PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Preliminary Objections—Demurrer—First Amendment—Free Speech Clause

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The Court relied on the precedential opinion of U.S. Supreme Court Justice Alito in Pleasant Grove City, Utah v. Summum, 55 U.S. 460 (2009), which held that privately funded monuments placed in public parks represent a form of government speech not subject to scrutiny under the Free Speech Clause of the First Amendment, and that a specific government's right to its speech is accountable to the public only through the election process. In addition to the framework in Summum, the Court relied on the Virginia Supreme Court's decision in Taylor v. Northam, 862 S.E.2d 458 (Va. 2021), which the Court found factually analogous to this case. The court in Taylor held that certain restrictive covenants were unenforceable and that Virginia's Governor had the authority to order the removal of a monument of Confederate General Robert E. Lee. This Court determined that the Taylor opinion provides "an implicitly Supreme Court sanctioned roadmap for resolving this matter." Both Taylor and the instant case involve outdated legislation, action taken by a government executive to remove a public statute from public land, and state laws disfavoring restrictive covenants. In addition, the Court found that like Taylor, evidence collected by the City of Pittsburgh's Art Commission demonstrated that public policy had shifted since the time of the donation of the Columbus statue in 1955. Ultimately, the Court held that the removal of the Christopher Columbus statue is within the City of Pittsburgh's government Free Speech rights protected by the First Amendment and subject to restraint by City of Pittsburgh voters and the democratic process.

Void Transfer of Estate Property—Executor Conflict of Interest—Bona Fide Purchaser of Estate Property—Unjust Enrichment

Surcharge insufficient where both executor and executor's spouse to whom executor improperly transferred estate property for nominal consideration without notice to interested parties were complicit in the improper transfer. Appropriate recourse is to deem the transfer void.

Executor created a manifest conflict of interest when he advanced his purely private interest of a monetary claim for care of the decedent at the expense of the estate by improperly transferring estate asset to his spouse for nominal consideration without notice to interested parties.

Executor's spouse to whom executor transferred estate asset for nominal consideration without notice to interested parties is not a bona fide purchaser of estate property.

Estate not unjustly enriched by voiding of transfer of estate property to executor's spouse for nominal consideration as satisfaction of executor's personal monetary claim against estate. Voiding transfer does not preclude executor from reasserting claim against estate.

Grounds for Removal as Executor—Requirement to Immediately Advertise Estate—Priority and Abatement of Payment of Charges and Claims

Executor's failure to fully segregate estate assets from personal assets, entry into term of years installment payment transaction for estate property without documentation of payments, failure to advertise estate immediately after the grant of letters testamentary, and failure to discover and secure stocks held by decedent at death were grounds for removal.

Nine years after grant of letters testamentary is not within a seasonable period after the grant of letters to advertise the estate pursuant to 20 Pa.C.S.A. §3162, which directs a personal representative to advertise the estate "immediately after the grant of letters."

Distribution of estate assets to beneficiaries is not contingent upon payment in full of debts and expenses of estate; rather, if the assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative pays such charges and claims in the order of priority under 20 Pa.C.S.A. §3392, and if the assets are insufficient to pay all claimants and distributees in full, to follow the order of abatement under §3541.

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Opinions

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ITALIAN SONS AND DAUGHTERS OF AMERICA v. CITY OF PITTSBURGH and MAYOR WILLIAM PEDUTO

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Case No.: GD-20-010732. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. McVay, J.

MEMORANDUM OF LAW

On October 9th, 2020, Plaintiff, Italian Sons and Daughters of America ("ISDA") filed an Emergency Motion for Special Relief and Preliminary Injunction pursuant to Pa.R.C.P. 1534, seeking to stop the Defendants, The City of Pittsburgh ("COP") and then Mayor, William Peduto from removing the Christopher Columbus Statue from Schenley Park. The ISDA complaint admits that the statue is on COP owned property and further asserts that the COP and the Mayor, by ordering the statue's removal, are violating the COP Home Rule Charter, the Pennsylvania Constitution's Due Process Clause, and the Public Trust Doctrine.

By way of preliminary objection, the COP has moved to dismiss the case in its entirety, recently arguing that removal of the statue constitutes government speech, and that the ISDA lacks standing to present a viable constitutional claim. For the following reasons, I agree and sustain the COP's preliminary objection in the form of a demurrer and dismiss the ISDA's Complaint.

PROCEDURAL HISTORY

On October 9, 2020, the ISDA instituted the above-captioned case by filing an Emergency Motion for Special and Preliminary Injunction and a Complaint against the COP and then Mayor, William Peduto seeking, inter alia, to enjoin the COP from removing the statue of Christopher Columbus from COP-owned, public land.

Immediately, upon receipt of the motion on October 9, 2020, I held a status conference with counsel for the parties to address the issues. As a result of that status conference, I issued an Order, dated October 10, 2020, and filed October 14, 2020, acknowledging the COP's agreement not to remove the Christopher Columbus Statue from its property in Schenley Park, and directing that the statue not be moved without first notifying me. My Order also permitted the COP to cover the statue as a protective measure from vandalism, over the ISDA's objection.

After additional filings by the parties, a second status conference was held on October 29, 2020. At that status conference, I recommended that the parties agree to meet to try and resolve the matter on their own. With the intent of fostering compromise and conflict resolution, I entered an order the next day suspending the filing of additional pleadings and litigation, encouraging the use of the litigation and statue as an opportunity for a "teachable moment" of the various relevant histories of Christopher Columbus, Indigenous People, and the ISDA.

Despite several attempts at settlement over many months for the next year through October of 2021, including a session that the parties had requested that I conciliate as opposed to a third party, the parties were unable to reach resolution beyond a general agreement to a teachable moment. The particulars of how to accomplish the agreed upon teachable moment of histories, ultimately reached an impasse on the issue of the relocation of the statue and the ISDA's refusal to agree to an alternative location such as a museum or a history center.

Thus, on October 25, 2021, upon request of both parties and upon consideration of a joint proposed case management order, I set forth filing deadlines that resumed litigation.

On November 12, 2021, the ISDA filed an Amended Complaint, raising the following counts:

a. Count I: Violation of substantive and procedural due process rights under the Pennsylvania Constitution;
b. Count II: Breach of contract;
c. Count III: Violations of the Pittsburgh Home Rule Charter, Pittsburgh City Code, and Ordinance No. 198;
d. Count IV: Violation of the public trust doctrine; and
e. Count V: a claim for equitable relief in the form of an injunction preventing the COP and then Mayor, William Peduto, from "removing or covering the Christopher Columbus statue."

On December 17, 2021, the COP and Mayor William Peduto filed preliminary objections to the ISDA's Amended Complaint raising multiple objections and that ISDA's claims arise from several erroneous premises.

First, the COP contends that the ISDA frivolously averred that Mayor Peduto acted unlawfully and against the City's interests, by asking the City's Art Commission to invite public comment to discuss whether the Columbus statue, owned by the COP and erected in the 1950's in Pittsburgh's Schenley Park, through a gift from an organization called the Sons of Columbus of America, Inc., should remain on display on public land.

Second, the COP contends that the ISDA, based some of their claims on the mutually exclusive notions, that the legislation granting to the Sons of Columbus of America, Inc., "the right to erect and construct a memorial ... of Christopher Columbus," identified in the Amended Complaint as Ordinance No. 198 (Amended Complaint), is both a perpetual obligation upon the City with the force of law, and that the legislation is an ongoing contract, not with the Sons of Columbus of America, Inc., but with Plaintiffs, ISDA, an organization that, according to its own website, has been in existence since 1930[1], twenty-five years prior to the Sons of Columbus of America, Inc.'s gift of the statue.

Third, the COP contends that the ISDA erroneously claim they were denied due process under the proceedings of the City's Art Commission. However, the COP contends that the Art Commission is not an administrative tribunal, and although it is the appropriate body to gather information and make recommendations regarding replacement or removal of public art on behalf of the Mayor, it does not have the power to resolve private contests regarding public art or adjudicate in a manner that would provide Plaintiffs with the type of forum or party status they contend is owed to them.

The COP further objected to the Amended Complaint as containing defamatory and baseless accusations that Mayor Peduto "contaminated" the Art Commission's process by "threats" to remove Commission members, who did not vote in accordance with his wishes. These accusations, repeated over a dozen times in the Amended Complaint[2], the COP contends, are wholly unsupported and serve no purpose other than to incite anger or animosity in a matter that has already received significant public attention.

Specifically, the COP and Mayor Peduto raised the following preliminary objections pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure.

1. The Amended Complaint did not establish that this Court has jurisdiction over the subject matter of the action, as it failed to demonstrate that Plaintiffs, Italian Sons and Daughters of America had standing, per Pennsylvania Rule of Civil Procedure 1028(a)(l), and the Pennsylvania Supreme Court's acknowledgment that questions of standing, ripeness, and political question are matters of justiciability. "Issues of justiciability are a threshold matter generally resolved before addressing the merits of the parties' dispute." Robinson Twp. v. Commonwealth, 83 A.3d 63, 74 n. 10 (Pa. 2009).
2. The Amended Complaint failed to conform to law or rule of court as it included scandalous or impertinent matter, per Pa.R.C.P. 1028(a)(2).
3. The Amended Complaint was factually and legally insufficient, per Pa.R.C.P.1028(a)(3) and (4), and its claims must fail for the following:
   a. The Art Commission is not an adjudicative entity or tribunal, and therefore there was no issue of due process;
   b. The Amended Complaint stated without factual support and contrary to publicly-available information that Plaintiffs were a successor to the Sons of Columbus of America, Inc.;
   c. The Amended Complaint lacked facts that would establish that "Ordinance No. 198" is a contract;
   d. The Amended Complaint misapplied the public trust doctrine, which is a legal doctrine applicable to public lands and natural resources, not monuments or statues.

After filings requesting more time for the parties and other filings, I heard extensive argument on the COP's preliminary objections on February 14, 2022. Perhaps most significantly, I heard two arguments for the first time. The COP, for the first time raised the government speech argument that had to this point in the litigation not been raised in any of the previous pleadings or briefs. Similarly, the ISDA argued, I believe for the first time, that they were the owners of the statue. More discovery thus became necessary on these issues, and also whether or not the ISDA had standing. I took the remaining issues under advisement.

On March 1, 2022, in response to the COP's challenge to the ISDA's standing, the ISDA filed a Motion for Leave to File a Second Amended Complaint to add the Sons of Columbus of America, Inc. as a Plaintiff. I ordered the COP to file its response to add the Sons of Columbus of America, Inc. and scheduled argument for March 16, 2022, and to ascertain the parties progress on discovery.

The parties again asked for more time and also a date specific for briefs and both parties filed their supplemental briefs on the June 17, 2022, deadline. Upon review of the preliminary objections, responses, and all of the briefs, and under the applicable standard of review, I find the precedential opinion of Justice Alito in Pleasant Grove City, Utah v. Summum, 555 U.S. 460 (2009) to be controlling, and its applicability compels dismissal of the ISDA lawsuit.

STANDARD OF REVIEW

The applicable standard of review for a trial court sustaining preliminary objections and that I must observe here, is that I must be free and clear from all doubt that no cause of action exists. Chasan v. Platt, 244 A.3d 73 (Pa. Commw. Ct. 2020), reargument denied (Jan. 25, 2021), appeal denied, 253 A.3d 679 (Pa. 2021). I recognize that this is a high bar for the COP to clear and that if I had any doubt at all at this stage of the litigation, then I should overrule the preliminary objections under Pa.R.C.P. 1028(a)(4).

The uncontroverted fact however remains that the Christopher Columbus statue presently sits in Schenley Park on city owned property and irrespective of who actually owns the statue, Justice Alito's majority opinion in Summum, 555 U.S. at 460, held that privately funded monuments placed in public parks represent government speech, and that a specific government's right to their speech is accountable to the public through the election process. For the sake of argument and consistent with the COP proposal to return the statue to the ISDA, averments of illegalities disputing ownership or the nature of the legal relationship between the COP and Sons of Columbus of America, Inc. as created through the long-ago COP ordinance process, become simply immaterial upon application of the United States Supreme Court's Summum holding, to the fact that the Christopher Columbus statue sits in Schenley Park.

In sum, I am free from doubt that any named plaintiff, including the Sons of Columbus of America, Inc. and the ISDA, will be able to presently plead sufficiently, a cause of action involving government speech under Pa.R.C.P. 1028(a)(4). Justice Alito's opinion in Summum, effectively gives the COP free reign to remove the Christopher Columbus Statue.

DISCUSSION

It must be emphasized that at no time previously in this litigation has the case been considered from a First Amendment perspective, but such an analysis, I believe is now dispositive of the issues. The COP has only raised government speech in its supplemental brief and not in its expressed list of grounds for preliminary objections.[3] Regardless, the analysis begins where the United States Supreme Court, in Summum, addressed whether a city in Utah violated the First Amendment's Free Speech Clause by rejecting an organization's application to erect a monument in a public park.

The record before the Supreme Court established that Summum, a religious organization, had written a letter to the mayor of Pleasant Grove City, Utah, asking that it be permitted to erect a monument in Pioneer Park, a 2.5-acre public park in

Pleasant Grove City's Historic District that was home to several monuments, including a Ten Commandments monument. Id., at 464-65. The City denied Summum's request, as its practice was to "limit monuments in the Park to those that either (1) directly relate to the history of Pleasant Grove, or (2) were donated by groups with long-standing ties to the Pleasant Grove community." Id., at 465.

The City later passed a resolution making this policy official. Id. Summum submitted a second request to erect a monument after the resolution was passed, and Pleasant Grove again denied their request. Id. Summum filed a lawsuit against Pleasant Grove claiming that Pleasant Grove violated the Free Speech Clause of the First Amendment by accepting the Ten Commandments monument but rejecting their proposed monument. Id., at 466. Summum also sought a preliminary injunction to erect their monument. Id. The District Court denied the preliminary injunction and Summum appealed to the Tenth Circuit regarding only the First Amendment claim. Id.

The Tenth Circuit reversed the District Court, reasoning under the First Amendment that a public park is a public forum and Pleasant Grove could not reject Summum's monument, "unless it had a compelling justification that could not be served by more narrowly tailored means." Id. The Tenth Circuit proceeded to conduct its own analysis and concluded that Pleasant Grove must permit Summum to erect their monument. Id. The Supreme Court however granted certiorari and reversed. Id., at 467.

In Summum, Justice Alito begins with an analysis of the First Amendment and the Freedom of Speech Clause after recognizing that this was basically a case of first impression, with a government entity accepting a privately donated monument for installation in a public park, as I find to be a similarly uncontroverted fact with the Christopher Columbus statue in Schenley Park. The fundamental dispute as Justice Alito viewed it, was the nature of the government's actions in accepting the monument for placement, i.e., were they engaging in their own expressive conduct or were they providing a forum for private speech? Summum's answer to this question determines the applicable jurisprudential analysis under the First Amendment, and I believe similarly to the facts as I find them here, and significant to my ultimate conclusion on the demurrer.

Specifically, Justice Alito found, if petitioners were engaging in their own expressive conduct, then the Free Speech Clause has no application. Summum, 555 U.S. at 467.

The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. See Johanns v. Livestock Marketing Assn., 544 U.S. 550, 553, (2005) ("[T]he Government's own speech ... is exempt from First Amendment scrutiny"); Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 139, n. 7, (1973) (Stewart, J., concurring) ("Government is not restrained by the First Amendment from controlling its own expression"). A government entity has the right to "speak for itself." Board of Regents of Univ. of Wis. System v. Southworth, 529 U.S. 217, 229, (2000). "[I]t is entitled to say what it wishes," Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 833, (1995), and to select the views that it wants to express, See Rust v. Sullivan, 500 U.S. 173, 194, (1991); National Endowment for Arts v. Finley, 524 U.S. 569, 598, (1998) (SCALIA, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view").

Summum, 555 U.S. at 467-68.

The majority opinion analyzed government speech as essential to government function.

Indeed, it is not easy to imagine how government could function if it lacked this freedom. "If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed." Keller v. State Bar of Cal., 496 U.S. 1, 12–13, (1990). See also Johanns, 544 U.S., at 574, (SOUTER, J., dissenting) ("To govern, government has to say something, and a First Amendment heckler's veto of any forced contribution to raising the government's voice in the 'marketplace of ideas' would be out of the question" (footnote omitted)).

Summum, 555 U.S. at 468.

As far as private participation in that speech, the majority states:

A government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message." See id., at 562, (opinion of the Court) (where the government controls the message, "it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources"); Rosenberger, supra, at 833, (a government entity may "regulate the content of what is or is not expressed ... when it enlists private entities to convey its own message").

Summum, 555 U.S. at 468.

Justice Alito further opined that, "There may be situations in which it is difficult to tell whether a government entity is speaking on its own behalf or providing a forum for private speech, but this case does not present such a situation. ***Permanent monuments displayed on public property typically represent government speech***" Id. at 470. (emphasis added)

The Summum court ultimately held that:

[A]lthough a public park is a traditional public forum for speeches and other transitory expressive acts, the display of a permanent monument in a public park is not a form of expression to which forum analysis applies. Instead, the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause.

Summum, 555 U.S. at 464.

Justice Alito also analyzes the actual message conveyed by a display and concludes that the message conveyed by the government can mean different things to different people and that:

it frequently is not possible to identify a single "message" that is conveyed by an object or structure, and consequently, the thoughts or sentiments expressed by a government entity that accepts and displays such an object may be quite different from those of either its creator or its donor. By accepting a privately donated monument and placing it on city property, a city engages in expressive conduct, but the intended and perceived significance of that conduct may not coincide with the thinking of the monument's donor or creator. Indeed, when a privately donated memorial is funded by many small donations, the donors themselves may differ in their interpretation of the monument's significance. By accepting such a monument, a government entity does not necessarily endorse the specific meaning that any particular donor sees in the monument.

Id. at 476-77.

It is important to note that this government speech jurisprudence was certainly not in existence at the time of the COP's acceptance of the Christopher Columbus Statue from the Sons of Columbus of America, Inc. back in 1955. It is fair to say that it is relatively new First Amendment jurisprudence and is acknowledged throughout the various concurring opinions of Justices Scalia

and Thomas, Stevens and Ginsburg, and separate concurrences of Breyer and Souter, as "recently-minted." Nonetheless, it appears to squarely apply here. I also recognize that there appears to be little if any Pennsylvania jurisprudence on government speech or interpretation of Summum.

Furthermore, Justice Alito also looked at the Statue of Liberty and found that its original message certainly differed and changed over time, with the overall point being that government speech is subject to different meanings but it's the government's right to exercise it over time.

While this is a plurality opinion, and the Justices do appear to discuss some of their concerns with the application of this new jurisprudence, a common theme remains that it is indeed government speech, and while not subject to the same First Amendment analysis as private speech, it is not unrestrained, "a government entity is ultimately 'accountable to the electorate and the political process for its advocacy.' 'If the citizenry objects, newly elected officials later could espouse some different or contrary position'" Id., at 468-69 (citations omitted). Justice Scalia in his concurrence, suggests that future limitations may have to be considered, but that the 10 Commandments Statue in Summum was safe for now stating, "The city ought not fear that today's victory has propelled it from the Free Speech Clause frying pan into the Establishment Clause fire. Contrary to respondent's intimations, there are very good reasons to be confident that the park displays do not violate any part of the First Amendment." Id., at 482-83.

What the Summum rule articulated, is that the ballot box is the restraint on government speech, and this is articulated again in Shurtleff v. City of Bos., Massachusetts, 142 S. Ct. 1583 (2022) and explained in Taylor v. Northam, 862 S.E.2d 458 (2021).

As the COP Supplemental Brief accurately points out, the United States Supreme Court recently revisited Summum and the question of government speech in its 2022 decision, Shurtleff, 142 S.Ct. at 1583. This case involved Boston's refusal to permit a religious organization to fly a Christian flag on a flagpole outside City Hall that had for years been used with the city's permission by private groups to raise flags of their choosing for a limited period of time. Id., at 1587. Justice Breyer, writing for the Court, distinguished the facts in Shurtleff from those in Summum, in part because Boston regularly lowered its own flag and permitted private groups to raise theirs, and held that, "Boston did not make the raising and flying of private groups' flags a form of government speech." Id.

As the COP emphasizes, Justice Breyer relied on Summum and its related jurisprudence throughout his opinion:

The First Amendment's Free Speech Clause does not prevent the government from declining to express a view. See Pleasant Grove City v. Summum, 555 U.S. 460, 467-469 (2009). When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say. See Walker v. Texas Div. Sons of Confederate Veterans, Inc., 576 U.S. 200, 207-208 (2015). **The Constitution therefore relies first and foremost on the ballot box, not on rules against viewpoint discrimination, to check the government when it speaks.** See Board of Regents of Univ. of Wis. System v. Southworth, 529 U.S. 217, 235 (2000).

Shurtleff, 142 S.Ct. at 1589 (emphasis added).

The Court here, just as it did in Summum, states that the proper recourse for rejection of government speech, lies in election, as elected officials are the individuals choosing what government has to say on behalf of the communities they represent.

Justice Alito, concurring with the majority, added, "Defined in literal terms, 'government speech' is 'speech' spoken by the government. 'Speech' as that term is used in our First Amendment jurisprudence, refers to expressive activity that is 'intended to be communicative' and, 'in context, would reasonably be understood... to be communicative.'" Id., at 1598. "Government speech is thus the purposeful communication of a governmentally determined message by a person exercising a power to speak for a government." Id.

Shurtleff has articulated that the First Amendment's Free Speech Clause does not prevent the government from declining to express a view, and that the Constitution relies first on the ballot box and not on rules against viewpoint discrimination to check the government's speech. Shurtleff, 142 S.Ct. at 1589. Both Summum and Shurtleff recognize that government has a right to decline monuments and as government speech I would contend, to remove them freely from their own property.

As the City of Pittsburgh and Mayor Peduto have suggested to me, the Virginia Supreme Court's decision in Taylor v. Northam, 862 S.E.2d 458 (Va. 2021), is instructive regarding the Schenley Park Columbus Statue. The Virginia Court relies directly on the United States Supreme Court's holdings in Summum and related First Amendment cases and involves facts that are quite similar to those before this Court. Notably, the United States Supreme Court denied certiorari in this matter, choosing to leave the Virginia Court's opinion undisturbed. See Heltzel v. Youngkin, 2022 U.S. LEXIS 1719 (U.S., Mar. 28, 2022).

Taylor v. Northam involved restrictive covenants arising from an 1887 deed, and 1890 deed, and an 1889 joint resolution of the Virginia General Assembly that required a round piece of land ("the Circle") in what is now the City of Richmond, to be used as a site for a monument for Confederate General Robert E. Lee and held only for the purpose of displaying the Lee monument. Taylor, 862 S.E.2d 458, 460. The 1889 resolution, inter alia, included, "the guarantee 'of the state that it will hold the said [Lee Monument] perpetually sacred to the monumental purpose to which it has been devoted.'" Id., at 461. The 1890 deed conveying ownership of the Circle and the Lee monument included nearly identical language regarding the perpetual obligation to use the land for the purpose of displaying the monument. Id.

Taylor explores this concept more, and also, articulated that government speech does not need to be viewpoint neutral because the Free Speech Clause is only to check the government's regulation of private speech. Id., at 466. It is recognized that the government will adopt and pursue programs contrary to the beliefs and convictions of its citizens, but that it is the democratic process that provides a check on government speech. Id.

In 2020, amidst rising public sentiment objecting to the display of the Lee monument and other Confederate statues, including repeated acts of vandalism on these statues, Virginia Governor Ralph Northam announced that he intended to decommission and remove the Lee monument. Id. The Taylor plaintiffs, owners or trustees of properties in the designated historic district where the Lee monument was located and successors to the heirs of the plat in the 1980 deed, sued. Id.

The plaintiffs in Taylor much like the ISDA here, argued that the Governor had no authority to remove the Lee monument because the 1889 joint resolution imposed a perpetual obligation on the Commonwealth that the Lee monument remain where it was erected, and that the 1889 joint resolution was a statement of current public policy. Id. They further argued much like the ISDA here, that Governor Northam, among other things, violated the doctrine of separation of powers by encroaching on the legislative powers enacting the 1889 joint resolution, and that they were asserting a property right to enforce the deeds, which they claim requires the Commonwealth to maintain the statue in perpetuity. Id. While the matter was pending, the General Assembly repealed the 1889 joint resolution and directed the Department of General Services to remove and store the Lee

monument. Id., at 462. After pretrial proceedings, and a grant of a temporary injunction preventing the Governor or General Assembly from removing the Lee monument, the matter proceeded to a bench trial. Id., at 463. Ultimately, "[e]ven though the circuit court found that the language in the 1887 Deed and the 1890 Deed creates restrictive covenants, it concluded that these restrictive covenants are unenforceable because enforcement of the restrictive covenants would violate current public policy of the Commonwealth." Id., at 464. Further, the trial court held that Governor Northam's actions did not violate the Virginia Constitution. Id. It dissolved the temporary injunction and found in favor of the Governor. Id., at 464-65.[4] The Taylor plaintiffs appealed.

The Virginia Supreme Court identified the specific legal questions as "whether a specific disfavored property right, a restrictive covenant (assuming that is what the language of the 1887 and 1890 Deeds create), is reasonable and enforceable when it purports to bind the government to perpetually maintain and protect a particular monument, and whether a joint resolution passed by the General Assembly in 1889 legally prohibits the current Governor from moving the location of a monument owned by the Commonwealth." Id., at 466. The court concluded that the purported restrictive covenants are unenforceable and that the Governor had the authority to order the removal of the Lee monument. Id. This is the same issue here as the ISDA is attempting to perpetually bind the COP's free speech rights.

The Virginia Court arrived at its conclusion by first looking at the Pleasant Grove City v. Summum's opinion: "permanent monuments displayed on public property typically represent government speech," and that regardless of whether a monument contains any expression in words, "like other monuments on government land, it 'play[s] an important role in defining the identity that the government projects to its own residents and the to the outside world.'" Id. (citing Summum). Further,

Government speech is a vital power of the Commonwealth, the democratic exercise of which is essential to the welfare of our organized society. Indeed, it would be difficult to imagine a government that could function absent this freedom. Summum, 555 U.S. at 468. "A government entity has the right to speak for itself[; it] is entitled to say what it wishes, and to select the views that it wants to express." Id., at 467-68 (internal citations, alterations, and quotation marks omitted). Thus, the Commonwealth has the inherent power to place or remove monuments on its property.

Government speech does not need to be viewpoint neutral because the Free Speech Clause checks the government's regulation of private speech, but it does not regulate government speech. Matal v. Tam, 137 S. Ct. 1744, 1757 (2017); Pleasant Grove City, 555 U.S. at 467. Inevitably, "government will adopt and pursue programs and policies [that may be] contrary to the profound beliefs and sincere convictions of some of its citizens." Board of Regents of U. of Wis. Sys. v. Southworth, 529 U.S. 217, 229 (2000). Ultimately, "it is the democratic electoral process that first and foremost provides a check on government speech" Walker v. Texas Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 207-08 (2015).

Taylor, 862 S.E 2d, at 466. Note that here the Virginia court cites entirely from United States Supreme Court opinions, and not Virginia law.

Regarding the Taylor plaintiffs' position that the 1887 and 1890 deeds created a property interest that vests in them the authority to control Virginia's government speech, the court, noting Virginia law disfavoring restrictive covenants, states "[e]nforceable restrictions on the use of property may become unenforceable because of changed circumstances or because the restriction violates public policy." Id., at 468. The court, citing Black's Law Dictionary, defines public policy as:

The collective rules, principles, or approaches to problems that affect the [C]ommonwealth or [that] promote the general good, and it more particularly pertains to 'principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society.' Black's Law Dictionary 1487 (11th ed. 2019). Public policy acts to restrain persons from lawfully performing acts that have 'a tendency to be injurious to the public welfare.' Wallihan v. Hughes, 82 S.E.2d 553 (1954) (quoting 12 Am. Jur. Contracts § 169 (1938)); See Black's Law Dictionary 1487 (11th ed. 2019).

Taylor, 862 S.E. 2d at 468-69. The court further recognizes that the "dominant role in articulation of public policy in the Commonwealth of Virginia rests with the elected branches. The role of the judiciary is a restrained one." Id., at 469. The court explained that the City of Richmond's and the General Assembly's recent removals of other Confederate statues "indicate[] that [the Commonwealth] no longer wishes to express symbolic celebrations of the Confederacy in perpetuity. Also, other circumstances and conditions existing at the time the 1890 Deed was signed have radically changed." Id., at 470. The radical change is the historical perspective of the Confederacy as understood by the City of Richmond and the message conveyed by the Lee Statue.

The court pointed out that the Lee monument "has been, and continues to be, an act of government speech." Id., at 471. "The Government of the Commonwealth is entitled to select the views that it supports and the values that it wants to express." Id., citing Summum. The court also found that "[a] restrictive covenant against the government is unreasonable if it compels the government to contract away, abridge, or weaken any sovereign right because such a restrictive covenant would interfere with the interest of the public." Id. It also found that the Governor and General Assembly in the 1890's "had no power to contract away the Commonwealth's essential power of freedom of government speech in perpetuity." Id.

Echoing the U.S. Supreme Court, the Virginia Supreme Court declared,

The Commonwealth has the power to cease from engaging in a form of government speech when the message conveyed by the expression changes into a message that the Commonwealth does not support, even if some members of the citizenry disagree because, ultimately, the check on the Commonwealth's government speech must be the electoral process, not the contrary beliefs of a portion of the citizenry, or of a nineteenth-century governor and legislature.

Therefore, any restrictive covenant purportedly created through the 1890 Deed, which would prevent the Commonwealth from moving a monument owned by the Commonwealth and on property owned by the Commonwealth is unenforceable because, at its core, that private property interest is the product of a nineteenth-century attempt to barter away the free exercise of government speech regarding the Lee Monument in perpetuity.

Id. (emphasis added).

ISDA v. City of Pittsburgh and Mayor Peduto

Taylor v. Northam is remarkably similar to the matter before me. The COP submit, and I agree, that this opinion provides an implicitly Supreme Court sanctioned roadmap for resolving this matter. Like Taylor, this case involves old and outdated legislation. Like Taylor, this case involves an action taken by a government executive to remove a public statue from public land. Like Taylor, evidence collected by the City of Pittsburgh's Art Commission overwhelmingly demonstrated that public policy has shifted since the time that the Sons of Columbus of America, Inc. donated the Columbus statue in 1955. And like Taylor relevant state law disfavors restrictive covenants.

As the COP points out, Pennsylvania courts have long held that restrictive covenants are problematic. The Pennsylvania Supreme Court stated in 1968, "It is accepted by both sides that deed restrictions are not favored by the law; they represent an interference with the owner's free and full enjoyment of his property." Schulman v. Serrill, 246 A.2d 643, 646 (Pa. 1968). In 1948, the Pennsylvania Supreme Court found:

t is an elementary principle of equity jurisprudence that such a decided change of conditions makes it improper for a chancellor to enforce a covenant which limits the full right of an owner to develop his property; this is because public policy dictates that land shall not be unnecessarily burdened with permanent or long-continued restrictions and because equity will not [impede] improvements simply in order to sustain the· literal or technical observance of a covenant which for one reason or another has become useless from the standpoint of any practical utility.

Price v. Anderson, 56 A.2d 215, 220 (Pa. 1948).

In 1978, the Superior Court held, "The contract must not contravene any policy of the law. It must be a contract between individuals relating to their private affairs. Each party must be a free bargaining agent, not simply one drawn into an adhesion contract, with no recourse but to reject the entire transaction." Zimmer v. Mitchell & Ness, 385 A.2d 437,439 (Pa. Super. 1978).

The ISDA cannot point to law that supports its position that it has the authority to limit what the Mayor of Pittsburgh, and the Mayor's advisory committees do with respect to City-owned monuments on City-owned land. The Mayor is elected by the residents of Pittsburgh and entrusted with the duty of effectuating speech that reflects the will and ideals of the voters. It is contrary to law and public policy to decide otherwise.

Thus, given the framework built by the United States Supreme Court in Pleasant Grove City v. Summum, and the example set by the Virginia Supreme Court in Taylor v. Northam, the City of Pittsburgh submits, and I agree, that the ISDA cannot be permitted to continue with this lawsuit as its position is not supported by either fact or law and this litigation is an improper interference with the COP's right to speech.

Reiterating that certiorari in Taylor was denied, suggests that the Supreme Court at least implicitly thinks it's a good road map. The ISDA's Supplemental Brief attempts to dismiss Taylor as distinguishable without any real analytical critique. Also, it should be noted that the ISDA fails to address the new elephant in the room, Summum and government speech.

Finally, while I am dismissing the ISDA's Complaint because the removal of the Christopher Columbus Statue is within the COP's government Free Speech rights, protected by the First Amendment and subject to the restraint by the COP voters and the democratic process, I would nonetheless encourage all parties to continue to meet and discuss final resolution and a future agreeable location for the statue under the teachable moment concept. Nothing in this memorandum precludes the parties from working together to find resolution along the lines of a history center, museum, or some private property location that attempts to present all historical perspectives. There is nothing to preclude City Council and the Arts Commission from being involved moving forward to find a home for the statue other than a City warehouse. Hopefully community leaders in Pittsburgh will become more involved, and the ISDA national leadership and the COP will be open-minded, and that all parties look towards understanding each other's viewpoints and historical understandings.

CONCLUSION

For the foregoing reasons, we sustain the COP and then Mayor, William Peduto's preliminary objections to the ISDA's Amended Compliant. Finding that under Summum, the Christopher Columbus Statue on COP owned property constitutes government speech, and the COP's government Free Speech rights permit the COP to remove the statue from Schenley Park.

BY THE COURT:
/s/Judge John T. McVay Jr.

[1] See https://orderisda.org/about/our-history/, stating "An official registration certificate was Issued on April 12th [sic], 1930." (Last checked December 13, 2021.) Plaintiffs' website (www.orderisda.org) contains no mention of the Sons of Columbus of America, Inc.

[2] Including, but not limited to Amended Complaint paragraphs 2, 3, 6, 25, 51, 57, 64, 67, 68-73, 79, 83, 91, 92, 102

[3] I find persuasive and substantially adopt many of the COP's June 6th, 2022, Supplemental Brief's arguments.

[4] The Virginia Supreme Court noted "The Taylor Plaintiffs' claims are based upon two premises. First, that they have an enforceable property interest which allows them to prohibit the Commonwealth from moving a monument owned by the Commonwealth from property that is likewise owned by the Commonwealth. Second, that the Governor is constitutionally prohibited from ordering the removal of the Lee Monument from the Circle because a joint resolution passed by the General Assembly in 1889 states the Commonwealth's current public policy and it strips the Governor of his authority to have the Lee Monument moved from the Circle. Rightfully, neither premise survived the circuit court's scrutiny." Taylor, 862 S.E.2d, at 466.

IN RE: ANGELA DIMATTEO, DECEASED

Void Transfer of Estate Property—Executor Conflict of Interest—Bona Fide Purchaser of Estate Property—Unjust Enrichment

Surcharge insufficient where both executor and executor's spouse to whom executor improperly transferred estate property for nominal consideration without notice to interested parties were complicit in the improper transfer. Appropriate recourse is to deem the transfer void.

Executor created a manifest conflict of interest when he advanced his purely private interest of a monetary claim for care of the decedent at the expense of the estate by improperly transferring estate asset to his spouse for nominal consideration without notice to interested parties.

Executor's spouse to whom executor transferred estate asset for nominal consideration without notice to interested parties is not a bona fide purchaser of estate property.

Estate not unjustly enriched by voiding of transfer of estate property to executor's spouse for nominal consideration as satisfaction of executor's personal monetary claim against estate. Voiding transfer does not preclude executor from reasserting claim against estate.

No. 02-18-06412. In the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division. McCarthy, J. May 31, 2022.

Walter A. Bernard, Esquire, Counsel for Casimiro DiMatteo, Appellant
Warner Mariani, Esquire, Pro se for Warner Mariani, Administrator D.B.N.C.T.A.

OPINION

At issue is a further appeal on behalf of Casimiro DiMatteo regarding the conveyance of real property from the Estate of Angela DiMatteo, Deceased, to the spouse and children of Casimiro DiMatteo, the executor of that estate.[1] In this current appeal, Casimiro asserts that this court erred when it directed that a conveyance of a parcel of developed real estate, which was an estate asset, from Casimiro in his capacity as executor of the estate to his spouse and children for nominal consideration should be set aside. In all, four matters are complained of, the first of which asserts that this court erred and abused its discretion when it ordered that the conveyance of a parcel of real estate located on Pearl Street in the City of Pittsburgh should be revoked. Casimiro maintains that the action which properly should have been taken by the court was a surcharge rather than a revocation of the transfer of title. That argument disregards the complicity of Casimiro and his wife, to whom the property was transferred. As the Superior Court has already determined in its opinion filed on January 19, 2022, Silvia was cognizant of Casimiro's conduct and was complicit in the illicit transfer. In such circumstances, the impropriety is not fully addressed by a surcharge; the transaction must be deemed void.

In the second matter complained of on appeal, it is asserted that the court erred when it did not permit Casimiro to present evidence regarding his ability to transfer the deed when he had a monetary claim against the estate. Again, the matter has been addressed. The Superior Court has observed that: "Casimiro created a substantial conflict of interest with his fiduciary duties as executor of the Estate when he claimed the Estate owed him $180,000 for taking care of his mother prior to her death. An executor has 'a duty to see that her purely private interests were not advanced at the expense of the estate'".[2] Quite apart from the fact that Casimiro complaint on appeal fails to address the matter of a manifest conflict of interest, it fails as well to acknowledge that the monetary claim of $180,000 which Casimiro asserts he had against the estate was markedly less than the appraised value of the property transferred, which had been $220,000. Casimiro argues, in effect, that his monetary claim superseded the interest of the estate in acquiring the greatest value for the property.

In the third matter complained of on appeal, it is asserted that the court erred when it revoked the sale from Casimiro to his wife when she was a bona fide purchaser of the Pearl Street property. That contention similarly disregards the fact of an exchange made for less than fair market value. Casimiro cannot convincingly assert that an exchange of marketable real estate made for the nominal consideration of one dollar between husband and wife and without having made prior disclosure to other possibly interested heirs or ascertaining the market for such property constitutes a bona fide exchange.

In the fourth and final matter complained of on appeal, Casimiro asserts that the court erred and abused its discretion when it unjustly enriched the estate by revoking the transfer of the deed. To the extent that that complaint is again referencing forgiveness of the purported $180,000 claim of Casimiro and is asserting that such forgiveness enriched the estate but provided no quid pro quo to Casimiro, the contention remains unconvincing. Voiding the transaction does not necessarily preclude a reassertion of the claim during the pendency of the estate.

BY THE COURT:
/s/McCarthy, J.

[1] A prior appeal was filed at No. 304 WDA 2021 and decided January 19, 2022. A current similar appeal, filed at 363 WDA 2022 on behalf of Casimiro's wife and children, is also pending.

[2] Opinion at pp 6-7.

IN RE: THE ESTATE OF JAMES B. KARN, DECEASED

Grounds for Removal as Executor—Requirement to Immediately Advertise Estate—Priority and Abatement of Payment of Charges and Claims

Executor's failure to fully segregate estate assets from personal assets, entry into term of years installment payment transaction for estate property without documentation of payments, failure to advertise estate immediately after the grant of letters testamentary, and failure to discover and secure stocks held by decedent at death were grounds for removal.

Nine years after grant of letters testamentary is not within a seasonable period after the grant of letters to advertise the estate pursuant to 20 Pa.C.S.A. §3162, which directs a personal representative to advertise the estate "immediately after the grant of letters."

Distribution of estate assets to beneficiaries is not contingent upon payment in full of debts and expenses of estate; rather, if the assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative pays such charges and claims in the order of priority under 20 Pa.C.S.A. §3392, and if the assets are insufficient to pay all claimants and distributees in full, to follow the order of abatement under §3541.

No. 02-10-01566. In the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division. McCarthy, J. July 21, 2021.

James L. Karn, Pro se for James L. Karn, Appellant
Arnold H. Caplan, Esquire, Pro se for Arnold H. Caplan, Administrator D.B.N.C.T.A.
Andrew M. Gross, Esquire, Counself for Douglas James Karn, Beneficiary

OPINION

This matter concerns the Estate of James B. Karn who died testate on October 29, 2004. At the time of his death, James was not married and was survived by two adult sons, James and Douglas. The typewritten will directed that:

> [A]fter payment of all my just debts, my property net value be distributed by my executor in the following proportion:
>
> James L. Karn (son) 70%
> Douglas James Karn (son) 20%
> Elizabeth Sherry Jones 10%

Inserted following the term "proportion" was a handwritten parenthetical entry which stated: (Shop + Equipment). Appended to the will was a pre-printed form captioned "Affidavit of NonSubscribing Witnesses". The names of James L. Karn and "Wm. Karn" were entered onto the form as witnesses to the will. William Karn is named in the will as the testator's brother and is designated as an alternate executor.

It was not until March 12, 2010, that letters testamentary were first issued and the decedent's son, James L., was confirmed as executor of the estate. A Pennsylvania inheritance tax return was filed the following month. Thereafter, no further activity of record occurred for approximately nine years. During that time, no distribution was made to Douglas Karn from the estate nor was Douglas kept apprised of the status of the estate, informally or otherwise. In or around April 2019, Douglas, through counsel, made written inquiry to James regarding the status of the estate administration. Receiving no prompt response, Douglas caused a "Petition for Citation for a Rule to Show Cause, Why James L. Karn Should Not Be Removed as Executor" to be filed on May 2, 2019. The petition asserted that, apart from filing the inheritance tax return, James had apparently done little to responsibly administer the estate. James had not complied with notice and filing requirements under Pennsylvania Orphans' Court Rule 10.5, had not filed an inventory or status report, and had sold two parcels of real estate, which were assets of the estate, without having informed heirs that the properties had been offered for sale. Nor was any accounting provided regarding the proceeds of those sales. The petition further asserted that James had neglected to ascertain all assets of the estate and, generally, had not administered the estate in a competent manner. The petition requested that James be required to show cause, if any, why he should not be removed as executor of his father's estate.

The matter proceeded to a hearing on September 18, 2019. At that hearing, it was established that James, having failed to marshal assets, to establish an estate bank account, to make expeditious distribution of assets, to maintain complete and accurate records, or to bring the estate to a complete close within a reasonable time, had acted in a manner inconsistent with the fundamental responsibilities of an executor. James was demonstrated to have been incapable or unwilling to perform essential responsibilities of the executor of his father's estate. Illustrative of that failure or incapacity was testimony provided by James regarding disposition of one of three parcels of real estate owned by the Decedent at the time of death:

Q. Is the mortgagor, Crow Hill Development, are they making monthly payments to the Estate?
A. They are making payment, yes.
THE COURT: To the Estate?
THE WITNESS: I believe so.
Q. And where do they send those payments?
A. To me.
Q. When will they be finished making their payments to the Estate?
A. I don't have a time schedule.
Q. So, how do you know when they're going to be paid in full?
A. I don't know.
Q. And when you get those checks, you're just depositing them into your bank account?
A. They're going to pay the debt, yes.
THE COURT: Answer the question. Where are you depositing these checks?
THE WITNESS: I guess into my account, yes.
THE COURT: Don't guess. You get these checks every month, right? Is that correct?
THE WITNESS: Yes, I do.
THE COURT: And what do you do with these checks?

THE WITNESS: I deposit it.
THE COURT: It's your personal account?
THE WITNESS: Yes.
THE COURT: Not the Estate?
THE WITNESS: Correct.
THE COURT: So there is no estate account open to your knowledge.
THE WITNESS: Correct.

N.T., 9/18/2019 at pp.25-26

A personal representative may be removed upon a showing that he or she has failed to perform any duty imposed by law or that the interests of the estate are likely to be jeopardized by the representative remaining in that position. 20 Pa.C.S.A. §§1, 5. Here, having either neglected to establish a separate bank account for the estate or, if one has been established, having failed to fully segregate accounts, and having entered into an installment payment transaction which has extended over a term of years, James failed in the fundamental responsibilities of a personal representative to administer the estate expeditiously and to maintain estate proceeds entirely separate from personal accounts. The failure by James to segregate estate and personal accounts and his unawareness of the payment schedule regarding a mortgage granted for the purchase of estate property suggests a negligent or incapable administration of the estate.

Additionally, James failed to discover and secure stocks which had been held by the decedent at the time of death. Consequently, dividend income which had accumulated over the course of James' executorship had not been paid to the estate and the stock shares themselves, not having been claimed by James on behalf of the estate, remained at risk of escheatment[1] or claim by intestate heirs viewing the Pennsylvania unclaimed property website.

James did not timely advertise the estate. Pursuant to 20 Pa.C.S.A. §3162, advertisement serves to foreclose any creditor claims that have not been presented within one year of the date of that advertisement. Although James now contends that he did advertise the estate, that advertisement did not occur until August 2019, subsequent to the time that the petition for citation in this matter had been filed and served and some nine years after the death of his father. That belated advertisement of the estate did not comport with the explicit directive of §3162 that personal representatives are to advertise an estate "immediately after the grant of letters". A consequence of James' failure to seasonably accomplish the mandatory task of immediately advertising the estate was an unnecessarily extended exposure of the estate to creditors' claims. It may not be ascertainable at this point which, if any, claims of creditors might have been forfeited had the estate been promptly advertised. Nonetheless it is plain from the failure to advertise and from all that has been presented that James lacked either the willingness or the ability to function responsibly as an executor.

Among the responsibilities of personal representatives is liquidation of estate assets in order to effect a prompt distribution to heirs.[2] The responsibility to make reasonably prompt distribution was not met by James. Even at this juncture, a decade into the administration of the estate, James' contention remains that, had he continued as executor, he "may have had funds to pay beneficiaries in the future. ...The investments made by the Appellant in the estate are mostly public record, including property taxes, funeral expenses, and inheritance tax. Other investments are easily estimated including new roof, furnace and water heater."[3] Those contentions are selfdefeating in that they concede a current uncertainty as to the scope and composition of the estate and seek, in effect, an indefinite extension of the executorship.

James asserts that "there is no proof that [he] meets any of the grounds for ... removal as executor of the estate" and that the court, therefore, erred by removing James as executor.[4] James concedes that he cannot yet provide any reliable accounting of the estate and that, had he continued as executor, he could only have offered estimates rather than a complete and competent accounting. Given that James could not comply either with the need to provide a complete and reliable accounting or with the responsibility to distribute the estate promptly, James's complaint on appeal that "the trial court erred when it removed Appellant as executor of the deceased's estate" is not supported by the record.

A second matter complained of on appeal asserts that this court "abuse[d] its discretion by awarding estate funds to a beneficiary before the debts were paid." Citing In re Estate of Davis, 128 A.3d 819 (Pa. Super. 2015), James contends that all the expenses and debts of an estate are to be paid in full before any distribution is made to beneficiaries. The Davis decision makes no such declaration, but merely recites that, in the event that the assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative, subject to any preference given by law to claims due the United States, shall pay such charges and claims in the order of priority dictated by statute at 20 Pa.C.S.A. §3392. The Davis decision further observes that, in the event the assets of the estate are insufficient to pay all claimants and distributees in full, the order of abatement set forth in 20 Pa.C.S.A. §3541 must be observed. James has not demonstrated, or alleged with any particularity, that the distribution sought by the administrator d.b.n.c.t.a. and allowed by the court contradicted the directives of §3392 or §3541.

The record in this case established unreliable record-keeping and grossly dilatory performance on the part of the executor. Neither of those deficiencies would be remedied promptly if the executor remained in place. For that reason, James was properly removed as executor. The record has not established any improprieties or failed performance on the part of the current administrator.

BY THE COURT:
/s/McCarthy, J.

[1] 72 Pa.C.S.A. §§1301.1, 1301.6, passim

[2] 720 Pa.C.S.A. §3316

[3] 7Brief of Appellant at 15.

[4] James filed a "Brief of Appellant" rather than a notice of appeal, and, in that brief set forth a "Statement of Questions Involved".