

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: :
 : No. 41-98-0349
ESTATE OF DEVIN WILLIAM MOYER, :
 Deceased :

OPINION and ORDER

In this case a mother and grandmother are fighting over who has the right to inherit from the estate of Devin William Moyer, a child killed in an automobile accident. Like most four year olds, Devin had insufficient time on this earth to accumulate worldly goods or amass a fortune. However, he had one valuable thing to pass on: a potentially lucrative lawsuit.

Under the Pennsylvania intestacy laws Devin's mother, Debra Moyer, is the sole beneficiary of his estate.¹ She would also be the sole recipient of any money awarded in a survival action or a wrongful death suit based on the accident.

Devin's maternal grandmother, Judi Betts, is seeking to prevent Ms. Moyer from obtaining any money from Devin's death because of her utter failure to live up to her responsibility as Devon's mother. Ms. Betts has filed a petition for forfeiture, alleging that Ms. Moyer has forfeited her right to inherit from Devin's estate and recover in a survival or wrongful death action.²

¹ Devin's father has apparently waived or lost his intestate rights.

² This action began with Ms. Moyer's petition for substitution of grant of letters, seeking to become administratrix of Devin's estate. Ms. Moyer had originally consented to the grant of letters to Judi Betts, but changed her mind after the two had a falling out. In

The testimony at the hearing demonstrated that Ms. Moyer has indeed been an extremely irresponsible parent. She lost custody of her three children to her mother, and never attempted to regain custody. Although she worked at various jobs, she provided very minimal financial support for her children and could not secure and maintain a residence of her own. She flitted from here to there, living with friends or boyfriends, exhibiting little concern for the welfare of her three small children.

By contrast, Ms. Betts opened her home and heart to all three children. Despite her own financial problems she fed them, clothed them, and cared for them when her daughter lost custody. She scrimped and saved to provide them with the necessities of life, making do on food stamps and whatever income she could generate from her job.

Surely justice and common sense demand that Ms. Betts should be the one who benefits from Devin's estate. Unfortunately, however, the Pennsylvania Superior Court has not seen it that way. This court is bound by the statute governing forfeiture and the appellate courts' interpretation of the statute. Therefore, our hands are tied. We must deny the petition for forfeiture, but we hope the Superior Court will take a more reasonable view of the matter or that the legislature will re-word the statute to allow those who are parents *in deed* to reap the benefits of a child's estate, rather than those who are

the petition Ms. Moyer alleged that because of the deteriorated relationship Ms. Betts would not act in the interest of Ms. Moyer, the sole beneficiary of the estate. On the date scheduled for the hearing counsel for Ms. Betts informed counsel for Ms. Moyer, apparently for the first time, that Ms. Betts intended to argue Ms. Moyer had forfeited her rights to the estate under 20 Pa.C.S.A. § 2106. After some discussion both sides agreed that the issue of forfeiture was the primary issue in this case. Ms. Betts stated that she would relinquish her position as administratrix if the court found no forfeiture, and Ms. Moyer stated she would withdraw her petition for substitution if the court found against her. The court then rescheduled the hearing to give the parties time to prepare to address the forfeiture issue.

parents *in name only*.

Findings of Fact

These findings are made after closely observing all the witnesses who testified at the hearing. While the court generally found Ms. Betts to be credible, she was obviously embittered, which slightly tainted her testimony on the issue of Ms. Moyer's contributions toward the children's support. Conversely, the court generally found Ms. Moyer to be uncredible, but believed her testimony regarding some minimal contributions she made. Peggy Miller, a friend of Ms. Moyer, was a highly credible witness who personally observed Ms. Moyer buy food and clothing for the children and thus helped persuade this court to conclude that Ms. Moyer made the meager contributions which lift her above the forfeiture threshold.

Ms. Moyer lost custody of Devin and her two other children in 1996. The children were eventually placed in the custody of Ms. Moyer's mother, Ms. Betts. In the year prior to Devin's death all three children lived with Ms. Betts, who provided the vast majority of their financial support. Occasionally Ms. Betts' other daughter, Dori Betts, would give her money to help out. Although Ms. Moyer had been assessed a child support obligation of \$290.00 per month, she made no payments from 29 July 1997 through 30 July 1998, nor did she give her mother cash to help with expenses.

Ms. Moyer, who was apparently unwilling or unable to establish a residence of her own, drifted here and there, sometimes living with her mother and the children, sometimes living with friends and boyfriends. During the year prior to Devin's death she

lived sporadically at Ms. Betts' home. While she was there she lived off the generosity of Ms. Betts. She occasionally cared for the children when Ms. Betts was unable to do so. Although she did not give Ms. Betts any money to help support the children, she sometimes purchased a few items of food—namely, milk and bread. She also bought the children Christmas presents in 1997.

When Ms. Moyer lived with friends, the children sometimes came to visit her every other weekend. Ms. Betts sent quantities of food along with the children, but Ms. Moyer sometimes purchased additional items of food for them and occasionally bought them a meal at a fast food restaurant. She also bought each of the children an item of clothing at the Family Dollar store on at least one occasion.

Discussion

As counsel for Ms. Moyer has pointed out in his cogent brief,³ Pennsylvania law does not favor forfeitures. Therefore, forfeiture statutes must be strictly construed, and the party asserting forfeiture bears the burden of proof. In re Estate of Mary Fonos, 698 A.2d 74, 76 (Pa. Super. 1997). The statute governing forfeiture, 20 Pa.C.S.A. §2106(b), states:

Any parent who, for one year or upwards previous to the death of the parent's minor child, has willfully neglected or failed to perform any duty of support owed to the minor or dependent child or who, for one year, has wilfully deserted the minor or dependent child shall have no right or interest under this chapter in the real or personal estate of the minor or dependent child.

³ By contrast, the brief and arguments of Ms. Betts' counsel contain lofty thoughts but little law.

There is no question of wilful desertion here. Ms. Moyer spent time with her children and in fact lived in the same household with them at intervals throughout the year in question. Therefore, the sole issue is whether the court should find forfeiture based on failure to support.

The forfeiture statute, passed in 1984, was first addressed by an appellate court in In re Estate of Teaschenko, 393 Pa. Super. 355, 574 A.2d 649 (1990). In that case, the Superior Court set forth the elements of forfeiture based on failure to support: (1) the decedent must be a minor or dependent child; (2) the parent must owe some duty of support to the decedent; (3) the parent must have failed to perform any duty of support for the decedent for at least a year prior to the decedent's death; and (4) the parent's failure must be willful. Id. at 651. The first two elements are clearly met. Therefore, the court will focus only on the third and fourth elements.

As to the fourth element, the court explained, "At the very least, the term 'wilfully' implies that the parent is aware of the duty to support, has the capacity to perform that duty, and makes no attempt to do so." Id. at 652. Although Ms. Betts did not do a very good job in establishing a prima facie case that Ms. Moyer was able to financially support Devin, Ms. Moyer's own testimony, presented after Ms. Betts had rested, showed that she was working at times throughout the year in question. Moreover, Ms. Moyer testified that she sometimes gave Ms. Betts her entire paycheck minus "cigarette money," which amounted to about \$150 per week. Although not believed by the court, this testimony constitutes at the very least an admission that Ms. Moyer could have supported Devin if only she had put aside her own selfish desires.

The case, therefore, turns on the third element, failure to support. In Teaschenko the court elaborated on this element, stating, “A parent does not forfeit her interest in her child’s estate merely by failing to perform her duties fully; rather, the parent must completely fail to perform *any* duty of support before a court will find a forfeiture under this statute.” Id. at 651-52. The Superior Court then demonstrated exactly how far it was prepared to go in construing the words of the forfeiture statute to effect the maximal benefit to the parent. In Teaschenko the evidence established that the mother gave the decedent child Christmas presents and provided meals and snacks when he visited her. The court concluded, “These actions constitute some support, albeit minimal.” Id. at 652.

Moreover, the Teaschenko court emphasized it was the petitioner who had the burden of proving the parent did not perform any duty of support. Id. at 652-63. The court pointed out, “The father showed only that he was the primary provider; he did not negate the possibility that the mother also provided some support.” Id. at 652.

Unfortunately, the case before this court is very similar to Teaschenko, and this court can find no distinctions that make a difference. Ms. Betts herself admitted that Ms. Moyer occasionally bought bread and milk for Devin. Moreover, it is very difficult to believe Ms. Betts’ assertion that when the children visited Ms. Moyer on weekends she provided all the food and Ms. Moyer never bought a morsel. Surely Ms. Moyer provided *some food* for Devin over the year in question, and on this issue the court accepts the testimony of Ms. Moyer, Peggy Miller, and James Miller.

That is not to say that in this court’s mind Ms. Moyer deserves to inherit from Devin’s estate. If this court were free to base its decision on fairness and common sense

rather than appellate precedent, we would sign a forfeiture order as soon as it could be prepared. We would interpret the statute in the way we think the legislature meant it. The phrase “failed to perform any duty of support” need not be stretched so far as to include any crumb a parent throws in front of a child. Rather, the most logical interpretation is that this phrase directs a trial court to conduct an overall assessment of a parent’s performance, in light of his or her unique circumstances and abilities, to determine whether the parent has adequately performed his or her duties. In making this determination a trial court should consider all of the surrounding circumstances of each case, including whether there exists another individual who has acted as a *de facto* parent and is far more deserving of an inheritance from the child’s estate.

Counsel for Ms. Betts has argued that the standard for forfeiture should be similar to the standard for termination of parental rights. The court does not accept that proposition and it is curious to see counsel advocating a standard that is so difficult to prove. See 23 Pa.C.S.A. §2511(a). Termination and forfeiture are very different procedures, and should not be treated the same. Termination of parental rights involves a living, breathing child whose future is at stake. A court must consider the needs and welfare of the child, among many other factors. In a forfeiture case, however, the child is dead. The only interest at stake is the potential to collect from the estate. Additionally, termination of parental rights strips a parent of one of the most fundamental rights protected by our Constitution. Forfeiture, by contrast, is merely a struggle over money. Therefore, it should be much more difficult to terminate parental rights, while forfeiture should be a sort of “tit for tat” inquiry. Forfeiture should turn on whether the parent’s

actions during the child's life are sufficient to entitle him or her to benefit from the child's death.

In evaluating a parent's performance, a court should be able to consider more than how much money the parent contributed to the child's support. A parent's duties involve much more than feeding and clothing a child. A parent also has the responsibility to provide the intangible things that all children need, such as love and emotional support. Perhaps a court might also ask the question, "If this child had understood the significance of inheritance, who would he have chosen as his heir?" This court has no doubt that Devin would have chosen Ms. Betts, the woman who voluntarily assumed and diligently performed the duty of parenting him.

Ms. Moyer purchased bread and milk for the children and apparently that is good enough for the Superior Court. However, should this case come before that esteemed tribunal on appeal, presenting a golden opportunity to overturn Teaschenko, this court would like to remind the reviewing panel of judges that man does not live by bread alone.

ORDER

AND NOW, this _____ day of August, 1999, for the reasons stated in the foregoing opinion, the petition for forfeiture filed by Judi Betts on 22 July 1999 is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
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