



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: November 22, 2005
Decided: February 15, 2006

Ms. Joan Tunnell
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Waterbury, CT 06704

Ms. Diane Bradley
P.O. Box 941
Nassau, DE 19969

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Grady & Hampton, LLC
6 North Bradford Street
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Re: *Joan Tunnell and Diane Bradley v. Pamela C. Stokley
and Ralph J. Bradley*, Civil Action No. 680-S

Dear Ms. Tunnell, Ms. Bradley and Counsel:

This action involves a challenge to the last will and testament of Clara E.V. Becketts ("Becketts"). Petitioners, Joan Tunnell and Diane Bradley, are the daughters of Becketts. Respondent Pamela Stockley is the daughter of Petitioner Diane Bradley and a granddaughter of Becketts. Respondent Ralph Bradley is the son of Petitioner Diane Bradley and a grandson of Becketts.

In the verified complaint ("Complaint"), Petitioners allege that Respondents exercised undue influence over Becketts to fraudulently obtain property from Becketts

through her will. Further, they allege that Stockley acted improperly when she sold Becketts' real property located at Route 8 Box 27, Millsboro, Delaware. Finally, Petitioners seek an accounting from the proceeds of the conveyance of the real property.

Respondents have moved for summary judgment on the grounds that Petitioners lack standing and filed their Complaint too late. For the reasons stated in this letter opinion and order, I grant Respondents' motion and dismiss Petitioners' claims with prejudice.

I. FACTS

Becketts died on August 2, 2003. Under her will, Becketts left her entire estate to her granddaughter, Stockley, and grandson, Ralph Bradley, in equal shares. According to Petitioners, in the five years before her death, Becketts suffered from Alzheimer's disease and dementia. Due to Becketts' mental infirmity, Diane Bradley lived with her mother from 1999 until 2002 to help her with activities of daily living. When Becketts was hospitalized briefly in 2002 for knee replacement surgery, Respondent Stockley entered Becketts' home and changed the locks. Since that time, Diane Bradley has not had access to her mother's home.¹

¹ After Stockley moved into Becketts' home in 2002, she had the home torn down and built a new house on the same site (the "House"), which she later sold. Compl. ¶ 11; Answer ¶ 11.

Becketts executed a will on December 4, 2001. Following her death the will was probated in Sussex County, Delaware on August 26, 2003. The will named Stockley as executor of the estate, and bequeathed Becketts' estate to her grandchildren, Stockley and Ralph Bradley.² In her capacity as executor, Stockley sold the House on April 1, 2004. Petitioners filed this action on September 3, 2004.

Petitioners' Complaint contains five counts. Count I seeks an accounting for the proceeds of the conveyance of the House. It alleges that Stockley, acting pursuant to a power of attorney or letters of administration, improperly sold the House for \$126,000 before Becketts' death and without her knowledge or permission.³ Count II seeks imposition of a constructive or resulting trust. It asserts that Stockley exercised undue influence over Becketts, who suffered from Alzheimer's, in order to fraudulently obtain property from Becketts without her knowledge. Count II further alleges that Becketts executed her will when "she was diagnosed with Alzheimer's and dementia" and that her "presumed intentions for the net proceeds of the sale of the real estate would have been for those proceeds to be used for the benefit of her daughters, the Petitioners."⁴ Count III claims that Stockley breached her fiduciary duties by failing properly to manage the

² See Attach. to Resp'ts' Mot. for Summ. J.

³ Petitioners now admit that the House was not sold until April 1, 2004, after Becketts died.

⁴ Compl. ¶¶ 20-21.

decendent's assets. Count IV asserts that Stockley converted the proceeds of the House for her own use and benefit before Becketts' death. It also alleges that Petitioners delayed filing this action until September 3, 2004, because Tunnell lived in New York and Diane Bradley "is an unsophisticated party."⁵ Although Count V correctly asserts that this Court has jurisdiction over this matter, it does not state any basis for an independent cause of action.

In terms of relief, Petitioners seek an accounting for all monies received on behalf of Becketts, the creation of a constructive or resulting trust over the proceeds received from the sale of Becketts' real estate, damages with interest and costs and attorneys fees.

II. ANALYSIS

A. Standards

Under Court of Chancery Rule 56, the Court will grant summary judgment only when the parties do not dispute any issue of material fact and the moving party is entitled to judgment as a matter of law.⁶ The Court must view the facts in the "light most favorable to the nonmoving party, and the moving party has the burden of demonstrating that there is no material question of fact."⁷ A party opposing summary judgment,

⁵ Compl. ¶ 30.

⁶ Ch. Ct. R. 56(c); *Motorola, Inc. v. Amkor Tech., Inc.*, 849 A.2d 931, 935 (Del. 2004).

⁷ *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979) (citing *Judah v. Delaware Trust Co.*, 378 A.2d 624, 632 (Del. 1977)).

however, “may not rest upon the mere allegations or denials of [their] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial. If [the party] does not so respond, summary judgment, if appropriate, shall be entered against [them].”⁸ The Court “also maintains the discretion to deny summary judgment if it decides that a more thorough development of the record would clarify the law or its application.”⁹

B. Counts I and III

Respondents seek to dismiss Counts I and III because Petitioners lack standing. Petitioners respond that they have standing because Becketts’ will is the product of fraud or undue influence and is therefore invalid.¹⁰

The term “standing” refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.¹¹ The issue of standing is concerned, “only with the question of who is entitled to mount a legal challenge and not with the merits of the subject matter of the controversy.”¹² Generally, in order to have standing:

(1) [the petitioner must have] . . . suffered an injury in fact--
an invasion of a legally protected interest which is (a)

⁸ Ch. Ct. R. 56(e).

⁹ *Cooke v. Oolie*, 2000 WL 710199, at *11 (Del. Ch. May 24, 2000).

¹⁰ Letter from Joan Tunnell to Court dated July 6, 2005.

¹¹ *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991) (citations omitted).

¹² *Id.*

concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of--the injury has to be fairly traceable to the challenged action of the [respondent] and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.¹³

This Court will not render an opinion on behalf of a “mere intermeddler”; to obtain relief a party must have a legally cognizable interest in a controversy.¹⁴

In this case Petitioners lack standing to sue under Counts I and III. Count I asks this Court to allow Petitioners to pursue an accounting of the net proceeds from the sale of the House. Petitioners admittedly are not beneficiaries of Becketts’ will. Yet, only the beneficiaries of a will would have standing to seek an accounting as to assets passing under it.¹⁵ Similarly, only the beneficiaries of Becketts’ will could complain that

¹³ *Dover Historical Soc’y v. City of Dover Planning Comm’n*, 838 A.2d 1103, 1110 (Del. 2003).

¹⁴ *Stuart Kingston, Inc. v. Robinson*, 596 A.2d at 1382.

¹⁵ *See In re Laird*, 1998 WL 409165, at *4 (Del. Ch. July 8, 1998) (petitioner lacked standing to question the handling of certain trusts because they were not created for her benefit or the benefit of her children, and because each trust beneficiary had a living parent who could look out for their interests.); *Stegemeier v. Magness*, 1996 WL 549832, at *3 (Del. Ch. Sept. 20, 1996) (Holding plaintiffs lacked standing to assert a breach of fiduciary duty claim to restore the alleged diverted profits from the sale of a property because they “failed to demonstrate that any Residuary Trust beneficiary other than [defendant] Anne Magness [had] a cognizable interest in the profits derived from the sale of the Harmony Crest lots.”).

Stockley breached her fiduciary duties in the handling of Becketts' estate. Because neither of the Petitioners is a beneficiary of the will, I dismiss Counts I and III based on a lack of standing.

C. Count II

Respondents argue that this Court should dismiss Count II because Petitioners did not file their Complaint within the applicable statute of limitations, 12 *Del. C.* § 1309. Petitioners urge this Court to excuse their failure to comply with the statute of limitations because the will is illegal due to fraud or undue influence, and they had no notice of its existence at the time it was probated.

Section 1309(a) states that:

Any person interested who shall not voluntarily appear at the time of taking the proof of a will, or be served with citation or notice as provided in § 1303 of this title, shall, at any time within 6 months after the entry of the order of probate, have a right of review which shall on the person's petition be ordered by the Court of Chancery. Upon such review, there shall be the same proceedings as upon a caveat, and the allowance of the will and granting of letters may be affirmed or the will rejected and the letters revoked.¹⁶

¹⁶ 12 *Del. C.* § 1309(a). This version of the statute includes recent amendments that became effective June 30, 2005 (the Legislature changed the statute as follows: in the first sentence, they substituted "the entry of the order of probate" for "such proof or after delivery to the Register of Wills of self-proved will", deleted the proviso regarding provision of a bond and made a minor punctuation change). *See* Comments to 12 *Del. C.* § 1309. These changes would affect the dates by which Petitioners must have filed their Complaint in order to satisfy the statute of

Delaware courts strictly construe the requirement that a petition for review of a will be filed in a timely manner under Section 1309(a), because it reflects a special public policy in favor of prompt settlement of decedents' estates.¹⁷

The purpose for a 6-month limitation on the time to attack the validity of a will or of a provision therein is clear. It is to permit the prompt and orderly administration of estates.

* * *

Statutes limiting the time for challenging a will are common in the various states for just this reason. There is a special public policy in favor of prompt settlement of decedent's estates. The statutes are strictly construed.¹⁸

In this case the Register of Wills approved Becketts' will for probate on August 26, 2003. Thus, the statute of limitations ran on February 26, 2004. Further, 12 *Del. C.* § 1309 contains no exception through which it could be tolled by virtue of fraud or illegality, for example. Indeed, the Delaware courts have held that "even fraud does not toll a statute which limits challenges to the validity of a will."¹⁹ Because Petitioners filed their

limitations, but not materially. Consequently, for ease of discussion I will use the current language of the statute in analyzing the limitations issue.

¹⁷ *In re Estate of Turner*, 2004 WL 74473, at *6 (Del. Ch. Jan. 9, 2004) (internal citations omitted); *In re Rich*, 2004 WL 1366978, at *2 (Del. Ch. June 15, 2004) (dismissing complaint even though petitioners filed only 14 days late).

¹⁸ *In re Rich*, 2004 WL 1366978, at *2.

¹⁹ *In re Estate of Bates*, 1994 WL 586822, at *1 (Del. Ch. Sept. 23, 1994).

Complaint more than six months after the statute of limitations had run, I grant Respondents' motion for summary judgment that Count II is barred as untimely.

D. Count IV

In Count IV, Petitioners accuse Stockley of converting the proceeds of the sale of the House for her own benefit. Respondents seek to dismiss Count IV as invalid on its face. In particular, Respondents contend that contrary to the allegation in the Complaint, there is no dispute that they sold the House *after* Becketts' death. I agree. At argument the parties agreed that the House was sold after Becketts' death. Because Becketts owned the House when she died, it became one of the assets of her estate. Consequently, this claim must be analyzed under the will.

Becketts' will provided that Stockley and Ralph Bradley each would receive a 50% interest in her estate. Thus, if Stockley improperly converted any interest in the House or the proceeds from its sale to her own use, she would have taken it either from the estate or Ralph Bradley in contravention of the will.²⁰

To challenge Stockley's actions in distributing the proceeds of the House, Petitioners must meet the standard for third party standing. As explained above with regard to Counts I and III, Petitioners do not have standing to challenge Stockley's handling of Becketts' estate, including her sale of the House and distribution of the

²⁰ Obviously, Stockley could not convert or steal property in which she, herself, had at least a beneficial interest.

proceeds, because they are not beneficiaries of her will. Thus, I grant Respondents' motion and dismiss Count IV, as well.

III. CONCLUSION

For the reasons stated in this letter opinion, the Court hereby grants summary judgment in favor of Respondents and dismisses all counts of the Complaint with prejudice.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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