

# Franklin County Legal Journal

---

Vol. 40, No. 43

April 21, 2023

Pages 20 - 30

---

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.

---

**JUDITH A. HOCKENSMITH & DIANNA R. OWEN, CO-  
EXECUTRICES OF THE ESTATE OF EVELYN S. HOLTRY,  
DECEASED v. SANDRA K. MYERS A/K/ASAUNDR A. K. MYERS,  
DONALD L. HOLTRY, DONNA JEAN LOIS, SCOTT A. HOLTRY,  
& JOHN R. HOLTRY**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Civil Action No. 2022-2584

**HOLDING:** Plaintiff co-executrixes of an estate petitioned the Court for a declaratory judgment that the estate was entitled to a pretermitted spousal share of subject property subject to a life estate deed subsequently conveyed by deed to one of the Defendants upon death of the life estate holder. Plaintiffs also sought declaratory judgment that the deed of conveyance was void because it lacked a signature from Plaintiffs or alternatively, that the deed of conveyance was void because it was procured by fraud. The Court held the estate was not entitled to a pretermitted spousal share in the subject property; since the life estate deed holder joined in the life estate conveyance, the subject property was excluded from calculation of the life estate holder’s pretermitted spousal share under 20 Pa. C.S. § 2105(a) (1972). The Court also held the Plaintiffs could not state a cause of action for fraud; the deed of conveyance was based on Defendants’ good faith reliance on counsel’s advice that Plaintiffs retain no interest in the subject property upon the life estate deed holder’s death, for which the only legal remedies are a quiet title or ejectment action pursuant to Pa. R.C.P 1061(b)(3).

**HEADNOTES**

1. “When ruling upon preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by refusal to sustain them.” *Allegheny Sportsmen’s League v Ridge*, 790 A.2d 350, 354 (Pa. Cmwlth. 2002).
2. Prior to judicial resolution of a dispute, a party must as a threshold matter show standing to bring the action; standing focuses on the idea that a party may only proceed with the court system’s dispute resolution process if the party is “adversely impacted” or “aggrieved” by the action. *Pittsburg Palisades Park, LLC v. Com.*, 888 A.2d 655, 659 (Pa. 2005); *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).
3. A party is “aggrieved” and has standing if the party’s interest in the outcome of an action is “substantial, direct, and immediate.” *Pittsburg Palisades Park, LLC v. Com.*, 888 A.2d 655, 660 (Pa. 2005).
4. An interest is “substantial” if it “surpasses the common interest of all citizens in procuring obedience to the law.” *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).
5. An interest is “direct” if the action stems from an occurrence causing harm to the party’s interest. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).
6. An interest is immediate if there is a causal connection between the action complained of and a party’s injury. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).
7. 42 Pa. C.S. § 7533 allows “any person interested under a deed, will...[to] have determined any question of construction or validity arising under the instrument...and [to] obtain a declaration of rights, status, or other legal relations thereunder.” 42 Pa. C.S. § 7533.

8. Declaratory judgments are appropriate means to settle contests and controversies arising from wills. 42 Pa. C.S. § 7533; *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003); *In re Cryan's Estate*, 152 A.2d 675,679-80 (Pa. 1930).

9. It is the longstanding policy of the Commonwealth to protect the rights of a surviving spouse against total disinheritance by a deceased spouse. *In re Trust Under Deed of David P. Kulig dated January 12, 2001*, 175 A.3d 222, 223-24 (Pa. 2017); *In re Pengelly's Estate*, 97 A.2d 844, 849 (Pa. 1953).

10. If the parties marry after creation of a will, the subsequent spouse becomes a "pretermitted spouse" entitled to the share of the decedent's estate as if the decedent died intestate. 20 Pa. C.S. § 2507(3). 20 Pa. C.S. § 2507(3) is identical in its current form to its 1972 version. 20 Pa. C.S. § 2507(3) (1972).

11. 20 Pa. C.S. § 2507(3) incorporates by reference §2101(a), which defines the intestate estate as "all or any part of the estate of a decedent not effectively disposed of by will or otherwise." 20 Pa. C.S. § 2507(3); 20 Pa. C.S. § 2101(a); *In re Trust Under Deed of David P. Kulig dated January 12, 2001*, 175 A.3d 222, 225 (Pa. 2017).

12. 20 Pa. C.S. § 2203 confers upon any spouse, pretermitted or not, a right of election which entitles the spouse to a one-third share of specified categories of property, including the probate estate. 20 Pa. C.S. § 2203; *In re Trust Under Deed of David P. Kulig dated January 12, 2001*, 175 A.3d 222, 224 (Pa. 2017).

13. Property included in any conveyance during a decedent's lifetime in which the surviving spouse expressly joins is excluded from calculation of the surviving spouse's pretermitted share. 20 Pa. C.S. § 2203(b)(1).

14. 20 Pa. C.S. § 2203(b)(1)'s 1972 predecessor is 20 Pa. C.S. § 2105(a) (1972). 20 Pa. C.S. § 2203(b)(1); 20 Pa. C.S. § 2105(a) (1972).

15. 20 Pa. C.S. § 2105(a) (1972) states: "The shares of the estate to which a widow is entitled shall be in lieu and full satisfaction of her dower at common law; her share in real estate alienated by the husband in his lifetime, without her joining in the conveyance shall be the same as her share in real estate of which the husband dies seised." 20 Pa. C.S. § 2105(a) (1972).

16. A life estate deed for the surviving spouse joined by the surviving spouse is a conveyance joined by the surviving spouse that excludes the conveyed property from the pretermitted spousal share. 20 Pa. C.S. § 2105(a) (1972).

17. A conveyance of real property by deed is presumptively valid and will not be set aside absent a showing by "clear and convincing evidence" the conveyance was improperly induced by fraud from the conveyor. *Wagner v Wagner*, 353 A.2d 819, 824 (Pa. 1976).

18. A party seeking to void a deed for fraud must plead fraud by clear and convincing evidence; fraud is never presumed. *Puharic v Novy*, 176 A. 233, 234 (Pa. 1934); *Pusic v Salak*, 104 A. 751, 753-54 (Pa. 1918).

19. To void a deed for fraud, a party must prove four elements by clear and convincing evidence: (1) a material representation; (2) false utterance; (3) intent to induce an action in reliance thereof; and (4) damages. *Moser v Desetta*, 589 A.2d 679, 682 (Pa. 1991); *Thomas v Seaman*, 304 A.2d 134, 137 (Pa. 1973).

20. A conveyance executed by the conveyor in good faith reliance upon counsel's assertions regarding title to a property cannot constitute the basis for a fraud action.

21. A party's proper remedies for a conveyance based on bad title advice are: (1) an action of ejectment; or (2) an action to quiet title. Pa. R.C.P. 1061(b)(3).

22. An action to quiet title may be brought "to compel an adverse party to cancel, surrender or admit the validity of any deed affecting any right, lien, title or interest in land." Pa. R.C.P. 1061(b)(3).

Appearances:

Tracy J. Ross, Esquire *for Plaintiffs*

J. McDowell Sharpe, Esquire *for Defendants*

## OPINION

Before Meyers, P.J.

The above-captioned matter is before the Court on Defendants’ *Preliminary Objections to Plaintiffs’ Complaint*, filed September 26, 2022.

### **I. FACTUAL & PROCEDURAL HISTORY**

Plaintiffs are co-executrices of the Estate of Evelyn S. Holtry (hereinafter “Mrs. Holtry”), who died testate on January 1, 2021. *See Complaint* ¶ 3. Defendants are descendants of John F. Holtry (hereinafter “Decedent”). *See id.* ¶ 5. In particular, Defendants Sandra Myers and Donald Holtry are Decedent’s surviving children, while Defendants Donna Jean Lois, Scott A. Holtry, and John R. Holtry are Decedent’s grandchildren, surviving children of Decedent’s son Carroll E. Holtry. *See id.* ¶ 7.

Decedent executed his Last Will & Testament on September 2, 1964. *See id.* ¶ 6. A copy of the will is attached to Plaintiffs’ *Complaint* as Exhibit B. The Will named Decedent’s children equal beneficiaries *per stirpes* of his estate and appointed the children executors of the Will. *See id.* ¶ 8. Decedent married Mrs. Holtry on January 21, 1969. *See id.* ¶ 9.

In November 1969, Decedent executed a Life Estate Deed (hereinafter “Deed”) in which he granted Mrs. Holtry a life estate on his property in Orrstown, Pennsylvania (hereinafter “subject property”). The Deed and its property description are attached to Plaintiffs’ *Complaint* as Exhibit C. The Deed stated the subject property would, at Mrs. Holtry’s death, revert back to Decedent should he survive her, and if he predeceased her, the subject property would pass to Decedent’s “heirs, executors, administrators and assigns” or to anyone entitled in a will left by Decedent. *See Exhibit C, attached to Complaint*, pg. 1.

Decedent died on September 5, 1975, never amending the 1964 will. *See Complaint* ¶ 12. Defendants Sandra Myers and Donald Holtry, along with now deceased Carroll Holtry were named executors of Decedent’s estate. *See id.* ¶ 13. On July 7, 1976, the above named parties and Mrs. Holtry filed a signed *Family Agreement & First & Final Account*, a copy of which is attached to *Complaint* as Exhibit D. *See id.* ¶ 14-15.

The *First & Final Account* noted the 1964 will, that Decedent married Mrs. Holtry afterwards without changing the will, and that 20 Pa. C.S. § 2507(3), as it read in 1975, applied to Mrs. Holtry. *See id.* ¶ 16. 20 Pa. C.S. § 2507(3) in 1975 stated a surviving spouse of a testator who married after making a will “shall receive the share of the estate to which [the spouse] would have been entitled to had the testator died intestate, unless the will shall [provide] a greater share.” *See* 20 Pa. C.S. § 2507(3) (1972) (hereinafter “pretermitted spouse/share”). The statutory share for a pretermitted spouse in effect at the time was one-third of the decedent’s estate if the decedent was survived by more than one child. *See id.* § 2102 (1972).

After Decedent’s death, Mrs. Holtry maintained the subject property as her primary residence until her death on January 1, 2021. *See Complaint* ¶ 19. Upon Mrs. Holtry’s death, Defendants asserted exclusive possession of the subject property as Decedent’s heirs. *See id.* ¶ 20. Plaintiffs countered they maintained an interest in Mrs. Holtry’s pretermitted spousal share of the subject property. *See id.* ¶ 21. Nonetheless, on June 11, 2021, Defendants executed a Deed conveying a fee simple interest in the subject property to Defendant Scott A. Holtry for \$150,000. *See id.* ¶ 23-24. A copy of the Deed is attached to the *Complaint* as Exhibit E.

Plaintiffs filed the instant *Complaint* on August 19, 2022, seeking: (1) declaratory judgment that Mrs. Holtry is an heir and beneficiary of Decedent’s estate as a pretermitted spouse and is thus entitled to a one-third share in the remainder interest of the subject property; and (2) declaratory judgment that the Deed to Defendant Scott A. Holtry is invalid and void as lacking a signature of Mrs. Holtry or her duly authorized representative; or in the alternative, that the Deed is void because it was procured by fraud. *See Complaint*, ¶ 28-66.

Defendants filed *Preliminary Objections* on September 26, 2022. The parties filed their respective briefs in support and opposition thereof on December 8, 2022, and December 15, 2022. Oral argument on Defendants’ *Preliminary Objections* occurred on January 12, 2023. The parties filed supplemental briefs on January 23, 2023. The matter is ready for decision.

## II. CONCLUSIONS OF LAW

[W]hen ruling upon preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain

preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by refusal to sustain them.

*Allegheny Sportsmen's League v. Ridge*, 790 A.2d 350, 354 (Pa. Cmwlth. 2002) (internal citations omitted).

*A. Whether Plaintiffs Lack Standing Under Pa. R.C.P. 1028(5)*

Prior to judicial resolution of a dispute, a party must as a threshold matter show standing to bring the action. *See Pittsburg Palisades Park, LLC v. Com.*, 888 A.2d 655, 659 (Pa. 2005). The traditional concept of standing focuses on the idea that a party may only proceed with the court system's dispute resolution process if the party is "adversely impacted" or "aggrieved" by the action. *See id.; In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).

A party is "aggrieved," and thus has standing, if the party's interest in the outcome of the action is "substantial, direct, and immediate." *See Pittsburg Palisades Park*, 888 A.2d at 660. An interest is "substantial" if it "surpasses the common interest of all citizens in procuring obedience to the law." *See In re Hickson*, 821 A.2d at 1243. An interest is "direct" if the actions stems from an occurrence causing harm to the party's interest. *See id.* An interest is "immediate" if there is a causal connection between the action complained of and a party's injury. *See id.*

Plaintiffs seek a declaratory judgment of rights related to Decedent's Will pursuant to 42 Pa. C.S. § 7533, which allows "any person interested under a "deed, will...[to] have determined any question of construction or validity arising under the instrument...and [to] obtain a declaration of rights, status, or other legal relations thereunder." *See* 42 Pa. C.S. § 7533. Contests and controversies from wills can be settled using declaratory judgments. *See In re Cryan's Estate*, 152 A.2d 675, 679-80 (Pa. 1930).

Plaintiffs seek declaratory judgment that Mrs. Holtry retained an interest in the subject property as a pretermitted spouse notwithstanding Decedent's Will, Mrs. Holtry's life estate, or the 1976 Family Agreement. Plaintiffs also alleged financial injury to Mrs. Holtry's estate from the Deed conveying the subject property to Defendant Scott Holtry for \$150,000 without compensation to Mrs. Holtry's estate. Thus, Plaintiffs have standing with the contested will and alleged financial injury involving the will, and can resolve the controversy via declaratory judgment. *See id.* at 679-80; *In re Hickson*, 821 A.2d at 1243. Defendants' First Preliminary Objection is **OVERRULED**.

*B. Demurrer: Subject Property Not Part of Estate under Pa.R.C.P. 1028(a)(4)*

The Commonwealth has a “long existing public policy...to protect the rights of a surviving spouse against total disinheritance by [the] deceased spouse. *See In re Trust Under Deed of David P. Kulig* dated January 12, 2001, 175 A.3d 222, 223-24 (Pa. 2017) quoting *In re Pengelly’s Estate*, 97 A.2d 844, 849 (Pa. 1953). This Commonwealth’s statutes reflect that policy in two critical ways. *See Kulig*, 175 A.3d at 224. First, § 2507(3) states if parties marry after creation of a will, the spouse becomes a “pretermitted spouse” entitled to the share of the decedent’s estate as if the decedent died intestate. *See* 20 Pa. C.S. § 2507(3). Subsection 2507(3) incorporates by reference Subsection 2101(a). Subsection 2101(a) defines the intestate estate as “[a]ll or any part of the estate of a decedent not effectively disposed of by will or otherwise.” *See* 20 Pa.C.S. § 2101(a); *Kulig*, 175 A.3d at 225.

Second, § 2203 confers upon any spouse, pretermitted or not, a “right of election” which entitles the spouse to a one-third share of specified categories of property, including the probate estate. *See* 20 Pa. C.S. § 2203; *Kulig*, 175 A.3d at 224.<sup>1</sup> Mrs. Holtry’s status as a pretermitted spouse is uncontested. Thus, resolution of this issue requires thorough application of 20 Pa. C.S. § 2102 and 2105(a) of 1972 and examination of the life estate deed.

20 Pa. C.S. § 2102(1) (1972) states, in pertinent part, a surviving spouse shall be entitled to the following share of the estate: (1) one third if the decedent is survived by more than one child... .” *See* 20 Pa. C.S. § 2102(1) (1972). It is uncontested Decedent was survived by his three children, Defendants Sandra Myers, Donald L. Holtry, and Carroll E. Holtry. Thus, Mrs. Holtry’s pretermitted share under the applicable law would be one third of Decedent’s estate. *See id.* Resolution of this issue therefore rests on application of 20 Pa. C.S. § 2105(a) (1972).

20 Pa. C.S. § 2105(a) (1972) reads in pertinent part: “The shares of the estate to which a widow is entitled shall be in lieu and full satisfaction of her dower at common law;...her share in real estate aliened by the husband in his lifetime, *without her joining in the conveyance* shall be the same as her share in real estate of which the husband dies seised.” 20 Pa. C.S. § 2105(a) (1972).<sup>2</sup>

<sup>1</sup> Since Decedent died in 1975, the Court must apply the statutes in effect at the time, which are from 1972. 20 Pa. C.S. § 2507(3) is the same in its current form as in 1972. 20 Pa. C.S. § 2203 took effect in 1978; the version of § 2203 in effect in 1975 was 20 Pa. C.S. § 2102 (1972). The Court finds the pertinent exclusion of property in a conveyance joined by the surviving spouse, presently at 20 Pa. C.S. § 2203(b)(1), is 20 Pa. C.S. § 2105(a) (1972). The Court uses the 1972 statutes from now on.

<sup>2</sup> Identical language appears in the 1947 version of this statute, at Act 37 § 5(a) (1947) (the “Intestate Act of 1947”), highlighting the longstanding nature of excluding conveyances with the

Mrs. Holtry signed the life estate deed, thus the life estate deed was a conveyance with the express consent or joinder of the surviving spouse. *See Exhibit C, attached to Complaint*, pg.2. This places the subject property within § 2105(a), excluding it from property for which Mrs. Holtry's pretermitted share can be calculated. *See* 20 Pa. C.S. § 2105(a) (1972).

The life estate deed reads in pertinent part: “[T]he said John F. Holtry desires to grant and convey to his wife, Evelyn S. Holtry, a life estate in the...[subject property]...*beginning at the death of John F. Holtry* and ending at the death of Evelyn S. Holtry with remainder to the said John F. Holtry, his heirs, executors, administrators, and assigns or if the said John F. Holtry leaves a will to the parties *entitled thereto* in the said will.” *See Exhibit C, attached to Complaint*, pg.1 (*emphasis added*).

Plaintiffs contend the deed's “parties entitled thereto” language identifies the class of people to whom the remainder interest belongs, and that use of the word “entitled” as opposed to “named” indicates the remainder belongs to anyone with statutory rights under the will, including Mrs. Holtry, who is acknowledged as a pretermitted spouse since she married Decedent after he executed his will. *See Plaintiffs' Brief in Opposition to Defendants' Preliminary Objections*, pg. 7-8.

However, Plaintiffs' contention overlooks the language granting the life estate “beginning at the death of John F. Holtry.” *See Exhibit C, attached to Complaint*, pg.1 Such language clearly states Mrs. Holtry's life estate vests at, not before, Decedent's death. The language granting the remainder to Mr. Holtry and his heirs, executors, administrators and assigns admittedly creates confusion; it is legally impossible for a party to possess a remainder for an interest that cannot vest until the party dies.

Notwithstanding this confusion, the life estate deed clearly states Mrs. Holtry has a life estate in the subject property beginning at Decedent's death and terminating at her death, with the remainder to Decedent's living heirs, executors, administrators, and assigns. *See Exhibit C, attached to Complaint*, pg.1. The sections of Decedent's will that designate Defendants Sandra Myers, and Donald Holtry executors, and Defendants Donna Jean Lois, Scott A. Holtry, and John R. Holtry as the children of now deceased Carroll Holtry, heirs and assigns, were unaffected by Decedent's marriage to Mrs. Holtry. *See Exhibit B, attached to Complaint*.

Since Mrs. Holtry's life estate began at Decedent's death, and a party cannot have a remainder in an interest vesting at the party's death, the language about Decedent's remainder and “the parties entitled under the will” can logically serve only one purpose; it provided for the disposition of the subject property in the event Decedent survived Mrs. Holtry, which would

---

surviving spouse's joinder from the pretermitted share.



render the life estate unvested and nonexistent. In such a circumstance, the subject property would pass according to Decedent's will, and there would be no "pretermitted spouse." That was not the case. Decedent died before Mrs. Holtry, which vested her life estate. Mrs. Holtry's death terminated her life estate and vested Defendants' remainder interest, leaving Mrs. Holtry and her estate with no remaining rights in the subject property. This absence of rights in the subject property also meant Defendants could freely convey the subject property without Plaintiffs' consent.

Since Mrs. Holtry signed the life estate deed, 20 Pa. C.S. § 2105(a) (1972) controls; the subject property is not part of the estate and is excluded from calculation of Mrs. Holtry's pretermitted share. *See* 20 Pa. C.S. § 2105(a) (1972). Thus, Defendants' second preliminary objection is **SUSTAINED**.

*C. Demurrer: Family Agreement Bars Mrs. Holtry & Her Estate from Asserting Claims Against Decedent's Estate, Thus Plaintiff fail to Sustain Cause of Action under Pa. R. C.P. 1028(a)(4)*

Since the Court concludes 20 Pa. C.S. § 2105(a) (1972) excluded the subject property after the life estate from estate property subject to calculation of Mrs. Holtry's pretermitted spousal share, Defendants' third preliminary objection is **DISMISSED AS MOOT**.

*D. Demurrer: Insufficient Pleading of Fraud under Pa. R.C.P. 1028(a)(4)*

A conveyance of real property by way of deed is presumptively valid and will not be set aside unless it is shown by "clear and convincing evidence" the conveyance was improperly induced by fraud on the part of the transferee. *See Wagner v Wagner*, 353 A.2d 819, 824 (Pa. 1976). While a deed procured by fraud is voidable, a party seeking to void such a deed must plead the fraud by clear and convincing evidence, as fraud is never presumed. *See Puharic v. Novy*, 176 A. 233, 234 (Pa. 1934); *Pusic v Salak*, 104 A. 751, 753-54 (Pa. 1918).

Thus, a party seeking to void a deed for fraud must plead the following elements by clear and convincing evidence: (1) a material representation; (2) falsely uttered; (3) intent to induce an action in reliance thereof; and (4) damage to the party. *See Moser v DeSetta*, 589 A.2d 679, 682 (Pa. 1991) *quoting Thomas v Seaman*, 304 A.2d 134, 137 (Pa. 1973).

Plaintiffs contend the Deed to Defendant Scott A. Holtry is fraudulent and voidable because Defendants conveyed the subject

property while knowingly disregarding Mrs. Holtry's estate's entitlement to an interest in the subject property as a pretermitted spouse. However, Defendants assert, and the Court is persuaded the evidence in the record shows, that Defendants conveyed the subject property to Defendant Scott A. Holtry on good faith reliance by counsel that upon termination of the life estate at Mrs. Holtry's death, Defendants became sole possessors of the subject property as designated remainder holders per the life estate deed. Defendants also relied in good faith on counsel's assurance that the life estate deed and 1976 Family Agreement extinguished any interest of Mrs. Holtry or her estate in the subject property after Mrs. Holtry's death.

The Court agrees with Defendants' assertion that this situation is at most a product of bad title advice, not fraud. Plaintiffs' proper remedies to invalidate the Deed would thus be: (1) an action of ejectment; or (2) an action to quiet title, which may be brought "to compel an adverse party to... cancel, surrender or admit the validity...of, any...deed affecting any right, lien title or interest in land." See Pa. R.C.P. 1061(b)(3). Therefore, Defendants' fourth preliminary objection is **SUSTAINED**.

#### IV. CONCLUSION

The instant case is a unique and highly unusual one, involving a combination of a dated will, life estate deed on the subject property, and family settlement agreement, and a recent deed of conveyance for the subject property. Plaintiffs seek relief in two ways: (1) declaratory judgment that Mrs. Holtry is an heir and beneficiary of Decedent's estate entitled to a one-third share of the subject property as a pretermitted spouse; or (2) declaratory judgment that the Deed to Defendant Scott A. Holtry is invalid and void as lacking a signature of Mrs. Holtry or her duly authorized representative; or in the alternative, that the Deed is void because it was procured by fraud.

The Court finds Plaintiffs have standing to sue and seek resolution via declaratory judgment in the instant action, as the instant action involves a contested will and alleged financial injury. See *In re Hickson*, 821 A.2d at 1243; *In re Cryan's Estate*, 152 A.2d at 679-80. Mrs. Holtry's status as a "pretermitted spouse" is uncontested, so the resolution of this case hinges on analysis of 20 Pa. C.S. § 2203, which governs the types of property subject to pretermitted spousal share. See 20 Pa. C.S. § 2507(3); 20 Pa. C.S. § 2203; *Kulig*, 175 A.3d at 224.

Because the life estate deed is signed by Mrs. Holtry, the subject's property's inclusion in Mrs. Holtry's pretermitted share is controlled by 20 Pa. C.S. § 2203(b)(1). The life estate deed's language clearly showed the subject property passed by life estate/remainder, not by will, rendering

the exception inapplicable. As such, the subject property is excluded from the estate and Mrs. Holtry's pretermitted share. *See* 20 Pa. C.S. § 2203(b) (1). Since the subject property's disposition is governed by the life estate and remainder interest, which belongs to Defendants, Mrs. Holtry's death terminated any interest she or her estate may have had in the subject property. Defendants' second preliminary objection is sustained, and Plaintiffs' petition for declaratory judgment that Mrs. Holtry is entitled to a one-third share in the remainder interest of the subject property is **DENIED**.

Plaintiffs' extinguished interest in the subject property allows Defendants to freely convey the subject property without Plaintiffs' consent. Defendants chose to convey the subject property via the Deed to Defendant Scott A. Holtry, and did not require a signature from Mrs. Holtry or her representative. Thus, Plaintiffs' petition to void the Deed to Defendant Scott A. Holtry as lacking a signature of Mrs. Holtry or her representative is **DENIED**.

Plaintiffs' petition to void the Deed to Defendant Scott A. Holtry as fraudulent fares no better. A deed may be set aside for fraud only upon a party's satisfaction of a fraud claim's five elements by clear and convincing evidence. *See Moser v DeSetta*, 589 A.2d 679, 682 (Pa. 1991) quoting *Thomas v Seaman*, 304 A.2d 134, 137 (Pa. 1973).

Per the life estate deed's language, Plaintiffs' rights in the subject property extinguished at Mrs. Holtry's death, and Defendants were free to convey the property without involvement from Plaintiffs. Assuming the opposite *arguendo*, the fraud claim is still unsustainable. The evidence in the record indicates Defendants conveyed the property to Defendant Scott A. Holtry in good faith reliance on counsel's advice they had rights based on the will, life estate deed, and family settlement agreement to do so. At most, this would have constituted conveyance based on bad title advice, not fraud, for which the appropriate legal remedies are an action in ejectment or a quiet title action. *See* Pa. R.C.P. 1061(b)(3). Defendants' fourth preliminary objection is sustained, and Plaintiffs' petition to void the Deed to Scott A. Holtry as fraudulent is **DENIED**.

An appropriate order follows.

**ORDER OF COURT**

**AND NOW**, this 10th day of March, 2023, **IT IS HEREBY ORDERED** that,

(1) Defendants' first preliminary objection is **OVERRULED**.

(2) Defendants' second preliminary objection is **SUSTAINED**, and Plaintiffs' petition for declaratory judgment that Mrs. Holtry is entitled to a one-third share in the remainder interest of the subject property is **DENIED**. Plaintiffs' petition to void the Deed to Defendant Scott A. Holtry as lacking a signature of Mrs. Holtry or her representative is also **DENIED**.

(3) Defendants' third preliminary objection is **DISMISSED AS MOOT**.

(4) Defendants' fourth preliminary objection is **SUSTAINED**, and Plaintiffs' petition to void the Deed to Scott A. Holtry as fraudulent is **DENIED**.