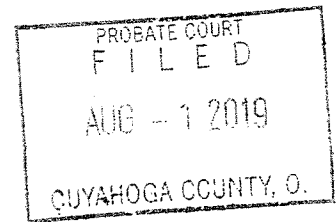


IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION



IN RE:
ESTATE OF ECKARD SCHOLTZ,
Deceased

CASE NO. 2017EST228889

JUDGMENT ENTRY

This matter came on for hearing on July 26, 2019 upon the Motion to Remove Ewald Scholtz as Executor of the Estate of Eckard Scholtz.

The Court heard the testimony of Ewald Scholtz and numerous documents were admitted into evidence.

The Court finds as follows:

Ewald Scholtz was appointed Executor of this Estate on October 16, 2107. On April 19, 2018 Movants filed their Complaint to Construe Last Will and Testament of Eckard Scholtz, or in the alternative, Complaint to Contest last Will and Testament. On October 5, 2018 Movants filed a Complaint for Declaratory Judgment which addresses the change of eight beneficiary designations on various assets, all of which were changed shortly before decedent's death, all to the benefit of Executor.

Ewald Scholtz, as Executor, has taken actions since the time of his appointment to frustrate Movants' attempts to obtain decedent's medical, financial and estate planning documents. Further, Executor has taken fiduciary fees and paid attorney fees from the Estate without approval from this Court. By the time of this hearing the Executor had replaced the fees

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taken back to the estate and had signed waivers, releases and otherwise complied with discovery. Executor's compliance resulted only after numerous motions were filed against him including this Motion to Remove.

The testimony of Ewald Scholtz leads this Court to believe that Scholtz, as Executor, does not comprehend the issues presented in the estate and in the companion adversarial actions. Scholtz was questioned as to why he sent Schedule K-1 tax forms to his sisters indicating that they were beneficiaries of estate assets while at the same time failing to name his sisters as Estate beneficiaries on Probate Form 1.0. He insisted that his sisters were not beneficiaries. When he was asked to explain what the Will says he stated that money in the probate estate "will be divided equally" between Eleanora, Elizabeth and him. It is this Court's impression that the Executor does not understand the term "beneficiary" and equates that term only with the assets that are to pass to him outside the estate. Whether or not this Court's interpretation is correct, the Executor is clearly confused about his role as executor and any duty he may owe to his sisters as named beneficiaries in the Will.

The Court found Scholtz's testimony and demeanor to be defensive, argumentative, and adversarial to his sisters. Although he states that he and his sisters are to share the estate assets equally he has failed to acknowledge them as interested parties to the estate and has made no distributions to them from the estate.

The Court finds that Scholtz has already incurred significant legal fees in pursuit of his confused position regarding the Will. Although at least the bulk of the fees initially paid have been returned to the estate it is expected that there will be a later application for approval of the fees to be paid from the estate.

The Court finds that although Scholtz, as Executor, has relied on accountants and attorneys in his administration of the Estate he has little to no understanding of what his duties are and to whom his duties are owed. His actions from the outset have been obstructionist, inconsistent and not in the interest of the Estate.

The Court finds that this Court has discretion under R.C. 2109.24 and R.C. 2113.18(A) to remove Scholtz as Executor if the interest of the Estate demands it, or if there are unsettled claims between the executor and the estate *that the court thinks may be the subject of controversy or litigation between the executor and persons interested in the estate.*

The Court finds that Scholtz has an inherent conflict with his sisters, who are both named in the Will and whose interest must be determined by an unbiased fiduciary. Scholtz admits in his Opposition Brief that “Ewald Scholtz and the Movants, his sisters, have competing legal interests in the ownership of the Probate Assets encompassed within the Estate.” Further, the sisters have a claim for assets that they assert should be Estate assets but that instead transferred outside of the Estate to Scholtz. Clearly Scholtz has a conflict in pursuing the potential Estate assets to his own detriment. The conflict has manifested itself in the reluctance by Scholz to allow relevant evidence to be discovered and in his refusal to participate in any meaningful way in the mediation that had been agreed to by the attorney for the Estate.

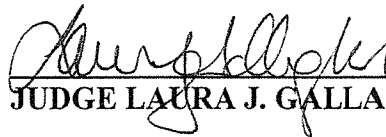
This Court has yet to decide the issues brought in two separate adversarial cases. The Court must interpret the language of the Will to determine any interest to which Plaintiffs are entitled and depending on that determination may also need to decide whether the current Will is in fact valid. Further, the Court must decide whether assets that transferred on death to Scholtz should in fact be assets of the Estate. Scholtz has demonstrated through his actions and his

testimony at this hearing that he is unable to protect the interests of the Estate and its beneficiaries.

The Court finds and **Orders** that the Motion to Remove is granted and further finds and **Orders** that Ewald Scholtz is hereby removed as Executor of the Estate of Eckard Scholtz.

It is further **ORDERED** that the Clerk of Court shall serve upon all parties notice of this judgment and date of entry pursuant to Civ. R. 58(B).

IT IS SO ORDERED.



JUDGE LAURA J. GALLAGHER