IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

* * * * * *

Estate of SAMUEL B. MILLINGHAUSEN, Jr., Deceased

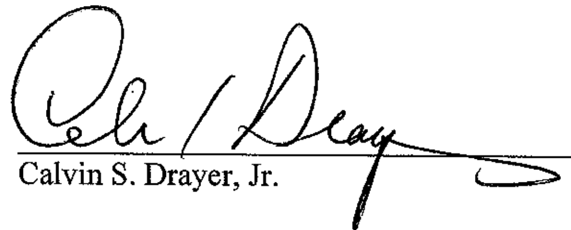
NO. 03-0700

* * * * * *

ORDER

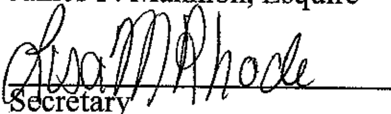
AND NOW, this 23rd day of December, 2004, it is hereby **ORDERED** that this Court's Opinion and Order dated December 6, 2004 is **VACATED** in favor of the Opinion and Order of this date.

BY THE COURT:



Calvin S. Drayer, Jr.

Copy of the above mailed
December 23 , 2004 to:
Samuel B. Millinghausen III, Esquire, pro se
James F. Mannion, Esquire



Secretary

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

ESTATE OF SAMUEL B. MILLINGHAUSEN, Jr., DECEASED

NO. 03-0700

OPINION AND ORDER

This case involves a challenge to the Will of Samuel B. Millinghausen, Jr., deceased, dated August 15, 2002. Samuel B. Millinghausen, Jr. ("Decedent") died February 3, 2003, a resident of Montgomery County, survived by his two daughters, Helen M. Rotzell and Dorothy A. Stadfelt, and his son, Samuel B. Millinghausen III. Decedent's will was probated by the Register of Wills on March 4, 2003 and Letters Testamentary were granted to Helen M. Rotzell as Executrix. Decedent's son, Samuel B. Millinghausen III, filed an Amended Petition appealing the Register of Wills' decision to probate the will. Samuel B. Millinghausen III ("Contestant") is excluded from receiving any share of this Estate by language in Item SECOND(B) of Decedent's will. We determine that Contestant does not have standing to challenge the probate of this will and cannot maintain his civil claim for intentional interference with a testamentary expectancy in this court.

Findings of Fact

1. Decedent died on February 3, 2003. *Amended Petition for Citation sur Appeal from Register in Probating Will*, ¶ 1 (hereinafter "*Amended Petition*").
2. Dorothy Millinghausen, his wife, predeceased Decedent by one month, dying January 5, 2003. (N.T., 06/21/04, at p. 8).
3. By the terms of his will dated August 15, 2002 ("2002 will"), Mr. Millinghausen left his

entire Estate to his wife, Dorothy B. Millinghausen, if she survived him. (Item SECOND(A) of 2002 will). If she did not, his 2002 will directed that his Estate be distributed outright in equal shares to his daughters, Dorothy A. Stadfelt and Helen M. Rotzell. (Item SECOND(B) of 2002 will).

4. The 2002 will also stated: "For reasons that I do not care to disclose, I have made no provision in this Will for my son, Samuel B. Millinghausen III. It is my intention that he should not receive anything under this Will." (Item SECOND(B) of 2002 will).

5. Decedent executed an earlier will dated November 25, 1983 ("1983 will"). Respondents, Helen M. Rotzell, Dorothy A. Stadfelt, Katherine Paul, Esq. and Peter Paul, Esq. appended a copy of this will to their Answer and New Matter filed in response to Contestant's original Petition. A copy of the 1983 will also was introduced into evidence at the hearing as Respondents' Exhibit R-2. (N.T., 06/21/04, at pp. 10, 84).

6. The 1983 will contained the same provision as the 2002 will; namely, "For reasons that I care not to disclose, I have made no provision for my son, Samuel B. Millinghausen III. It is my intention that he should take nothing under this, my Last Will and Testament." (ITEM 4 of 1983 will).

7. A copy of the 1983 will was submitted to the Court because the original will had been destroyed. (N.T., 06/21/04, at p. 4).

8. Decedent, his wife and Helen Rotzell visited Katherine Paul, Esq., scrivener of the 2002 will, in Maryland in August of 2002. Copies of the fully executed 2002 will were brought to that visit. When Helen Rotzell asked what should be done with the 1983 will, Attorney Paul suggested that the 1983 will should be destroyed so that there was no

confusion about which is the most recent will. In accordance with Attorney Paul's advice, Helen Rotzell took the original 1983 will to work and, after noting the original signatures on the will and that it was a will of the decedent, shredded it in her shredder at her place of employment. (N.T., 06/21/04, at pp. 57, 70-71).

9. Contestant alleges that the execution of the 2002 will was procured by fraud, misrepresentation, undue influence, duress, and constraint practiced upon Decedent by Dorothy B. Millinghausen, his spouse, who received the benefit of punishing Contestant. *Amended Petition*, ¶ 5

10. Contestant also alleges that Helen Rotzell and Dorothy Stadfelt, Decedent's daughters, assisted by Katherine Paul, Esq. exerted undue influence, fraud and misrepresentation over Decedent. *Amended Petition*, ¶¶ 6, 7.

11. Finally, Contestant alleges that Helen Rotzell, Katherine Paul and/or Peter Paul, Esquires conspired to and did intentionally interfere with Petitioner's testamentary expectancy. *Amended Petition*, ¶ 8; *Brief in Opposition to Preliminary Objections*, p. 1.

12. According to Contestant's testimony, over the course of twenty years, Decedent's Spouse misled Decedent about the family relationship with son, misled Decedent about the appropriateness of her discipline towards son (i.e., beating him with a fan belt), the need for family counseling and that son was to blame for all of these problems. (N.T., 06/21/04, at pp. 30-31).

13. There was testimony by other witnesses who testified that Mrs. Millinghausen was a milquetoast and Mr. Millinghausen was very much in charge of the family. (N.T., 06/21/04, at pp. 54, 73).

14. Contestant admitted on cross-examination that he could not name and did not know of any specific incident where his mother exerted duress, misrepresentation, undue influence or constraint over Decedent with respect to the 1983 will. (N.T., 06/21/04, at pp. 32-35).

15. Contestant testified that Decedent did not suffer from a weakened intellect at any time during 1983. (N.T., 06/21/04, at p. 40).

16. Contestant admitted during cross-examination that Mrs. Millinghausen was the sole residuary beneficiary under both the 2002 and 1983 wills. (N.T., 06/21/04, at pp. 26-27). Contestant also admitted that Mrs. Millinghausen did not receive any additional pecuniary benefit by having Contestant excluded from Decedent's will. *Id.* at pp. 28-29. The only benefit she received was the benefit of further punishing Contestant. *Id.* at 28.

17. Finally, Contestant admitted that there is no evidence that his sisters, Dorothy Stadfelt and Helen Rotzell, exerted fraud, misrepresentation, undue influence, duress or constraint over their father with respect to the 1983 will. (N.T., 06/21/04, at p. 26).

18. Helen Rotzell did not have any knowledge of the 1983 will until after it was executed. (N.T., 06/21/04, at pp. 71-72).

19. Contestant alleges in his Amended Petition that in May of 2002, "in the den of Decedent's home, in the presence of Spouse, Petitioner and one or two other family members, . . . Decedent did in a loud clear voice make a declaration to the effect that with regard to Petitioner, any and all issues or matters or problems from the past were to be over and forgotten and to have no future effect and that Petitioner was welcome to come and go in the house and that Decedent wished for the family to resume normal family relationships free of disharmony." *Amended Petition*, ¶ 21.

20. In answer to a question as to why the 2002 will included the same provision as the 1983 will excluding Contestant from any inheritance, Contestant testified that the fact his father would execute a will in August of 2002 identical to the 1983 will after making this statement of reconciliation in May of 2002 demonstrated Mrs. Millinghausen's ability to control Decedent. (N.T., 06/21/04, at p. 22).

21. Contestant testified that he does not know of any reason why his father would execute a will disinheriting him unless it was because of the control that Mrs. Millinghausen exerted over Decedent and the animosity that Mrs. Millinghausen felt toward Contestant. (N.T., 06/21/04, at p. 34).

22. The 2002 will was prepared and executed because Decedent was adamant about changing his designation of executors and in order to clarify any lapsing language in the residuary bequest. (N.T., 06/21/04, at pp. 61-62).

23. In paragraph 35 of his Amended Petition and in his post-hearing brief, Contestant alleges that Decedent told him in late December 2002 or early January 2003 that Decedent had an appointment with Attorney Paul to amend his will and restore Contestant's share. *Amended Petition*, ¶ 35. See also *Brief in Opposition to Preliminary Objections*, pp. 3-4.

24. Contestant alleges, in paragraph 39 of the Amended Petition and in his post-hearing brief, that the appointment with Ms. Paul was not kept, and Contestant attributes its cancellation to an endeavor by Helen Rotzell and Attorney Paul to interfere with Contestant's testamentary expectancy. *Amended Petition*, ¶¶ 39; *Brief in Opposition to Preliminary Objections*, p. 4.

Discussion

The first issue before us is whether Contestant has standing to challenge the will of

Decedent dated August 15, 2002. This issue was raised in Preliminary Objection No. 1 filed by Respondents, Helen M. Rotzell, Dorothy A. Stadfelt, Katherine Paul, Esq. and Peter Paul, Esq. Contestant is an intestate heir of Decedent, but he is expressly excluded from receiving an inheritance under Decedent's 2002 and 1983 wills.

The right to appeal from the Register's decision probating a will is a right granted by statute. 20 Pa. C.S.A. § 908. *See e.g., Estate of Briskman*, 808 A.2d 928, 932-33 (2002). When a cause of action is statutorily created, jurisdiction requires a determination of whether petitioner is within the class of persons entitled to pursue the action. *Estate of Briskman*, 808 A.2d at 933 (citing *Grom v. Burgoon*, 448 Pa. Super. 616, 672 A.2d 823 (1996)). *See also In re Rogers' Estate*, 154 Pa. 217, 26 A. 225 (1893)(If petitioner has no standing, then his petition should be dismissed "as an impertinent attempt to interfere in what was no concern of his.")

Section 908 of the Decedents, Estates and Fiduciaries Code provides that "any *party in interest who is aggrieved* by a decree of the register, . . . may appeal therefrom to the court within one year of the decree . . . ." 20 Pa. C.S.A. § 908. A party in interest is aggrieved by a decision from the Register of Wills if the judgment, decree or order of the Register injuriously affects some pecuniary interest of the party. *Estate of Luongo*, 823 A.2d 942, 953 (2003)(citing *In re Estate of Seasongood*, 320 Pa. Super. 565, 467 A.2d 857 (1983)). *See also In re Curtis Estate*, 98 A. 575 (Pa. 1916); *Estate of Sidlow*, 374 Pa. Super. 624, 543 A.2d 1143 (1988).

Prior to the decision of the Pennsylvania Superior Court in *Estate of Briskman, supra,* it had been suggested that an heir-at-law always had standing to contest the probate of a will even though there existed a prior testamentary document excluding the heir as a beneficiary. *In re Heffner's Estate*, 43 Pa. D. & C. 2d 365 (O.C., Mont.Co. 1967); *In re Holtz's Estate,* 30 Pa. D. &

C. 2d 396 (O.C. Perry 1962). The *Briskman* Court rejected the reasoning of these lower court decisions and held that the "clear and unambiguous language of the statute permits a party to appeal a Register's decision only if that party has an interest that has been aggrieved." 808 A. 2d at 932-33. "Heirs-at-law" is not designated in section 908 as a class entitled to appeal the Register's decision based merely upon their status as heirs. *Id.* at 933. The *Briskman* decision has been followed in *Estate of Burger*, 852 A.2d 385 (Pa. Super. 2004) and *Estate of Luongo*, *supra*.

As a result, a contesting heir will not have standing to proceed with a will contest if a prior testamentary document exists that also denies an inheritance to the contesting heir. *Estate of Briskman*, 808 A.2d at 933. If the will in dispute is invalidated, then under the doctrine of dependent relative revocation, absent a specific revocation, the prior will would be revived. *See Estate of Luongo*, 823 A.2d at 952, n. 3(discussion of doctrine of dependent relative revocation). In order for the contesting heir to have standing to appeal, any and all prior wills denying an inheritance to the contesting heir would need to be invalid and the right to an inheritance in decedent's estate reached through intestate succession. *Estate of Luongo*, 823 A.2d at 957-58.

The *Briskman* decision did not make it clear how to verify that a valid prior will exists. The opinion in *Luongo* is helpful on this issue. In *Estate of Luongo*, decedent's son sought to challenge decedent's final will, which bequeathed pecuniary amounts to him and his siblings, leaving the residue to decedent's long-time female companion. 823 A.2d at 949. However, in prior wills dated 1987 and 1983, decedent had bequeathed his entire estate to his companion, excluding his children completely. *Id.* The Superior Court affirmed the lower court's holding that decedent's son did not have standing to contest the **whole** of Decedent's last will because the

existence of the two prior wills denied him a share in decedent's estate. *Id.* at 958 (emphasis in the original).

The Superior Court in *Estate of Luongo* found that the lower court could not directly pass upon the validity of decedent's 1987 and 1983 wills because such documents were not before it. *Id.* at 958. Nevertheless, according to the *Luongo* court, the lower court needed to review the prior wills and the circumstances surrounding their execution "to ascertain the realistic possibility of [contestant's] success in challenging the prior wills." *Id.*

> When reviewing Decedent's testamentary pattern under the prior wills of 1987 and 1983, the court was not passing upon the validity of those wills. The court was simply trying to ascertain the realistic possibility of [contestant's] success in challenging the prior wills, which would have to be invalidated before [contestant] could reach more of Decedent's estate through intestate succession. We conclude that this exercise was entirely legitimate, where done for the purpose of determining whether [contestant] had a practical possibility of an aggrieved interest in the estate by virtue of the probate of Decedent's [last] will. . . . The practical possibility that [contestant] could reach more of Decedent's estate through a challenge to the whole of Decedent's [last] will is virtually nil on *the facts averred*, due to the existence of the prior wills.

Id. (emphasis added).

Ever since *Briskman*, this Court has been concerned about what evidence regarding a prior will needs to be presented in order to eliminate a contestant's standing. Obviously, the proponent needs to produce a valid prior will that has not been revoked except by the contested will. At such point, it now appears from *Luongo* that the contestant has some burden, yet to be defined precisely, to come forward with evidence indicating there is a realistic or practical possibility to successfully challenge the earlier will.

In this case, Respondents, as proponents of the will, have satisfied this Court that the

1983 will was valid and was not revoked by Decedent. Helen Rotzell established that there was a 1983 will, that there were original signatures on the original document, and that it was the will of Decedent. (N.T., 06/21/04, at pp. 70-71). Moreover, the destruction of the original 1983 will was not a revocation effective under 20 Pa. C.S.A. section 2505.[1] Decedent did not destroy the 1983 will himself. Because another person destroyed the will, the destruction needed to occur in Decedent's presence and at his express direction pursuant to 20 Pa. C.S.A. section 2505. The testimony of Katherine Paul, Esq. and Helen Rotzell established that the shredding was performed at Mrs. Paul's suggestion,[2] not Decedent's direction, and was accomplished by Mrs. Rotzell in her office and outside Decedent's presence. The physical destruction of the original 1983 will was not a valid revocation of the document. Hence, it is a realistic possibility that the Register would probate a photocopy of the 1983 will if such were presented. *See Del Rossi Will*, 15 Fiduc. Rep. 2d 156 (O.C. Montg. 1995).

Since Respondents have established that a copy of the 1983 will realistically could be probated by the Register, Contestant must come forward with some evidence that the prior will may be invalid. Contestant has failed to meet this minimal burden. Contestant did not present any evidence at the hearing raising any grounds upon which to invalidate the 1983 will. In fact, his own testimony shows that there are no grounds on which to challenge the 1983 will.

Contestant theorizes that Mrs. Millinghausen must have defrauded and unduly influenced

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[1] Section 2505 of the Probate, Estates and Fiduciaries Code provides that a will can be revoked in only one of three ways: (1) some other will or codicil in writing; (2) some other writing declaring the same, executed and proved in the same manner required of wills; or (3)being burnt, torn, canceled, obliterated or destroyed with the intent and for the purpose of revocation, by the testator himself or by another person in his presence and by his express direction. 20 Pa. C.S.A. § 2505.

[2] Attorney Paul testified that she recommended to the Millinghausens in August of 2002 that their prior wills be destroyed once she knew that the 2002 wills were fully executed. (N.T., 06/21/04, at p. 57). The Superior Court

Decedent because Contestant can think of no other reason why Decedent should want to disinherit him. (N.T., 06/21/04, at p. 34). This is not the standard of proof. In order to raise a presumption of undue influence, contestant needs to show that (1) the proponent was in a "confidential relationship" with the decedent, (2) the proponent receives a "substantial benefit" from decedent, and (3) at or around the time of the will's execution, decedent had a "weakened intellect". *Estate of Clark*, 461 Pa. 52, 60, 334 A.2d 628, 632 (1975).

Notably, Contestant herein testified that Decedent did not suffer from a weakened intellect in 1983. (N.T., 06/21/04, at p. 40). Contestant admitted that Mrs. Millinghausen received no additional pecuniary benefit by excluding Contestant from Decedent's will; her only benefit was the satisfaction of further punishing Contestant. (N.T., 06/21/04, at p. 28). Finally, Contestant conceded that there is no evidence that his sisters exerted fraud, misrepresentation, duress and constraint upon Decedent with respect to the 1983 will. (N.T., 06/21/04, at p. 26).

Despite Contestant's admissions and lack of evidence, Contestant maintains that he still has standing to contest Decedent's 2002 will because *Briskman* is distinguishable. *Brief in Opposition to Preliminary Objections*, p. 7, 15. Contestant argues that he has not admitted to the validity of the 1983 will while contestants in prior cases did accede to the validity of prior wills. *Id.* at 18. It is for this Court, not Contestant, to determine whether there is a realistic possibility that Decedent's 1983 will could be admitted to probate upon presentation. The Superior Court's decision in *Briskman* would be meaningless if contesting heirs could sided-step its effect by merely refusing to acknowledge a prior will.

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issued its decision in *Briskman* the next month. Now, it would be bad practice to recommend the destruction of a prior will unless the client wishes an absolute revocation, rather than a dependent relative revocation.

Contestant argued at the hearing and in his post-hearing brief that he "did not anticipate and was not prepared to present and challenge Respondents' evidence." (N.T., 06/21/04, at pp. 35-36); *Brief in Opposition to Preliminary Objections*, p. 5. As an attorney representing himself pro se, Contestant has only himself to blame. Contestant was informed by Court Order dated May 25, 2004 that a hearing was to be held on June 21, 2004 concerning the issue of whether he had standing to proceed with his Amended Petition. This Court previously informed Contestant of the *Briskman* decision and gave him an opportunity to amend his original Petition accordingly. With knowledge of the decision in *Briskman*, Contestant decided to proceed by filing the Amended Petition. Contestant knew he would be required at some time to present evidence suggesting the invalidity of the 1983 will. This Court will not indulge Contestant's theories and conclusory accusations any longer. "[O]pportunity, suspicion and conjecture do not create or amount to proof . . . and cannot carry the cause." *Estate of Luongo*, 823 A.2d at 964. *See also McNeil v. Jordan,* 20 Fiduc. Rep. 2d 295, 302-03 (O.C., Mont. Co. 2000) *aff'd* 814 A.2d 234 (Pa. Super. 2002), *alloc. granted* 575 Pa. 703, 837 A.2d 178 (2003).

In summary, there is no realistic possibility that Contestant successfully can challenge Decedent's 1983 will. He therefore lacks standing to proceed with an appeal from the probate of the 2002 will because he is not aggrieved by the Register's probate decree.

The second issue concerns Contestant's claim of intentional interference with a testamentary expectancy. From the Amended Petition, it is unclear whether Contestant is alleging that the intentional interference resulted in the drafting and execution of the 2002 will or resulted in Decedent's inability to execute a later will revoking the 2002 will. Both of these scenarios will be addressed below. For different reasons, Contestant's claim of intentional

interference with a testamentary expectancy fails under either interpretation.

The Pennsylvania courts recognize the civil tort of intentional interference with a testamentary expectancy. *Cole v. Wells*, 406 Pa. 81, 177 A.2d 77 (1962); *Mangold v. Neuman*, 371 Pa. 496, 91 A.2d 904 (1952); *Marshall v. DeHaven*, 209 Pa. 187, 58 A. 141 (1904); *McNeil v. Jordan,* 814 A.2d 234 (Pa. Super. 2002), *aff'g* 20 Fiduc. Rep. 2d 295 (O.C., Mont. Co. 2000), *alloc. granted* 575 Pa. 703, 837 A.2d 178 (2003); *Cardenas v. Schober,* 783 A.2d 317 (Pa. Super. 2001), *appeal granted in part*, 568 Pa. 713, 797 A.2d 909 (2002). The elements of this tort are:

> (1) The testator indicated an intent to change his will to provide a described benefit for plaintiff,
> (2) The defendant used fraud, misrepresentation, or undue influence to prevent execution of the intended will,
> (3) The defendant was successful in preventing the execution of a new will, and
> (4) But for Defendant's conduct, the testator would have changed his will.

McNeil, 814 A.2d at 238. However, this civil tort cannot be used to collaterally attack a Register's decree of probate. *Mangold*, 371 Pa. at 500-01, 91 A.2d at 906-07.

> There is a well-defined distinction between an attempt to impeach collaterally a judicial decree of probate and a case where the decree of probate is not attacked, but is admitted to be valid, and the testator has been prevented from modifying or revoking the admittedly valid probated document through physical restraint or fraud to the injury of an intended testamentary beneficiary.

Id. at 502, 91 A.2d at 907.

To the extent Contestant alleges that the 2002 will was procured by fraud, misrepresentation, duress and constraint, his civil claim of intentional interference with a testamentary expectancy is barred. His remedy is limited to an appeal from probate. Previously,

in this Opinion, we have held that Contestant does not have standing to appeal the probate of the 2002 will. He cannot cure his lack of standing by alleging intentional interference with a testamentary expectancy. This is an impermissible collateral attack upon the probate decree. Respondents' Preliminary Objection No. 3 is sustained.

On the other hand, Contestant may proceed with a civil claim of intentional interference with a testamentary expectancy if Contestant properly alleged in a complaint that Decedent was restrained from or defrauded in revoking or modifying his 2002 will. Respondents have filed a preliminary objection to this claim arguing that the "Amended Petition lacks the requisite specificity under Pennsylvania's fact pleading requirements." *Preliminary Objections to Amended Petition for Citation sur Appeal from Probate*, ¶ 10.

When reviewing Contestant's Amended Petition, we must accept as true all of Contestant's well-pleaded facts as well as reasonable inferences therefrom, but not factually unsupported conclusions of law." *McNeil,* 814 A.2d at 238(quoting *Balsbaugh v. Rowland*, 447 Pa. 423, 426, 290 A.2d 85, 87 (1972)); *Cardenas*, 783 A.2d at 321; *Mellon Bank v. Fabinyi*, 437 Pa. Super. 559, 567-68, 650 A.2d 895, 899 (1994). "Pennsylvania courts demand fact pleading." *McNeil,* 20 Fiduc. Rep. 2d at 302. In similar fashion, Supreme Court Orphans' Court Rule 3.4(a)(3) requires petitions to set forth "a concise statement of the facts relied upon to justify the relief desired . . . ."

The following paragraphs are the only averments in Contestant's Amended Petition that allege Respondents intentionally interfered with Decedent's wishes to revoke or modify his 2002 will:

> 35. That Decedent did tell Petitioner in late December 2002 or early January 2003, that he had an appointment with Kathy . . . to amend his will to restore Petitioner's share in his estate;
>
> . . .
>
> 39. That Katherine Paul cooperated with Executrix (i.e., Helen Rotzell) in endeavoring to interfere with Petitioner's testamentary expectancy by failing to keep the appointment with Decedent;
>
> . . .
>
> 45. That Helen Rotzell (i.e., Executrix) had a confidential relationship with Decedent, participated in and cooperated in Spouse's deceptive practices and prevented Decedent from changing his will;
>
> 46. That Helen Rotzell acted to isolate Decedent from both parents and interfered with Petitioner's relationship with Decedent.

Amended Petition, ¶¶ 35, 39, 45, 46.

These allegations are insufficient to set forth a cause of action for intentional interference with a testamentary expectancy. The Amended Petition does not contain any factual averments that Respondents used fraud, misrepresentation or undue influence to prevent execution of a later will. Unsubstantiated references to undue influence and a confidential relationship between Decedent and Helen Rotzell are not allegations of facts and will be disregarded as unsupported conclusions of law. Even if Katherine Paul cancelled a meeting with Decedent, as Petitioner alleges, this does not permit the inference of a conspiracy or fraud.[3] For these reasons, Contestant's Amended Petition lacks factual specificity and Preliminary Objection No. 2 is sustained as to the claim that Respondents intentionally interfered with Decedent's attempt to execute a will subsequent to the will executed on August 15, 2002.

[3]According to paragraph 35 of the Amended Petition, it was late December 2002 or early January 2003 when Decedent allegedly expressed an intent to revoke his 2002 will and include Contestant as a residuary beneficiary under a new will. Testimony by Contestant at the hearing established that Decedent's Spouse died on January 5, 2003. (N.T., 06/21/04, at p. 8). Less than thirty days later, Decedent died. *Amended Petition*, ¶ 1.

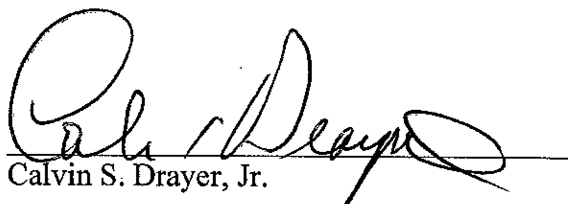
For reasons previously set forth in this Opinion, Contestant's Amended Petition will be dismissed. Contestant does not have standing to appeal the Register's decision to probate the 2002 will. Moreover, Contestant cannot collaterally attack the 2002 will by raising the civil tort of intentional interference with a testamentary expectancy. By pleading sufficient facts, Contestant may pursue a claim that Decedent intended to revoke or modify his 2002 will, but was prevented from doing so by the actions of Respondents. The Orphans' Court Division cannot exercise proper jurisdiction over that single claim under 20 Pa. C.S.A. §§ 711, 712. Contestant's Amended Petition therefore is dismissed in its entirety, and Samuel Millinghausen III may pursue a civil claim for intentional interference with a testamentary expectancy in civil court in accordance with this Opinion.

AND NOW this 23rd day of December, 2004, upon consideration of the Preliminary Objections of Respondents, Helen M. Rotzell, Dorothy A. Stadfelt, Katherine Paul, Esq. and Peter Paul, Esq., the briefs and reply briefs filed in support of and opposition to these Preliminary Objections, and after a hearing on June 21, 2004 *sur* the Amended Petition, it is hereby ORDERED and DECREED as follows:

1. All of Respondents' Preliminary Objections are SUSTAINED.
2. Contestant's Amended Petition for Citation *sur* Appeal from Register in Probating Will is DISMISSED with prejudice as Contestant lacks standing to appeal the Register's decision to probate the 2002 will; and
3. Contestant's Amended Petition to the extent that it attempts to set forth a civil claim of intentional interference with a testamentary expectancy is DISMISSED without prejudice.

As this ORDER determines the rights and status of Samuel B. Millinghausen III in this Estate, it is further **ORDERED** and **DECREED** that this ORDER shall constitute a final Order for purposes of Rule 342 of the Pennsylvania Rules of Appellate Procedure. Exceptions may be filed within twenty (20) days from the entry of this Order, or an Appeal may be taken to the appropriate Appellate Court within thirty (30) days of the entry of this Order. *See* Pa. O.C. Rule 7.1, as amended, and Pa.R.A.P. 902 and 903.

BY THE COURT:



Calvin S. Drayer, Jr.

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December 23, 2004, to:
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