

EDWARD P. SNOOK, KENNETH E.	:	IN THE COURT OF COMMON PLEAS OF
SNOOK, WILLIAM L. SNOOK and	:	LYCOMING COUNTY, PENNSYLVANIA
JOHN L. SNOOK,	:	
Plaintiffs	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 99-00,594
	:	
LUCILLE E. CLYMER, LOIS A.	:	CIVIL ACTION – LAW
McGARVEY and LEWIS D. SNOOK,	:	
Defendants	:	

OPINION AND ORDER

Presently before the Court are Preliminary Objections filed by Defendants in the above captioned matter.¹ Plaintiffs filed a Complaint in this matter April 21, 1999. The parties are the sons and daughters of Woodrow W. Snook and Maude M. Snook, of Loganton, Clinton County, Pennsylvania. Both parents are deceased. Plaintiffs claim that prior to their deaths, their parents were of weakened intellect and further impaired by physical limitations. Complaint paragraphs 9 and 10. Plaintiffs aver that Defendants were in a position of confidentiality with respect to their parents and Defendant Lucille E. Clymer was power of attorney for them. Complaint paragraphs 11, 12 and 13. Said power of attorney was recorded in Clinton County at Book 944, page 185. Complaint paragraph 12. Acting as power of attorney and fiduciary, Lucille E. Clymer sold the marital property of Woodrow and Maude Snook May 22, 1998, for \$95,000.00; the deed is recorded in Clinton County at Book 944 page 188. Complaint paragraph 14. According to the Complaint, Ms. Clymer then distributed the proceeds from this sale and also the remainder of the parents’ assets “from a location in

¹ Plaintiffs requested dismissal of the Preliminary Objections for Defendants’ failure to file a brief. That request was withdrawn at oral argument.

Lycoming County” to Defendants, including herself, to the exclusion of Plaintiffs. Complaint paragraph 17. Plaintiffs claim this distribution was contrary to the wills of their parents, which provide ninety percent of their estate was to be divided equally among the parties.² Complaint paragraph 18. Plaintiffs bring eight counts against Ms. Clymer and the other Defendants: Improper Distribution under 20 Pa.C.S. §5603(a)(4); Unjust Enrichment; Undue Influence; Funds Received Due to Fraud or Trick; Conspiracy; Violation of Fiduciary Duty; Resulting Trust, and; “Outrageous Conduct, Punitive Damages and Attorney’s Fees.”

It is clear this matter must be transferred to the Orphans’ Court of Clinton County. With respect to whether this case should be in Orphans’ Court, the underlying issues in this matter concern the power of attorney of Ms. Clymer and the estate of the parties’ parents. 20 Pa.C.S. §711 states, in relevant part:

§ 711. Mandatory exercise of jurisdiction through orphans’ court division in general

Except as provided in section 712 of this code (relating to nonmandatory exercise of jurisdiction through orphans’ court division) and section 713 of this code (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans’ court division:

(1) Decedents’ estates. The administration and distribution of the real and personal property of decedents’ estates...

(10) Incompetents’ estates. The administration and distribution of the real and personal property of the estates of incompetents...

² We note the Complaint also makes mention of a ten percent distribution under the will to the Loganton Wesleyan Church of Loganton, Pennsylvania. It is unclear that Plaintiffs have standing to bring a Complaint on behalf of the Church. Further, the Church is not a named Plaintiff.

(11) Fiduciaries. The appointment, control, settlement of the accounts of, removal and discharge of, and allowance to and allocation of compensation among, all fiduciaries of estates and trusts, jurisdiction of which is exercised through the orphans' court division...

The Court notes also that under 20 Pa.C.S. §712, questions of powers of attorney and disposition of cases “where there are substantial questions concerning matters enumerated in section 711” may properly be in the orphans' court division. 20 Pa.C.S. §712(3), (4). Finally, venue over the estates of decedents, minors and incompetents is where the decedent had his or her last family or principal residence, or in the county whose court at the time proceedings are first initiated would have jurisdiction to appoint a guardian. 70 Pa.C.S. §721. It is obvious to this Court that jurisdiction over the instant case is in the orphans' court division of Clinton County.

Further, had this matter not been determined by statute, this Court believes venue is most appropriately in Clinton County. Relevant documents, such as Ms. Clymer's power of attorney and the deed transfer as a result of the sale of the parents' home, are filed in Clinton County. At oral argument, the Court was advised that at least one of the wills at issue here³ was probated August 23, 1999, in Clinton County.

Plaintiffs contend: “There were deeds and powers of attorney prepared and executed, as well as transfer from bank accounts, all of which are *believed* to be in Lycoming County banks.” Plaintiffs' Brief in Opposition to Preliminary Objections p. 4 (emphasis supplied). However, the Complaint makes no mention of bank accounts in Lycoming County,

³ Counsel indicated “the will” had been probated.

but only that distribution of assets was made from a location in Lycoming County. Complaint paragraph 17. At oral argument, Plaintiffs' counsel advised the Court the basis for this belief is Plaintiffs' understanding the documents were prepared by an attorney in Lycoming County. We cannot agree that this is a sufficient basis upon which to find venue in this county. Regardless where the documents were prepared, they were filed in Clinton County and concern alleged improper transfer of assets located primarily in Clinton County. Power of attorney was obtained in Clinton County. The alleged undue influence and fraud would have been perpetrated in Clinton County. The sale of the house, the proceeds of which apparently are a large portion of the amount in controversy here, occurred in Clinton County.

Plaintiffs argue "many of the parties reside in Lycoming County." *Ibid.* According to Plaintiffs' Complaint, two of the individual Plaintiffs reside in Lycoming County. The third lives in Ohio, the fourth in Clinton County. Two of the individual Defendants live in Clinton County; the third lives in Florida. Complaint paragraphs 1-7. We fail to see how two out of seven parties in this action constitutes "many of the parties."

Accordingly, we will issue an Order transferring this matter to the orphans' court division of the Court of Common Pleas of Clinton County. In light of this ruling, the Court will not address the remaining Preliminary Objections, but instead leave determination of them to the Clinton County Court.

ORDER

AND NOW, this 11th day of October 1999, Plaintiffs' Preliminary Objections with respect to venue and jurisdiction are **HEREBY SUSTAINED**. The Prothonotary is directed to transfer this matter to the orphans' court division of the Court of Common Pleas of Clinton County. Costs and fees for transfer and removal of the record shall be paid by Plaintiffs pursuant to Pa.R.Civ.P. Rule 1006.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Scott A. Williams, Esquire
James Malee, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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