

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

IN THE MATTER OF THE ESTATE OF GEORGE SEESE III., DECEASED

CASE NO: 2017 PB-E 001436

This matter came on for an evidentiary hearing this 9th day of March, 2018. Present before the magistrate were George Michael Seese, applicant/son of decedent, with counsel, Paul Shugar; and Denise Seese, applicant/surviving spouse of decedent, with counsel, Charles Grisi and Charles Budde.

FINDINGS OF MAGISTRATE

1. Decedent had eight (8) children, George Michael Seese (hereinafter, "Michael Seese"), Amanda Scheufler, Andrew Seese, Christopher Seese, Katherine Seese, Steven Seese, Seth Seese, and Hannah Seese. Denise Seese was the adoptive parent of only two (2) of decedent's children, Seth and Hannah.
2. On December 6, 2017, decedent's son, Michael Seese, filed an application to administer this estate claiming decedent did not leave a will.
3. Thereafter, on December 8, 2017, surviving spouse, Denise Seese, filed a competing application to administer this estate also claiming decedent did not leave a will.
4. On December 26, 2017, Michael Seese filed a motion requesting that this Court deny Denise Seese's application to administer this estate for unsuitability and conflicts of interest. Mrs. Seese responded to said motion on January 4, 2018, asserting her higher priority under R.C. 2113.06, as well as her suitability to perform the duties involved therewith. Mrs. Seese has not questioned Michael Seese's suitability.
5. This magistrate finds that notice was properly served on all persons as required by R.C. 2113.07. This magistrate further finds that Amanda Scheufler, Andrew Seese, Christopher Seese, Katherine Seese, and Steven Seese, all persons with equal priority to Michael Seese, signed a waiver of right to administer the estate in support of Michael Seese's application. Furthermore, Brian Seese, temporary legal custodian and guardian of the estates of Seth and Hannah Seese, consented to Michael's Seese's application on behalf of Seth and Hannah.

6. Decedent and Denise Seese were married on October 12, 2002. During their marriage, they adopted Seth and Hannah Seese from Russia. Both are still minors. Decedent filed for a legal separation on March 14, 2017 and Mrs. Seese responded with a counterclaim for divorce on October 6, 2017. During the pendency of said case, decedent was unexpectedly killed on November 13, 2017.
7. Mrs. Seese testified that just prior to decedent filing for legal separation, she removed approximately \$80,000.00 from their accounts and deposited the same into her individual account. Mrs. Seese also claims that decedent removed funds from their joint accounts and closed them. Mrs. Seese concedes that she and decedent were subject to a mutual restraining order during the divorce proceedings so neither could make financial decisions for the other. Furthermore, each was mandated to keep all funds in each person's possession even if the funds had been removed just prior or after the filing of the legal separation.
8. Mrs. Seese testified that she demanded the return of certain personal property that she claims belongs to her, her parents, her son, and Mason, but decedent refused to return the same.
9. Mrs. Seese testified that while the divorce proceeding was pending, she was not permitted to have any unsupervised visitation with Seth or Hannah. Furthermore, Mrs. Seese was prohibited from contacting Hannah by telephone and Seth refused to participate in supervised visits with her. Mrs. Seese denied abusing Seth or Hannah and blames decedent for any abuse. Currently, Brian Seese is the temporary legal custodian and guardian of the estate of Seth and Hannah.
10. R.C. 2113.06 states, in part, the following:
 - (A) Administration of the estate of an intestate shall be granted to persons mentioned in this division, in the following order:
 - (1) To the surviving spouse of the deceased, if resident of the state;
 - (2) To one of the next of kin of the deceased, resident of the state.
11. However, R.C. 2113.06 goes on to say that letters of administration will not be issued to anyone who is found to be "unsuitable for the discharge of the trust." A similar provision is found when issuing testamentary letters under R.C. 2113.05. As such, these two

sections should be read in light of each other. *In re Estate of Roch*, 81 Ohio App.3d 161, 164, 610 N.E.2d 524 (9th Dist. 1991).

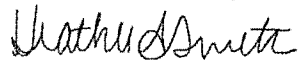
12. When interpreting R.C. 2113.05, the Supreme Court found that a person is suitable if that person is “reasonably disinterested and in a position to reasonably fulfill the obligations of a fiduciary.” *In re Estate of Henne*, 66 Ohio St.2d 232, 236, 421 N.E.2d 506 (1981). “While acknowledging deference to the testator’s nomination of an executor, the court, in determining the limits of a reasonably disinterested applicant, may consider factors including, but not limited to: (1) the nature and extent of the hostility and distrust among the parties; (2) the degree of conflicting interests and obligations, both personal and financial; and (3) the underlying and aggregate complexities of the conflict.” *Id.* at par. 3 of syllabus.
13. Whether an applicant is suitable is a determination that lies within the sound discretion of the probate court. *Id.* at 421.
14. In this case, decedent did not entrust the administration of his estate to anyone through the execution of a last will and testament. Without knowing decedent’s expressed wishes, this magistrate must rely upon R.C. 2113.06. As the surviving spouse, Mrs. Seese has priority in the appointment of an administrator, unless she is unsuitable.
15. When decedent passed away, he and Mrs. Seese were engaged in a contested divorce wherein property rights were highly disputed. Decedent sought the return of approximately \$80,000.00 that Mrs. Seese took from their accounts and deposited into her individual account. Additionally, Mrs. Seese claims that decedent removed funds from joint accounts and subsequently closed them. Mrs. Seese also claims she sought the return of her and her family’s personal property, which decedent kept from her. Therefore, it is conceivable that the administrator may need to pursue a claim against Mrs. Seese and address any claims made by Mrs. Seese against the estate. If Mrs. Seese is appointed as administrator, she will not be able to make objective decisions in the best interest of the estate when those decisions may negatively impact her personally. Therefore, this magistrate finds that there is a high degree of conflicting interests. Furthermore, this magistrate finds that there is hostility between Mrs. Seese and Seth.

16. Based on the evidence presented, this magistrate finds that Denise Seese is unsuitable to administer this estate because she is not reasonably disinterested and in a position to fulfill the obligations of a fiduciary.
17. This magistrate further finds that no evidence was presented to show why Michael Seese is unsuitable and therefore finds that Michael Seese is a suitable person who is reasonably disinterested and is in a position to reasonably fulfill the obligation of a fiduciary.

DECISION OF MAGISTRATE

1. Denise Seese's application to administer the estate should be denied.
2. George Michael Seese's application to administer the estate should be granted with letters of authority issuing.

Dated: March 27, 2018



Heather A. Smith, Magistrate

Instructions for Service to the Clerk:

Charles Budde, by electronic mail,
Charles Grisi, by electronic mail,
Paul R. Shugar, 101 W. Prospect Avenue, Suite 1400, Cleveland, Ohio 44115, by regular mail, and
All those listed on the 1.0 by regular mail.

NOTICE: A PARTY MAY, PURSUANT TO OHIO CIVIL RULE 53, FILE A WRITTEN MOTION TO SET ASIDE A MAGISTRATE ORDER WITHIN TEN (10) DAYS OF THE FILING OF THE ORDER. OBJECTIONS TO A MAGISTRATE DECISION MAY BE FILED WITHIN FOURTEEN (14) DAYS OF THE FILING OF THE DECISION, EXCEPT FOR A CLAIM OF PLAIN ERROR. A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW, UNLESS THE PARTY HAS OBJECTED TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE 53(D).