

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Edward Fina, Deceased
O.C. No. 1408 DE of 2005
Control No. 063685

Amended Audit Memorandum

Edward Fina died intestate on April 25, 1996. Nine years later, his wife, Concetta Fina (hereinafter "Concetta"), obtained letters of administration on May 24, 2005. In addition to his wife, Edward Fina was survived by two daughters, Lorinda Ann Fina (hereinafter "Lorinda") and Loretta Del Collo (hereinafter "Loretta"). As administratrix, Concetta filed an account of her administration of her husband's estate on March 20, 2006 after her daughter Loretta filed a petition seeking an accounting.

The genesis of dispute in Orphans' Court can be traced to an earlier action filed by Concetta Fina in the Civil Trial Division.¹ In August 2005, Concetta Fina, as administratrix of the Estate of Edward Fina, filed a complaint against Loretta, her husband, Daniel Del Collo, Jr., and her father-in-law, Daniel Del Collo Sr. asserting that Loretta, with the help of the two co-defendants, had deprived the Fina Estate of its right to a one-third stock interest in a corporation they had founded, Findel, Inc.² Loretta responded by filing a counterclaim in which she asserted that "[i]mmediately after Edward's death, Concetta Fina took all Edward's assets, with the exception of the shares

¹ Loretta Del Collo explained that she was prompted to seek an accounting from her mother after Concetta filed suit against her over the alleged conversion of the Findel Corporation assets. 12/12/2006 N.T. at 58-59 (Loretta).

² See Complaint, Concetta Fina, Administratrix, v. Loretta Del Collo, et al., August 2005, No. 3894, ¶¶ 7-9, 21-22, 25. Findel was founded in 1973 by directors Edward Fina, Daniel Jr. and Daniel Sr. Del Collo. Complaint, ¶ 7. See also 12/12/2006 N.T. at 69 (Loretta's identification of the parties involved in the Findel litigation).

in Findel, Incorporated and concealed them from defendants” while secretly distributing the estate assets to herself and Lorinda.³ By decree dated September 12, 2005, this matter was transferred from the civil trial division by the Honorable Joseph O’Keefe.

After the civil action was transferred, Loretta filed a petition seeking an accounting by Lorinda Fina. In that petition, she asserted that Edward’s estate consisted not only of Findel, Inc. stock but also of real estate located at 2940 South Juniper Street, Philadelphia; 8607 Winchester Avenue, Margate, New Jersey; and other locations; cash; certificates of deposit; jewelry and other financial instruments.”⁴ By decree dated December 13, 2005, this court granted Loretta’s petition, and by decree dated March 10, 2006, Concetta Fina was ordered to file an account.

According to the Account subsequently filed by Concetta, \$12, 795.69 in Pennsylvania Inheritance Tax *was yet to be paid* as well as \$7,381.09 in interest as of March 20, 2006. The Administratrix has admitted that she paid no Pennsylvania inheritance tax.⁵ The account stated that there had been principal receipts of \$490,000 and that \$202,000 had been distributed to Loretta Del Collo. The account stated that there is an “overdistribution” of \$95,369.25 to Loretta Del Collo and attributed “\$6,397.87 as her “share” of the taxes. The account further stated that Concetta Fina had received \$56,000 in principal distributions while Lorinda Fina had received nothing.

On May 1, 2006 Loretta filed objections to the account. She asserted first that the accountant should be surcharged from her fair share for the interest due of \$7,381.09 on

³ Del Collo Answer & Counterclaim to Complaint, Concetta Fina, Administratrix v. Loretta Del Collo, et al., August 2005, No. 3894, ¶¶81-82.

⁴ 11/16/2005 Del Collo Petition, ¶ 6.

⁵ 11/13/2006 N.T at 46-47 (Concetta).

the delinquent tax still due ten years after the death of Edward Fina. Secondly, Loretta claimed that she had not received the distributions set forth on page 4 of the Account.

After conferences and discovery, a four day hearing was heard on the objections as well as Loretta's counterclaim that Concetta had concealed assets of her husband's estate to deprive Loretta of her rightful share. The testimony revealed that the account filed by Concetta Fina is inherently fraudulent. Prior to his death, Edward Fina had amassed a fortune in cash as a numbers writer.⁶ Throughout his life, he was careful to conceal the scope—and source—of his hidden wealth. For instance, while he regularly drove a new car, it was never titled in his own name.⁷ Edward entrusted large sums of cash to be held by relatives in safety deposit boxes.⁸ Whenever real property was purchased—whether at Juniper Street in Philadelphia or at Margate in New Jersey, it was titled in the name of other family members.⁹

After Edward's death, his wife, Concetta, with the active compliance of her daughter Lorinda, continued her husband's pattern of secreting away bundles of cash in safety deposit boxes held by relatives and in the basement in her Juniper Street residence¹⁰ in an ostensible effort to avoid taxes and any accountability to the rightful heirs. Edward, and then Concetta, dragged other family members into their scheme to hide their cash fortune. The forthright—and highly credible-- testimony of a niece, Lena

⁶ 12/12/2006 N.T. at 13 (Loretta). When asked how her father had earned his living, Lorinda initially responded that he had been a car salesman and florist. 12/11/2006 N.T. at 142 (Lorinda). Upon further questioning, Lorinda conceded that he had been incarcerated in 1971 for illegal betting and numbers writing. *Id.* at 143 (Lorinda).

⁷ 12/11/2006 N.T. at 6 (Concetta). See generally 12/12/1006 N.T. at 14-15 (Loretta) (“My father didn't hold title to anything in his name, that I know of, except for Findel, and even Findel, he was trying to divert himself of that”).

⁸ 12/11/2006 N.T. at 22 (Concetta)(When asked how much money would be entrusted to relatives, Concetta replied that “my husband was the one that determined that”).

⁹ The Margate Property at 8607 Winchester Avenue, for instance, was originally titled in the name of Carmella Martino, who was Concetta's sister. 12/12/2006 N.T. at 11 (Loretta).

¹⁰ 12/11/2006 N.T. at 25 (Concetta)(referencing cash hidden in the basement).

Barone, and a nephew, Arthur Corrado, helped uncover at least some of those hidden assets. In explaining why he had helped his Aunt and Uncle conceal their cash assets, Mr. Corrado ruefully observed: “Like I said, it was family, but ain’t no family no more.”¹¹

While the testimony of Ms. Barone and Mr. Corrado help pinpoint \$1,000,000 in assets, the record does not provide a basis for calculating the sums hidden in the Juniper street basement. This is problematic for determining the total assets of the estate. Since Concetta was evasive, untruthful and not always clear as to whether the cash gifts she distributed came from a safety deposit box or the basement stash,¹² merely adding up the gifts of record does not provide a definitive basis for calculating the entire estate.

The specific matters addressed at the hearing included Loretta’s objections to the account filed by Concetta, the issues raised in the civil action concerning the alleged conversion of the Fina estate’s interest in Findel, Inc., and Loretta’s counterclaim against Concetta and Lorinda for their alleged conversion and concealment of estate assets.¹³ At the beginning of the hearing, Loretta conceded that the 500 shares of Findel stock owned by Edward Fina was part of his estate, thereby rendering that issue raised in the civil action moot.¹⁴ In her counterclaim, Loretta asserted that certain assets, especially large quantities of concealed cash, should be considered part of the estate; she denied receiving the amounts in cash set forth in the account; she denied that her husband, Daniel Del Collo, and her sons, Daniel and Christian Del Collo received certain funds as part of Loretta’s distribution from the estate; she asserted that the Margate property should be

¹¹ 12/12/2006 N.T. at 104 (Corrado).

¹² See, e.g., 11/13/2006 N.T. at 66-70(Concetta)(inability to clarify whether the cash gift to grandsons came from a safety deposit box).

¹³ 11/13/2007 N.T. at 15-17;11/14/2007 N.T. at 6-8.

¹⁴ 11/13/2006 N.T. at 17-18 (Canuso).

considered part of the estate even though it had been titled in the names of various other people.¹⁵

A. Concetta's Evasive, Conflicting Testimony Concerning Basic Entries in the Account Undermine the Credibility of Both the Account and the Administratrix

1. The Account Statement of \$490,000 in Principal Receipts Does Not Include All the Assets of the Estate

In Loretta's counterclaim, she asserts that Concetta concealed assets of her husband's estate so that she could deprive Loretta of her rightful share while funneling assets to Lorinda.¹⁶ Procedurally, the appropriate method to retrieve those assets would be to surcharge the administratrix for failing to include them in her accounting. Judge Pawelec in Estate of Bennie Freeman, 1999 Phila Ct. Com. Pl. LEXIS 28 (Phila. O.C. 1999), mapped out the methodology for establishing such a claim:

He who would surcharge a personal representative for failure to marshal and administer property of a decedent must identify the missing property; prove that it was owned by the decedent at death; prove the value of said property at the time of death; prove that failure to marshal and administer the missing property constituted breach of a fiduciary duty; prove that said breach of fiduciary resulted in a loss to the estate; and prove the amount of said loss.
Estate of Bennie Freeman, 1999 Phila. Ct. Com. Pl. LEXIS 28, *4 (Phila. O.C. 1999).

An administrator of an estate is "required to use such common skill, prudence and caution as a prudent man, under similar situations, would exercise in connection with the management of his own estate." Estate of Geniviva, 450 Pa. Super. 54, 64, 675 A.2d 306, 310, app. denied, 546 Pa. 666, 685 A.2d 545 (1996). An administrator has a duty to pay the federal estate tax, and failure to do so can result in personal liability. The party seeking to impose a surcharge has the burden of proof. Id., 450 Pa. Super. at 64, 675 A.2d at 310-11.

¹⁵ 11/13/2006 N.T. at 19-21 (Canuso).

¹⁶ 10/28/2005 Del Collo Answer & Counterclaim to Complaint, ¶¶81-83.

In the instant case, the testimony of Concetta Fina was critical in establishing her failure to account for all the assets in her husband's estate. Concetta's testimony regarding the account she filed as administratrix was vague, inconsistent and ultimately unpersuasive. She was unable to give clear answers to basic questions concerning the account filed under her name. The account lists the total principal receipts for the Estate of Edward Fina as \$490,000. When asked about this entry of \$490,000 in the account, Concetta replied: "Well, it was—I thought between \$475,000 and \$490,000, so I'm assuming."¹⁷ After indicating that the principal receipts set forth in the account came from safety deposit boxes held for her husband by Arthur Corrado, her nephew, and Lena Barone, her niece,¹⁸ Concetta was evasive and confused as to her valuation of those cash assets:

Q: When did Arthur give you Edward Fina's money?

A: Well, after my husband's passing.

Q: Do you know the date?

A: No, I don't.

Q: How much money did Arthur give you?

A: Well, I didn't count it when Arthur gave it to me, but when they both gave it to me I counted it.

Q: How much did you count?

A: Well, I'm assuming that my husband marked each package with \$10,000 in big bold black letters, so I'm assuming each packet was \$10,000. And that's how I came up to this amount.

Q: What amount did you come to?

A: Say that again?

Q: What amount?

A: Well, like I just said previously, I thought it was \$475,000 but you have \$490,000 so I could have made a mistake.¹⁹

¹⁷ 11/13/2006 N.T. at 36 (Concetta).

¹⁸ 11/13/2006 N.T. at 37-38 (Concetta). Concetta repeatedly stated that she received Edward Fina's money from Arthur and Lena. *See, e.g.*, 11/13/2006 N.T. at 60.

¹⁹ 11/13/N.T. at 38 (Concetta). Concetta was vague as to how much money came from each of the two safety deposit boxes. She noted that "Arthur had his at 13th and Moyamensing, and the name of the bank I don't remember. Lena had hers in Margate, New Jersey." 11/13/2006 N.T. at 39-40 (Concetta).

Concetta was equally unclear about the principal balance on hand in cash listed on page 5 of her account. The account states that the principal cash balance on hand was \$178,346.22, yet Concetta denied that she had performed the basic task of computing the assets to determine the balance on hand:

Q: Did you ever count the money in the safety deposit box to verify that it equals this amount of \$178,000?

A: Did I ever count? No.

Q: So am I correct in assuming that you are not sure that there is \$178,000 in the safe deposit box that is the balance of the estate of Edward Fina?

A: Yes.

Q: Could it be more than that amount?

A: No way.

Q: How do you know it cannot be more?

A: Because I know that it's not more than that. If I look at the packs, you can estimate it without even counting it.²⁰

When asked about specific items listed in the account, Concetta testified that they were incorrect. For instance, page 4 of the Account outlining distributions of principal indicates that on April 28, 1999, \$10,000 in cash was distributed to Loretta Del Collo. Concetta, however, testified that this amount should have been listed as \$20,000.²¹ Clearly, this inability to back up figures set forth in the account severely undermined its credibility.

The vague, confused nature of her response to specific entries in the account unfortunately is characteristic of Concetta's testimony throughout her three days on the witness stand. She stated that she kept no records of what was given to her by Arthur or Lena but merely guessed as to the amounts based on the wrapping of the parcels of cash.

²⁰ 11/13/2006 N.T. at 144-45 (Concetta).

²¹ 11/13/2006 N.T. at 102 (Concetta) ("That should have be \$20,000 because I went to Moorestown, and I gave Loretta two packs of \$10,000. Ten was supposed to be for her kitchen and ten was for Chris's senior year in high school").

Concetta believed that Lorinda was with her when she received the money from Lena.²² She also indicated that she kept her husband's money in a safety deposit bank at a bank called Saint Edmond's and may have used \$30,000 of it to purchase a certificate of deposit.²³ In addition, she kept an unspecified amount of cash and jewelry hidden in her Juniper Street house.²⁴ When asked as to specific amounts in the St. Edmond's safety deposit box or in her house, she responded:

Q: How much did you take, total?

A: I really don't know. I just took packs of \$10,000 and that was it.

Q: Do you have any record as to how many packets of \$10,000?

A: No, I don't.²⁵

One reason for the difficulty in documenting the account principal receipts and disbursements is Concetta's penchant for paying account expenses in cash.²⁶ Moreover, Concetta testified that as Administratrix she never kept a separate banking account for her husband Edward Fina's estate. In fact, she admitted that she took estate money, placed it in her own accounts, and then used it, inter alia, for provided alleged distributions.²⁷

A more complete estimate of the total estate assets was presented by the testimony of Concetta's nephew, Arthur Corrado, and niece, Lena Barone. Arthur testified that at the time of Edward Fina's death in 1996, he maintained a safety deposit

²² 11/13/2006 N.T. at 40-43 (Concetta).

²³ 11/13/2006 N.T. at 50-52 (Concetta).

²⁴ 11/13/2006 N.T. at 53 and 151 (Concetta). Arthur Corrado testified that when he was taken down to her basement by Concetta he saw "a roll (of cash) wrapped in rubber bands of \$5000. Also there was a gun in there." 12.12/2006 N.T. at 85 (Corrado).

²⁵ 11/13/2006 N.T. at 53-54 (Concetta).

²⁶ 11/13/2006 N.T. at 44-45 (funeral expenses), 49 (attorney fees)(Concetta).

²⁷ 11/13/2006 N.T. at 116-18 (Concetta).

box for Edward to hold his \$500,000 in cash.²⁸ He had opened this box around 1987.²⁹ After Edward's death, he continued to maintain this box and recalled that Concetta asked him to take out \$15,000 on three occasions in 1998 for her expenses. He had previously taken out \$15,000 for Edward's funeral.³⁰ No one else had access to the box, because, Arthur testified, Concetta did not want anyone to know it was her money.³¹ In 1998, Arthur received a call from Concetta that she "was going to take the money out of the box with her daughter" Lorinda. Lorinda accompanied him to the bank, where he dumped all the money into a satchel, and then drove Lorinda home to Concetta.³² After this safety box was emptied in 1998, Concetta asked Arthur to open another one for her but he refused.³³

Lena Barone, Concetta's niece, testified that she also held a safety deposit box for Edward Fina's money beginning in the early 1990's. The other person with access to the box was Lorinda Fina. According to Lena, this second box also contained \$500,000. Around 1997—after Edward Fina's death, Lena and Lorinda went to the bank so that Lorinda could empty the box and bring the money to her mother.³⁴ Concetta likewise confirmed that she received money from Lena from a safety deposit box "after my

²⁸ 12/12/2006 N.T. at 80-81 (Corrado). Arthur first opened the box in the late 1980's. Concetta gave him the money to place in the box. She handed him the money, which he then placed in the box. The cash was in bundles of \$10,000; Concetta told him the amount was \$500,000. *Id.* at 93-94 (Corrado).

²⁹ 12/12/2006 N.T. at 93 (Corrado).

³⁰ 12/12/2006 N.T. at 82 (Corrado).

³¹ 12/12/2006 N.T. at 99 (Corrado).

³² 12/12/2006 N.T. at 83-84 (Corrado)

³³ 12/12/2006 N.T. at 88 (Corrado).

³⁴ 12/12/2006 N.T. at 117-18 (Barone).

husband passed on,” though, as was characteristic of her testimony as a whole, she later expressed doubt as to exactly when she received the money from Lena.”³⁵

In addition to the sums of cash in these two safety deposit boxes, Arthur testified that around the time of Edward’s death, he had seen bundles of money in rolls of \$5,000 and a gun in the basement of Concetta’s Juniper street home.³⁶ This testimony, unfortunately, was imprecise as to the total amount hidden in the basement.

Concetta, Arthur and Lena all agreed that the money they were holding in the two safety deposit boxes belonged to Edward Fina, and then to his estate.³⁷ The testimony of Ms. Barone and Mr. Corrado are critical for establishing two key points. First, the account understated the principal receipts by at least \$500,000. Second, Lorinda Fina played an active role in Concetta’s efforts to hide estate assets in safety deposit boxes of relatives. Concetta, as administratrix, should be surcharged for these missing funds.

Concetta was equally cavalier in her accounting of the clothing and jewelry valued at \$15,000 in page 4 of the account. She admitted that she never itemized the jewelry in her husband’s estate³⁸ and that she gave gifts of jewelry to Henry Barone and Arthur Corrado that were not listed in the account.³⁹ Concetta, as administratrix, would also be subject to a surcharge for the items of jewelry that she gave to relatives rather than to the legal intestate heirs.

³⁵ *Compare* 11/13/2006 at 37-38 (Lena gave Concetta the safety deposit money after the death of Edward) *with* 11/13/2006 N.T. at 43 (Concetta was not sure whether Lena gave her the money before or after Edward’s death)(Concetta).

³⁶ 12/12/2006 N.T. at 85 (Corrado).

³⁷ See, e.g., 11/13/2006 N.T. at 37-41 (Concetta); 12/12/2006 N.T. at 81-83, 96 (Corrado); 12/12/2006 N.T. at 117-18, 127 (Barone)(the sole purpose of the safety deposit box was to store Edward Fina’s money).

³⁸ 11/13/2006 N.T. at 59 (Concetta).

³⁹ 11/13/2006 N.T. at 155 (Concetta)(When asked why these gifts of jewelry were not included in the account, Concetta replied: “I just didn’t include it. That’s all. No reason.” 11/13/2006 N.T. at 155 (Concetta)

Since the principal receipts of the Fina Estate may be more than double the amount listed in the account, the administratrix would be required to pay more than the \$12,795.69 in Pennsylvania Inheritance tax that was listed as unpaid on page 3 of the Account. The interest accordingly would be greater than the \$7,381.09 set forth in the account, for which Concetta should likewise be surcharged.⁴⁰

B. The Distributions to Loretta Del Collo Set Forth in the Account Did Not Occur Based on the Record and Concetta's Testimony Which Lacks Credibility

According to the account, Loretta Del Collo received a total disbursement of \$202,000 from the estate of Edward Fina in the following amounts:

DISTRIBUTIONS OF PRINCIPAL

LORETTA DEL COLLO

4/28/96	Cash – Daniel Del Collo, Jr.	\$ 28,000
4/28/96	Cash	\$100,000
4/28/96	Cash gifted to Daniel Del Collo,III (grandson)	\$ 27,000
4/28/96	Cash gifted to Christian Del Collo (grandson)	\$ 36,000
4/28/99	Cash	\$ 10,000
7/1/99	Cash	<u>\$ 1,000</u>
	Subtotal:	\$202,000.00
	Less: Adjustment for over distribution to be refunded and proportionate share of PA inheritance tax	
	Over distribution:	\$95,369.25
	Share of taxes:	\$6,397.87

Concetta testified that after her husband died, on April 28, 1996 she summoned her daughter, Loretta, and her two grandsons, Chris and Dan, to her bedroom where she had sixteen cash bundles of \$10,000 dollars which came either from St. Edmond's or Wachovia. She stated that she gave two packs of \$10,000 to Dan, two packs of \$10,000 to Chris and two packs of \$10,000 to Danny. The remaining ten packs of \$10,000,

⁴⁰ Account at 3; 11/13/2006 N.T. at 46-47 (Concetta)(admitting failure to pay taxes).

Concetta testified that she gave to Loretta.⁴¹ The Account, however, indicates that on April 28, 1996, Daniel Del Collo, Jr. received not \$20,000 but \$28,000; Daniel Del Collo, III(grandson) received not \$20,000 but \$27,000 while Christian Del Collo (grandson) received not \$20,000 but \$36,000.⁴² Concetta was unable to explain this discrepancy in her testimony.⁴³ Moreover, when asked the reason for these distributions to these relatives, Concetta stated that it was because they were needy or out of love and not that she told them this was a distribution from Loretta's share of the estate of Edward Fina.⁴⁴ In fact, Concetta evasively refused to answer whether she had informed Loretta that these distributions to her husband and children were distributions from her father's estate.⁴⁵ Moreover, Concetta did not attempt to characterize this alleged distribution of \$100,000 to Loretta Del Collo as her proper one-quarter share of her father's estate under the rules of intestacy. Instead, she maintained that she gave \$100,000 to Loretta based on her husband's direction.⁴⁶

Concetta's testimony as to the other alleged distributions to Loretta set forth on page 4 of the Account was equally unbelievable. She testified that the cash distribution of \$10,000 on April 28, 1999 was incorrect and should have been listed as \$20,000.⁴⁷ She admitted that she gave an Oldsmobile to Loretta which was titled in Concetta's name

⁴¹ 11/13/2006 N.T. at 72-73, see generally 66-73 (Concetta). At one point in her testimony, Concetta stated that she gave her grandson Dan 2 bundles of \$10,000 "plus the \$8,000 which I separated." *Id.* at 69. Later, she contradicted this and stated that she gave Danny 2 packs of \$10,000, Dan 2 packs of \$10,000, Chris 2 packs of \$10,000 and Loretta 10 packs of \$10,000. *Id.* at 71.

⁴² Account at 4.

⁴³ See, e.g. 11/13/2006 N.T. at 73-76 (Concetta).

⁴⁴ See, e.g. 11/13/2006 N.T. at 75(Concetta) ("there was always somebody needy). See also 12/11/2006 N.T. at 79 (Concetta)(the gift to the grandsons was out of love).

⁴⁵ 11/13/2006 N.T. at 124-25 (Concetta).

⁴⁶ 12/11/2006 N.T. at 37 (Concetta).

⁴⁷ 11/13/2006 N.T. at 102-04 (Concetta).

but actually was her husband's vehicle even though it was not listed in the account.⁴⁸

Finally, Concetta mischaracterized a \$10,000 loan to Loretta to consult with an attorney Mary Vidas as a distribution.⁴⁹

Loretta Del Collo denies that after her father's death she received a sum of cash from her mother, that her sons received cash from her mother in her presence, that she received \$10,000 in April 1999, and that she received \$1,000 in cash from her mother in July 1999 as listed in the account.⁵⁰ On this record, this court concludes that the alleged distributions to Loretta Del Collo on page 4 of the Account did not occur.

C. The Representation in the Account that Lorinda Fina Received No Distributions From Her Father's Estate Lacks Credibility

According to the account, Lorinda Fina has received no distributions from the estate of her father. Testimony at the hearing, however, revealed several sources of concealed distributions to Lorinda, each of which will be analyzed separately.

a. The \$50,000 Loan to Nick Martino With Repayments to Lorinda's Bank Account Constituted a Distribution of Estate Funds

Concetta testified that she made a loan of \$50,000 to a relative, Nick Morano, from her husband's estate.⁵¹ The \$50,000 came from the funds Concetta kept in her home and not from any of the safety deposit boxes. This "loan," however, was actually a hidden distribution to Lorinda because Nick Martino paid it back in monthly installments to Lorinda's PNC account. In fact, Concetta explicitly characterized this \$50,000 as Lorinda's share of her father's estate which Lorinda agreed should be lent to Nick.⁵²

⁴⁸ 11/13/2006 N.T. at 133-35 (Concetta).

⁴⁹ 11/13/2006 N.T. 110-113. See Ex. D-4 (check marked "loan to Loretta").

⁵⁰ 12/11/2006 N.T. at 180-183 (Loretta)

⁵¹ 11/13/2006 N.T. at 141-42 (Concetta).

⁵² 11/14/2006 N.T. at 33-34; 12/11/2006 N.T. at 71-72 (Concetta); 12/11/2006 N.T. at 164-66(Lorinda)(admitting that under promissory note she prepared, the estate money borrowed by Martino was payable to Lorinda, though she claimed she turned the money over to Concetta).

b. Although The Transfer of the Margate Property to Lorinda Constituted a Hidden Distribution of Fina Estate Assets Based on the Record Presented at the Hearing, This Court Lacks Jurisdiction Over this Out-of-State Property to Order Any Distribution as to It

Another disputed asset is the Margate property. Concetta maintains that she purchased the Margate property located at 8607 Winchester Avenue for \$33,000 in 1969 with her savings from her employment at the United Fund. Concetta conceded, however, that she had retired from that job in 1961.⁵³ Lena Barone testified that Concetta earned only \$75 a week while employed with the United Fund in the 1950's, and during that period had been expected to contribute financially to her mother's household expenses where Concetta resided at that time.⁵⁴ When the Margate property was originally purchased in 1969, a deed was placed in the name of Concetta's sister, Carmella Martino, who never lived there.⁵⁵ In 1973, a new deed transferred title to the Margate property to Olivia Martino, who was Concetta's mother, with no payment of any monies.⁵⁶ Then in 1979, title to the Margate property was conveyed by deed to Loretta Del Collo and Lorinda Fina.⁵⁷ Subsequently, a January 25, 1984 deed transferred title to the Margate property from Daniel Del Collo and Loretta Del Collo and Lorinda Fina to Concetta.⁵⁸ A few days later, the Margate property was transferred by deed dated January 30, 1984 from Concetta to Concetta and Lorinda.⁵⁹ Finally, after Edward's death, Concetta transferred the Margate property from herself and Lorinda to Lorinda, alone.⁶⁰

⁵³ 11/14/2006 N.T. at 17-19 (Concetta).

⁵⁴ 12/12/2006 N.T. at 116 (Barone)

⁵⁵ 12/12/2006 N.T. at 86 (Corrado). See Ex. D-11. According to Concetta, the deed was placed in his sister's name "to protect myself all the time from my husband because we were constantly leaving one another." 11/14/2006 N.T. at 17 (Concetta).

⁵⁶ 11/14/2006 N.T. at 21 (Concetta). See Ex. D-12.

⁵⁷ 11/14/2006 N.T. at 22 (Concetta). See Ex. D-13.

⁵⁸ See Ex. D-14.

⁵⁹ See Ex. D-15.

⁶⁰ See Ex. D-16.

Although Concetta maintains that the title to the Margate property was so frequently transferred because of the shaky nature of her marriage to Edward,⁶¹ this explanation lacks credibility, especially since Edward regularly resided with his family at the Margate up until his death.⁶² Instead, this pattern of changing deeds was an attempt to conceal another of Edward's assets.

During the hearing, counsel for Loretta asserted that this Margate property should have been included in the account as an asset of the Edward Fina estate.⁶³ Under Section 711 of the PEF code, Orphans' Court has mandatory jurisdiction over the "administration and distribution of the real and personal property of decedents' estates and the control of decedent's burial. 20 Pa.C.S. § 711(1).

Numerous Pennsylvania orphans' courts, however, have held that they lack jurisdiction over the disposition of real property located outside the Commonwealth, and therefore refuse to grant any awards as to it.⁶⁴ See, e.g. Barnash Estate, 27 Fid. Rep. 291, 294 (Wash. Cty. O.C. 1977)("The descent of real estate belonging to a decedent is governed by the law where the land is situate regardless of where the decedent was domiciled" so that the Pennsylvania orphans' court has no jurisdiction as to descent of decedent's property located in Poland); Whitworth Estate, 20 Fid. Rep. 196 (Phila. O.C. 1970)(Real property located in Kentucky is not subject to the jurisdiction of Philadelphia Orphans' Court and no award thereof was made); Kuhn Estate, 18 Fid. Rep. 396, 397 (Bucks Cty. O.C. 1968)("The first question [regarding decedent's title to real property

⁶¹ 11/14/2006 N.T. at 20-22(Concetta).

⁶² 12/11/2006 N.T. at 137 (Lorinda)("He lived there (i.e. Margate) with us").

⁶³ 11/13/2006 N.T. at 21 (Canuso).

⁶⁴ 20 Pa.C. S. § 3301(a), however, states that a personal representative shall file with the Register of Wills an inventory of all real property of the decedent "except real estate outside the Commonwealth." Real estate located outside the Commonwealth should be listed in a memorandum at the end of the inventory.

located in Florida] the auditing judge refuses to pass upon. This court has neither the power nor the inclination to determine title to real estate located in another state”); Dayon Estate, 14 Fid. Rep. 373, 378 (Phila. O.C.1964)(“The account includes decedent’s real estate in Forrest Park, New York, valued at \$5,000, but as this court has no jurisdiction over the disposition of same, no award thereof can be made in this adjudication”); Fulginiti Estate, 12 Fid. Rep. 137 (Phila. O.C. 1961)(“The Orphans’ Court of Philadelphia County has no jurisdiction” over real property located in New Jersey “in any event”).

In refusing to exercise subject matter jurisdiction over real property located outside the Commonwealth, these cases offer no rationale but instead frequently cite Wolfe v. Lewisburg Trust & Safe Deposit Co., 305 Pa. 583, 158 A. 567 (1931), in which the Pennsylvania Supreme court analyzed a Pennsylvania Orphans’ Court jurisdiction over a decedent’s real property located in North Dakota:

It is a well settled principle of law that parties to a suit cannot by consent confer jurisdiction with respect to the subject matter of litigation, either by stipulation or agreement; as jurisdiction is fixed by law, it is beyond the control of the parties....

This land is situate in North Dakota, and it is a principle of private, international law, fortified by a great mass of authority, that all questions relating to the transfer of title to land wherever arising will be governed by the laws of the place where the land is situated. The appointment of an administrator in Pennsylvania would give him no authority over lands in North Dakota, or anywhere outside the state....Pennsylvania law would require, were the situation reversed and the land located here, an ancillary administrator to be appointed except in matters specially provided for by statute.

Wolfe v. Lewisburg Trust & Safe Deposit, Co., 305 Pa. at 589, 158 A. at 568.

Under this analysis that the descent of real property is determined by “lex loci re sitae,” Barnash Estate, 27 Fid. Rep. at 294, the title of the Margate property would be

determined by New Jersey law and its rule of intestacy. See, e.g. N.J. S. A. §3B-5-3.⁶⁵

In light of the strong body of precedent disdaining any ruling on this issue as well as the inconclusive nature of the present account, it would be imprudent to rule on Loretta Del Collo's claims as to the Margate property in this procedural context.

c. Estate Assets Were Surreptitiously Transferred to Lorinda Through Certificates of Deposit from Concetta

Throughout the hearing, there was testimony from Concetta, Lorinda and Loretta that Concetta attempted to transfer funds to her daughters through certificates of deposit.⁶⁶ Both Concetta and Loretta agree that Loretta had resisted these attempts.⁶⁷

In the questioning of Concetta and Lorinda, Loretta's counsel sought to establish that Concetta transferred estate funds to Lorinda by changing the title of various certificates to Lorinda's name alone. The record concerning transfers of certificates of deposit to Lorinda unfortunately is frequently complicated and confusing. Cutting through the documents and often dense testimony, however, Concetta conceded that estate assets were transferred to Concetta or Lorinda through at least two certificates of

⁶⁵ It would appear that there is a difference between the Pennsylvania and New Jersey intestacy rule where a decedent is survived by a spouse and children of their marriage. Under New Jersey, the spouse would take the entire estate. Section 3B:5-3 provides: "The intestate share of the surviving spouse or domestic partner is: a. The entire estate if: (2) All of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and there is no other descendant of the surviving spouse or domestic partner who survives the decedent." N.J.S.A. §3B:5-3(a)(2). As a matter of equity, such a result would be repugnant since equity will not assist a party to obtain a benefit from his fraud. See, e. g. Dayen's Estate, 11 Pa.D. & C. 663, 665 (Phila. O.C. 1929)

⁶⁶ See, e.g., 11/14/2006 N.T. at 42 (Concetta testifying as to her transfer of "bonds" to Lorinda when questioned about Certificates of Deposit) and 50 (attempted gift of CD to Loretta).

⁶⁷ See, e.g., 11/14/2006 N.T. at 50-51 (Concetta)(Loretta refused to give Concetta her social security number to effectuate the purchase of a certificate of deposit in Loretta's name). See also 12/11/2006 N.T. at 177-79 (Loretta testified that she did not respond to Concetta's efforts to purchase a CD for her).

deposit: Ex. D-19, a St. Edmond's certificate of deposit (No. 12710789) in the amount of \$42,434.15⁶⁸ and Ex. D-22, a St. Edmond's certificate of deposit for \$4,500.⁶⁹

The record as to the remaining certificates of deposit, specifically Ex. D-18, a St. Edmund's certificate of deposit (No. 12713457)⁷⁰ in the amount of \$30,000; Ex. D-20 (St. Edmund's certificate of deposit for \$16,442.36)⁷¹; Ex. D-21 (PNC certificate of deposit for \$5,000);⁷² D-23 (PNC certificate of deposit for \$4,500);⁷³ Ex. D-24 (St. Edmund's certificate of deposit for \$42,408.57 purchased September 12, 1996);⁷⁴ Ex. D-

⁶⁸ See Ex. D- 19 which indicates that this CD was transferred after Edward's death to Lorinda on December 27, 1999. Concetta indicated that this money was estate money that was returned to her by Daniel Del Collo. 11/14/2006 N.T. at 42-43 (Concetta). By changing the title of the CD to Lorinda alone, Concetta surreptitiously transferred estate funds to Lorinda.

⁶⁹ Ex. D-22 indicates that Concetta purchased a \$4,500 St. Edmund's certificate of deposit in July 2001 in the name of Loretta Del Collo and Concetta. According to Concetta, when she requested Loretta's social security number it was never supplied to her so she believed she transferred the certificate of deposit over to herself and Lorinda. 11/14/2006 N.T. at 50-51 (Concetta). Significantly, Concetta also testified that the money used to purchase this CD came from the estate of Loretta's father, i.e. Edward Fina, thereby establishing that this CD should be considered part of the Fina estate. Id. It appears that this CD is listed on page 4 of the Account as a CD in the joint names of Concetta and Loretta.

⁷⁰ See Ex. D-18 which indicates that Concetta purchased this certificate in April 1998 after Edward's death. The record is unclear as to the source of funds for this CD. In her testimony, Concetta was unable to explain the source of the funds, though she did acknowledge that Lorinda did not provide the funds for this CD. Concetta subsequently transferred the CD from the joint names of Lorinda or Concetta to the name of Lorinda alone on December 27, 1999. See generally 11/14/2006 N.T. at 39-41 (Concetta).

⁷¹ The background of this certificate of deposit was not clarified in the questioning of Concetta, when it was suggested that this CD was purchased in 1984--many years before Fina's death and then transferred to Lorinda in 1999. See 11/14/2006 N.T. at 44-48 (Concetta). This time scenario would not support the conclusion that estate funds were used to purchase the CD. The document itself, however, appears to indicate that the "date opened" in the joint names of Concetta or Lorinda Fina was August 10, 1995 and that title was transferred to Lorinda alone November 2001. The record is too confused, however, to support a conclusion that this CD represented a surreptitious transfer of estate funds to Lorinda.

⁷² Although Ex. D-21 suggests that Concetta purchased a certificate of deposit in the amount of \$5,000 in December 1999, it was not linked either to estate funds or to a transfer to Lorinda. See 11/14/2006 N.T. at 49 (Concetta).

⁷³ Ex. D.-23 indicates a \$4,500 PNC certificate of deposit in the name of Concetta or Loretta Del Collo. Neither it nor the questioning of Concetta established a link with estate funds or a surreptitious transfer to Lorinda. See, e.g. 11/14/2006 N.T. at 51-52 (Concetta testified that when she did not receive Loretta's social security number for this CD, she transferred it to herself, not Lorinda).

⁷⁴ The exact fate of this \$42,408.57 St. Edmonds certificate of deposit in the name of Concetta and Loretta remains unclear from Concetta's testimony. Although she eventually conceded that it came from estate funds, its present status is unclear and does not establish a surreptitious transfer to Lorinda. See, e.g., 11/14/2006 N.T. at 53-57 (Concetta).

25 (PNC certificate of deposits for \$20,012.70 and \$9,000)⁷⁵ and Ex. D-27 (Commerce Bank certificate of deposit for \$30,000 issue date October 15, 2005)⁷⁶ is inconclusive for the reasons set forth in the accompanying notes.

d. Lorinda's Testimony on Key Issues Was Evasive and Lacking in Credibility

The record established that Lorinda Fina played an active role in helping her mother conceal assets of the Fina estate. She conceded, for instance, that she had shared access with her mother to the Margate safety deposit box since 1992 which she characterized as holding the balance of her father's estate.⁷⁷ She also admitted that she was aware that her cousin Arthur held a safety box to store her father's money.⁷⁸

Her testimony at several key points simply lacked credibility or was evasive. She was unable to explain, for instance, her pattern of making deposits into a particular account and then withdrawing the same amount on the same day.⁷⁹ Although Lorinda conceded that her father had occupied the Margate property until his death, she was evasive when asked whether her father's funds were used to purchase the Margate property which stood out in sharp contrast to the more credible, convincing testimony of Lena Barone that she had accompanied Edward Fina when he used his own money to

⁷⁵ When asked about Ex. D-25 which counsel characterized as "purport[ing] to represent two CD's" in the amount of \$20,012.70 and \$9,000 purchased in June 2006 and October 2005, Concetta stated that they were not purchased in 2006 but were rollovers from earlier purchases that were not linked to estate assets. 11/14/2006 N.T. at 56-57 (Concetta).

⁷⁶ Concetta was not questioned about this CD which the parties stipulated was in the name of both Concetta and Lorinda with an issue date of October 15, 2005. 11/14/2006 N.T. at 75-76. This stipulation, however, neither links the funds used to purchase the CD to estate assets nor does it establish a surreptitious transfer of estate funds to Lorinda, alone.

⁷⁷ 12/11/2006 N.T. at 124-28 (Lorinda). Lena Barone likewise confirmed that Lorinda had access to the safety deposit box holding Edward Fina's money. 12/12/2006 N.T. at 117 (Barone).

⁷⁸ 12/11/2006 N.T. at 138 (Lorinda).

⁷⁹ See, e.g. 12/11/2006 N.T. at 110-11 (Lorinda) & Ex. D-34; 12/11/2006 N.T. at 114-16 (Lorinda) & Ex. D-36.

purchase the Margate property for \$33,000.⁸⁰ Finally, when asked about the source of her father's funds and occupation, Lorinda at first responded evasively that to "the best of my knowledge he was a car salesman and a florist."⁸¹ It was only when pressed that she acknowledged that her father had engaged in illegal betting and numbers writing which she may have learned by reading the Crime Commission report.⁸²

e. The Issue of Whether the 2940 South Juniper Street Property Is an Asset of the Fina Estate Shall Be Decided In the First Instance By the Successor Administrator

In her initial petition seeking an accounting from Lorinda, Loretta asserted that the 2940 South Juniper Street property was part of Edward Fina's estate.⁸³ In the subsequent hearing on Loretta's objections to the account, however, Loretta, through her counsel, did not explicitly assert the status of the Juniper Street property as an estate asset as an issue for adjudication. Instead, it was the status of the Margate property that was singled out as estate property.⁸⁴

Concetta testified that she had resided at 2940 South Juniper Street for 44 years. She stated that she had purchased it in 1961 as the family's primary residence.⁸⁵ This Juniper Street property—like the Margate property—had a history of transfers in title. In 1984, for instance, the property was transferred from Daniel Del Collo, Loretta and Lorinda to Concetta alone.⁸⁶

⁸⁰ Compare 12/11/2006 N.T. at 137 (Lorinda) with 12/12/2006 N.T. at 121-22 & 139 (Barone)

⁸¹ 12/11/2006 N.T. at 142 (Lorinda).

⁸² 12/11/2006 N.T. at 143 (Lorinda).

⁸³ See 11/16/2005 Del Collo Petition, ¶ 6.

⁸⁴ See, e.g., 11/13/2006 N.T. at 20-21 (Canuso); 11/14/2006 N.T. at 6-8 (Canuso).

⁸⁵ 11/12/2006 N.T. at 23 & 15 (Concetta).

⁸⁶ See Ex. D-14.

Loretta asserts that the Juniper street property was purchased with Edward Fina's funds but titled in others to conceal his assets and avoid taxes.⁸⁷ Concetta's contrary assertion that she purchased the Juniper street property with her own funds strains credulity in light of the record and such testimony as Lena Barone concerning Concetta's meager earnings prior to her retirement in 1961 from the United Fund.⁸⁸

Nonetheless, there is a presumption that where "a solvent husband buys land and takes title thereto in the name of his wife, it is presumed to be a gift from him to her and vests in her both the legal and equitable title. In other words, a husband's post-nuptial settlement of property upon his wife is valid except as to existing or contemplated creditors." Dayen's Estate, 11 Pa. D. & C. 663, 664 (1929), *aff'd*, 97 Pa. Super. 250, 1929 Pa. Super. LEXIS 260 (1929).⁸⁹ Such a transfer is good against subsequent creditors "if not made with a fraudulent intent as to them." Dayens Estate, 11 Pa. D. & C. at 664.

Under this presumption, while a spouse may convey property to a spouse to provide security, this transfer may not be made with the intent to defraud creditors. The limitation or exception set forth in this presumption refers solely to creditors where there has been an intent to defraud and not to heirs, such as Loretta, who seek to revoke a

⁸⁷ 12/12/2006 N.T. at 67 (Loretta). According to Loretta, "[w]hen he passed away, my father owned Juniper Street; he owned the house in Margate; he owned a part of Findel; he owned a car that wasn't titled to him; he had millions of dollars in cash that was in safe deposit boxes controlled by other people he had jewelry." *Id.* at 48.

⁸⁸ 12/12/2006 N.T. at 116 (Barone). Ms. Barone further noted that Concetta had been expected to contribute financially to the household expenses while living with Ms. Barone's grandmother. *Id.*

⁸⁹ In Dayen, a husband transferred various assets to his wife to protect them from potential claims due to his union activities. His wife, however, predeceased him. After an account of her estate was filed, the husband then reclaimed the transferred assets. The Superior Court concluded that this claim was properly rejected because he failed to overcome the presumption of a gift to his wife by clear, explicit and unequivocal proof. Since the intent of the transfer was to defraud potential creditors, a court of equity will not rescue a party from his own fraudulent scheme. Estate of Dayen, 97 Pa. Super. 250, 254, 1929 Pa. Super. LEXIS 260, *5 (1929). See generally Holmes Estate, 414 Pa. 403, 406, 200 A.2d 745, 747 (1964)(placing property in spouse's name creates a presumption that can be overcome only by clear and convincing evidence).

transfer such as Juniper street. In Lamparter's Estate, 15 Pa. D. & C. 369, 1930 Pa. Dist. & Cnty. Dec. LEXIS 12, *7 (1930), for instance, the court concluded that where a decedent transferred property to two of his children at a time he was insolvent, that transfer could be challenged by decedent's creditors but otherwise the transfer was valid as to those particular two children and was not subject to the claims of decedent's other heirs. The rationale for this conclusion was that "[a]s against all persons except his creditors, the decedent's deeds to two of his children were perfectly valid. He had a right to sell or give to any of his children any or all of his real estate; and none of his children could challenge the validity of the conveyance, conceding, of course, his competency and the absence of duress." Id., 1020 Pa. Dist. & Cnty. Dec. LEXIS at *7.

Ultimately, however, the issue of whether the 2940 South Juniper Street property is an asset of the estate must be decided—in the first instance—by the successor administrator. According to Concetta's brief in support of her exceptions to the January 15, 2008 Audit Memorandum, there is an original deed listing Concetta as the grantee for the Juniper Street property when it was purchased in 1961 for \$12,000 subject to a mortgage in Concetta's name.⁹⁰ This deed was not introduced at trial, but is certainly a salient piece of evidence in resolving the puzzle of the Fina estate.

Conclusion

The account of Concetta Fina's administration of her husband Edward Fina's estate will hereby be returned unaudited. Because of its inaccuracies and the hidden, but

⁹⁰ 3/25/2008 Concetta Fina Brief in Support of Exceptions at 3.

undetermined, assets revealed during the hearing, the account cannot be confirmed as stated.

DATE: _____

John W. Herron, J.