

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: CHRISTINE GRACE BARRY :  
AGENT UNDER POWER OF ATTORNEY : NO. 16-9191  
FOR GRACE A. DIEHL, PRINCIPAL :

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CARBON COUNTY  
REGISTER OF WILLS  
CLERK OF ORPHANS COURT

William Schwab, Esquire Counsel for Estate of Grace  
A. Diehl  
Eric Strauss, Esquire Counsel for Christine Grace  
Barry  
J. William Widing, III, Esquire Counsel for Michelle Glantz

MEMORANDUM OPINION

Matika, J. - June 15, 2017

Before this Court are the Preliminary Objections of Christine Grace Barry (hereinafter "Barry") in the nature of a Motion to Dismiss for lack of standing and other relief in response to a Petition for Citation to Compel Account in accordance with 20 Pa.C.S.A. § 5210 filed by Michelle Glantz (hereinafter "Glantz"). For the reasons stated within this Opinion, the Preliminary Objections are Overruled.

FACTUAL AND PROCEDURAL BACKGROUND

On May 17, 2016, Grace A. Diehl (hereinafter "Diehl") passed away. Diehl's Last Will and Testament dated March 24, 2010 was admitted to probate and letters testamentary were granted to Barry. At the time of Diehl's passing, she was survived by five (5)

children,<sup>1</sup> including Petitioner, Glantz and Objector, Barry. All five (5) children were named as residual beneficiaries under the Diehl Will, with each to receive ten percent (10%) from the residual of the Estate.

In filing the instant petition, Glantz alleges that she believes Diehl had given financial Power of Attorney to Barry,<sup>2</sup> said authority being in effect since July, 2004.

Glantz further sets forth in her petition in paragraph 6 the following facts:

"Christine Grace Barry and her husband lived with Mrs. Diehl in her 2718 Fairyland Road Residence for approximately three years beginning in Spring of 1976. In 1979 Christine Grace Barry and her husband moved into a residence adjoining Mrs. Diehl's. They continue to reside there. In early 2005, Mrs. Diehl sold her 2718 Fairyland Road Residence to Christine Grace Barry and her husband, but continued to reside there as a rent-paying tenant until her death in 2016. In the Fall of 2012, the brother-in-law and sister-in-law of Christine Grace Barry moved into the 2718 Fairyland Residence to be companions for Mrs. Diehl. At some point prior to

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<sup>1</sup> The other surviving children, namely Winona Rifenshield, Diane Slotter, and Mary Lou Gilotti, while not specifically named as petitioners, have executed joinder documents evidencing their desire to join in the prayer for relief sought in the petition.

<sup>2</sup> Glantz attaches an unsigned, undated copy of the alleged Power of Attorney. However, in her Preliminary Objections, Barry acknowledges the existence of several Powers of Attorney naming Barry as Agent.

Mrs. Diehl's death, Petitioner believes Christine Grace Barry assumed control over Mrs. Diehl's checkbook."

Glantz filed this Petition on the basis that neither she (nor her joinder siblings) have ever received information nor an accounting relative to Barry's management of their Mother's assets, and that if Barry had improperly expended or distributed assets of Diehl's while she was Agent, those assets should be returned to the Estate and be available as part of the residual Estate to which Glantz has an interest.

Glantz further avers that as residual beneficiaries pursuant to her Mother's Will, Glantz and the adjoining siblings have standing to seek an accounting pursuant to 20 Pa. C.S.A. § 5610.

Barry filed Preliminary Objections to this Petition and in doing so notes that Glantz does not ever allege that Diehl was of unsound mind or subject to undue influence at the time of executing the Power of Attorney. More importantly to Barry, she argues that Glantz does not have standing to seek an accounting, as standing to do so befits only the Principal—in this case the Decedent Diehl or the Guardian—or Personal Representative, namely Barry.

Briefs<sup>3</sup> were lodged and argument was held before this Court. Now, the Preliminary Objections are ripe for disposition.

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<sup>3</sup> The Estate of Grace Diehl took no position with regard to either the Petition for Citation or the Preliminary Objections.

### LEGAL DISCUSSION

"For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been 'aggrieved.'" *Com., Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014). "A party is aggrieved for purposes of establishing standing when the party has a "substantial, direct and immediate interest" in the outcome of litigation." *Id.* (quoting *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009)).

There have been a number of Pennsylvania County Courts concluding that a claim of a breach of the fiduciary responsibilities of an agent towards the principal can only be brought by the Principal himself or by the Principal's personal representative. See *Rosewater Estate*, 25 Fid. Rep. 2d 83 (O.C. Montgomery Co. 2005) (Petitioner's stepsons had no standing to challenge the withdrawal of monies by the agent from a Decedent's Trust); *Griggs Estate (No. 2)* 2 Fid. Rep. 3d 354 (O.C. Chester Co. 2012) (Where the Petitioner, the surviving spouse, had no standing to compel an accounting by the agent of her late husband's estate, rather only his executor could do so); and *In re Mardell Dardarian, Principal*, 3 Fid. Rep. 3d 206 (O.C. Chester Co. 2013) (Where the Petitioner daughter did not have standing to seek an accounting from her Mother's agent while her Mother was still alive, and the

daughter was neither a beneficiary nor her Mother's personal representative).

In the case of *In re Kilpatrick's Estate*, 84 A.2d 339 (Pa. 1951), the Court determined that a husband/widower did not have standing to sue his late wife's first husband's estate on behalf of his late wife's estate, as he was neither a distributee of his late wife's first husband's estate nor a "party in interest." Barry relies upon these cases in arguing that Glantz has no standing. However, that reliance is misplaced.

In a case of first impression, the Superior Court in *Rellick-Smith v. Rellick*, 147 A.3d 897 (Pa. Super. Ct. 2016), held that a beneficiary had standing to sue a deceased agent. In that case the Appellant, Rellick-Smith, filed suit against the Appellees, Rellick and Vasil, claiming that while they were co-agents for the Decedent, they used their authority to remove Rellick-Smith as an owner of certificates of deposit that had been created by the decedent as a way of "estate planning," naming all three (3) as intended beneficiaries upon her passing. Several months after Decedent's passing, Rellick and Vasil withdrew all the monies in those certificates and divided it between themselves, to the exclusion of Rellick-Smith. Appellees argued that the only persons with standing to challenge their actions were the Decedent (Principal) before her death, or the personal representative of her Estate. The Superior Court held that Rellick-Smith did in

fact have standing as an aggrieved party, with a substantial, direct and immediate interest in the outcome of the litigation.<sup>4</sup>

Applying *Rellick-Smith* to the case *sub judice*, this Court finds similarly embodied claims set forth in the Petition for Citation. Here, Diehl had a Last Will and Testament leaving a ten percent (10%) beneficial share in her residual estate to her five (5) children. Barry was "believed" to be her agent.<sup>5</sup> While, unlike *Rellick-Smith*, there is no averment that Barry affirmatively did anything to affect these residual shares, the Petitioners are seeking an accounting to determine whether that has in fact occurred while Barry was Agent. Undoubtedly, if Barry acted improperly as Agent, that could conceivably impact this ten percent (10%) beneficial share to which each Petitioner is entitled. Accordingly, Petitioners could be seen as aggrieved parties with a substantial, direct and immediate interest in the outcome of the estate, i.e. a diminished residual share.

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<sup>4</sup> The *Rellick-Smith* case dealt with Preliminary Objections as well, where all allegations in the Complaint were accepted as true. Appellant alleged that the Decedent created the CDs with the intent to leave her monies to the three (3) intended beneficiaries, Appellant and Appellees. While the Power of Attorney permitted and authorized the agents to "make additions to an existing trust," those additions could not be inconsistent with the intent of the Principal. As such, and again accepting the averments set forth in the Complaint as true, Appellant met the requirements for standing insofar as being an aggrieved party with a substantial, direct, and immediate interest in the outcome of the litigation.

<sup>5</sup> The Petition avers that it was "believed" a Power of Attorney existed, but only an unsigned copy of it is attached to the Petition. However, in her Preliminary Objections, Barry acknowledged that several such Powers of Attorney existed, under which Diehl named Barry her agent.

This Court is also constrained, based upon *Rellick-Smith*, to follow our sister jurisdictions, which found that only the Principal or her personal representative would have standing to seek an accounting. While Petitioners in general "trust" their agents, not all agents are known to comply with and act in accordance with a Power of Attorney. Additionally, not all principals are fully cognizant, even if of sound mind, to know all acts of the agent. Therefore, an unknowing or unsuspecting principal would not think to question the improper acts of their agent. Clearly, however, a personal representative of an estate could challenge those actions. But it is absurd to think that a personal representative, tasked with challenging the actions of an agent, would do so if the personal representative and agent were the same person.

#### CONCLUSION

Based upon the foregoing, this Court enters the following:



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ORDER OF COURT

AND NOW, this 15<sup>th</sup> day of June, 2017, upon consideration of the Preliminary Objections filed by Christine Grace Barry, the brief lodged in support thereof, the response filed by Michelle Glantz and supporting brief lodged therewith and after argument thereon, it is hereby **ORDERED and DECREED** that the Preliminary Objections are **OVERRULED**. The said Christine Grace Barry shall file on or before July 17, 2017 full and complete answers to each of the averments set forth in the Petition for Citation issued on October 20, 2016.

BY THE COURT:

  
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Joseph J. Matika, J.