

the postal receipts submitted by Mr. Byrd, he first mailed the Notice of Appeal to this Court's Order of December 6, 2005 on December 12, 2005, well within the Appeal period. Notwithstanding the failure of the Prothonotary to docket same, the Appeal is found to be timely.

The Court will now address Mr. Byrd's 1925(b) Statement.

The only issues that concern this Court are issues **No. 5** and **No. 7**. **No. 7** will be addressed first.

Only July 28, 2005, this Court entered the following Order:

And Now, to wit, this 28th day of July, 2005, it is hereby Ordered and Decreed that Plaintiff's Motion for Partial Summary Judgment under Control #021065 is granted upon Defendant's failure to file any response thereto and the Court has no recourse but to mark the matter as uncontested.

Copies were served on all parties on July 29, 2005.

On August 4, 2005, Defendant filed a Motion to Set Aside Partial Summary Judgment claiming various violations of both local and state rules of civil procedure and most important, a failure to Serve the Motion. Plaintiff filed a Response on August 10, 2005 claiming many things but as to his proof of service did not provide an Affidavit of Service of the Motion. His answer on this issue claimed that the Civil Clerks would not have accepted his Motion if Service to all parties was made.

As this was an inadequate response and since he failed to produce any form of proof of service and there is no duty for Civil Clerks to verify adequate service prior to accepting the Motion, this Court entered the following Order:

And Now, this 12th day of September 2005, it is hereby Ordered and Decreed that Plaintiff's Motion for Partial Summary Judgment be dismissed and stricken from record for failure to conform to Rules of Court.

The next issue is **No. 5** of Plaintiff's 1925(b) Statement, set out in full.

5. The question presented is the lower court in error in granting the Defendants there Motion for Summary Judgment where there was clear and presented/genuine disputed issues of claims submitted by appellant.

Defendant's Motion for Summary Judgment addresses in concise form which is set forth below:

Motion for Summary Judgment

And Now comes defendant by counsel Fincourt B. Shelton and moves this Honorable Court for Summary Judgment and in support thereof avers as follows:

1. Plaintiff filed his complaint under Court term and number March Term 2002 No 1316 alleging negligence on the part of defendants' for failing to prove that he was the biological son of a decedent named Thomas E. Davis.
2. Plaintiff was the son of Jean Gerner Byrd a married woman. It is presumed by law that her husband was the father of her children.
3. During decedent Thomas E. Davis life he held Plaintiff and his brother out as his sons.
4. Defendant Carol Ricks-Davis was the wife of decedent Thomas E. Davis.
5. During the marriage defendant Carol Ricks-Davis understood from her husband that Plaintiff and his brother were the children of decedent Thomas E. Davis.
6. Decedent Thomas E. Davis died December 31, 1999 without a Will. (See Exhibit "A")
7. Plaintiff's brother Warren Byrd appeared at the Register of Wills with defendant Carol

Ricks-Davis on January 7,2000 and Letters of Administration were granted to Carol Ricks-Davis wife of the decedent. (See Exhibit “B”)

8. Defendant had lived openly as wife of decedent for more than sixteen years and was qualified as a common-law wife.

9. No challenge to defendants common-law status was ever raised.

10. Defendant acknowledged Plaintiff and his brother as sons of decedent Thomas E. Davis as witnessed in the Petition for Grant of Letters. (See Exhibit “C-1”).

11. There are no genuine issues of dispute which remain.

12. Plaintiff is entitled to a share of decedents’ estate as determined by the law of intestate succession. (See Exhibit “C-2”)

13. The estate administration is complete, inheritance tax returns have been filed, a formal settlement agreement was prepared, an inventory filed, as well as an accounting all of which have been provided to Plaintiff. (Exhibit “D”).

14. Plaintiff is entitled to thirty-three and one third percent (33 1/3%) of the decedents’ estate after deduction of cost of administration decedents’ debts and wife’s statutory share.

15. Insurance proceeds payable to Carol Ricks-Davis are not part of decedents’ estate and need not to be shared with Plaintiff.

16. Whether or not decedent was the biological father of Plaintiff is a moot issue since defendant has not challenged his parentage.

17. Defendant Fincourt Shelton is under no duty to prove the parentage of Plaintiff and is not negligent in failing to pursue said issue.

These facts are not contested. Plaintiff alleges that he takes issue or has “disputed issues of claims.” Notwithstanding the fact that he disputes the issues, he has not offered any facts other than his disagreement with the outcome of the distribution of his father’s estate.

He fails to offer any facts or law which would show that the legal conclusion that Ms. Davis was his deceased father’s wife at the time of his death is not correct.

He fails to show how Mr. Fincourt had any duty to prove his parentage or help him secure any non-estate death benefits from his father since Mr. Fincourt did not represent him, had no agreement with him, (he was counsel to the Administration of the Estate) and had no common law duty to advance his claims outside the estate.

He fails to show that his parentage is a contested issue in fact since he is identified in the Estate (See Petition for Grant of Letters of Administration, Exh. C-1 to Defendant’s Motion for Summary Judgment).

Hence, since there are no legally cognizable issues of fact or law, Defendants were entitled to the Summary Judgment granted by the Court.

BY THE COURT:

ALLAN L. TERESHKO, J.

DATE

cc:
Darryl Byrd
Fincourt B. Shelton, Esq.

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