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Crouch v. Crouch

VAN C. CROUCH, Plaintiff, v. RAMONA J. CROUCH, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action - Law, No. 1992-775

*Substitution of a party; Appointment of a personal representative; Opening of an estate*

1. An individual's death does not bar recovery by a party who is aggrieved by conduct which occurred during the decedent's lifetime; an action to enforce any right or liability which survives a decedent may be brought by or against his personal representative. 20 Pa.C.S.A. §§3371, 3373.
2. Where no estate was ever raised and no personal representative was ever appointed, a claimant must secure the appointment of a personal representative by applying to the Register of Wills for the issuance of letters testamentary or letters of administration to a qualified individual. §§3155, 3156.
3. A widow named as executrix in the decedent's Will may renounce her right to act as executrix; a creditor who opens the estate would then have to secure the appointment of a personal representative against whom the creditor could initiate an action in connection with the decedent's alleged failure to conduct certain financial transactions as required by a marital settlement agreement between the creditor and the decedent. §§3386, 3389.

Appearances:

Hannah Herman-Snyder, Esq.

Karl E. Rominger, Esq.

OPINION

Herman, J., August 25, 2006

Before the court is a petition filed by Ramona Crouch to enforce the terms of a Property and Settlement Agreement signed between the above parties pursuant to divorce proceedings which culminated in a divorce decree entered on June 17, 1993. The Agreement was signed on June 1, 1993 and provided that Van was to make Ramona trustee for their minor child Morgan to receive proceeds from a life insurance policy which Van had through his employer. (¶ 40.) The Agreement also provided that Van was to transfer an IRA account into Morgan's name by July 1, 1993 pursuant to the Pennsylvania Uniform Gifts to Minors' Act (UGMA) to pay for her college costs. [¶ 21(a).]

Van thereafter made a Will on July 21, 1994 which named his second wife, Laura Crouch, as executrix. Aside from a few items of personal property, Van left the remainder of his estate to Laura. Van died on May 17, 2003. Shortly thereafter, Ramona inquired about the insurance policy and learned Van had waived his right to that employment benefit, leaving no insurance proceeds for Morgan's use. She also discovered Van had not transferred the IRA into a custodial account in Morgan's name.<sup>1</sup>

In June of 2005, Ramona filed a petition for enforcement and contempt on the contention that had Van abided by the Agreement and secured life insurance benefits, those benefits would have grown to \$440,000 by the time of his death. Ramona also alleges the IRA account containing \$5,104.23 when the Agreement was signed would have increased in value substantially if it had been transferred to a custodial

account for Morgan. Citing Pa.R.C.P. 2352(b), Ramona seeks to have Laura Crouch substituted as a party in place of Van so that this petition can proceed. Laura answered the petition and the court held a hearing and received written argument from counsel.

Based on counsels' inquiries and statements to the court, it appears no estate has ever been opened for Van anywhere by anyone. Although Laura is named executrix in Van's Will, she never sought and therefore has never been granted letters testamentary, nor has she acted as personal representative on behalf of any such estate.<sup>2</sup> Counsel for Ramona advised the court she has considered opening an estate, a course of action she is clearly entitled to pursue as a potential creditor.

It is well-established that an individual's death renders any suit against him impossible where an action is not commenced before his death. However, an individual's death does not bar recovery by a party who is aggrieved by conduct which occurred during the decedent's lifetime. 20 Pa.C.S.A. §3371. An action to enforce any right or liability which survives a decedent may be brought by or against his personal representative. §3373. Where no estate of the decedent was ever raised and no personal representative was ever appointed, a claimant must secure the appointment of a personal representative by applying to the Register of Wills for the issuance of letters testamentary or letters of administration to a qualified individual, such as the person designated as executor in the Will. §3155; §3156. Once a personal representative is appointed, the claimant can either (1) bring suit in the civil division of the Court of Common Pleas and ask the Orphans' Court to make provision for the distribution or satisfaction of his claim in accordance with §3389, or (2) prove his claim at an audit of the estate in the Orphans' Court division pursuant to §3386; Myers v. Estate of Wilks, 655 A.2d 176 (Pa.Super. 1995).<sup>3</sup>

Counsel for Laura indicated that if an estate is opened, Laura would renounce her right to act as personal representative, as is her right. Her renunciation would necessitate the appointment of a personal representative against whom Ramona could initiate an action in her position as a potential creditor of Van's estate. 20 Pa.C.S.A. §3155; §3156; Standard Pa. Practice §153:49. At this juncture, Pa.R.C.P. 2352(b) cannot be used to substitute Laura for Van in a matter which has its origins in a divorce action between Van and Ramona, nor can she be compelled to assume the role of personal representative. Any claim Ramona has against Van must be pursued by first opening an estate, then having the Register of Wills appoint an appropriate personal representative for the estate, and finally by making a claim against the estate by filing an action naming the personal representative as the individual charged with answering that claim on behalf of the estate.

For the foregoing reasons, the court will deny Ramona Crouch's request to have Laura Crouch substituted for Van Crouch in connection with the petition for enforcement and contempt arising from the divorce action. Ramona Crouch may pursue the avenues discussed above in an effort to obtain satisfaction on her claims.

#### ORDER OF COURT

Now this 25th day of August 2006, upon review and consideration of the pleadings, the written arguments of counsel and the relevant authority, the court hereby denies the request of Ramona J. Crouch to substitute Laura Crouch for the decedent Van C. Crouch in connection with Ramona Crouch's petition for contempt and enforcement of the Property and Settlement Agreement signed by Van C. Crouch and Ramona Crouch.

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<sup>1</sup>The court has no information about what assets Van might have owned at the time of his death.

<sup>2</sup>The Probate, Estates and Fiduciaries Code defines a personal representative as the executor or administrator of an estate. 20 Pa.C.S.A. § 102.

<sup>3</sup>Section 3389 - Claims subject to litigation in other courts - provides: "When any claim not provided in the orphans' court division is being litigated in any other division or court, State or Federal, having jurisdiction thereof, the court may make such provision for the distribution or satisfaction of the claim as shall be equitable."

Section 3386 - Failure to present claim at audit - provides: "If any claimant whose claim is not reported to the court by the personal representative as an admitted claim shall fail to present it at the call for audit or confirmation, he shall not be entitled to receive any share of the real and personal estate distributed pursuant to such audit or confirmation, whether the estate of the decedent be solvent or insolvent."

