

# 2019 ESTATE & ELDER SYMPOSIUM

## *Case Law Update*

Robert Clofine, Esquire

340 Pine Grove Commons  
York, PA 17403  
(717) 747-5995

Email: [clofine@estateattorney.com](mailto:clofine@estateattorney.com)  
[www.estateattorney.com](http://www.estateattorney.com)



# Navarra Estate

185 A.3d 342, 2018 PA Super 84 (2018)

- Sandra and Fred had a 2<sup>nd</sup> marriage and each had children from a prior marriage
- The couple signs mutual wills agreeing that all assets would eventually pass to all six of their children in equal shares
- Sandra enters a NH and Fred changes his Will to exclude Sandra and her 2 children
- Sandra's daughter is appointed her guardian and she seeks to modify Sandra's will under PEF 5536(b) in order to eliminate Fred's 4 children as beneficiaries
- Superior Court approves codicil to Sandra's Will to eliminate Fred's children

# Trust Under Deed of Kulig 175 A.3d 222 (Pa. 2017)

- Kulig makes Revocable Living Trust and Will naming his children as beneficiaries
- Kulig marries 2<sup>nd</sup> wife after signing the Trust and Will
- Kulig dies with \$3.2 million in Trust & \$2.1 million in probate assets, survived by children & 2<sup>nd</sup> wife
- Wife claims ½ intestate share of probate assets and Trust assets as a pretermitted spouse under PEF Code § 2507(3)
- PA Supreme Ct reverses both lower courts & holds PEF Code § 2507(3) does not apply to Revocable Trusts

# Fortunato v. CGA Law Firm

1:17-cv-00201 (M.D. Pa. 7/24/2017)

- Stockbroker refers client to Attorney & Attorney meets with client to discuss revisions to Will that leaves estate equally to client's two children
- Client signs new Will that leaves 50% to daughter, 20% to son and 30% to grandchildren
- Attorney assures client that Will controls disposition of \$1 million brokerage account, but that account is "TOD" to children in equal shares
- Court holds that grandchildren have standing to sue drafting attorney as third party beneficiaries

# Berry v. Berry

No. 1766 MDA 2017, 2018 Pa Super 276 (10/11/2018)

- Agents under POA file divorce action on behalf of husband and wife who had been married for 66 years
- Trial court enters divorce decree and equitable distribution award, and wife appealed
- Superior Ct *sua sponte* raises issue of the parties mental capacity
- Superior Ct voids the divorce and holds that agents under POA cannot pursue a divorce on behalf of their principals, and the trial court should have determined whether the spouses were incapacitated persons as required by Pa.R.C.P. 2056

# Estate of Capobianco

8 Fid. Rep. 3d 201 (Phila Orphans' Ct 4/18/2018)

- Agent under POA creates irrevocable trust for mom and conveys all of mom's assets to the trust
- POA gave agent power to make unlimited gifts and create irrevocable trusts
- Mom had 7 children, but trust paid out to just 3 of the children
- Court holds that agent had duty to preserve the principal's estate plan under PEF § 5601.3(b)(6)
- Agent's resentment toward disinherited siblings was not good faith to prevent liability

**Mary J. Wilkosz, an alleged IP**  
**No. 965 WDA 2017 (Pa. Super. 4/13/2018)**

- Mom suffers from Alzheimer's and her two daughters, Joan & Pat, have conflicts regarding mom's care
- Joan files petition seeking guardianship over mom
- Orphans Ct does not require mom's presence at hearing and appoints Pat as guardian of her person even though mom's POA named Joan as agent
- Superior Ct affirms. Since all parties agreed that mom was incapacitated, her presence was not required, and even though the agent under POA may be preferred as guardian, orphans' ct has discretion to appoint another were there is good cause

# Dardarian, an Incapacitated Person 7 Fid. Rep. 3d 249 (O.C. Div. Chester )

- Mardell is subject of contested guardianship and court appoints the family attorney as guardian of her person and \$1.3 million estate
- Guardian's annual report shows principal payments of \$54,325 to guardian & \$12,934 to guardian's counsel
- Ct. *sua sponte* holds hearing to examine whether fees charged were reasonable.
- After thorough review of PA law & facts, court finds fees paid were acceptable even though paid without advance court approval as required by PEF Code



# In re Nadzam

No. 322 WDA 2018, 2019 PA Super 14 (1/14/2019)

- Daughter files action to force her sister to account as agent under mother's POA
- Trial court says no standing because most of the asset transfers pre-dated the POA, and the decedent's nonprobated Will left 100% to agent
- Superior Court affirms that daughter had no standing because she wasn't a beneficiary under the Will and therefore wasn't an aggrieved party
- If daughter successfully challenged the Will, she would then have standing

## Tyreman Estate

8 Fid. Rep. 3d 66 (O.C. Div. Monroe )

- Objections are filed to an accounting by a cousin-agent who had been acting for the principal for 7 years under a 2006 POA
- The POA granted the power “to make gifts, including gifts to my agent” and the objector challenged gifts in excess of the annual exclusion and those to “non-issue” donees
- Ct finds POA language allows unlimited gifts and that agent had been acting as amanuensis in any event
- Ct rejects argument that agent should have prevented principal from making gifts and refuses to surcharge agent for \$1,500 of unexplained transactions in an account covering 7 years and \$500,000

# Estates of Berg

8 Fid. Rep. 3d 207 (Phila Orphans' Ct 5/10/2018)

- This case involves professional guardian Gloria Byars, who has been removed as guardian from about 100 guardianship cases in the Philadelphia area
- Byars was suggested as guardian by PCA, and she engaged in self-dealing, fraud, and failed to keep even basic records
- In surcharging Byars, Judge Herron had harsh words aimed at PCA for failing to properly vet Byars
- Judge Herron added that he “sincerely hopes that the discovery of [Byars’] malfeasance will serve as a clarion call to make the larger changes necessary to protect incapacitated Pennsylvanians.”