

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: ESTATE OF JEFFREY W. TOTT, DECEASED	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
	:	
APPEAL OF: ANNA MARIE TORRES, TRUSTEE OF THE JEFFREY W. TOTT REVOCABLE TRUST U/A DATED NOVEMBER 14, 2008	:	
	:	
	:	No. 1144 WDA 2025

Appeal from the Order Entered August 15, 2025
In the Court of Common Pleas of Allegheny County Orphans' Court at
No(s): 02-24-00031

BEFORE: BOWES, J., OLSON, J., and BENDER, P.J.E.

MEMORANDUM BY BOWES, J.:

FILED: September 16, 2026

Anna Marie Torres appeals from the interim order interpreting the death tax provision of her late ex-husband's will, which she contends the orphans' court allowed to improperly benefit his pretermitted surviving spouse. We affirm.

The orphans' court provided the following history:

Jeffrey W. Tott died on December 29, 2023, survived by his [second] wife, Brandy Bock-Tott, and two adult children, Jeffrey Tott II and Natalie Marie Tott (hereinafter collectively, "the Tott Children"). It was initially believed that the decedent died intestate, which resulted in both Ms. Bock-Tott and the Tott Children filing informal caveats requesting that each other not be appointed as administrator of the estate. Smithfield Trust was appointed as administrator *pendente lite*. Subsequently, a will dated November 14, 2008 ["2008 Will"] was located and letters of administration . . . were issued to Smithfield Trust. The [2008 W]ill provides, *inter alia*, for the residue of the estate to be distributed to the "Jeffrey W. Tott Revocable Agreement of Trust" ["the Trust"] and that the estate taxes are to be paid from the Trust. Anna Marie Torres, who is the mother of the Tott Children

[and the decedent's first wife], was appointed as the successor trustee of the Trust.

On March 26, 2025, Smithfield Trust filed an inventory listing a total estate value over \$55,000,000, a state inheritance tax return, and a federal inheritance tax return. The first and partial account and petition for distribution were filed on April 3, 2025[, and provided for a distribution of fifty percent of the estate proceeds to Ms. Bock-Tott, and the other fifty percent to the Trust.] The case was called for audit before the [orphans' court] on May 19, 2025. Exceptions were filed individually by Ms. Bock-Tott, the Tott Children, and [Ms. Torres].

Orphans' Court Opinion, 8/14/25, at 1-2 (capitalization altered).

Following a status conference and briefing, the orphans' court entered an interim order and opinion that disposed of some of the objections. Of relevance to the instant appeal, the court affirmed the fifty/fifty distribution and interpreted the language of the "death taxes" provision in the 2008 Will to require payment of those taxes from the Trust's principal. ***Id.*** at 4. Therefore, it directed that "the account and proposed distribution must be recalculated to assess the taxes solely against the Trust's share of the final distribution." ***Id.*** (capitalization altered). The ensuing order sustained one of the objections of Ms. Bock-Tott, dismissed several of the Tott Children's objections, dismissed Ms. Torres's objections, and left the remainder pending.

Ms. Torres timely initiated the instant appeal.¹ She complied with the orphans' court order to file a concise statement pursuant to Pa.R.A.P. 1925(b).

¹ Ms. Torres averred in her docketing statement that the interim order was appealable as of right pursuant to Pa.R.A.P. 342(a)(1), (4), and (6). Finding none of these applicable, this Court issued a rule to show cause upon her to explain why her appeal should not be quashed. Ms. Torres filed a response, *(Footnote Continued Next Page)*

Despite its belief that the interim order was not appealable, the court submitted a Rule 1925(a) opinion addressing Ms. Torres's sole proposed issue.

In this Court, she phrases her challenge in the following manner:

abandoning her reliance on Rule 342(a)(1), but reasserting the applicability of Rules 342(a)(4) and (6). We discharged the rule and referred the matter to this panel. In considering the appealability of the underlying order, we note that our Supreme Court has adopted rules providing that the following orphans' court interim orders are appealable as of right:

- (1) An order confirming an account, or authorizing or directing a distribution from an estate or trust;
- (2) An order determining the validity of a will or trust;
- (3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;
- (4) An order interpreting, modifying, reforming or terminating a trust;
- (5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;
- (6) An order determining an interest in real or personal property;
- (7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or
- (8) An order otherwise appealable as provided by Chapter 3 of these rules.

Pa.R.A.P. 342(a). Upon review, we determine that the instant appeal is properly before us pursuant to Rule 342(a)(3) because the order interpreted a clause of the decedent's will.

Did the orphans' court err as a matter of law or abuse its discretion in ordering that the inheritance tax for the subject estate is to be paid from the decedent's trust after receipt of the trust's share from the estate, as opposed to from the residue of the estate prior to the Trust and the second spouse receiving 50/50 shares?

Ms. Torres's brief at 4 (capitalization altered).

We begin with an overview of the relevant legal principles. "In general, when reviewing a decision of the orphans' court, an appellate court's responsibility is to assure that the record is free from legal error and to determine if the orphans' court's findings are supported by competent and adequate evidence." ***Matter of Peterson Fam. Irrevocable Tr.***, 333 A.3d 453, 457 (Pa.Super. 2025) (cleaned up). Regarding will interpretation:

The testator's intent is the polestar in the construction of every will and that intent, if it is not unlawful, must prevail. Also, we must focus on the precise wording of the will and view the words of the will in the context of the overall testamentary plan. We give effect to word and clause where reasonably possible so as not to render any provision nugatory or mere surplusage. Additionally, we are not permitted to determine what we think the testator might or would have desired under the existing circumstances, or even what we think the testator meant to say. Rather, we must focus on the meaning of the testator's words within the four corners of the will. Finally, a court may not rewrite an unambiguous will.

In order to ascertain the actual intent of the settlor or testator, the court must place itself in his armchair and consider not only the language and scheme of the instrument but also the facts and circumstances with which he was surrounded; and these surrounding facts and circumstances include the condition of his family, the natural objects of his bounty[,], and the amount and character of his property.

In re Est. of Cassidy, 296 A.3d 1219, 1223 (Pa.Super. 2023) (cleaned up).

The 2008 Will and the Trust were executed on the same day. Their salient pay-tax clauses provide, respectively, as follows:

FOURTH: Death Taxes.

- (a) All death taxes (and interest and penalties) imposed as a result of my death upon any property passing under my Will, upon the Jeffrey W. Tott Revocable Agreement of Trust and upon any amounts in any qualified retirement plan or individual retirement account, but not otherwise, shall be paid out of the principal held under said Agreement of Trust as provided therein.

2008 Will, 11/14/08, at 2.

Death taxes (and interest and penalties thereon) imposed as a result of my death upon the principal of this trust and the property passing under my Will, and upon any amounts in any qualified or nonqualified retirement plan or individual retirement account, but not otherwise, shall be paid out of the principal of the trust under Paragraph FOURTH having an inclusion ratio of greater than zero, each share thereof, whether outright or in trust, to bear a *pro rata* portion of such taxes, and to the extent insufficient, out of the principal thereof having an inclusion ratio of zero.

Trust, 11/14/08, at 8. The decedent was unmarried at the time he executed these documents, having already divorced Ms. Torres. He did not marry Ms. Bock-Tott until 2012. Therefore, we also bear in mind the following provisions of the Probate, Estates and Fiduciaries Code:

(2) Divorce or pending divorce.--Any provision in a testator's will in favor of or relating to the testator's spouse shall become ineffective for all purposes unless it appears from the will that the provision was intended to survive a divorce, if the testator:

- (i) is divorced from such spouse after making the will; or
- (ii) dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been

entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

(3) Marriage.--If the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate, unless the will shall give him a greater share or unless it appears from the will that the will was made in contemplation of marriage to the surviving spouse.

20 Pa.C.S. § 2507. In light of the decedent's marital status when he executed the 2008 Will, § 2507(2) does not apply, but § 2507(3) entitles Ms. Bock-Tott to fifty percent of the decedent's estate as his surviving pretermitted spouse.

The question facing us in this appeal is who bears the burden of paying the decedent's death taxes. In particular, we must decide whether the tax amount should be deducted from the estate before the money is divided between Ms. Bock-Tott and the Trust, or whether the division should be of the gross estate and then the taxes taken solely from the fifty percent of the estate designated for distribution to the Trust. In answering this question, the orphans' court found the pay-tax provision of the 2008 Will unambiguous. As explained in its Rule 1925(a) opinion:

The inheritance taxes are to be paid from the principal of the Trust. Thus, the Trust must receive its distributive share and then pay the inheritance taxes, as its sole responsibility per this paragraph of the [2008] Will. As the Account and Proposed Distribution filed by Smithfield Trust calculates the taxes prior to the distribution to the beneficiaries, the Account must be recalculated to assess the taxes solely against the Trust's share of the final distribution.

Orphans' Court Opinion, 10/30/25, at 4.

Ms. Torres argues that “Ms. Bock-Tott, testator’s second spouse, whose existence was un contemplated when testator executed [the 2008] Will, may not reap the benefit of the tax allocation clause contained in [the 2008] Will in addition to her statutorily mandated intestate share.” Ms. Torres’s brief at 10 (some capitalization altered). In her view, the 2008 Will’s pay-tax clause “did not contemplate an intestate share distribution, but rather intended that all of his assets would be disposed of pursuant to the terms of the [2008] Will.” **Id.** at 12. Relying upon our High Court’s decision in ***In re Corso’s Estate***, 431 A.2d 253 (1981), Ms. Torres contends that “it would be absurd to suppose that [the d]ecedent intended the tax allocation clause to benefit the intestate share under these circumstances.” **Id.** Thus, she insists that the inheritance taxes should “be borne by the estate prior to distribution of the estate proceeds” equally between Ms. Bock-Tott and the Trust. **Id.** at 13 (some capitalization altered).

Ms. Bock-Tott, meanwhile, avers that ***In re Corso’s Estate*** is factually distinguishable. **See** Ms. Bock-Tott’s brief at 10-12. She maintains that nothing modified the pay-tax clause of the 2008 Will and advocates for a plain reading of the 2008 Will’s language, which the orphans’ court employed to have the Trust bear the burden of paying the death taxes. **Id.** at 13.

An examination of ***In re Corso’s Estate*** is warranted. In that case, the testator executed a will that “provided that his wife . . . receive in trust an amount equal to the maximum allowable marital deduction under federal estate tax laws and that their daughter . . . receive the residue of the estate

in trust.” ***In re Corso’s Est.***, 431 A.2d at 253. “The will also contained a tax allocation clause directing that all inheritance and estate taxes be paid from the residuary estate.” ***Id.*** Thus, the pay-tax provision benefited his then-wife. Later, the testator divorced and remarried without altering his will.

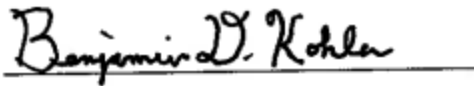
When the testator died, the second wife received half of his estate as if he died intestate pursuant to § 2507(3). The orphans’ court charged the taxes against his daughter as the holder of the residuary estate and she appealed. Our Supreme Court found the court erred because the pay-tax clause, which was intended only to favor the testator’s former spouse, was rendered “ineffective for all purposes” pursuant to § 2507(2) upon their divorce. As such, it could not be revived and utilized to benefit the testator’s second wife, particularly where at the time the testator executed his will he “did not intend to die intestate, did not intend to divorce and remarry, and thus could not have intended his subsequent spouse to benefit from the pay-tax clause or any other provision of his will.” ***Id.*** at 255.

We agree with Ms. Bock-Tott that the matter *sub judice* is materially distinct, thereby rendering application of ***In re Corso’s Estate*** inapt. Unlike in that case, Ms. Torres and the decedent were divorced before he executed the 2008 Will. Therefore, no portion of the 2008 Will was nullified through § 2507(2), and we are not presented with the absurd situation at issue in that case of trying to apply a provision intended to benefit an ex-spouse to the advantage of a second, un contemplated spouse.

Indeed, the pay-tax clause in the 2008 Will was not intended to benefit anyone. Rather, it was a general provision that unambiguously provided the mechanism by which all death taxes were to be paid. The fact that Ms. Bock-Tott was not contemplated as receiving an intestate share pursuant to § 2507(3) does not alter the unambiguous language of the 2008 Will's pay-tax clause. We conclude that the orphans' court correctly determined that the death taxes clause contained no ambiguity, and applied its plain meaning in issuing the order *sub judice*. Accordingly, we affirm.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/16/2026