

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE THE ESTATE OF MARGUERITE :
C. SCHURER, DECEASED :
: Estate No. 41-99-0268
PETITION OF EUGENE A. SCHURER :
AND JOSEPH L. SCHURER :

OPINION and ORDER

The petitioners have filed a petition in Orphans' Court to recall a sale of real estate from Marguerite Schurer to her grandson and former son-in-law. The transfer took place shortly before her death on 18 May 1999. The petitioners allege that the sale should be voided because it was procured through an exertion of undue influence on Ms. Schurer, and because she lacked the capacity to transfer the property. The estate has filed preliminary objections stating that the Orphans' Court has no jurisdiction over this matter.

After studying the relevant caselaw, it is clear to this court that the estate is correct. The Orphans' Court has jurisdiction to determine matters involving distribution of the property that was in the actual or presumptive possession of the decedent at death, or property that subsequently came into the possession of the estate. Keyser's Estate, 329 Pa. 514 (1938). However, a dispute over *ownership* of the property is outside the jurisdiction of the Orphans' Court. Id. at 519.¹ It is undisputed that the real estate at issue in this case was not in the decedent's possession at the time of her death, nor was it

¹ The Keyser court stated: "If, however, the property in dispute was not in decedent's possession at the time of his death, and did not thereafter come into the hands of his personal representative, the orphans' court is without power to determine title or ownership disputed by a third party claiming the property as his own. In such case the executor or administrator must bring an action at law or in equity in the court of common pleas against the party in possession."

in her estate's possession afterward. Therefore, this is merely a question of ownership of real estate, which must be filed in the court of common pleas.

We found no change in the caselaw since 1938, and in fact other appellate courts have followed Keyer's Estate. So clear is the caselaw on this question that we deem it unnecessary to engage in a more detailed discussion of the matter, although we certainly might elect to file a more lengthy opinion should our decision be appealed.

Clearly, the present action must be dismissed. However, the petitioners are not without a remedy. If they believe the estate has a cause of action for undue influence, and that the executors have a duty to bring such action but have refused, then the petitioners are free to file an Orphans' Court petition to remove the executors.

ORDER

AND NOW, this _____ day of December, 1999, for the reasons stated in the above opinion, the preliminary objections filed by the estate are granted and the petition is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Benjamin Landon, Esq.
Marc Drier, Esq.
Gary Weber, Esq., Lycoming Reporter