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PLJ

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OPINIONS

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Adoption of M.R.D., Minor Child

Adoption Proceeding—Grandparent Rights and Intervention

Court finds that natural grandparents of minor do not have standing to file Petition to Intervene in adoption proceeding.

No. 1631 WDA 2019 A-19-036. In the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division. Children's Fast Track Appeal. McCarthy, J.—November 22, 2019.

OPINION

This matter involves a petition to intervene in the matter of the petition for adoption of a minor child. Specifically, the maternal grandparents of the minor child petitioned to intervene in a private adoption in which the spouse of the natural father sought to adopt the child, so that the spouse would then share with the natural father the care and parenting of the child.

The natural mother of the child is deceased. The adoptive mother and the father are husband and wife and reside together. The child, MRD, is **REDACTED** years old, having been born in **REDACTED**. The child presently resides with her father and adoptive mother in Allegheny County.

At the time of the death of the natural mother on **REDACTED**, the natural mother and father were married and had been residing with the maternal grandparents in Clarion County, Pennsylvania, for several years. Following the death of the natural mother, MRD and her father continued to reside with the maternal grandparents until June 23, 2018, on which date the father attempted to leave that residence with his daughter. Purportedly, at that time, the maternal grandparents physically prevented MRD from leaving with her father and made threats against the father should he make any further effort to remove MRD from their home.

Ultimately, through court intervention,¹ father and child were reunited, and have since resided together in Allegheny County away from the maternal grandparents. The present matter came before this Court through Petition for Adoption filed pursuant to 23 Pa.C.S.A. §2701 on June 20, 2019 by the current spouse of the natural father and, hence, the stepmother of MRD.

At the time that the Petition for Adoption was filed, a **REDACTED** 2018 Order of Court from the Court of Common Pleas of Clarion County was in place which accorded the maternal grandparents of the child partial physical every other weekend from Saturday at 10:00 a.m. until Sunday at 5:00 p.m. By supplemental opinion and order dated **REDACTED**, 2019, the Clarion County Court determined that the maternal grandparents stood in loco parentis to MRD "and therefore had the right to file for any form of physical or legal custody" and additionally determined, inter alia that "Father shall keep the plaintiffs informed of all major decisions concerning the child including where she is attending day care, pre-school, school, any medical treatment other than routine matters, an all information that would have been deemed important to another parent".

Based, in part, upon the **REDACTED**, 2019 order of the Clarion County Court, the maternal grandparents of the child filed a Petition to Intervene in that adoption proceeding. Before the court in this matter are preliminary objections filed on behalf of the stepmother of MRD to the petition of the maternal grandparents to intervene in the adoption of MRD by the stepmother.

Specifically, the preliminary objections assert, pursuant to Pa R. C.P. 1028 (3) and (4) that the pleading of the maternal grandparents is insufficient in its factual averments and, in any event, lacks any sound legal foundation. The Preliminary Objections to the Petition to Intervene also challenge the standing of the Intervenor. As noted in those objections, the Grandparents do not appear to meet the qualifying criteria of 23 Pa. C. S. Section 271 1(a), which identifies those who must consent to an adoption:

- Adoptee (over 12 yrs. old);
- Spouse of the adopting parent;
- Parent(s) of an adoptee who is under 18 years old;
- Guardian of an incapacitated adoptee;
- Guardian of the person of an adoptee under 18 years old or having custody of that child.

If this matter can be viewed as a petition on behalf of the maternal Grandparents to modify the matter of physical custody -- that is, if those Grandparents seek some refinement of the arrangements regarding physical custody -- then the Grandparents may have standing in that regard. There does not appear to be standing, however, to intervene in the adoption petition itself.

The Grandparents assert that the "extraordinarily similar" case of *In Re: Adoption of R.J.S.* 889 A2d 92 (Pa. Super. 2005) required notice of the adoption proceedings to have been provided to them and that they should be participants in that proceeding. The cited case involved an adoption which would have had the effect of terminating all relations between a child and his biological parents and would, therefore, "sever the child entirely from its own family tree and engraft it upon its new parentage". Such complete severance may be a consequence in instances in which a child has lost or is removed from both natural parents. In such instances, 23 Pa.C.S.A. §5314² may have application. It has no application to this matter, where a natural parent has passed away, the surviving natural parent has married another, and that new stepparent then seeks to adopt the child. Rather, in that circumstance, grandparents are exempted from the termination of rights which is otherwise a consequence of adoption:

Any rights to seek physical custody or legal custody rights and any custody rights that have been granted under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) to a grandparent or great-grandparent prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.

[Emphasis added]

In *re Adoption of Hess*, 530 Pa. 218,608 A.2d 10, 13 (1992) similarly confirmed that the custody and visitation rights of grandparents are preserved in the instance of adoption by a stepparent:

[U]nder the Children and Minors Act, 23 Pa.C.S. § 5301, et seq., grandparents have the right to seek visitation and/or custody of their grandchildren until the children are adopted by someone other than a stepparent or grandparent. 23 Pa.C.S. §§ 5313, 5314. This statute demonstrates an intention on the part of the Pennsylvania legislature to encourage the maintenance of family relationships wherever possible, a policy which is especially relevant in this instance, because the grandparents already have custody of the children's siblings. See, e.g., *Albright v. Commonwealth ex rel., Fetters*, 491 Pa. 320, 421 A.2d 157 (1980) (grandparents given custody as opposed to parents where grandparents would keep siblings together); *Pilon v. Pilon*, 342 Pa. Super. 52, 492 A.2d 59 (1985). Moreover, it illustrates the expectation that grandparents in some instances will desire to adopt their grandchildren.

530 Pa. 218, at pp. 224-25

Hess additionally acknowledged that grandparents may intervene in adoption proceedings involving grandchildren when such an adoption follows termination of parental rights. But that is not the circumstance here. The contention of the intervening maternal grandparents in this matter appears to be that, having been granted the status of in loco parentis, they not only may continue to enjoy visitation and/or custody of their grandchild but may also intervene in the adoption of their grandchild by the current spouse of the child's natural father. The Clarion County Order of REDACTED 2018 is expressed in terms of "partial custody of the child every other weekend from 10:00 am Saturday until Sunday at 5:00 pm". The Supplemental Opinion of that court, dated REDACTED 2019, however, accords the Father "sole legal custody" and "primary physical custody". That later Order defines with particularity certain custody arrangements and permits either party to seek modification of the Order. It does not preclude adoption by a stepparent and, more pointedly, does not accord the grandparents status to intervene in such an adoption proceeding.

There are no assertions made by the grandparents regarding the fitness of the adoptive mother. Nor is there any articulation of jeopardy to the visitation privileges granted by the Clarion County Court. 23 Pa.C.S.A. §5326 preserves the interests of grandparents in the instance of adoption by a stepparent.

Although this matter has been designated by the Superior Court as a Childrens' Fast Track Appeal, the grandparents have not complied with the requirement to promptly file a concise statement of matters complained of on appeal. The particulars of the appeal are, therefore, not clear. That deficiency compounds the deficiency of the Petition to Intervene itself, which did not specify the relief which the grandparents were seeking.

Notwithstanding the apparent failure to comply with the directive of Pa.R.A.P. 1925(a)(2)(i) an opinion is being provided:

Although Father did not comply with Pa.R.A.P. 1925(a)(2)(i), we decline to apply the bright-line application of the waiver rule adopted by the Pennsylvania Supreme Court in *Commonwealth v. Castillo*, 585 Pa. 395, 888 A.2d 775 (2005). In *In re K.T.E.L.*, 983 A.2d 745 (Pa. Super. 2009) this Court addressed a similar issue and concluded that, in a children's fast track case, failure to file a Concise Statement along with the notice of appeal will result in a defective notice of appeal, to be decided on a case-by-case basis. *Id.* At 747. In the instant matter, Father's misstep was not prejudicial to any of the parties and did not impede the trial court's ability to issue a thorough opinion. Accordingly, we find the procedural error was harmless.

J.M.R. v. J.M., 2010 PA Super 120, 1 A.3d 902, 906 (Pa. Super. Ct. 2010)

Accordingly, the above is submitted without benefit of knowledge of the particular matters complained of on appeal.

BY THE COURT:
/s/McCarthy, J.

¹ By Order of Court dated July 6, 2018, Clarion County Court directed that MRD was to be returned to her father.

² Replaced by 23 Pa.C.S.A. §5326

In Re: WARD, An Alleged Incapacitated Person

Power of Attorney

- *Power of Attorney* – Agent acting under Power of Attorney has fiduciary duty to principal, and is obligated to use powers for benefit of his principal and to keep a record of all receipts.
- *Surcharge* – Where Agent withdrew cash from principal's account and has no receipts, burden is on him to prove how funds were spent but where court finds Agent credible and does not believe Agent was stealing, surcharge of 50% was imposed
- *Surcharge* – Agent will be surcharged where spent principal's funds to cover personal expenses.
- *Surcharge* – Where Agent paid personal credit card from principal's funds and it was quite possible that some charges were for the principal, but Agent was unable to provide receipts, Agent will be surcharged.
- *Surcharge* – Where Agent wrote checks to his husband for home repairs and cleanup but amount owed was offset by receipts showing expenditures on principal's behalf, only balance was awarded as surcharge.
- *Inheritance Tax* – Tax on funds Agent received from joint account after other joint account holder died was Agent's debt and he was surcharged for this amount.
- *Multi-Party Account Act* – During lifetime of the parties, a joint account belongs to the parties in proportion to their net contributions unless there is clear and convincing evidence of a different intent. 20 Pa. C.S. §6303(a). When one party dies, the survivors' ownership is in proportion to their prior ownership interests augmented by a per capita share of any interest the deceased had in the account before death.
- *Surcharge* – Where amount belonging to Agent from a joint account offset all surcharge amounts except \$2,864.28, court declined to award surcharge because Agent credibly testified that he made up shortfall between principal's expenses and income, he single-handedly managed her care and finances on a daily basis and he and his husband were with the principal on a daily basis.
- *Objections to Account* – Objections not addressed during testimony are dismissed for failure of Objectant to prove them.

No. 3386 of 2020. In the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division.

O'Toole, A.J.—March 25, 2021.

MEMORANDUM AND ORDER OF COURT

This matter came before the Court originally on a Petition for Appointment of a Guardian of the Person and Estate, which was filed at Docket No. 7003 of 2019 on December 5, 2019. Thereafter, Counsel filed a Petition for Rule to Show Cause Why an Agent under a Power of Attorney Should not File an Account and for Surcharge of Agent on behalf of Richard O'Shea (hereinafter, "Richard") at the same docket number, which was an error, as only guardianship matters should have been docketed at that number. The Respondent-Agent, Robert O'Shea (hereinafter, "Robert"), filed an Answer to the Petition at the same docket

number. Richard and Robert are two of the AIP's five children. The Petition requests the filing of an Account and alleges that the Agent has breached his fiduciary duty under the Power of Attorney. Pursuant to an Order dated March 16, 2020 at the guardianship docket number, Robert was ordered to file a First and Partial Account of his actions as Agent for the past three years within sixty (60) days, with a hearing on any Objections to be held on August 27, 2020. The time period was extended to June 30, 2020 due to the court shutdown.

The First and Partial Account was filed on July 20, 2020 at a new number as captioned above (i.e., 3386 of 2020). Objections were filed on August 7, 2020 and a Response was filed on August 25, 2020, both of which are docketed at the new number. At a conference on August 27, 2020, the matter was scheduled for a hearing on the Objections and Response.

A hearing was held on October 30, 2020 and January 15, 2021. Although the hearing testimony primarily concerned the Objections to the POA Account, the parties stipulated to WARD's incapacity based upon the deposition transcript of Dr. Elena Georgievskaya, M.D.¹

Findings of Fact

1. Per Stipulation, WARD is an incapacitated person. (N.T. 10/30/20, p. 7). Exhibit***.
2. Richard and Robert O'Shea are the sons of WARD and her deceased Husband, Robert (hereinafter, "Mr. O'Shea"), who died on October 20, 2018. (N.T. 10/30/20, pp. 4-6, 12)
3. Robert is WARD's agent under a Power of Attorney executed by WARD on July 3, 2009. Exhibit***.
4. WARD resides in her residence with caregivers provided 24 hours per day. Robert coordinates all of WARD's case. He uses two caregiver services, along with private caregivers as needed. Robert's husband, Bradley Evan, provides care on a daily basis from 7:30 a.m. until 4:00 p.m. Mr. Evans prepares meals, feeds, baths, and changes WARD, and provides her with companionship. He also performs some household chores. (N.T. 10/30/20, pp. 9-10; 89, 119-128) (N.T. 01/15/21, pp. 65, 84, 117-120)
5. The following bank accounts are relevant for purposes of this matter:
 - (a) FNB Account – in the names of Mr. O'Shea, WARD, and Robert, which was used primarily for direct deposit of WARD's Social Security benefit and Mr. O'Shea's pension benefit; WARD currently receives \$1,500/month from Social Security and \$400/month from Mr. O'Shea's pension; the current value of the account is approximately \$2,000;
 - (b) FNB Account – in the names of Mr. O'Shea and Robert; The account was opened in April, 2014 with a check in the amount of \$153,000, which were funds from a closed Northwest Bank account in the names of Mr. O'Shea and WARD; and
 - (c) FNB Account – in the names of Mr. O'Shea, WARD, and Robert; The account was opened in June 2018 with \$106,000, which were funds from an FNB passbook account in the names of Mr. O'Shea and WARD; the account was closed once it reached a \$0 balance.
- (N.T. 1/15/21, pp. 14, 32-34, 37-46, 69-70)
6. Robert wrote all checks on the three FNB accounts. Prior to his Father's death, he would meet with his Father twice per month to write out the checks to pay bills for his parent's household. At these meetings, his Father occasionally gave Robert permission to pay some of his own expenses. (N.T. 1/15/21, p. 12)
7. At his Father's request, Robert made cash withdrawals from the FNB accounts in the amount of \$300-500/month. In addition, Robert used approximately \$300/month in cash to pay for household expenses for his parents. He did not retain receipts for these expenses. (N.T. 1/15/21, pp. 15-16)
8. After his Father's death, the funds in FNB Accounts were used for WARD's care. (N.T. 1/15/21, p. 48, 63)
9. Although he testified otherwise, per REDACTED Exhibit*** 1, Robert used \$4,446.22 from FNB Account for his personal expenses and \$4,727.25 from FNB Account for inheritance tax assessed against him.
10. In September and October 2019, Robert wrote checks to his husband, Bradley Evans, totaling \$17,000 from FNB Account for household repairs and cleanup. Robert claims that these funds remain in FNB Account. Robert admits that the household repairs for which these funds were earmarked have not been completed (N.T. 1/15/21, pp. 21-25)
11. After his Father's death, Robert believed that the funds remaining in FNB Account were his sole property, as his name was the only name on the account. (N.T. 1/15/21, p. 46)
12. Robert has used at least \$30,000 of the funds in FNB Account for WARD's care, as she does not have sufficient monthly income to meet her needs. (N.T. 1/15/21, p. 69-70)
13. WARD's IRA, stock, and life insurance cash values have been depleted. (N.T. 1/15/21, p.27-29)
14. Although unable to care for herself, WARD's current health is "ok". She does not like the harassment and family disputes/disruptions that occur in her home between Robert and Richard/Richard's family. (N.T. 1/15/21, p. 60-62)
15. WARD receives very good shelter, food, and care on a daily basis. (N.T. 10/30/20, p. 94, 102, 118) (N.T. 1/15/21, p. 72)
16. Due to the very poor relationship between Robert/Brad Evans and Richard/his family, the police have been called to WARD's residence numerous times. (N.T. 10/30/20, pp. 40, 73)

Discussion

It is axiomatic, and the PEF Code is clear, that an agent acting under a power of attorney has a fiduciary relationship to the principal. An agent acting under a power of attorney is obligated to exercise the powers granted in the document for the benefit of the principal and keep a record of all receipts, disbursements, and transactions made on behalf of the principal. 20 Pa.C.S. §5601.3(b)(4), formerly 20 Pa.C.S. §5601(e)(4).

Richard raises twenty-eight (28) separate Objections to the First and Partial Account filed by Robert. In an effort to be more precise than the manner in which the Objections are posed, the Court has grouped the Objections into categories.

Objections to Expenditures Made by Robert Prior to Mr. O'Shea's Death

Initially, the Court finds that Robert was not acting as an Agent under the Power of Attorney until such time as Mr. O'Shea entered a nursing home in May/June of 2018. Prior to that time, Mr. O'Shea was in charge of the bank accounts and he authorized all withdrawals from the accounts. The Court finds that Robert credibly testified that Mr. O'Shea requested that Robert make cash withdrawals of \$300-500/month on his behalf, which Robert did. Robert also credibly testified that Mr. O'Shea permitted him to pay certain rather nominal personal expenses from FNB Accounts because Robert was providing care and assistance for his parents without any remuneration.

Once Mr. O'Shea entered the nursing home in May/June of 2018, he was no longer handling his own finances and Robert was acting under as Agent under the POA. During the approximately four-five months prior to Mr. O'Shea's death in October 2018, Robert made \$8,100 in cash withdrawals from FNB Accounts. Robert would have no reason to give Mr. O'Shea cash while he was in a nursing facility and WARD was not handling her finances at that time. Also, Robert does not have any receipts to document the use of the funds. That being said, recognizing that the burden is on Robert to prove how these funds were spent, the Court finds Robert to be credible and the Court does not believe that Robert was stealing this money from his parents for his own use. As such, the Court will only surcharge Robert fifty percent (50%), or \$4,050, of this amount.

Objections to Expenditures Made by Robert from FNB Accounts After Mr. O'Shea's Death

Per REDACTED Exhibit*** 1, Robert paid a total of \$448.09 in his personal expenses from FNB Account from January 16, 2019 through December 2, 2019. While these were the type of expenses that Mr. O'Shea typically approved when he was alive, these are Robert's personal expenses and he is not entitled to use WARD's funds to pay them. He will be surcharged in the amount of \$448.09.

Again, per REDACTED Exhibit*** 1, Robert paid his personal credit card in the amount of \$4,013.13 from December 2018 through October 2019. While it is quite possible that some of the charges on the credit card were for WARD, Robert is unable to provide receipts. In light of the fact that the Court generously declined to surcharge Robert for the cash withdrawals above, the Court will surcharge Robert in the amount of \$4,013.13 for the credit card payments, especially in light of the fact that he had full access to the funds in FNB Account.

Checks Payable to Bradley Evans

It is undisputed that Robert made two (2) check payable to his husband, Bradley Evans: in the amount of \$8,500 on September 23, 2019 for "roof repairs" and in the amount of \$8,500 on October 21, 2019 for "house cleanup". Robert testified that he had a discussion "with the people from welfare" who advised him to spend down WARD's money so that she would qualify for Medicaid assistance. He stated that "we had plans for that money", but it is "still in the bank". Under further questioning, he stated that some of the repairs had been performed. He also stated that he used \$13,000 of the funds for his legal fees and \$2,000 for WARD's burial plot.

A review of Robert's Answer to the Petition provides verification, via receipts, of the following expenses on WARD's behalf:

(1)	Burial Plot	\$1,695.00
(2)	Grave Marker	\$2,185.00
(3)	Evans Invoice	\$2,000.00
(4)	Payments to Caregivers from Robert personal Account	\$2,580.00
	TOTAL	\$8,460.00

The Court finds the \$8,460.00 set forth above to be legitimate expenses on behalf of WARD, which leaves a balance of \$8,540 to be surcharged. The Court further finds that Robert's expenses for attorney's and accountant's fees are not recoverable as expenses of WARD.

Inheritance Tax

On January 17, 2019, Robert paid \$2,727.25 in inheritance tax on the funds that he received from the FNB Account, which he held jointly with Mr. O'Shea. He paid the tax from FNB Account. This was not a debt attributable to WARD. This was a debt belonging to Robert, who benefitted by receiving the balance in the account at the time of his Father's death. He will be surcharged in this amount.

Multi-Party Account Act

The Multi-Party Account Act provides that a joint account belongs, during the lifetime of the parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is a clear and convincing evidence of a different intent. 20 Pa.C.S. §6303(a) Any sum remaining at the death of a party to a joint account belongs to the surviving party or parties, as against the estate. If there are two or more surviving parties, their respective ownerships during lifetime shall be proportion to their previous ownership interests under 20 Pa.C.S. §6303, augmented by an equal per capita share for each survivor of any interest the decedent may have owned in the account immediately before his death. 20 Pa.C.S. §6304(a)

Per the foregoing, Robert was entitled to retain all funds in FNB Account, as he was the only surviving party on the account. Such is not so with regard to the FNB Accounts. Those accounts were titled in the names of Mr. O'Shea, WARD, and Robert. Thus, once Mr. O'Shea died, the account was owed by WARD and Robert. At the time of Mr. O'Shea's death, there was a total of \$33,828.38 in those accounts, half of which, or \$16,914.19, belonged to Robert.²

Total Surcharge and Credit

Cash	\$4,050.00
Personal Exp	\$ 448.09
Credit Card	\$4,013.13
Cks to B. Evans	\$8,540.00
Inheritance Tax	\$2,727.25
TOTAL SURCHARGE	\$19,778.47
LESS CREDIT	(\$16,914.19)
SURCHARGE DUE	\$2,864.28

Based upon the above, the Court could surcharge Robert in the amount of \$2,864.28. However, the Court declines to do so for the following reasons: First, Robert credibly testified that he takes funds from FNB Account on a monthly basis to makeup the shortfall between WARD's expenses and her income. Second, Robert is single-handedly managing all aspects of WARD's care and

finances on a daily basis. Although he receives assistance from his brother, Dan and his family, he and his Husband are with WARD on a daily basis. Third, not only has Richard not been helpful, he and his family have been very disruptive, causing distress for WARD, which will not be tolerated going forward.

Finally, the Court notes that certain of the Objections were not addressed during the testimony and said Objections are dismissed for failure of the Objectant to prove them via testimony.

Based upon the foregoing, the Court issues the following Order:

ORDER OF COURT

AND NOW, to wit, this 25th day of March, 2021, it is hereby ORDERED as follows:

- (1) The Objections are granted in part and dismissed in part, based upon the foregoing; and
- (2) The request for a surcharge against Robert O'Shea, as Agent under the Power of Attorney for WARD O'Shea is denied.

BY THE COURT:
/s/O'Toole, A.J.

¹ The Court requests that future filings by counsel be filed at the correct docket number. Guardianship filings are to be filed at docket no. 7003 of 2019. POA filings are to be filed at 3386 of 2020.

² The Court notes that this was pointed out by Attorney Orie, who is counsel for WARD.

NOTE: *** Indicates a chart/exhibit/appendix omitted in this publication. Please refer to the Department of Court Records website to view the complete Opinion including the exhibits, charts, and appendix.

**This opinion was redacted by the ACBA staff. It is the express policy of the Pittsburgh Legal Journal not to publish the names of juveniles in cases involving sexual or physical abuse and names of sexual assault victims or relatives whose names could be used to identify such victims.*

In Re: Donald R. and Ruby E. Dodge Revocable Trust

Objections to Accounting

Court finds testimony regarding work performed for estate-owned property to be credible, sustains objections to First and Final Account, and awards fees to contractors.

No. 5038 of 2018. In the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division.
O'Toole, A.J.—June 24, 2021.

MEMORANDUM OPINION AND ORDER OF COURT

This matter came before the Court on Objections filed on February 18, 2020 on behalf of Raymond Ferchak and Objections filed on February 20, 2020 on behalf of Hanus Plumbing. The Objections were filed to the First and Final Account filed by the Successor Trustee, Pam Fuhrer, who is one of the three children of Donald R. and Ruby E. Dodge.¹

A hearing was held on April 21, 2021. At said hearing, testimony was proffered with regard to both sets of Objections.

Findings of Fact

1. Richard Hanus, a longtime employee of his family business, Hanus Plumbing, testified credibly with regard to the extensive plumbing work that he did at the Trust's real property located at 4669 Marina Drive, Munhall. Mr. Hanus credibly stated that over the course of 5-7 days he renewed the drainage system for the sanitary sewer and the water feed line distribution for all of the bathrooms, the kitchen, and the laundry room, along with installing a new hot water tank. (N.T. 4/21/21, pp. 4-5)

2. Mr. Hanus's bill of \$7,825 has never been paid. (N.T. 4/21/21, pp. 4-5)

3. Raymond Ferchak, who is a licensed contractor in Pennsylvania, testified that he was contacted by John Barnett, whose company had been retained as the construction manager for repairs/renovations to the Marina Drive residence. He submitted a bid for \$39,000. He began working in January 2019 and was locked out of the residence in June 2019. (N.T. 4/21/21, pp. 12-16)

4. Mr. Ferchak was paid a total of \$25,000 between January and June 2019. (N.T. 4/21/21, pp. 17)

5. Mr. Ferchak testified credibly that during the time that he worked on the renovations Mr. Barnett and Ms. Ferchak made numerous changes to the original renovation plans. (N.T. 4/21/21, pp. 18)

6. Mr. Ferchak submitted an invoice for \$37,445.05, which was less than his original bid, even though he credibly testified, at great length, about the substantial additional work that he performed. (N.T. 4/21/21, pp. 19-40) (Exhibit 17 – Photos)

7. When he was locked out of the residence, the majority of the renovations were completed. (N.T. 4/21/21, pp. 40-42)

8. John Barnett, whose company was hired as the construction manager, testified that he applied for the construction permit in mid-February 2019. (N.T. 4/21/21, pp. 64)

Discussion

The Court's decision in this case is based solely on the credibility of the witnesses. That being said, the Court finds the testimony of Mr. Hanus and Mr. Ferchak to be entirely credible. They are both skilled in their trades and there was no testimony elicited from either Mr. Barnett or Ms. Fuhrer that the work that they performed was shoddy or unsatisfactory. Rather, it appears that the only complaints on behalf of the estate were that Mr. Ferchak's work was not completed in a timely fashion and Mr. Hanus's work was not specifically authorized.

With regard to Mr. Ferchak, apparently the only deadline that was discussed was "completion in the spring". If Mr. Barnett is the professional that he claims to be, he should know better than to use this generic term. He should have put an exact completion date in the contract.

With regard to Mr. Hanus, Mr. Barnett, without further elaboration, stated that he told Mr. Ferchak that the bid from his suggested plumber – Mr. Hanus – was too high. The Court was not provided with a copy of said bid, nor did Mr. Barnett provide evidence of why it was “too high”. In any event, Mr. Barnett permitted Mr. Ferchak to use Mr. Hanus as the plumber.

The bottom line here is that these two gentlemen performed significant work in the renovations of this residence, which led to it being sold at a much higher profit than would have been realized without their hard work. Based upon the foregoing, the Court issues the following Order:

ORDER OF COURT

AND NOW, to wit, this 24th day of June, 2021, it is hereby ORDERED as follows:

- (1) The Objections filed on behalf of Richard Ferchak are sustained and the Trustee shall pay to Mr. Ferchak the sum of \$12,445 within fifteen (15) days of the date of this Order;
- (2) The Objections filed on behalf of Hanus Plumbing are sustained and the Trustee shall pay to Hanus Plumbing the sum of \$7,825 within fifteen (15) days of the date of this Order;
- (3) Said sums shall be deducted from the proceeds of the sale of the real property proposed to be distributed to the three beneficiaries, such that each beneficiary’s proceeds are reduced by one-third (1/3) of the total due of \$20,270 (i.e., \$6,756.66 each); and
- (4) The request for counsel fees is denied, as no evidence was presented with regard to said fees.

BY THE COURT:
/s/O’Toole, A.J.

¹ The Court notes that Counsel titled the Account as “The Estate of Ruby Dodge”, which is completely incorrect.