

CASE NUMBER: 2019-1040

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 107343

IN RE ESTATE OF ELASE JENKINS

**APPELLEE HELEN FORBES FIELDS, ESQ.'S MEMORANDUM IN RESPONSE TO
APPELLANT SHARLA JENKINS'S MEMORANDUM IN SUPPORT OF
JURISDICTION**

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I. EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Section 2(B)(2)(e) of Article IV of the Ohio Constitution dictates that the Supreme Court of Ohio's discretionary jurisdiction is reserved for "cases of public or great general interest." Cases presenting questions and issues of public or great general interest are to be distinguished from cases where the outcome is primarily of interest to the parties in a particular piece of litigation. *Williamson v. Rubich*, 171 Ohio St. 253, 254 (1960). While undoubtedly important to the Appellant here, this appeal falls into the latter category of cases referenced in *Williamson*. Since this case does not present issues of public or great general interest, jurisdiction over this appeal should be denied.

Here, Appellant makes no legal arguments whatsoever in her brief. Her brief consists entirely of an incoherent recitation of facts that has been heard by the court time and time again. Appellant makes no showing that this case has any public or great general interest. This matter may be important to Appellant, but it is an individualized matter; this case has no effect on the community at large and does not involve any great general interest. Appellant is simply unhappy with how the Probate Court handled her mother's estate. However, the Probate Court acted lawfully and was upheld by the Eighth District Court of Appeals. Appellant is now attempting to relitigate the same facts again. Since this case has no public or great general interest, and because Appellant relies on no legal arguments, this Honorable Supreme Court should deny jurisdiction to hear this case.

II. STATEMENT OF THE FACTS

On December 7, 2017, Shera Jenkins filed an Application for Authority to Administer Estate and an Application to Probate Will. On December 9, 2015, the Probate Court granted

Shera Jenkins's Application for Authority to Administer Estate and admitted the will to probate. On January 15, 2016, Appellant Sharla Jenkins filed a Motion to Remove Administrator, which was heard and granted on June 16, 2016.

At the request of Cuyahoga County Probate Court Magistrate Richard L. Gedeon that Appellee Helen Forbes Fields, Esq. take over this estate, Appellee filed an Application for Authority to Administer Estate on June 30, 2016, which was heard and granted without bond on July 1, 2016. After becoming the Administrator of the Estate of Elase Jenkins, Appellee Helen Forbes Fields, Esq. learned that the decedent's body had been located in the morgue for approximately 260 days and the Cuyahoga County Medical Examiner's Office was demanding that her body be removed immediately. As Administrator, Appellee Helen Forbes Fields, Esq. took action, filing a motion to have the Court require family members to make either funeral or cremation arrangements with the nine hundred dollars (\$900.00) on deposit with Strawbridge Memorial Chapel.

Continuing her duties as Administrator, Appellee Helen Forbes Fields, Esq. took inventory of the property in the Estate, finding the following: household goods worth a total of Five Hundred dollars (\$500.00), a 1999 Ford Escort worth One Thousand Seven Hundred Thirty-Six Dollars (\$1,736.00), a KeyBank savings account with One Thousand Fifty-Six Dollars and Thirty-Four Cents (\$1,056.34), a Citizens Bank checking account with Six Hundred Sixty-Five Dollars and Eighteen Cents (\$665.18), and a house located at 5058 Cato Street, Maple Heights, Ohio 44137 worth Forty-Nine Thousand Two Hundred Dollars (\$49,200.00).

Appellant Sharla Jenkins filed Exceptions to Inventory on the basis of a failure to open an estate account, displeasure with the division of the household goods, and a discrepancy with

jewelry items listed in the Inventory. The Magistrate found that after a thorough examination of the testimony and the court records, it was clear that Administrator Helen Forbes Fields, Esq. correctly inventoried the assets of the estate and properly distributed the tangible personal property in kind after allowing input from the heirs. Further, the Magistrate found that Helen Forbes Fields, Esq. had faithfully discharged her duties as Administrator. The Magistrate denied Appellant's Exceptions and approved Appellee's Inventory and Appraisal.

Throughout the time that Appellee Helen Forbes Fields, Esq. was serving as the Administrator of the Estate, she was harassed by several of the heirs, including Appellant Sharla Jenkins, in particular. Appellee received many phone calls from Appellant that were threatening and harassing in nature, in that they expressed intent to do harm to Appellee's person and served to interfere with the daily operation of Appellee's law practice.

Eventually, Appellee Helen Forbes Fields, Esq. had to file for an extension of the administration of the estate due to the fact that the heirs were causing several disruptions that were delaying Appellee from efficiently administrating the estate. Appellee properly filed a Certificate of Transfer, transferring a one-third (1/3) share of the decedent's real property to each devisee, Sharla Jenkins, Shafone Palmer, and Sherry Jenkins Pickens, pursuant to the decedent's will.

Appellant Sharla Jenkins, and her sister, Sherry Jenkins, filed a motion to remove Appellee Helen Forbes Fields, Esq. as Administrator of the estate on April 10, 2017. On May 4, 2017, Cuyahoga County Probate Court Judge Laura J. Gallagher denied and dismissed this motion, finding that it failed to set forth any statutory reason for removal. Further, Judge Gallagher found Appellant's motion to be a rambling, incoherent recital of claims that had

already been addressed by the Court. On May 18, 2017, Appellant Sharla Jenkins filed an Objection to Magistrate's Decision after the Court denied her Motion to Remove Administrator. The Court denied and dismissed the Objections because it found that there was no pending Magistrate Decision to which to Object, and thus found the Objections to Magistrate's Decision to be without merit.

Continuing her duties as administrator, even with all the improper conduct from the heirs, on August 4, 2017, Appellee Helen Forbes Fields, Esq. properly filed the Fiduciary's Final Account. Appellee also filed a Motion for Extraordinary Attorney Fees because of all the harassment she was receiving from the heirs, and because of the additional work she had to perform due to the unnecessary delays caused by the heirs. The Court found Appellee's Motion for Extraordinary Fees to be well taken, and such motion was granted with a modified amount, on November 9, 2017.

Appellant Sharla Jenkins filed Exceptions to the Final Account filed by Appellee. Appellee Helen Forbes Fields, Esq. filed an Amended Final Fiduciary's Account on November 20, 2017. On April 19, 2018, Cuyahoga County Probate Court Magistrate John R. Homolak, denied and dismissed Appellant's Exceptions to the Final Account and approved Appellee's Final Account. Magistrate Homolak found that the work Appellee Helen Forbes Fields, Esq. had done to administer this estate had been proper. The Magistrate found that Appellee made a reasonable attempt to find additional assets that Appellant believed existed, that Appellee reasonably distributed the household goods, and that Appellee satisfactorily accounted for the assets of the estate and properly documented the payment of estate expenses. Magistrate Homolak determined that Appellee Helen Forbes Fields, Esq. had satisfactorily, and properly, administered the estate.

Appellant Sharla Jenkins once again filed an Objection to Magistrate Homolak's decision. Judge Gallagher found Appellant's Objection to Magistrate's Decision was without merit, denied and dismissed the Objection, and reaffirmed approval of the Final Account filed by Appellee Helen Forbes Fields, Esq. Appellant Sharla Jenkins then filed an Appeal with the Court of Appeals of Ohio, Eighth Appellate District. After two failed attempts at filing a compliant Appellate Brief, Appellant Sharla Jenkins filed an Appellate Brief that was found to be substantially compliant with Rule 16 of the Ohio Rules of Appellate Procedure. In her Appellant Brief, Appellant Sharla Jenkins alleged that 1) the Probate Court erred by appointing Appellee Helen Forbes Fields, Esq. the Administrator of the estate, 2) the Probate Court erred by approving the Inventory and Appraisal, and 3) the Probate Court erred by approving the Amended Fiduciary Account.

The Appellate Court held oral argument on April 30, 2019. On May 30, 2019, the Appellate Court issued its decision, in which it affirmed the Cuyahoga County Probate Court. The Appellate Court properly found that Appellant Jenkins's claims had no merit and were completely unsubstantiated by any evidence. Appellant Jenkins then filed a Motion for Reconsideration of the Appellate Court decision on June 10, 2019. The Appellate Court denied this Motion on June 24, 2019. Appellant now appeals this decision to the Supreme Court of Ohio.

III. LAW AND ARGUMENT

A. Appellant's Notice of Appeal is Not Compliant with Rule 7.01 of the Ohio Supreme Court Rules of Practice, Thus Mandating Dismissal of the Appeal.

Appellant Jenkins filed her Notice of Appeal with the Ohio Supreme Court on July 30, 2019. However, in doing so, Appellant failed to file a Notice of Appeal in compliance with the Ohio Supreme Court Rules of Practice. S.Ct.Prac.R. 7.01(A)(5)(c) provides:

To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals has ruled on an application for reconsideration, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(5)(b) and shall include both of the following:

- (i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B) and that indicates the date of the filing of the application for reconsideration, the date of the court of appeals' decision on the application for reconsideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;
- (ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02 and that also has attached a date-stamped copy of the court of appeals' decision denying the application for reconsideration, or if reconsideration is granted, the subsequent entry of judgment.

Appellant's Notice of Appeal does not include the date when she filed her Application for Reconsideration. It also neither includes the date of the Court of Appeals' decision on the Application for Reconsideration, nor the date of the Court of Appeals' opinion and judgment entry that is being appealed. In fact, Appellant's Notice of Appeal contains no content in the body of the Notice at all. It simply includes the case caption, title, signature block, and certificate of service. Appellant's Notice of Appeal should not be considered by this Honorable Supreme Court because it fails to comply with the Rule 7.01 of the Ohio Supreme Court Rules of Practice.

B. Response to Appellant Jenkins's Proposition of Law No. I: Appointment of Administrator.

The Probate Court's decision to appoint Appellee Helen Forbes Fields, Esq. as Administrator for the Estate of Elase Jenkins was proper and the Appellate Court appropriately affirmed that decision. Ohio Revised Code Section 2113.05 provides:

... if the executor named in a will or nominated pursuant to that power dies, fails to accept the appointment, resigns, or is otherwise disqualified and the holders of the power do not have authority to nominate another executor or the power is not conferred in the will, or if the power is conferred in a will but the power cannot be exercised because of the death of a holder of the power, letters of administration with the will annexed shall be granted to a suitable person or persons, named as devisees or legatees in the will, who would have been entitled to administer the estate if the decedent had died intestate, unless the will indicates an intention that the person or persons shall not be granted letters of administration. Otherwise, the court shall grant letters of administration with the will annexed to some other suitable person.

“R.C. 2113.05 grants the probate court the authority to exercise reasonable discretion in determining if an applicant for letters testamentary is a competent and suitable person...” *In re Estate of Amoroso*, 2015 Ohio 3352, ¶ 16 (8th Dist., 2015); *see also In re Estate of Young*, 4 Ohio App.2d 315, 320 (10th Dist. 1964). “A suitable person under R.C. 2113.05 has been defined as one who ‘is reasonably disinterested and in a position to reasonably fulfill the obligations of a fiduciary.’” *Id.* at ¶ 17; *see also In re Estate of Henne*, 66 Ohio St.2d 232 (1981). “In determining whether an applicant is reasonably disinterested, the court may consider ‘(1) the nature and extent of the hostility and distrust among the parties; (2) the degree of conflicting interests and obligations, both personal and financial; and (3) the underlying and aggregate complexities of the conflict.’” *Id.* Next-of-kin as administrator of an estate is only preferable over a stranger if they are suitable. *Id.* at ¶ 22; *see also In re Estate of Vickers*, 110 Ohio App. 499 (4th Dist. 1959).

In *Amoroso*, the Probate Court's decision to appoint an independent individual as administrator of the estate was upheld by the Appellate Court because it properly found that the next-of-kin were not suitable to serve as administrator as they were not disinterested and had conflicting interests.

Here, Shera Jenkins was appointed as Executrix of the estate. Shera Jenkins was eventually removed as Administrator of the estate due to her failure to properly administer the estate. The Will states that if Shera Jenkins is unable to serve as Administrator, that Shirley Cook shall be appointed as Administrator. However, Shirley Cook had predeceased decedent, and thus was unable to serve as Administrator. Due to the fact that there was much discord and conflicting interests between the heirs at the time, the Probate Court determined that an independent individual should be appointed as Administrator, like in *Amoroso*. Therefore, pursuant to Ohio Revised Code § 2113.05, the Court appointed Appellee Helen Forbes Fields, Esq. as the Administrator of the estate. The Appellate Court affirmed the Probate Court's decision to appoint Appellee Helen Forbes Fields, Esq. as the Administrator. This Honorable Supreme Court should find that the Appellate Court's decision was proper and should not accept jurisdiction to further hear this case.

C. Response to Appellant Sharla Jenkins's Proposition of Law No. II: Inventory and Appraisal.

The Cuyahoga County Probate Court's decision to approve the Inventory and Appraisal was proper, and the Appellate Court appropriately affirmed the Probate Court's decision. A fiduciary of an estate is required to file an inventory of assets and set forth values pursuant to Ohio Revised Code Section 2115.02. Ohio Revised Code Section 2115.16 requires an executor to include in an inventory all items of personal property in which decedent had an interest at the

time of death. “The representative of an estate has an obligation and mandatory duty to seek out and collect every asset belonging to the decedent at the time of [her] death and include it in the estate.” *In re Estate of Ewing*, 3d Dist. No. 5-03-03, 2003-Ohio-4734 (2003). “All probate assets in which the decedent had an interest at the time of her death must be included on the inventory.” *In re Estate of Kemp*, 937 N.E.2d 1102 (Ohio App., 2010).

Here, the Probate Court Magistrate found that Appellee Helen Forbes Fields, Esq. properly inventoried the estate. Appellee made a diligent effort to locate additional assets that Appellant Sharla Jenkins believed existed, but to no avail. Appellee also properly inventoried and distributed the personal property in the estate, and even took the time to get the input from the heirs as to which items each of them wanted. For the foregoing reasons, this Honorable Supreme Court should find that the Appellate Court’s decision was proper and should not accept jurisdiction to further hear this case.

D. Response to Appellant Sharla Jenkins’s Proposition of Law No. III: Amended Final Account.

The Cuyahoga County Probate Court’s decision to approve the Amended Final Account was proper, and the Appellate Court appropriately affirmed that decision. Ohio Revised Code Section 2109.30(A) provides that “Every executor and administrator shall render an account of the executor’s and administrator’s administration at the time and in the manner prescribed in section 2109.301 of the Revised Code.” Ohio Revised Code Section 2109.301(A) provides:

An administrator or executor shall render an account at any time other than a time otherwise mentioned in this section upon an order of the probate court issued for good cause shown either at its own instance or upon the motion of any person interested in the estate...

Every account shall include an itemized statement of all receipts of the administrator or executor during the accounting period and of all disbursements and distributions made by the executor or administrator during

the accounting period. In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate known to or in the possession of the administrator or executor at the end of the accounting period and shall show any changes in investments since the last previous account.

It is the fiduciary's burden to establish the validity of an account. *In re Estate of Butler*, 137 Ohio St. 96 (1940). An exceptor has the initial burden of establishing that assets existed that were not included or that certain expenditures were improper. *Steward v. Barry*, 102 Ohio St. 129 (1921); *see also Bolen v. Humes*, 94 Ohio App. 1 (1951).

Here, Appellee Helen Forbes Fields, Esq. made a diligent effort to locate additional assets that Appellant Sharla Jenkins believed existed, but to no avail. The decedent received proceeds from the Ohio Lottery several years before her death, and it appears that she expended the funds before her death. The heirs could not advance any funds to further an investigation to locate any additional assets and due to the fact that the estate had no funds left, Appellee determined that it was not financially proper to pursue further investigation. The Cuyahoga County Probate Court Magistrate found that Appellee Helen Forbes Fields, Esq. properly accounted for the estate's assets, properly reported the estate's expenses, and that she properly administered the estate. Therefore, this Honorable Supreme Court should find that it was proper for the Appellate Court to affirm the Cuyahoga County Probate Court's decision to approve the Final Amended Account and should not accept jurisdiction to further hear this case.

IV. CONCLUSION

For all the foregoing reasons, the Eighth District Court of Appeals' decision, affirming the Cuyahoga County Probate Court's decision, was correct. Appellant Jenkins is attempting to relitigate the same facts, while at the same time, not making any valid legal arguments in her favor. As such, while this Appeal may be of interest to Appellant Sharla Jenkins, it is not a case

of public or great general interest. Consequently, this Honorable Supreme Court should not accept jurisdiction to further hear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Appellee Helen Forbes Fields, Esq.'s Memorandum in Response to Appellant Sharla Jenkins's Memorandum in Support of Jurisdiction was served on this 23rd day of August, 2019, by Regular U.S. Mail to the following:

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