NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

WILLIAM H. IRISH Appellant v. BARRY WARNSHUIS AND CANDACE D. WELLS, INDIVIDUALLY AND AS EXECUTORS OF THE ESTATE OF JANET B. IRISH AND KENNETH JACK WARNSHUIS, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1124 WDA 2012

Appeal from the Judgment Entered August 23, 2012
In the Court of Common Pleas of Erie County
Civil Division at No(s): 2009-15746

IN RE: ESTATE OF JANET B. IRISH, DECEASED APPEAL OF: WILLIAM W. IRISH	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1133 WDA 2012

Appeal from the Decree May 8, 2012
In the Court of Common Pleas of Erie County
Civil Division at No(s): 393-2009

BEFORE: BENDER, GANTMAN AND OLSON, JJ.

MEMORANDUM BY OLSON, J.: FILED: October 10, 2013

In this consolidated appeal, Appellant, William H. Irish, appeals from the judgment entered on August 23, 2012 and from the Orphans' Court's May 8, 2012 decree.[1] We affirm.

Janet B. Irish (hereinafter "Mrs. Irish") and Appellant were married in 1982. The marriage was the second for both Appellant and Mrs. Irish. Mrs. Irish was previously married to Lyle Warnshuis and, during this prior marriage, Mrs. Irish and Lyle Warnshuis had three children, Barry Warnshuis, Candace D. Wells, and Kenneth Jack Warnshuis (hereinafter, collectively "the Warnshuis Children"). Trial Court Opinion, 10/3/12, at 1.

Appellant and Mrs. Irish remained married from 1982 until Mrs. Irish died, testate, on October 13, 2009. Following Mrs. Irish's death – and in accordance with Mrs. Irish's will – Barry Warnshuis and Candace D. Wells were appointed co-executors of Mrs. Irish's estate. Appellant's Complaint, 12/23/09, at ¶¶ 4 and 14. According to Appellant, during the administration of Mrs. Irish's estate, the co-executors asserted ownership over two pieces of property to which, Appellant claimed, the estate was not entitled. These two pieces of property were a 2006 Kia Sportage automobile and the marital home of Appellant and Mrs. Irish, which was located in Corry, Pennsylvania.[2]

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[1] Appellees have filed a motion to dismiss the appeal at 1133 WDA 2012. We deny Appellees' motion.

[2] Throughout this memorandum, we will refer to the marital home as "the Corry Property."

Appellant's Brief at 5. Appellant thus refused to surrender the Kia automobile and Appellant filed a complaint, in the civil division of the Court of Common Pleas of Erie County, wherein Appellant requested that the trial court exercise its equitable powers and impose a constructive trust, in his favor, on the Corry Property. ***Id.***

Within Appellant's complaint, Appellant averred that he and Mrs. Irish purchased the Corry Property in 1987 and that, at the time of the purchase, the couple owned the property as tenants by the entireties. Appellant's Complaint, 12/23/09, at ¶¶ 6 and 9. As Appellant averred, in 1990, he and Mrs. Irish "became concerned that the [Corry Property] could be exposed to personal injury claims arising from [Appellant's] profession as an aircraft mechanic." ***Id.*** at ¶ 7. According to Appellant, "[i]n order to protect the [Corry Property] from such claims, [Appellant and Mrs. Irish] executed on January 10, 1990, and thereafter caused to be recorded in [the] Erie County Record Book . . . a deed by which record title [to the Corry Property] would vest in [Mrs. Irish] alone." ***Id.*** at ¶ 8. The consideration for the transfer was $1.00. Deed, 1/10/90, at 1. However, and notwithstanding the grant of title to Mrs. Irish, Appellant averred that neither he nor Mrs. Irish "intended that the . . . [c]onveyance would work [as] a divestiture of [Appellant's] survivorship right in the entireties." Appellant's Complaint, 12/23/09, at ¶ 9.

Appellant averred that, in 2003, Mrs. Irish executed a will wherein she stated her intention to devise $20,000.00 of her separate property to

Appellant, with the remainder of her estate to pass to the Warnshuis Children. ***Id.*** at ¶¶ 14-16; Mrs. Irish's Last Will and Testament, dated 1/8/03, at 1-2. Appellant acknowledged that, upon Mrs. Irish's death, the plain terms of Mrs. Irish's will placed title to the Corry Property in the Warnshuis Children. Appellant's Complaint, 12/23/09, at ¶ 16. However, Appellant claimed that – since he did not intend to gift the Corry Property to Mrs. Irish – the trial court should exercise its equitable powers, impose a constructive trust over the Corry Property, and order the co-executors to convey the Corry Property to Appellant in fee simple absolute. ***Id.*** at ¶ 14-17 and "Wherefore" Clause.

After Appellant instituted his civil action, the co-executors of Mrs. Irish's estate filed a "Petition for Sanctions" against Appellant in the Orphans' Court division of the Erie County Court of Common Pleas. Within their petition, the co-executors claimed that Appellant was obdurately and vexatiously interfering with the administration of Mrs. Irish's estate and that, as a result, they were entitled to both monetary sanctions and attorneys' fees from Appellant. Appellees' Petition for Sanctions, 6/20/11, at ¶¶ 1-50. Further, the co-executors claimed that Appellant was unlawfully refusing to relinquish control over the 2006 Kia Sportage automobile, which was titled in Mrs. Irish's name only and which, the co-executors claimed, belonged to the estate. ***Id.*** at 22-24; ***see also*** Appellees' Supplemental Petition for Sanctions, 11/14/11, at ¶¶ 1-12.

The civil action and the Orphans' Court proceeding were consolidated before the same lower court judge. On October 7, 2011, November 17, 2011, and January 12, 2012, the Orphans' Court heard testimony on Appellees' Petition for Sanctions; on January 17, 2012 and January 18, 2012, a non-jury trial took place on Appellant's civil action. On May 8, 2012, the lower court issued an "Order" – which served as its decree in both the civil action and the Orphans' Court proceeding. The lower court's decree declared:

> AND NOW, to-wit, this 8th day of May, 2012, following a trial on the Complaint in Equity filed by [Appellant] and the scheduled hearings on the Petition for Sanctions filed by Petitioners Barry Warnshuis and Candace Wells, as Co-Executors of the Estate of Janet B. Irish, and in consideration of the Proposed Findings of Fact and Conclusions of Law submitted by the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:
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> 1. Regarding the Equity Action . . . the relief requested by [Appellant] is DENIED to the extent that the [trial c]ourt finds no constructive trust on the [Corry Property] for reasons set forth in [the trial court's] Findings of Fact and Conclusions of Law.
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> 2. Regarding the Petition for Sanctions . . . the sanctions requested by the Co-Executors of the Estate of Janet B. Irish are DENIED, including the attorneys' fees requested and the $3,000.00 requested for the depreciation of the Kia [Sportage automobile], for the reasons set forth in the [Orphans' Court's] Findings of Fact and Conclusions of Law.
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> 3. The 2006 Kia Sportage is an asset of the Estate of Janet B. Irish and the parties shall make arrangements to have the title properly transferred to the Estate for administration purposes.

> 4. All household goods located in the [Corry Property] during the time that Janet B. Irish was married to [Appellant] are property of [Appellant], having been entireties property prior to [] Mrs. Irish's death.

Lower Court Order, 5/8/12, at 1-2 (internal bolding omitted).[3]

On May 9, 2012, the lower court issued its Findings of Fact and Conclusions of Law. The lower court's findings of fact were as follows:

> 1. Janet B. Irish . . . and [Appellant] were married in 1982. [When the couple married, Appellant was a highway maintenance superintendent on the New York State Thruway; Mrs. Irish "had quit her job when [Appellant] married her," and Mrs. Irish remained unemployed throughout the entirety of the couple's 27-year marriage.]
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> 2. [Mrs. Irish] was previously married to Lyle Warnshuis, who passed away in 1978.
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> 3. Lyle and [Mrs. Irish] had [the Warnshuis Children together].
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> 4. On March 1, 1987, [Mrs. Irish] and [Appellant] purchased [the Corry Property].
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> 5. [Mrs. Irish] and [Appellant] applied the insurance proceeds from the fire in their previous home in Westfield, New York towards the purchase of the Corry Property.
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> 6. Both [Mrs. Irish] and [Appellant] had contributed to the purchase of the Westfield[, New York home], which was held by the entireties and was destroyed by a fire in 1986.
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> 7. At the time of the initial purchase, the Corry Property was titled in the names of [Mrs. Irish] and [Appellant] as entireties property.

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[3] Since the lower court termed its May 8, 2012 decree an "order" – and since the terms are essentially synonymous today – we will, at times, also refer to the decree as an order.

8. On January 10, 1990, [Mrs. Irish] and [Appellant] executed a deed transferring record title of the Corry Property to [Mrs. Irish] alone [for the consideration of $1.00. The transfer of title] was prepared by William Barney, [Esquire (hereinafter "Attorney Barney"), and was done] for the following reasons[.]

9. [In 1987, Appellant retired from his job with the New York State Highway Authority – with full pension – and founded a small business devoted to airplane maintenance, which Appellant named "Irish Air."]

10. Although Irish Air did not have a large volume of business, [Appellant] was concerned about potential tort liability resulting from the business' operation.

11. Attorney Barney informed Mr. Irish he could manage potential tort liability by purchasing liability insurance, and that the Corry Property would not be subject to attachment for any judgments due to [Mrs. Irish] and [Appellant] holding the Corry Property as entireties property.

12. In spite of Attorney Barney's advice, [Appellant's] concerns over potential liability factored into his decision to deed the Corry Property to [Mrs. Irish]. The Warnshuis Children dispute that this was [Appellant's] primary motivation.

13. [Appellant] ceased to operate Irish Air following a stroke he suffered in 2005.

14. Upon retiring from the New York State Highway Authority in 1987, [Appellant] was entitled to receive pension benefits on a monthly basis.

15. [Appellant] opted to receive a higher monthly pension benefit without surviving spouse benefits rather than a lower monthly pension with surviving spouse benefits.

16. [Appellant] had discussions with [Mrs. Irish] concerning his decision with regard to [Appellant's] pension benefits.

17. [Appellant's] concerns regarding the lack of surviving spouse benefits and providing for [Mrs. Irish] in the event he would predecease her factored into [Appellant's] decision to deed the Corry Property to [Mrs. Irish].

18. The Corry [P]roperty remained in [Mrs. Irish's] name until her death in 2009, and [Appellant] never attempted to have the property reconveyed prior to her death.

19. [Appellant] intended the transfer as a gift to [Mrs. Irish], and did not intend for the Corry Property to be retransferred to the entireties estate.

20. As the transfer was intended as a gift, and [Appellant] was not relying on [Mrs. Irish] to reconvey the property, there was no confidential relationship between [Appellant] and [Mrs. Irish] with regards to the transfer.

21. After suffering an initial stroke in January 2009, [Mrs. Irish] died testate later that year, on October 13, 2009, predeceasing [Appellant], with whom [Mrs. Irish] remained married until the time of her death.

22. [Mrs. Irish's] Last Will and Testament, dated January 8, 2003, [bequeathed] a specific cash sum of [$20,000.00] to [Appellant] and [bequeathed] the residue of [Mrs. Irish's] Estate, including real property, to the Warnshuis Children.

23. [Mrs. Irish's w]ill had been prepared by Paul Carney, [Esquire], who had explained to [Mrs. Irish] that the residuary clause in the [w]ill meant all real and personal property titled in her name alone would pass to the Warnshuis Children.

24. Barry [Warnshuis] and Candace [D. Wells] were appointed Co-Executors of [Mrs. Irish's] Estate on October 28, 2009, pursuant to the terms of [Mrs. Irish's] Last Will and Testament.

25. Following their appointment, the Co-Executors, via letter by counsel . . . informed [Appellant] that [the] 2006 Kia Sportage and the Corry Property were titled in [Mrs. Irish's] name alone, and that the Co-Executors needed

access to the Corry Property for purposes of conducting an inventory.

26. On December 23, 2009, [Appellant] filed a Complaint in Equity against the Warnshuis Children, wherein [Appellant] sought the conveyance of title to the Corry Property from [Mrs. Irish's] Estate into his name.

27. [Appellant], via letter by [his counsel] . . . refused access to the Co-Executors on the grounds that [Appellant] believed the Kia [automobile], the Corry Property itself, and the household goods located in the Corry Property to be entireties property.

28. All parties agree that the clothing and jewelry worn by [Mrs. Irish] during her lifetime belonged to [Mrs. Irish] at the time of her death, and are thus Estate [p]roperty.

29. [Appellant] did dispose of some of [Mrs. Irish's] clothing by donating it to the Salvation Army. The items deposed of, however, were not specifically identified by [Appellant], and as such the [Orphans' Court found] they had negligible monetary value.

30. The Kia [automobile] was titled in [Mrs. Irish's] name alone, and the bill of sale identified [Mrs. Irish] as the purchaser of the vehicle.

31. Both [Mrs. Irish] and [Appellant] operated and made personal use of the Kia [automobile].

32. [Appellant] believed in good faith that the Kia [automobile] was entireties property due to the vehicle having been purchased with the proceeds from the sale of [Appellant's] vehicle and by the expenditure of [Appellant's] funds, and due to [Appellant] having been the vehicle's principal driver and having paid for insurance, gasoline, and maintenance on the vehicle.

33. [Appellant], believing in good faith that the Kia [automobile] was entireties property, had already transferred the Kia into his name on January 12, 2010.

> 34. The household goods were obtained by both [Mrs. Irish] and [Appellant], and were used for the enjoyment of both over the [27-year] duration of the marriage. . . .

Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 1-7 (internal citations and footnotes omitted).

On May 15, 2012 – or, seven days after the lower court rendered its decrees – Appellant filed a "Motion for Post Trial Relief" at the civil action docket number and a separate (but identically titled) "Motion for Post Trial Relief" at the Orphans' Court docket number. Within both of Appellant's filings, Appellant claimed that the lower court's conclusions were either "unsupported by" or against the weight of the evidence. ***See*** Appellant's Civil "Motion for Post Trial Relief," 5/15/12, at 1-2; Appellant's Orphans' Court "Motion for Post Trial Relief," 5/15/12, at 1-2. On June 20, 2012, the lower court entered an order denying "both of [Appellant's m]otions." Lower Court Order, 6/20/12, at 1.

On July 18, 2012, Appellant filed a notice of appeal at both the civil action docket number and Orphans' Court docket number and, on August 23, 2012, Appellant filed a *praecipe* for entry of judgment at the civil action docket number.[4] Now on appeal, Appellant raises the following claims:[5]

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[4] ***See*** Pa.R.A.P. 905(a)(5) ("[a] notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof").

[5] The lower court ordered Appellant to file and serve a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate
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> 1. Is not the conclusion of the trial court that the [Corry Property] is the property of [Mrs. Irish's] estate unsupported by the law and evidence?
>
> 2. Is not the conclusion of the [Orphans' Court] that the Kia automobile is the property of [Mrs. Irish's] estate unsupported by the law and evidence?

Appellant's Brief at 2.

Before considering the merits of Appellant's claims, we note that Appellees have filed a motion to dismiss the appeal that Appellant filed from the Orphans' Court's May 8, 2012 decree. According to Appellees, Appellant filed an untimely notice of appeal from the Orphans' Court's decree, as Appellant "did not file exceptions to the May 8, 2012 [decree] . . . [and Appellant did not] file a [n]otice of [a]ppeal from the Orphans' [Court's decree] until July 18, 2012, more than 70 days after [the decree] was [entered]." Appellees' Motion to Dismiss, 9/17/12, at 3.

Appellees acknowledge that – seven days after the Orphans' Court entered its May 8, 2012 decree – Appellant filed a document titled "Motion for Post Trial Relief" and, within this filing, Appellant claimed that the Orphans' Court's May 8, 2012 decree was "unsupported by" and against the weight of the evidence. ***See*** Appellant's Orphans' Court "Motion for Post Trial Relief," 5/15/12, at 1-2. Moreover, Appellees acknowledge that Appellant filed his notice of appeal within 30 days of the date that the

(Footnote Continued) ———————————

Procedure 1925(b). Appellant complied and preserved the two claims he currently raises on appeal.

Orphans' Court denied Appellant's "Motion for Post Trial Relief." ***See*** Appellant's Notice of Appeal, 7/18/12, at 1. However, Appellees argue, "[a] motion for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice." Appellees' Motion to Dismiss, 9/17/12, at 4; Pa.R.C.P. 227.1 cmt. Since Orphans' Court proceedings are governed by petition practice, Appellees claim that Appellant's "Motion for Post Trial Relief" did not toll the time within which Appellant was required to file a notice of appeal. ***See*** 20 Pa.C.S.A. § 761 ("[a]ll applications to the orphans' court division claim shall be by petition . . ."). Rather, Appellees claim that Appellant was only permitted to file "exceptions" to the Orphans' Court's decree – and, since Appellant did not file "exceptions," we must quash the appeal. Appellees' Motion to Dismiss, 9/17/12, at 4. We reject Appellees' hyper-technical contention.

As is relevant to the current issue, on May 8, 2012, the Orphans' Court entered a decree declaring "[t]he 2006 Kia Sportage is an asset of the Estate of Janet B. Irish and the parties shall make arrangements to have the title properly transferred to the Estate for administration purposes." Lower Court Order, 5/8/12, at 2. Since this decree "determin[ed] an interest in . . . personal property," the decree was immediately appealable under Pennsylvania Rule of Appellate Procedure 342(a)(6). Pa.R.A.P. 342(a)(6) ("[a]n appeal may be taken as of right from the following orders of the Orphans' Court Division: . . . An order determining an interest in real or personal property").

Given that the May 8, 2012 decree was immediately appealable under Rule 342, Appellant had a choice: in accordance with Pennsylvania Rule of Appellate Procedure 903, Appellant was entitled to file a notice of appeal within 30 days of the date the decree was entered or, in accordance with Pennsylvania Orphans' Court Rule 7.1, Appellant was entitled to file exceptions to the decree – with the exceptions due "no later than [20] days after entry of [the decree]." Pa.O.C.R. 7.1(a).[6] Appellant was not required

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[6] Pennsylvania Orphans' Court Rule 7.1 is titled "Exceptions" and, in relevant part, the Rule provides:

> **(a) General Rule.** Except as provided in Subdivision (e)[, regarding adoptions and involuntary terminations], no later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in Subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if the grounds for appeal are otherwise properly preserved.
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> **(b) Waiver.** Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.
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> . . .
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> **(g) Exceptions.** Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

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to file exceptions to preserve an issue on appeal. ***Id.*** ("[f]ailure to file exceptions shall not result in waiver if the grounds for appeal are otherwise properly preserved"). Nevertheless, if Appellant chose to file exceptions – and then properly filed those exceptions – Appellant could not file a notice of appeal until the Orphans' Court decided the exceptions. ***Id.*** ("[i]f exceptions are filed, no appeal shall be filed until the disposition of exceptions"). The notice of appeal would then be due 30 days after the Orphans' Court decided the exceptions. Pa.R.A.P. 903.

In this case, Appellant took exception to the Orphans' Court's May 8, 2012 decree and, seven days after the Orphans' Court entered its decree, Appellant filed his "Motion for Post Trial Relief" and claimed that the Orphans' Court's determination – regarding the ownership of the Kia Sportage automobile – was unsupported by, and against the weight of, the evidence. Appellant's Orphans' Court "Motion for Post Trial Relief," 5/15/12, at 1-2. Appellant thus requested that the Orphans' Court either grant judgment in his favor or order a new hearing. ***Id.*** at 2. The Orphans' Court denied Appellant's request for relief on June 20, 2012 and, on July 18, 2012, Appellant filed a notice of appeal to this Court.

Therefore – and regardless of how Appellant titled his post-hearing request for relief – the **substance** of Appellant's post-hearing filing proves

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Pa.O.C.R. 7.1.

that Appellant filed "exceptions" to the Orphans' Court's May 8, 2012 order. Our conclusion is not altered by the fact that the comment to Pennsylvania Rule of Civil Procedure 227.1 declares that "[a] motion for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice." Pa.R.C.P. 227.1 cmt. First, the comment to Rule 227.1 is not binding upon this Court. ***Commonwealth v. Lockridge***, 810 A.2d 1191 (Pa. 2002) ("the [c]omments are not part of the Rules and have not been officially adopted or promulgated by [the Pennsylvania Supreme Court]"). Second, if we were to quash an appeal simply because a litigant incorrectly titled a document, we would elevate form over substance and, thus, violate our obligation to liberally construe our procedural rules. ***See*** Pa.R.C.P. 126; Pa.O.C.R. 2.1.[7] Finally – and in view of our obligation to liberally construe our procedural rules – it is apparent that the above-cited comment to Pennsylvania Rule of Civil Procedure 227.1 means only that post-trial motion

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[7] Pennsylvania Orphans' Court Rule 2.1 declares:

> The rules adopted by the Supreme Court regulating the practice and procedure of the Orphans' Courts of this Commonwealth, and the rules adopted by such courts, shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

Pa.O.C.R. 2.1.

practice (as delineated in Rule 227.1) does not apply "to matters governed exclusively by the rules of petition practice." The comment does not mean that otherwise proper "exceptions" are nullified merely because they are titled "Motion for Post Trial Relief."

Since any error in the naming of the exceptions did not "affect the substantial rights of the parties in interest," we conclude that Appellant's "Motion for Post Trial Relief" constitutes "exceptions," as that term is used Pennsylvania Orphans' Court Rule 7.1. ***See*** Pa.O.C.R. 2.1. Since Appellant's exceptions were filed in a timely manner and since Appellant filed his notice of appeal within 30 days of the date the Orphans' Court decided his exceptions, the current appeal is timely. Appellees' "Motion to Dismiss" is thus denied.

For Appellant's first claim on appeal, Appellant contends that the lower court's decree in the civil action – wherein the lower court denied Appellant's equitable request to impose a constructive trust over the Corry Property – was unsupported by the evidence. This claim is meritless.

Our standard of review of a court sitting in equity is as follows:

> The trial judge, sitting in equity as a chancellor, is the ultimate fact-finder. [Our standard] of review, therefore, is limited. The final decree will not be disturbed unless the chancellor committed an error of law or abused his or her discretion. The findings of fact made by the trial court will not be disturbed unless they are unsupported by competent evidence or are demonstrably capricious.

Daddona v. Thorpe, 749 A.2d 475, 480 (Pa. Super. 2000) (internal quotations and citations omitted).

Generally, a "constructive trust" is defined as:

> a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.

Kern v. Kern, 892 A.2d 1, 8-9 (Pa. Super. 2005) (internal quotations, citations, corrections, and emphasis omitted).

Appellant claims that he transferred his entire interest in the Corry Property to his wife, Mrs. Irish, in trust and that Appellant did not "intend[] that the . . . [c]onveyance would work [as] a divestiture of [Appellant's] survivorship right in the entireties." Appellant's Complaint, 12/23/09, at ¶ 9. Yet, no writing exists which evinces any such alleged agreement between Appellant and Mrs. Irish. Pursuant to the Restatement (Second) of Trusts § 44:

> (1) Where the owner of an interest in land transfers it *inter vivos* to another in trust for the transferor, but no memorandum properly evidencing the intention to create a trust is signed, as required by the Statute of Frauds, and the transferee refuses to perform the trust, the transferee holds the interest upon a constructive trust for the transferor, if
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> > (a) the transfer was procured by fraud, duress, undue influence or mistake, or
> >
> > (b) the transferee at the time of the transfer was in a confidential relation to the transferor, or

> (c) the transfer was made as security for an indebtedness of the transferor.

Restatement (Second) of Trusts § 44(1); ***see also Silver v. Silver***, 219 A.2d 659 (Pa. 1966).

Here, Appellant does not claim that the transfer was "procured by fraud, duress, undue influence or mistake" and Appellant does not claim that the transfer was made "as security for an indebtedness of the transferor." Rather, Appellant claims only that he is entitled to a constructive trust because, at the time of the transfer, Mrs. Irish was "in a confidential relation to [Appellant]." Appellant's Brief at 7. As our Supreme Court has held:

> where property is conveyed to one in a confidential relationship to the transferor, subject to a promise to reconvey which is subsequently breached, equity will intervene by imposing a constructive trust to prevent the unjust enrichment of one so abusing a confidential relationship. **It is necessary that both a confidential relationship and reliance upon a promise to reconvey induced by that relationship be shown**.

Silver, 219 A.2d at 661-662 (internal citations omitted) (emphasis added). "Under our case law, the marital relationship is not confidential as a matter of law. [Whether a confidential relationship exists in a marital union] is a question of fact and arises when one party places confidence in the other with a resulting superiority and influence on the other side." ***Yohe v. Yohe***, 353 A.2d 417, 421 (Pa. 1976).

Appellant concedes that, "where, as here, the parties are husband and wife, a presumption arises that a transfer [of property] between them was a

gift." Appellant's Brief at 7; ***see also Chambers v. Chambers***, 176 A.2d 673, 675 (Pa. 1962) ("ordinarily a factual presumption arises that a gift was intended where a husband purchases or transfers property in the name of his wife"); ***Stauffer v. Stauffer***, 351 A.2d 236, 241 n.2 (Pa. 1976) (majority of the Supreme Court holding that there is an "established presumption of [a] gift in cases where, as here, the transfer was from the entireties estate to the wife alone"); ***Balazick v. Ireton***, 541 A.2d 1130, 1133 n.2 (Pa. 1988) (same); ***Yohe***, 353 A.2d at 420 (real property was owned by the martial couple as tenants by the entireties and an *inter vivos* transfer occurred, wherein ownership of the property was transferred to wife only; the trial court applied the factual presumption that, "when a husband purchases real or personal property with his own funds and transfers such property to his wife without consideration, . . . a gift [i]s intended;" our Supreme Court held that the trial court "did apply the correct presumption"); ***Watkins v. Watkins***, 142 A.2d 6, 9 (Pa. 1958) (where husband purchased stock in wife's name, "a gift is presumed"). This presumption may be rebutted only with "clear, explicit and unequivocal – though not necessarily uncontradicted – evidence" that the transfer was not intended as a gift. ***Kadel v. McMonigle***, 624 A.2d 1059, 1062 (Pa. Super. 1993).

In the case at bar, the lower court refused to impose a constructive trust on the Corry Property because, it concluded, there was no confidential relationship between Appellant and Mrs. Irish and Appellant actually intended for "the property [to be] a gift [to Mrs. Irish] and [Appellant] did

not intend [for] the property [to] be retransferred to the entireties estate." Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 13. While Appellant claims that the court's conclusions are unsupported by the evidence, it is apparent that the opposite is true. In this case, the lower court's factual and legal conclusions are well supported by the evidence. As the lower court thoroughly explained:

> [T]here were at least two factors which motivated [Appellant] to transfer his interest in the Corry Property to [Mrs. Irish] in 1990. It is clear that despite receiving legal advice which should have alleviated his concerns, [Appellant] remained concerned about potential tort liability resulting from the operation of Irish Air, and mistakenly believed that transferring the property to [Mrs. Irish] alone would protect the property from execution for any such liability . . . and so these concerns were a motivating factor in [Appellant's] decision to transfer the property.
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> However, [during trial, Appellant testified that – when he retired from the New York State Highway Authority – he opted to receive higher monthly pension benefits **without** surviving spouse benefits. Further, Appellant admitted] that his concerns regarding the lack of surviving spouse benefits and providing for [Mrs. Irish] in the event he would predecease her also factored into his decision to transfer the Corry Property to [Mrs. Irish. As Appellant testified]:
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> > [Trial Court: Okay. Was [Mrs. Irish] part of the discussion on your choosing the pension plan [without surviving spousal benefits]? Or did you make that decision? Without consulting her?]
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> > [Appellant]: . . . I made the decision to make the [pension benefit] plan the way I wanted it.
> >
> > [Trial Court]: The way you wanted it?
> >
> > [Appellant: Yes.]

. . .

> [Appellant]: But I talked to [Mrs. Irish] about it to make sure that it was all right with her.
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> [Trial Court]: And do you think that would be okay with her to know that –
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> [Appellant]: . . . [T]hat's one of the reasons I gave her the house.
>
> [Trial Court]: Okay.
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> [Appellant]: . . . I signed [the house] over so if anything happened to me she would have the house and she would be pretty well off.
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> [Trial Court]: Okay, but if something happened to her then did you think about that?
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> [Appellant]: I thought about it, but never give it a thought about changing it back over.

[N.T. Trial, 1/18/12 (Afternoon Session), at 139-140].

. . .

Thus, in light of the above findings of fact . . . [the lower court] cannot and will not impose a constructive trust upon the Corry Property on [Appellant's] behalf. . . . [T]he facts of record fail to show that the transaction at issue arose solely out of [Appellant's] desire to avoid execution on the property. Rather, by [Appellant's] own admission, [Appellant] was motivated to transfer his interest in the Corry Property to [Mrs. Irish] by several considerations, one of which was the future care of his wife. . . . [Appellant was] apparently unaware of the right of survivorship attached to entireties property [and] was sufficiently worried about providing for his wife that he left the Corry Property in her name alone.

[Further, Appellant] never sought the reconveyance of the Corry Property, despite having ceased to operate Irish Air in

> 2005, and despite having ample opportunity to do so in the period of time between the cessation of business operations and [Mrs. Irish's] ultimate decline and demise. It thus follows that [Appellant] intended the property as a gift and did not intend the property [to] be retransferred to the entireties estate, and so no confidential relationship existed between the parties. Therefore, [the lower c]ourt is without the power to impose a constructive trust on the Corry Property on [Appellant's] behalf. The Corry Property was in [Mrs. Irish's] name alone at the time of her death, and thus is part of [Mrs. Irish's] Estate.

Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 10-13 (internal footnotes omitted) (emphasis added).

Since the record thoroughly supports the lower court's conclusion that Appellant freely gifted the Corry Property to Mrs. Irish, the court did not abuse its discretion when it refused to impose a constructive trust over the property in Appellant's favor.[8] Appellant is thus not entitled to relief on his first claim.

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[8] To support his claim that he is entitled to a constructive trust on the Corry Property, Appellant relies almost exclusively upon our Supreme Court's opinion in ***Chambers v. Chambers***, 176 A.2d 673 (Pa. 1962). ***Chamber*** is, however, inapposite to the case at bar.

In ***Chambers***, the parties purchased a house as "husband and wife" – although, unbeknownst to the parties, their marriage was invalid. ***Id.*** at 674. Four years later, the husband wished to purchase a vehicle and was informed that – to protect his marital house in case he missed a car payment – the husband should transfer his interest in his home to his wife. ***Id.*** The husband did so and, at trial, the parties stipulated that the sole purpose of the conveyance was "to protect the real estate from any execution which might result upon a default upon the financing of the purchase of the automobile." ***Id.*** Moreover, the wife testified that, at the time of the conveyance, she "would have reconveyed the premises had [the husband] asked her." ***Id.*** at 676. The parties later separated and, following

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For Appellant's second and final claim on appeal, Appellant argues that the Orphans' Court's conclusion – that the Kia automobile is the property of Mrs. Irish's estate – was against the weight of the evidence. This claim fails.

In general:

> Our standard of review of an [Orphans' Court's] decision is deferential. When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and [whether] the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the

(Footnote Continued) ———————————

their separation, the husband filed a complaint, seeking to have a constructive trust placed over the property in his favor. ***Id.*** at 674.

The ***Chambers*** Court recognized the "factual presumption [] that a gift [i]s intended where the husband purchases or transfers property in the name of his wife." ***Id.*** at 675. Yet, as the ***Chambers*** Court held, the presumption was inapplicable in its case, as the "undisputed facts" proved that the conveyance was not intended to be a gift. ***Id.*** Specifically, the ***Chambers*** Court held, the facts demonstrated that the "conveyance was not executed with any intent to divest [the husband] of his beneficial interest in the premises but only to place legal title in [the wife's] name as a protective device securing both their interest." ***Id.*** at 676. Thus, the Supreme Court concluded, it would be inequitable not to impose a constructive trust in favor of the husband. ***Id.***

Obviously, ***Chambers*** does not control the current case, as, here, the lower court concluded "that [Appellant] **intended the property as a gift** and did not intend the property [to] be retransferred to the entireties estate." Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 13 (emphasis added). Further, as was explained above, the lower court's factual conclusions are well-supported by the evidence of record. Indeed, the record includes Appellant's own admission that he transferred the property to Mrs. Irish **because he chose a pension without surviving spousal benefits and "signed [the house] over so if anything happened to me she would have the house and she would be pretty well off."** N.T. Trial, 1/18/12 (Afternoon Session), at 139-140 (emphasis added).

> credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion. . . . An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused.

In re Estate of Strahsmeier, 54 A.3d 359, (Pa. Super. 2012) (internal quotations, citations, and corrections omitted). Further, since Appellant claims that the Orphans' Court incorrectly weighed the evidence when pronouncing its decree, we note:

> a verdict is against the weight of the evidence only when [the verdict] is so contrary to the evidence as to shock one's sense of justice. It is well established that a weight of the evidence claim is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Rather, the role of the trial court is to determine that notwithstanding all the evidence, certain facts are so clearly of greater weight that to ignore them, or to give them equal weight with all the facts, is to deny justice. A motion for a new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict; thus the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner.
>
> Significantly, in a challenge to the weight of the evidence, the function of an appellate court on appeal is to review the trial court's exercise of discretion based upon a review of the record, rather than to consider *de novo* the underlying question of the weight of the evidence. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. It is for this reason that the trial court's denial of

> a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings.

Commonwealth v. Rivera, 983 A.2d 1211, 1225 (Pa. 2009) (internal quotations, citations, and corrections omitted).

In this case (and as Appellant admits) the certificate of title to the 2006 Kia Sportage automobile was issued solely in the name of Mrs. Irish. Appellant's Brief at 16. Further, it is undisputed that Mrs. Irish signed the bill of sale for the automobile – and did so on the line declaring that she was the "purchaser" and the "buyer" of the automobile. ***See*** Bill of Sale, dated 11/28/05, at 1. Appellant did not sign the bill of sale. ***Id.***

After the Orphans' Court heard the witnesses testify and considered the evidence of record, the court concluded that "the Kia [automobile] was property owned solely by [Mrs. Irish] at the time of [Mrs. Irish's] death, and so it is property of [Mrs. Irish's] Estate." Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 15. In arriving at this conclusion, the Orphans' Court applied our longstanding precedent that, while a certificate of title does not conclusively prove ownership of an automobile, the certificate of title is, nevertheless, "an indicium of ownership" of the automobile. ***Rice St. Motors v. Smith***, 74 A.2d 535 (Pa. Super. 1950) (internal citations omitted); ***see also*** 75 Pa.C.S.A. § 1106(c) ("[a] certificate of title issued by the [D]epartment [of Transportation] is *prima facie* evidence of the facts appearing on the certificate"). The Orphans' Court also cited to an opinion

from the United States Bankruptcy Court for the Eastern District of Pennsylvania, which declared that the certificate of title:

> creates a rebuttable presumption of ownership, with the burden of proof on the person claiming ownership of the vehicle whose alleged ownership interest is not reflected on the certificate of title. Said presumption can be rebutted if all other indicia of ownership point towards an owner who is not named in the certificate of title.

Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 14 (internal citations omitted), *quoting* ***In re Lightfoot***, 399 B.R. 141, 145-146 (Bkrtcy.E.D.Pa. 2008).

Following the Orphans' Court's decree, Appellant filed his "Motion for Post Trial Relief" and claimed that the decree was against the weight of the evidence. Appellant's Orphans' Court "Motion for Post Trial Relief," 5/15/12, at 1-2. The Orphans' Court denied Appellant's claim.

Now on appeal, Appellant claims that the Orphans' Court either ignored or failed to adequately consider certain evidence, which – Appellant claims – tends to show that Appellant owned the vehicle in question. Appellant's Brief at 17-18.[9] This evidence includes: Appellant purchased the

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[9] Importantly, Appellant does not claim that the Orphans' Court committed legal error in holding that Mrs. Irish's name on the certificate of title "create[d] a rebuttable presumption of ownership" in Mrs. Irish – and that Appellant needed to rebut this presumption to prove his ownership in the vehicle. ***See*** Appellant's Brief at 16-18; Lower Court Findings of Fact and Conclusions of Law, 5/9/12, at 14; ***In re Lightfoot***, 399 B.R. at 145-146. Indeed, within Appellant' brief to this Court, Appellant cites ***In re Lightfoot*** with approval and acknowledges that the certificate of title "creates a presumption that may be rebutted by other evidence." Appellant's Brief at
(Footnote Continued Next Page)

Kia automobile with his money; Appellant was the principal driver of the vehicle; and Appellant paid for the insurance, gasoline, and maintenance on the vehicle. ***See*** Appellant's Brief at 17-18.

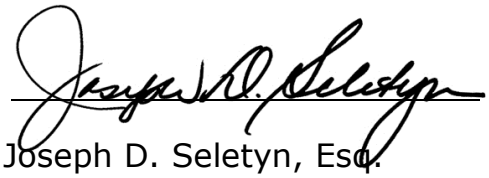
Yet, since the Orphans' Court has already ruled upon and denied Appellant's weight of the evidence claim, we may only consider whether the Orphans' Court denial constituted an abuse of discretion. Given the conflicting evidence in this case – and Appellant's legal concession that the certificate of title created a presumption of ownership solely in Mrs. Irish – we cannot conclude that Appellant has met his "unquestionably high [burden] for establishing that the [Orphans' C]ourt abused its discretion in denying his motion for a new trial based upon a challenge to the weight of the evidence." ***Rivera***, 983 A.2d at 1223. Appellant's final claim on appeal thus fails.

Judgment affirmed at 1124 WDA 2012. Decree affirmed at 1133 WDA 2012. Motion to Dismiss denied. Jurisdiction relinquished.

(Footnote Continued) ———————————

17. As this Court may not "reverse a [lower] court judgment on a basis that was not properly raised and preserved by the parties," we express no opinion on whether Appellant and the Orphans' Court are correct in declaring that, since the certificate of title was issued solely to Mrs. Irish, a "rebuttable presumption of ownership" was created in Mrs. Irish, to the exclusion of Appellant. ***Steiner v. Markel***, 968 A.2d 1253, 1256 (Pa. 2009); ***see also Rabatin v. Allied Glove Corp.***, 24 A.3d 388, 396 (Pa. Super. 2011) ("this Court may not at as counsel for an appellant and develop arguments on his behalf").

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2013