

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF) Civil Action No. 95-626
LARRY LEE HILLBLOM)
) **ORDER**
)

This matter comes before the Court upon motion by Petitioner Kinney for reconsideration^{1/} of this Court's August 15, 1995 Ordering the Executor of the Estate, Bank of Saipan, to respond to Petitioner Kaelani Kinney's Motion for DNA Testing. Oral arguments were heard on January 12, 1996. Having considered the written submissions and arguments of the parties, the Court now renders its decision.

^{1/} Petitioner Kinney first raised the issue for reconsideration in her "Supplemental Objection to Carlsmith Billings For the Period Between May 25, 1995 to September 30, 1995," dated January 3, 1996 and Petitioner Moncrieff joined her objection, submitting a "Supporting Brief Of Petitioner Moncrieff To Supplemental objections of Petitioner Kinney to Carlsmith Bills" on January 5, 1996. Petitioners again raised the issue for reconsideration at the Administration of the Estate Conference on January 5, 1996, and all parties subsequently submitted additional memoranda.

FOR PUBLICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. FACTS

In his will, dated January 15, 1982, Larry Hillblom nominated Bank of Saipan to act as the Executor of his Estate. He also made specific bequests to three people: his mother, Helen Anderson, his brother Terry Hillblom, and his brother Grant Anderson. In addition, Mr. Hillblom directed that the Larry Lee Hillblom Charitable Trust be created and gave the residue of his estate in trust to its trustees, Peter Donnici, L. Patrick Lupo, Terry Hillblom, Grant Anderson and Stephen J. Schwartz.

Bank of Saipan filed a Petition For Probate of Will and Issuance of Letters Testamentary on July 7, 1995. Petitioner Kinney filed her "Opposition of the will to Probate and Motion for Hearing for Determination of Paternity and Heirship and For Declaratory Judgment" on July 17, 1995. She moved the Court for an Order requiring Helen Anderson, Terry Hillblom and Grant Anderson to submit to DNA testing to determine if Junior Hillbroom is the son of the decedent on July 28, 1995. This Court ordered the Executor to reply to Petitioner Kinney's motion for DNA testing on August 15, 1995, citing Com.R.Pro. 10 and stating that such response was part of its fiduciary duties to the Estate.

On November 17, 1995, Petitioner Moncrieff filed his "Petition for Declaratory Judgment of Paternity and Heirship." He subsequently filed a "Motion for Commissions to take out of Jurisdiction Depositions and to Produce Documents and Tangible Things" on December 7, 1995. That motion, among other relief, requested that the Court Order Helen Anderson, Terry Hillblom and Grant Anderson to give blood samples to Petitioner Moncrieff for DNA testing. As Petitioner Moncrieff had not yet joined this proceeding, he was not considered and is not bound by the Court's August 15, 1995 Order. The Court therefore takes this opportunity to revisit that Order and to establish guidelines with regard to the Executor's^{2/} fiduciary duty to the estate in heirship proceedings.

^{2/} 8 CMC § 2107(a) defines "personal representative" to include executors and administrators. 8 CMC § 2926 governs attorney fees charged to the estate by its personal representative (i.e. executor or administrator). For the purposes of determining fiduciary duties owed to the decedent's estate in heirship proceedings, the Court finds the titles executor and administrator interchangeable.

1 the will beneficiaries given a property right in the estate which may be affected by the determination
2 that Petitioners are heirs. *Id.* It is the responsibility of the various claimants to establish their own
3 rights, if any, in the estate. *Lynagh, supra* at 259. The fact that they are unwilling to carry the
4 burden of defending their interests in the Estate on their own resources does not mean that the
5 Executor can actively litigate on their behalf. See *In Re Lynn's Estate*, 240 P.2d 1001 (Cal. Dist.
6 Ct. App. 1952); *Lynagh, supra* at 259 (Administrator is a mere officer of the court holding the estate
7 as stakeholder, and should assume a neutral and indifferent attitude as between claimants).

8 9 **C. Executor's Fiduciary Duty**

10 The right of the Court to allow the Executor reimbursement for reasonable attorney fees
11 necessary to carry out its fiduciary duty is not in dispute here. However, the parties sharply dispute
12 whether the defense of an heirship proceeding falls within the Executor's fiduciary duty. The Probate
13 Code expressly states that only reasonable attorney fees that benefit the estate may be charged to the
14 estate. 8 CMC §2926(c)^{3/}. Here, the Executor's defense against Petitioners **Kinney's** and **Moncrieff's**
15 heirship claims provides no benefit to the estate because these claims do not imperil estate assets.
16 Instead, the Executor's defense benefits the named beneficiaries of Mr. **Hillblom's** will, whose
17 interests in the estate may be eliminated if Petitioners succeed in proving heirship. Such an active
18 position in favor of the present beneficiaries of the estate over parties that may become beneficiaries
19 of the estate is inconsistent with the Executor's fiduciary duty of impartiality. *Barnett v. Barnett*, 340
20 So. 2d 548 (Fla. Dist. Ct. App. 1976) (Administrator has no **interest** in determining the proper heirs
21 of decedent).

22
23
24 ^{3/} Interpreting 8 CMC § 2926, this Court denied an Administratrix reimbursement for attorney fees
25 expended litigating a will contest *In Re Estate of Aldan*, Civ. No. 90-490 (August 5, 1995), stating
26 that fees for contests among beneficiaries do not benefit and are therefore not chargeable to the estate.
27 In *Aldan*, the Court relied, in part on *In re Estate of Meyer*, 802 P.2d 148, (Wash.App.Ct 1990) in
28 reaching its decision. Although *Meyer* has been overruled by *Estate of Goulet*, 898 P.2d 425 (Cal.
July 31, 1995), the Court maintains the rule that the **Executor/Administrator** must remain neutral
with respect to disputes between beneficiaries and may not use estate assets to assist one beneficiary
over the other.

1 **D. Attorney Fees**

2 On August 15, 1995, this Court deemed it necessary for the Executor to respond to Petitioner
3 Kinney's motion for DNA testing, since it is within the Executor's fiduciary responsibility to
4 participate in the investigation of claims. *Barnett v. Barnett*, 340 So.2d 548 (Fla. Dist. Ct. App.
5 1977). For this same reason, this Court also deems the Executor's response to Petitioner Moncrieff's
6 motion requesting blood samples necessary. However, beyond these responses and the attendant
7 investigations conducted in preparing them, any further expenditure of legal fees to defend against
8 Petitioners Kinney and Moncrieff serves no benefit to the estate. Since it is neither the duty nor the
9 prerogative of the Executor to favor one claimant over the other, such legal fees cannot be
10 reimbursed to the Executor. *Id.*

11

12

CONCLUSION

13

14

15

16

17

18

Because Petitioners' heirship claims will not deplete estate assets to be finally distributed,
actively litigating against those claims does not benefit the estate and does not fall within the
Executor's fiduciary duty. The need for substantial legal services with regard to this heirship
proceeding extends only to costs incurred in preparing, filing and arguing the Executor's response
to Petitioner Kinney's and Petitioner Moncrieff's motions for DNA testing. Accordingly, it is hereby
ORDERED ^{4/} that:

19

20

21

22

23

24

25

26

27

28

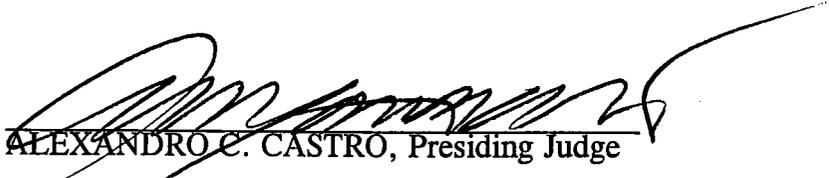
1. Petitioners' joint motion for reconsideration of this Court's August 15, 1995 Order is
GRANTED;
2. The Executor shall notify the beneficiaries of Mr. Hillblom's will of the status of the
heirship proceeding and of the fact that they are responsible for establishing and defending their own
rights in the estate; and

^{4/} In issuing this Order, the Court has taken considerable time to study and evaluate the issues raised.
As the result, the Court advises all parties in advance that no reconsideration of this Order will be
entertained. **Any** perceived errors in this Order shall be brought to the attention of the Commonwealth
Supreme Court on appeal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Henceforth, additional legal fees incurred by the Executor in the defense of **Petitioner's** heirship claims will not benefit the estate and will not be reimbursed to the Executor by the estate.

So ORDERED this 24 day of January, 1996


ALEXANDRO C. CASTRO, Presiding Judge