A. § 6108, this Court finds that statutorily there is no basis for this Court to consider Anna M. Scutchall's testamentary intent as the actions of her agent acting under her durable power of attorney bind her to those designations under 20 Pa. C.S.A. § 5603.

For the foregoing reasons, the Court will DENY the Commonwealth's preliminary objection IV for the foregoing reasons and as stated herein. An order is attached.

ORDER OF COURT

AND NOW, this 30th day of June 2015, the Court having considered the preliminary objections of the Commonwealth to the amended petition to void actions by Decedent's former power of attorney and return funds to the estate of Anna M. Scutchall;

IT IS HEREBY ORDERED that preliminary objections number I and IV are DENIED. Preliminary objections II and III are GRANTED. As the Court has found that there is a lack of legal sufficiency to proceed, the action shall be dismissed absent Petitioners' exercising their right to file an amended pleading to establish legal sufficiency to proceed in this matter, consistent with the rules of civil procedure permitting amendment of a pleading following the granting of preliminary objections.

The Clerk of Orphans' Court shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.