

IN THE COURT OF COMMON PLEAS FOR LUCAS COUNTY, OHIO  
PROBATE DIVISION

HERBERT E. ADAMS, Executor	:	Case No. 2007 ADV 149
	:	
Plaintiff	:	Judge Jack R. Puffenberger
	:	
v.	:	
	:	MEMORANDUM OF NAMED
BARBOURA KRUPP, et al.,	:	DEFENDANTS IN OPPOSITION
	:	TO DEFENDANT JULIA R.
Defendants	:	BATES' MOTION FOR
	:	SUMMARY JUDGMENT

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NOW COMES Laura L. Kronz, Donna M. Gardner, Ruth Anne Franklin, Carole L. Mason, Grace M. Bauman, Floyd R. Franklin, John W. Franklin, Verlin A. Rice, Carma E. Rice, Donald L. Underwood, David E. Underwood, Kathy Woods Allen, Dennis J. Woods and Gaylene C. Finch, some of the Next of Kin of Decedent John A. Waldvogel (hereinafter "Next of Kin"), by and through counsel, and submits the within Memorandum of Named Defendants in Opposition to Defendant Julia R. Bates' Motion for Summary Judgment.

MEMORANDUM

It is clear from a reading of Defendant Julia R. Bates' (hereinafter Bates or Prosecutor) Memorandum in Support that Bates is of the opinion that the Last Will and Testament is clear and unambiguous on its face and that the deposition of Fiduciary Herbert E. Adams doesn't add anything to assist the Court in the construction of Decedent's Will. Bates neither filed Adams' deposition with the Court nor does she argue that it is necessary to determine the testator's intent.

Bates filed nothing to contradict Adam's assertions that testator's use of the words, "...the last possibility before distribution is made to the State of Ohio" were used because it was testator's belief that no Next of Kin existed any longer and that "...he was at the end of a dying family". Deposition of Herbert E. Adams at TR. 13, Lines 11-14. Defendants herein submit that had testator wanted his estate to go to the State of Ohio, he would have said exactly that at Item 4. (f), he wouldn't have used the terminology, "...the last possibility..." He would have said, "...then I direct that my estate shall be distributed to the said Lorene Berno...if living and if not living, then to State of Ohio."

Adams made it clear in uncontrodicted testimony that he held little affection for the State of Ohio and that he viewed the passing of his estate to the State of Ohio as something to be avoided. **The intent of Decedent is that his estate must not go to the State, not the opposite as urged by Bates.**


In a recently published case, *Stevens v. Radey*, 117 Ohio St. 3d 65 (2007), citing *Polen v. Baker*, 92 Ohio St. 3d 563 (2001), *Olglesbee v. Miller*, 111 Ohio St. 426 (1924) and *Mathews v. Krisher*, 59 Ohio St. 562 (1899), it is stated:

"When a court interprets a will, it should first look to the intent of the testator and divide property in accordance with it...However, where a decedent fails to dispose of some or all of this or her property through a testamentary transfer, the statute of descent and distribution, R.C. 2105.06, governs who receives the unaccounted-for property...The statute provides a default distribution scheme to resolve uncertainty created by intestacy..." *Stevens v. Radey* at p. 66.

At the risk of boring repetition, the within matter cries for a determination by the Court that Decedent's estate not escheat but pass via Ohio's statute for

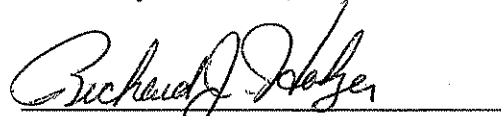
distribution of "unaccounted-for property", "the "statute of decent and distribution". Id.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

This is to certify that a true copy of this Motion and Memorandum in Support of Motion was sent by regular US mail, postage prepaid to those persons whose names are set for below, on this 24<sup>th</sup> day of March, 2008.

  
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