IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: ESTATE OF SALLY C. VANDERKRAATS, Deceased

NO. 1501-0863

James F. Mannion, Esquire, Karl Prior, Esquire, Adam T. Gusdorff, Esquire, Attorneys for Edith C. Haney, Administratrix c.t.a. of the Estate of Sally C. Vanderkraats, Deceased
Ronald S. Jones, Esquire, Attorney for Grandchildren, Dirk Vanderkraats and Holly Vanderkraats

OPINION

BY OTT, P.J.

This Motion for Summary Judgment filed by Edith C. Haney, Administratrix of the Estate of Sally C. Vanderkraats, is before this Court as a result of the Superior Court's Memorandum Opinion of October 20, 2004, which reversed the Order of June 2, 2003 and remanded the case to this Court for further proceedings, if warranted.

Upon the retirement of the Honorable Lawrence E. Wood on October 4, 2006, this matter was reassigned to this Judge.

PROCEDURAL HISTORY AND UNCONTESTED FACTS

The facts of this matter first were brought before this Court in 1987 upon the death of Arie D. Vanderkraats (hereinafter "Arie"). At the time of Arie's death on June 13, 1987, he was survived by his wife, Sally C. Vanderkraats, his son, Gilbert

Vanderkraats, and Gilbert's adult children, Dirk Vanderkraats and Holly Vanderkraats Livezey (hereinafter "Grandchildren")

Arie created a Trust under deed dated September 16, 1969, appointing Commonwealth Trust Company as Trustee. Arie named himself as the only beneficiary of the Trust. He did not designate a remainder beneficiary. He did not retain a power of appointment. At the time that the Trust was signed, Arie was married to Sally C. Vanderkraats[1] and had as then-living heirs a son and a grandchild.[2] None of these individuals are mentioned by name or class in the Trust document.

On April 2, 1985, Arie executed a Will and Codicil. The dispositive provisions of the Will are ITEMS II and III, which provide:

> ITEM II: I give, devise and bequeath all of my estate, real, personal and mixed, which I own in my own name, to my wife, SALLY C. VANDERKRAATS.
>
> In the event my said wife shall predecease me or die within thirty (30) days of the date of my death, then I direct that my estate as aforesaid shall be given to my son, GILBERT VANDERKRAATS.
>
> ITEM III: I further give to my wife, SALLY C. VANDERKRAATS, all of the income, during her lifetime, from the trust which I have established with Commonwealth Trust Co., Trustee. At the time of my wife's death, the aforesaid trust shall terminate and the principal and any income remaining shall then be given to my son, GILBERT VANDERKRAATS.

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[1] At times, the record has reflected that Sally Vanderkraats was the second wife of Arie, and at other times that she was his fourth wife. It is not disputed that at the time of Arie's death, he had been married to Sally C. Vanderkraats since May 19, 1969.

[2] Dirk Vanderkraats was born on February 11, 1965. Holly Vanderkraats Livezey was born on December 31, 1969, two (2) months after the Trust was executed.

The Will does not refer to any other beneficiaries by name or by class. At the time that the Will and Codicil were executed, Dirk Vanderkraats was twenty (20) years of age, while Holly Vanderkraats Livezey was seventeen years (17) of age.

The Codicil contains an *in terrorem* clause that states:

> ...that should any Beneficiary or Beneficiaries, direct or implied, oppose or contest by any means whatsoever, this my Last Will and Testament dated this 2nd Day of April, 1985, He, She and/or They, be excluded from all Beneficiary Rights and their share to be equally distributed between the remaining Beneficiary or Beneficiaries.

Arie D. Vanderkraats died on June 13, 1987 and Sally met the thirty (30) day survival requirement. The Will and Codicil were submitted to probate on August 12, 1987 and Letters Testamentary were issued on August 25, 1987. Thereafter, Gilbert filed an appeal from probate alleging undue influence and lack of testamentary capacity. By Final Decree dated December 17, 1991, the Honorable Alexander Endy dismissed the Will contest. The Decree was affirmed by the Superior Court on November 2, 1992.

In August 1993, Sally Vanderkraats filed a Petition to Terminate the Trust. She argued that she was now the sole beneficiary of the Trust assets because Gilbert's remainder interest ceased to exist as a result of Gilbert's unsuccessful Will contest. Gilbert was given proper notice of the filing of the Petition to Terminate the Trust, as reflected in the docket. The Grandchildren were, as of August 1993, both past the age of majority. The issue of terminating the Trust was litigated and an Adjudication and Decree issued on April 15, 1994. Judge Endy held that Gilbert had forfeited his interest in the Trust when he contested the Will without probable cause. Gilbert appealed. The appeal was dismissed by the Superior Court on September 12, 1994. A Petition to

Reinstate the Appeal *nunc pro tunc* was denied on December 6, 1994. Thereafter, the Trustee distributed the balance of the Trust assets to Sally Vanderkraats pursuant to Paragraph I. E. of the Trust Agreement, which allows a 70% beneficiary to terminate the trust.

Sally died on June 5, 2001. On October 8, 2001, Gilbert filed a Motion to Set Aside the Order of April 15, 1994 that terminated his interest in the Trust. On November 16, 2001, Judge Wood dismissed the Motion without prejudice. Following additional pleadings and discovery, a Final Order was entered on August 26, 2002, dismissing the Motion and directing Gilbert to pay $48,000 in attorney fees plus interest.

Prior to the issuance of the August 2002 Order, the grandchildren filed a Petition seeking to have the Court establish a constructive trust permitting them access to certain assets in Sally's Estate. Their theory was their right to their father's remainder interest devolved to them thorough intestacy. After hearings, Judge Wood issued an Opinion and Order dated June 2, 2003 wherein he imposed a constructive trust over the assets in Sally's Estate. Sally's Estate filed Exceptions, which were dismissed by Order dated October 7, 2003. The October 28, 2003 Opinion clarified the scope of the constructive trust as imposed on only those assets, which passed under ITEM III of Arie's Will. Judge Wood concluded that the Grandchildren succeeded to Gilbert's share under ITEM III of the Will based upon Section 2514(9) of the PEF Code, 20 Pa.C.S.A. § 2514(9).

Sally's Estate appealed to the Superior Court. The Estate argued, *inter alia*, that: (1) the grandchildren had no interest under Arie's Will or Trust; (2) the anti-lapse statute

does not apply in situations where a beneficiary survives the testator and later forfeits his interest; and (3) there was no evidentiary basis for the imposition of a constructive trust.

In a Memorandum Opinion dated October 20, 2004, the Superior Court reversed Judge Wood's Order and remanded the case for further proceedings, if warranted.

The Estate of Sally C. Vanderkraats filed a Motion for Summary Judgment. We must first determine if a Motion for Summary Judgment is a proper pleading to dispose of this matter on remand. Pennsylvania Rule of Civil Procedure 1035.2 states that:

> After the relevant leadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law
>
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) If, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2 (1), (2)

This matter involves the interpretation of Arie's 1969 Will and Codicil. This is a question of law rather than fact. *Onofrey v. Wolliver*, 351 Pa. 18, 21, 40 A.2d 35, 37 (1944). All facts necessary to decide the issue have been previously developed and are not in dispute. Furthermore, at oral argument held on May 30, 2007, counsel for all parties agreed that this Court could revisit the June 2, 2003 Order and Opinion issued by Senior Judge Wood, and clarified by his October 28, 2003 Opinion. It was

acknowledged by all parties that this Court has the ability to review and determine *de novo* the issue of whether the grandchildren succeed to their father's forfeited interest in the Estate of Arie Vanderkraats.

DISCUSSION

Recognizing Judge Wood's experience and expertise in Orphans' Court matters, we do not take lightly the fact that we do not agree with Judge Wood's conclusion that "[a] legacy voided pursuant to an *in terrorem* clause should be treated the same as a lapsed legacy."

In reaching our conclusion we begin with the decision of Judge Endy dated April 15, 1994, that determined Gilbert had forfeited his interest in the Trust by contesting the Will. That decision was not overturned on appeal, no case law was presented by either party, nor did we find any in our own research, which would suggest that the enforcement of the *in terrorem* clause by Judge Endy has since been determined to be contrary to law.

As the decision by Judge Endy that Gilbert forfeited his interest in his father's estate is final, the only issue remaining is whether the forfeiture is the equivalent of Gilbert having predeceased his father.

The Will never mentions the Grandchildren by name or by class. Thus, the only way that Grandchildren could inherit under Arie's Will would be by application of the anti-lapse statute. Section 2514(9) states, in relevant part,

> A devise or bequest to a child . . . of the testator . . . shall not lapse if the beneficiary shall fail to survive the testator and shall leave issue surviving the testator but shall pass to such surviving issue who shall take per

> stirpes the share which their deceased ancestor would have taken had he survived the testator . . . .

20 Pa. C.S.A. §2514(9). We did not find, nor were cited, any case law directly on point, nor did Judge Wood cite any in his opinion. I do not find his reliance upon the reasoning in *Bloom v. Selfon,* 520 Pa. 519, 520, 555 A.2d 75 (1989), persuasive. As he said, the facts were dissimilar and the Supreme Court was interpreting 20 Pa.C.S.A. §2507(2) as it related to the divorce of a testator and the interpretation of provisions in the will in favor of or to the divorced spouse. President Judge Taxis, in *Clifford Estate*, 25 Fiduciary Reporter 453, 456 (1975), refused to treat a disclaimed interest as one that passes under Subsection (9) of the anti-lapse statute because ". . . sub-section (9) is confined to situation where a pre-residuary legatee has failed to survive the testator, an event which did not occur in this estate." Statutes must be interpreted upon the presumption that the legislature intended all parts of the statute to be effective. 1 Pa. C.S.A. §§ 1921(a), 1922. Gilbert is still living and sub-section (9) is not applicable.

Because Judge Wood determined the Trust assets passed under the residuary clause for lack of dispositive provisions in the Trust Agreement (*see*, Opinion of June 2, 200___), he did not address 20 Pa.C.S.A. §2514(10), Shares not in residue. Item III of Arie's Will is a non-residuary bequest, and we now look at the applicability of 20 Pa.C.S.A. §2514(10).

> A devise or bequest not being part of the residuary estate which shall fail or be void because the beneficiary fails to survive the testator or because it is contrary to law or otherwise incapable of taking effect or which has been revoked by the testator or is undisposed of or is released or disclaimed by the beneficiary, if it shall not pass to the issue of the beneficiary under the provisions of paragraph (9) here of, and if the disposition thereof shall not be otherwise expressly provided for by law,

shall be included in the residuary devise or bequest, if any, contained in the will.

20 Pa.C.S.A. §2514(10).

We agree with the analysis advanced by Sally's Estate that the language of Subsection (10), ". . . which has been revoked by the testator. . . ", is applicable to this case.

The valid *in terrorem* clause was a revocation of Gilbert's remainder interest in the trust. Subsection (10) then directs that the revoked gift be included in the residuary clause of the Will, unless Subsection (9) is inapplicable. We have already determined that Subsection (9) only applies to a predeceased child, which Gilbert is not.

The residuary bequest in ITEM II contains only two beneficiaries—Sally and Gilbert. Since Gilbert's interest under the Will was declared forfeited by Judge Endy's April 15, 1994 Adjudication, the only residuary beneficiary of Arie's Will was Sally.

In summary, Gilbert knowingly risked his rights and those of his heirs to receive any interest in Arie's Estate by contesting the Will. Under the terms of the Codicil, it is clear that should any beneficiary oppose or contest the April 2, 1985 Will, that beneficiary would be excluded from all rights under the Will. Gilbert knowingly contested the Will. The *in terrorem* clause controlled and any share to which Gilbert would have been entitled was given to Sally by Decree of April 15, 1994. At the time of Arie's death, the only beneficiaries under his Will were Sally and Gilbert. Thus, when Gilbert's share was forfeited, the only *remaining* beneficiary was Sally.

Based upon the foregoing, we enter the following:

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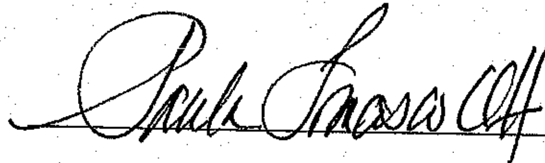
Ronald S. Jones, Esquire, Attorney for Grandchildren, Dirk Vanderkraats and Holly Vanderkraats

ORDER

AND NOW, this 21st day of June, 2007, upon consideration of the Motion for Summary Judgment of Edith C. Haney, Administratrix, c.t.a. of the Estate of Sally C. Vanderkraats, Deceased, and after oral argument May 30, 2007, it is hereby ORDERED that summary judgment is GRANTED in favor of Edith C. Haney, Administratrix, c.t.a. of the Estate of Sally C. Vanderkraats, Deceased

BY THE COURT:



P.J.

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