

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: ESTATE OF DEBORAH A.
HAUGH

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

APPEAL OF: BRIAN DUNCAN

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: No. 1457 MDA 2025

Appeal from the Order Entered September 23, 2025
In the Court of Common Pleas of York County
Orphans' Court at No(s): 6722-2530

BEFORE: KUNSELMAN, J., LANE, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED AUGUST 18, 2026**

In this estate case, Brian Duncan appeals from the order that sustained preliminary objections to his "Petition to Remove Executor and Appoint Successor." The Orphans' Court's order, in effect, maintained the status quo, i.e., Brian's brother, Patrick Duncan, remained as executor to the Estate of Deborah A. Haugh¹ (the "Estate"). **See** Pa.R.A.P. 342(a)(5) (establishing that appeals may be taken as of right from Orphans' Court orders that determine the status of fiduciaries). Brian presents seven issues for review, chiefly contending that the Orphans' Court dually erred by finding that he lacked standing to pursue his petition and further concluding that he pleaded no legal

* Retired Senior Judge assigned to the Superior Court.

¹ Deborah is Brian and Patrick's mother.

basis for removal. After a thorough review of the record, we reverse and remand.

The Orphans' Court has capably provided the procedural history of this matter up until this juncture:

This matter pertains to the administration of the Estate of Deborah A. Haugh, deceased as of October 20, 2022 [("Decedent")]. Ms. Haugh died testate, widowed, and a resident of York Township, York County, Pennsylvania. Her last will and testament, dated July 22, 1996, was duly probated in the Office of the Register of Wills of York County, and letters testamentary thereon were issued on December []5, 2022, to Patrick Duncan, the Executor therein named [("Executor")]. The will may be found of record in said Office in File No. 6722-2530[.]

The Executor[,] Patrick Duncan[,] retained, and the [E]state is represented by, John V. Rafferty, Esq., and Denise M. Antonelli, Esq., attorneys of Gawthrop Greenwood, P.C. (hereinafter, collectively, "Counsel"). Counsel previously represented Decedent during her lifetime and, specifically, in relation to her rights during the administration of the [e]state of Kenneth C. Haugh, Decedent's husband.^[2]

The first and final accounting of [the Estate of] Deborah A. Haugh was filed with [the Orphans' Court] on May []7, 2025, and scheduled to be called for audit on June []4, 2025. [Brian Duncan ("Petitioner[]"), a beneficiary of the Estate, filed an objection to the first and final accounting of [the Estate of] Deborah A. Haugh with [the Orphans' Court] on May 29, 2025. An order denying the adjudication of the first and final account[ing] and a scheduling hearing on [the] objection was issued on June []6, 2025. The hearing was subsequently canceled upon the filing of preliminary objections to the objection.

² To reiterate, Counsel represented Deborah while she was alive and, following both her death and the appointment of Patrick as Executor of her Estate, now represents the Estate through Patrick's decision to retain that same Counsel.

On June 17, 2025, Executor filed two [sets of] preliminary objections: (1) Objection to Objector's *Objection to the First and Final Accounting for the Estate of Deborah A. Haugh* and, (2) Objections to Objector's *Petition to Remove Patrick Duncan as Executor and Appoint Brian Duncan as Successor Executor*. The [first objection filing was] overruled on July 18, 2025, leaving [that] matter ... to be further decided in accordance with York [County Local Rule of Civil Procedure] 208.2(b) when ripe for consideration.

Orphans' Court Opinion, 9/22/25, at 1-2 (italics maintained from original; footnotes and unnecessary capitalization omitted). Ultimately, in sustaining Executor's preliminary objections at the latter issue involving a removal challenge, the Orphans' Court found, *inter alia*, that Brian's petition was "legally insufficient, as [he] lack[ed] standing to pursue a claim against Decedent's [E]state for supposed errors in administration that have no calculable impact on Decedent's Estate." ***Id.*** at 10 (capitalizations maintained from original).

Brian timely filed a notice of appeal from the Orphans' Court's corresponding order dismissing his petition on preliminary objections. Thereafter, he timely filed a statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Brian raises seven issues before this Court:

1. Did the Orphans' Court err as a matter of law by sustaining Executor's preliminary objection based on lack of standing?
2. Did the Orphans' Court err as a matter of law in applying the wrong legal standard in determining whether Petitioner has standing to seek to remove the Executor?

3. Did the Orphans' Court err as a matter of law in holding that the petition to remove pleads no legal basis for removal of the Executor?
4. Did the Orphans' Court err as a matter of law in dismissing Petitioner's well-plead allegations, relying upon facts outside of the four corners of the petition, viewing those facts in the light least favorable to Petitioner, and deciding disputed factual issues against Petitioner without any discovery, hearing, or opportunity to develop and present the evidence and record necessary for a proper determination of the substantive merits of the petition to remove?
5. Did the Orphans' Court err in finding as a matter of law that the errors in the administration of the Estate have no calculable impact on Decedent's Estate?
6. Did the Orphans' Court err as a matter of law in holding that an executor can neither bring a claim against a decedent's counsel based on negligent advice, action, and/or inaction of that counsel during a decedent's life nor against the Estate's counsel based on negligent advice, action, and/or inaction of counsel since the decedent's death?
7. Did the Orphans' Court err in failing to hold a hearing pursuant to the Pennsylvania Rules and by dismissing the petition to remove without leave to amend?

See Appellant's Brief at 5-6 (suggested answers omitted).

As with all appeals from Orphans' Court orders, we note our following standard of review:

In reviewing an order from the Orphans' Court, our standard is narrow: we will not reverse unless there is a clear error of law or an abuse of discretion. Our scope of review is also limited: we determine only whether the court's findings are based on competent and credible evidence of record.

In re Estate of Karschner, 919 A.2d 252, 255-56 (Pa. Super. 2007) (citation omitted).

Relevant here, for orders sustaining preliminary objections, we emphasize the following:

In determining whether the [O]rphans' [C]ourt properly sustained preliminary objections, we review the ruling for an error of law or abuse of discretion. On an appeal from an order sustaining preliminary objections, we accept as true all well-pleaded material facts set forth in the appellant's complaint and all reasonable inferences which may be drawn from those facts. Preliminary objections seeking the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief; if any doubt exists, it should be resolved in favor of overruling the objections.

Threshold issues of standing are questions of law; thus, our standard of review is *de novo*[,] and our scope of review is plenary.

In re Nadzam, 203 A.3d 215, 220 (Pa. Super. 2019) (citation, brackets, and ellipses omitted).

As to executors, specifically, our Supreme Court has stated that "[a]n executor is required to exercise the same degree of judgment that a reasonable person would exercise in the management of his own estate. This duty includes the responsibility to distribute the estate promptly." ***In re McCrea's Estate***, 380 A.2d 773, 775-76 (Pa. 1977) (citations omitted).

Preliminarily, we agree with the Orphans' Court insofar as it correctly identified that the removal of an executor, the action that Brian seeks, is a "drastic remedy" and that "the need for such action must be clear." Orphans' Court Opinion, 9/22/25, at 4 (citation omitted); ***see also In re Estate of Mumma***, 41 A.3d 41, 49-50 (Pa. Super. 2012) (illuminating, *inter alia*, that

removal is a “drastic remedy” and that “ordinarily removal cannot occur unless some fiduciary duty has been violated[.]”). The Orphans’ Court then cites the “Grounds for removal” statute, which establishes that it “shall have exclusive power to remove a personal representative when he ... is wasting or mismanaging the estate[,], failed to perform any duty imposed by law[, or if] the interests of the estate are likely to be jeopardized by his continuance in office.” 20 Pa.C.S. § 3182(1), (5).

Nevertheless, our review leads to the inescapable conclusion that the Orphans’ Court thereafter proceeded under a fundamental misunderstanding of Brian’s legal claims. Although the rationale underpinning its preliminary objections determination is less than a model of clarity, we discern that it found: (1) Brian wholly lacked standing to file his petition; and (2) the allegations contained therein were legally insufficient. **See** Pa.O.C.R. 3.9(b)(4), (5). As we find that Brian is ultimately entitled to relief, we do not discretely analyze the seven issues he has raised in his brief. Instead, we review the two bases under which the Orphans’ Court sustained preliminary objections,³ first starting with the issue of standing.

The Orphans’ Court believed that Brian’s petition raised claims against Counsel, rather than against Decedent’s Estate, insofar as it summarized his petition as follows:

³ As evident in the seven issues he has raised before this Court, Brian expressly challenged both bases in his brief.

[Petitioner] essentially alleges that Executor should have pursued a malpractice claim against [C]ounsel for Decedent for advice provided to the Decedent during her lifetime and related to the administration of the estate of her husband, Kenneth C. Haugh. Specifically, Petitioner argues that [C]ounsel for Decedent ... failed to advise Decedent that she should elect against the will of her spouse who predeceased her and, instead, advised her to pursue a declaratory judgment action[,] which resulted in a loss of her income to her [E]state during her lifetime. Further, upon final disposition of the appeal in the [e]state of Kenneth C. Haugh, Counsel further advised Executor on behalf of the [E]state to forgo the election at that time[,] as well[,] due to the belief that [Kenneth's E]state was "insolvent or close to it[,]" based on what Petitioner alleges was a flawed valuation that undervalued Kenneth C. Haugh's interest in H&H Castings. Petitioner avers that Executor breached his duty owed to the beneficiaries of Decedent's [E]state, and failed to properly administer the [E]state, by retaining Decedent's [C]ounsel and not pursuing a claim of malpractice after Counsel breached their duty to the Decedent and to the Estate.

Orphans' Court Opinion, 9/22/25, at 4 (citations omitted); **see also id.** at 6 ("Essentially, Petitioner alleges that [C]ounsel has been mismanaging Decedent's Estate since prior to [Decedent's] death, and that Executor should be removed from his position due to his acquiescence with Counsel's mismanagement.") (citation omitted).

The Orphans' Court then spent the next couple of paragraphs delving into whether it was permissible for Brian, whom the Orphans' Court identified as a third-party beneficiary under Deborah's will, to file a legal malpractice case against Counsel[,] who represented Deborah during her lifetime, ostensibly in his own personal capacity. **See id.** at 5-6. Essentially, because Brian asserted that it was erroneous for Counsel "to proceed with a Declaratory Judgment action[] instead of a spousal election claim against the

[e]state of Kenneth Haugh, [a decision that is alleged to have] caused direct harm to the Decedent's Estate[,]" **id.** at 7, the Orphans' Court concluded that it was not within the realm of a challenge to the "drafting, execution, or administration" of a will, which is necessary to establish standing as a third-party beneficiary in a malpractice claim. **Id.** at 7-8.

After our review, we conclude that its analysis of standing, as it pertains to Brian's ability to proceed on his petition, is misplaced. As Brian correctly points out, the "Executor was required to show that Brian – [as] Petitioner – lacked standing to bring the *Petition to Remove Executor*." Appellant's Brief at 14 (emphasis in original). Instead, here, the Orphans' Court mistakenly looked to whether Brian had present standing to allege substantive claims of negligence or malpractice against Counsel. However, "this assertion [against Counsel] has nothing to do with Petitioner's standing to *seek the removal of the Executor – Patrick*." **Id.** (emphasis added); **see also id.** at 17 (indicating that its analysis "has absolutely nothing to do with whether Brian – a beneficiary of the Estate – has standing to seek the removal of Patrick as the Executor. By filing the Petition to Remove, Brian is not asserting a direct attack on the contract between Decedent and her Counsel.").

Brian is a beneficiary under the will, and as such, is clearly a "party in interest" within the meaning of, *inter alia*, the procedure that may be undertaken to remove an executor from an estate. **See** 20 Pa.C.S. § 3183 ("The court ... may ... on the petition of any party in interest alleging adequate

grounds for removal ... [.]”). In his own words, Brian is alleging that there has been a “personal, pecuniary harm resulting from the Executor’s mismanagement of Estate assets – the harm that directly affects the size and integrity of Brian’s potential inheritance. A direct causal link exists between the Executor’s failure to act in accordance with his legal obligations and the depilation and jeopardy of Estate assets.” Appellant’s Brief at 17; **see also** Appellant’s Reply Brief at 6 (writing that the petition asserts “waste, mismanagement, failure to safeguard [E]state claims, and jeopardy to the Estate[.]”). As Brian is a party in interest and accordingly has standing to petition for the Executor’s removal, an act expressly sought in his petition to remove, **see** Petition to Remove Patrick Duncan as Executor and to Appoint Brian Duncan as Successor Executor, 5/29/25, at 1, the Orphans’ Court was incorrect to frame the issue as solely one of Brian seeking a cause of action against the Estate’s Counsel on a third-party beneficiary theory. Thus, its basis for sustaining of preliminary objections, on the issue of standing, was erroneous.

At the second sustained preliminary objection, a demurrer attacking the legal sufficiency of Brian’s petition, we first note the more-particular rules that specifically govern our analysis: “[p]reliminary objections in the nature of a demurrer require the court to resolve the issues *solely on the basis of the*

pleadings^[4]; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.”

Caltagirone v. Cephalon, Inc., 190 A.3d 596, 599 (Pa. Super. 2018)

(citation omitted; emphasis added).

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

This Court will reverse the trial court’s decision regarding preliminary objections only where there has been an error of law or abuse of discretion.

Godlove v. Humes, 303 A.3d 477, 481 (Pa. Super. 2023) (citations omitted).

On the issue of legal insufficiency, the Orphans’ Court found that the petition challenged decisions made by the Decedent during her lifetime rather than decision affecting the administration of the Estate as follows:

Decedent’s choice to pursue a [d]eclaratory [j]udgment rather than an election against her former husband’s estate was a decision made during Decedent’s lifetime; there is nothing of record to show that Decedent was contemplating her death and the future distribution of her assets in making this preferential choice. Petitioner has failed to allege any calculable harm to the

⁴ Brian specifically suggests that, in reaching its conclusions, the Orphans’ Court relied “on facts outside of the four corners of the [p]etition[.]” Appellant’s Brief at 22-23.

[E]state; although he alleges that Decedent *should have* received more money from Kenneth Haugh's Estate, Decedent *chose to* proceed in a different manner. Furthermore, the value of Decedent's husband's estate was determined through the course of administration of that matter, which is not before [the Orphans' Court]. [The Orphans' Court] finds no credible claim of bad faith or mismanagement. Petitioner seeks to second-guess the decisions of Decedent made during her lifetime by attacking the Executor of her Estate but fails to plead any viable basis for the Executor's removal under 20 Pa.C.S. § 3182.

Orphans' Court Opinion, 9/22/25, at 9-10 (emphases in original).

Based on our review of the record, Brian's petition can be divided into two categories of assertions: (1) those indicating why Decedent has or had a cause of action in malpractice against the Counsel she employed while she was alive, **see** Petition to Remove Patrick Duncan as Executor and to Appoint Brian Duncan as Successor Executor, 5/29/25, at 4-6; and (2) those establishing why the Estate has a heretofore unasserted cause of action in malpractice against the Estate's Counsel due to, *inter alia*, flawed valuations and bad advice, and why, therefore, Patrick's continued acquiescence to this Counsel, who continues to represent the Estate, has led to waste and mismanagement, **see id.** at 7-13.

At a minimum, the Orphans' Court fails to discuss *anything* as it pertains to Brian's second claim, which specifically challenges the administration of Decedent's Estate by Patrick and legal work performed by the Estate's Counsel in support thereof. Instead, the Orphans' Court merely describes what it casts as Decedent's decisions made during her lifetime vis-à-vis the declaratory judgment action and why those decisions do not, now, lead to the conclusion

that Patrick should be removed as Executor or establish the Estate's right to pursue a malpractice claim. Distilled down, the Orphans' Court, in essence, ruled that Decedent's legal choices, while alive, vitiate any ability for the Estate to thereafter pursue a legal malpractice action for claims arising during her lifetime. **See** Orphans' Court Opinion, 9/22/25, at 10 ("Petitioner seeks to second-guess the decisions of Decedent [that she] made during her lifetime by attacking the Executor of her Estate[.]"). While that conclusion may ultimately be correct as applied to the yet-to-be-developed facts of this case, we cannot say, at this early juncture, that it is "clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief." **Godlove, supra**. Indeed, and relatedly, the Orphans' Court's failure to analyze *anything* germane to the second portion of Brian's petition, involving the more-recent involvement of Counsel and Patrick's actions *as Executor*, demonstrates, that there is obvious doubt preventing sustaining preliminary objections. Accordingly, because both reasons underpinning its sustaining of preliminary objections, standing and legal insufficiency, are legally infirm, we reverse the Orphans' Court's order.⁵

Order sustaining preliminary objections reversed. Request for sanctions

⁵ Patrick, as Executor, seeks sanctions against Brian, contending that this appeal is frivolous. **See** Appellee's Brief at 17-18. Nevertheless, given our disposition, which reverses the Orphans' Court's order, sanctions are not warranted, as we have found merit to Brian's contentions.

denied. Case remanded. Jurisdiction relinquished.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 08/18/2026