

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE MATTER OF: ESTATE OF
FRANCES S. CLEAVER, DEC.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: PDM, INC.

No. 2751 EDA 2013

Appeal from the Order Entered May 23, 2013
In the Court of Common Pleas of Chester County
Orphans' Court at No(s): No. 151209347

BEFORE: SHOGAN, J., ALLEN, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED APRIL 15, 2014

PDM, Inc., appeals from the order entered May 23, 2013, in the Chester County Orphans' Court finding that the Orphans' Court had subject matter jurisdiction over a lawsuit filed by PDM in the state of Delaware, and transferring that matter to the Orphans' Court for disposition. On appeal, PDM contends the Orphans' Court erred in concluding that it had subject matter jurisdiction over the Delaware lawsuit. Because we conclude the order on review is interlocutory, and not appealable, we quash.

The relevant facts gleaned from the trial court opinion are as follows: Frances S. Cleaver died testate on January 3, 2012. She named her four children, Walter Cleaver, Cheryl Vincent, Cynthia Vincent, and Cathy Anderson, beneficiaries of her estate. Cynthia and Cathy were appointed co-

executors of the Estate, and Cheryl was an agent for her mother under a power of attorney executed in 1999.¹

At the time of her death, the decedent owned 10% of the shares of PDM. Her son, Walter, owned the remaining 90% of the shares. The decedent bequeathed her 10% share to Walter in her will. However, pursuant to the terms of the will, Walter was required to reimburse the Estate for the appraisal of the PDM stock. Thus far, Walter has refused to provide the requisite financial documents for the valuation and has refused to reimburse the Estate for the retainer fee it paid to the appraiser.

In July of 2012, Walter filed a petition in the Orphans' Court to remove Cynthia and Cathy as co-executors. The following month, in August of 2012, Walter filed a civil lawsuit in the Chester County Court of Common Pleas against Cheryl and her husband, contending that Cheryl attempted to use her power of attorney, granted to her by the decedent, to take control of PDM.² The complaint was dismissed without prejudice to Walter to bring the claims in the Estate litigation.

Thereafter, in September of 2012, PDM filed a lawsuit against the Cleaver sisters in New Castle County, Delaware. The complaint alleged that while Cheryl was employed by PDM from January until June of 2011, she

¹ We will refer to the sisters collectively as "the Cleaver sisters."

² **See** Joint Petition, 2/12/2013, at ¶ 28.

accessed confidential information, which she and her sisters then used “in an unrelated estate matter concerning their now-deceased mother.” Orphans’ Court Opinion, 8/13/2013, at 3 (citation omitted). The complaint stated causes of action for, *inter alia*, breach of contract and breach of fiduciary duty. The Cleaver sisters filed a motion in Delaware seeking to stay or dismiss the action. On December 21, 2012, the Superior Court of Delaware entered a temporary stay of the action until the Chester County Orphans’ Court determined whether it had jurisdiction over the matter.

Thereafter, on February 12, 2013, the Cleaver sisters filed a joint petition for declaratory relief in the Chester County Orphans’ Court requesting the court assert jurisdiction over the Delaware lawsuit because the claims therein related to the issues in the Estate litigation, namely Cheryl’s power of attorney and the decedent’s PDM stock. On May 23, 2013, the Orphans’ Court entered an order (1) declaring that it had jurisdiction over PDM with respect to the claims raised by the Cleaver sisters, and (2) transferring PDM’s Delaware lawsuit to the Orphans’ Court for disposition “as the issues are sufficiently related.” Order, 5/23/2013. PDM filed exceptions to the May 23rd order, which the Orphans’ Court denied on August 13, 2013. This timely appeal followed.³

³ The Orphans’ Court did not direct PDM to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On October 16, 2013, the Orphans’ Court issued a statement in lieu of opinion, noting that (*Footnote Continued Next Page*)

On appeal, PDM contends the Orphans' Court erred in finding that it had subject matter jurisdiction over the Delaware lawsuit. However, before we may address PDM's substantive claim, we must first determine whether the order before us is appealable.⁴

"It is well settled that questions as to the appealability of an order go to the jurisdiction of the court asked to review the order." ***Pridgen v. Parker Hannifin Corp.***, 974 A.2d 1166, 1171 (Pa. Super. 2009). Generally, an appeal lies only from a final order, unless otherwise permitted by statute. ***Forrester v. Hanson***, 901 A.2d 548, 554 (Pa. Super. 2006). A final order is defined in Pennsylvania Rule of Appellate Procedure 341 as one that:

- (1) disposes of all claims and of all parties; or
- (2) is expressly defined as a final order by statute; or

(Footnote Continued) _____

"[t]he issues on appeal were adequately covered by our Opinion and Order dated August 13, 2013." Statement of the Court, 10/16/2013.

⁴ On December 20, 2013, the Cleaver sisters filed a Motion to Quash this appeal, arguing that the order on appeal is not a final order pursuant to Pa.R.A.P. 341. By *per curiam* order dated January 30, 2014, this Court denied the motion without prejudice to the Cleaver sisters to raise the issue before the merits panel. The Cleaver sisters have challenged the appealability of the order in their appellee brief. **See** Cleaver Sisters' Brief at 1, 3.

It merits emphasis that PDM neither responded to the Cleaver Sisters' motion to quash, nor addressed their challenge to the appealability of the order in either its initial or reply brief.

(3) is entered as a final order pursuant to subdivision (c) of this rule.

Pa.R.A.P. 341(a).

Turning to the present matter, it is clear the order on appeal does not dispose of all claims and of all parties. Rather, the order asserted subject matter jurisdiction over the claims in the Delaware lawsuit so that they will be adjudicated as part of the Estate litigation in the Chester County Orphans' Court. Moreover, the Orphans' Court did not make a determination of finality pursuant to subsection (c) of the Rule. Therefore, we find the order is not appealable under Rule 341.

Neither does the order on appeal fall within the enumerated categories of Orphans' Court orders that are immediately appealable under Rule of Appellate Procedure 342. Indeed, the order *sub judice* does **not** (1) conform an account or authorize a distribution from an estate or trust; (2) determine the validity of a will or trust; (3) interpret a will; (4) interpret or modify a trust; (5) determine the status of beneficiaries or creditors in an estate or trust; (6) determine an interest in property; or (7) concern an inheritance tax appraisal. **See** Pa.R.A.P. 342(a). Accordingly, we must determine whether the order is otherwise appealable under Rule 311 or Rule 313. **See** Pa.R.A.P. 342(a)(8).

Pennsylvania Rule of Appellate Procedure 311 permits an appeal as of right from certain interlocutory orders, including orders sustaining venue or

personal or *in rem* jurisdiction. Pa.R.A.P. 311(b).⁵ Here, the order on appeal asserted subject matter jurisdiction. This Court has held that Rule 311(b) “is not applicable to [orders] sustaining subject matter jurisdiction.” ***Ratz v. Ratz***, 518 A.2d 317, 319 (Pa. Super. 1986). ***See also Davis Supermarkets, Inc. v. United Food & Commercial Workers, Local 23***, 533 A.2d 1068, 1070 (Pa. Super. 1987). Indeed, “[s]uch an order is not appealable.” ***Davis Supermarkets, Inc., supra***, 533 A.2d at 1070.

We also recognize that Rule 313 permits an immediate appeal from collateral orders, which it defines as follows:

A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

⁵ The Rule provides, in pertinent part:

An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:

(1) the plaintiff, petitioner or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or

(2) the court states in the order that a substantial issue of venue or jurisdiction is presented.

Pa.R.A.P. 311(b). It merits mention that even if we found the order on appeal sustained personal jurisdiction, the Cleaver sisters did not elect to deem the order final, nor did the Orphans’ Court state in the order that a substantial issue of jurisdiction was presented.

Pa.R.A.P. 313(b). With regard to the third element of the collateral order test, this Court has stated:

To satisfy this element, an issue must actually be lost if review is postponed. Orders that make a trial inconvenient for one party or introduce potential inefficiencies, including post-trial appeals of orders and subsequent retrials, are not considered as irreparably lost.”

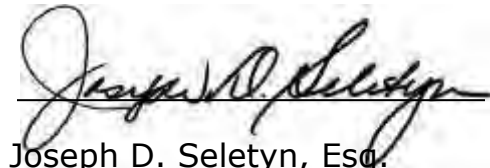
Graziani v. Randolph, 856 A.2d 1212, 1225 (Pa. Super. 2004) (citation omitted), *appeal denied*, 875 A.2d 1075 (Pa. 2005).

Here, PDM’s claims will not be irretrievably lost if we deny review at this stage. PDM can renew its challenge to subject matter jurisdiction at the conclusion of the litigation.

Therefore, because we conclude that the order on appeal is interlocutory, and not appealable, we quash this appeal.

Appeal quashed. Motion granted.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014