IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT (Sitting at Philadelphia)

No. 628 EAL 2002

Re: Estate of Briskman (Adelaide), Petition of Estate of Julie K. Palley, Deceased
Philadelphia County Court of Common Pleas
Trial Court Docket Number: 1487 of 1994
Intermediate Court Docket Number: 2772 EDA 2001

BRIEF IN OPPOSITION TO PETITION FOR ALLOWANCE OF APPEAL

Brief in Opposition to the Appeal of Estate of Julie K. Palley, Deceased

From the Order of Pennsylvania Superior Court Docketed November 13, 2002 at 2772 EDA 2001 Denying Palley Estate's Application for Reargument And/Or Rehearing From Judgment of Pennsylvania Superior Court Entered on September 9, 2002 at 2772 EDA 2001 Reversing Decree of Court of Common Pleas of Philadelphia County, Orphans' Court Division, at O.C. No. 1487 of 1994 Issued August 13, 2001

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TABLE OF AUTHORITIES

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Respondent respectfully opposes the petition for allowance of an appeal. The Superior Court correctly and unanimously held that an heir at law of the decedent who is not a beneficiary, but is a named **successor** trustee under a prior will, is not a "party in interest aggrieved by the decree of the register," and thus had no standing to appeal the Register's decree. Review of a final order of the Superior Court is not a matter of right, but of sound judicial discretion. An appeal will be allowed only when there are "special and important reasons therefor." Pa. R.A.P. 1114. The note which accompanies Rule 1114 indicates the character of the reasons which will be considered. The Superior Court decided this matter in accordance with applicable decisions of the Supreme Court, and rendered its decision consistent with the decisions of other appellate courts below on the same question. This case presents no issue of immediate public importance such as would justify assumption of plenary jurisdiction under 42 Pa.C.S.§726. Thus, the case at bar provides no reason for the Supreme Court of Pennsylvania to allow this appeal

ISSUES PRESENTED FOR REVIEW

1. The Superior Court correctly (and unanimously) determined that since the contestant had stipulated to the authenticity of the decedent/Testatrix's signature on the probated will, it insured that the signature on the will was authentic and satisfied the purpose of 20 Pa. C.S.A. §3132. Thus it had no reason to apply the doctrine of "unclean hands," even while acknowledging petitioner's "doubts ... of the testator's intent or Appellant's motives." Even if the doctrine were applicable, Estate of Pedrick, 505 Pa. 530, 482 A.2d 215 (1984), addressed only a statute of limitations in a case where the court unquestionably had subject matter jurisdiction, and does not stand for the proposition advanced by counsel that a court may ignore statutory prerequisites for jurisdiction whenever

"unclean hands" is alleged.

2. The Superior Court correctly held that jurisdiction is the threshold issue. Ms. Palley lacked standing to challenge the probate of the Briskman will, because 20 Pa. C.S.A. §908(a) mandates that those who may appeal a decree of the register must be "parties in interest" and "aggrieved." These jurisdictional prerequisites may be raised at any time because §908(a) both creates the cause of action and designates who may sue.

3. The Superior Court correctly held that Ms. Palley lacked standing to challenge the probate of the Briskman will because she was not "a party in interest aggrieved by the decree of the register." A prior unauthenticated Briskman will appoints Richard Rosin as executor and as the trustee of a trust created thereunder. Normally, he would (at some appropriate time) either accept this appointment of trusteeship, renounce it, or even fail to qualify. If he did not accept or qualify, then Ms. Palley would have the right (but not the obligation) to succeed him and would have to formally accept the stewardship. Be that as it may, Ms. Palley died after the trial but prior to the lower court's order. While a court would not let a trust fail for the want of a trustee, the appointment as contingent successor trustee was personal to Ms. Palley. A court would have no obligation to appoint Ms. Palley's nominee (there are none) even if all the contingencies were met and she was unable to accept or qualify. Ms. Palley's aggrievement is so remote and indirect that the Superior Court correctly decided the entire standing issue.

4. The Superior Court correctly determined that petitioner's stipulation to the authenticity of decedent/Testatrix's signature on the probated will resolved all questions concerning the will's validity.

CONCISE STATEMENT OF THE CASE

Adelaide Briskman, the decedent/Testatrix, died on June 15, 1993 at the age of 82, unmarried, without issue, and domiciled in Florida. R.262a. On January 21, 1993 she executed a will which came to be probated in Philadelphia, in connection with a parcel of real property (1632 Walnut Street). Id. Mr. Resop was duly appointed by the register on December 3, 1993. R. 263a. The petitioner initiated a contest to the will on December 1, 1994 by filing a Petition for Citation to Show Cause. There were two pre-trial conferences - on or about June 5, 1995 and December 3, 1997; then on February 25 and 26, 1998 the matter was heard by the Honorable Frank X. O'Brien in a two day trial. Counsel submitted proposed findings of fact and conclusions of law and briefed the issues, and the case then sat for 3 ½ years until the Honorable Alex Bonavitacola issued an opinion and order on May 7, 2001. Meanwhile, petitioner died on September 3, 2000, and respondent filed a Suggestion of Death with the court on February 9, 2001.

Although contestant's position is that she presented testimony to prove that Mr. Resop convinced decedent/Testatrix to take certain measures in order to protect her estate from the legal actions that a hospital might take against her for an unpaid modest bill, the lower court made no findings in connection with this rather incredible testimony, and , by way of example, the record never evidenced any such unpaid hospital bill. Neither the record nor the lower court opinion and order supports the contestant's position that either she proved, or the lower court found, Ms. Briskman not to be of sound mind.

Contestant's pre-trial stipulation to the authenticity of the decedent's signature, Superior Court Opinion, p.10 n.9, trumps and is inconsistent with any significance that she assigns to evidence of the alleged fraud in the execution or inducement. Moreover, the record clearly reflects that the two

witnesses and notary knew the decedent/Testatrix well and knew her signature well, as she was a frequent visitor in the bank where they worked, and had documents executed there previously. Exceptions were denied by Order of the Honorable Alex Bonavitacola dated August 13, 2001. On September 9, 2002, in a published opinion, Briskman Estate 2002 Pa. Super. 287, 808 A.2d 928, the Superior Court correctly reversed the lower court's decree on the ground that Ms. Palley had lacked standing to challenge the probate of the will because her interest was too remote, thus she was not a "party in interest aggrieved by the decree of the register." The Superior Court also acknowledged that respondent should have prevailed on the merits, as a result of Ms. Palley's stipulation to the authenticity of decedent/Testatrix's signature.

CONCISE COUNTER-STATEMENT OF REASONS RELIED UPON FOR OPPOSITION TO ALLOWANCE OF APPEAL

Respondent opposes an Allowance of Appeal by this Honorable Court. The Superior Court's order was unanimous, well-reasoned and correctly-decided. Thus no purpose would be served by further expenditure of this Court's time and attention to the case at bar within the meaning of Pa. R.A.P. 1114.

I. The Superior Court's Decision does not conflict with the Supreme Court's Holding in Estate of Pedrick because Ms. Palley stipulated to the authenticity of the decedent/Testatrix's signature on the probated will and 2) did not prove her other allegations, thus, even if the court had had jurisdiction, it had no reason to apply the doctrine of "unclean hands."

Petitioner's contention that respondent had "unclean hands" is unsupported by the record. Moreover, the doctrine of "unclean hands" is an equitable doctrine which can be imposed only on a party who is unquestionably within the court's jurisdiction. Petitioner erroneously relies on Estate of Pedrick *supra,* for the proposition that equitable doctrines may generally be applied, regardless

of having satisfied statutory prerequisites which bring the case within the court's jurisdiction. Kirkander Estate, 490 Pa. 49, 415 A.2d 26 (1980)(limitations period not time-barred, attack grounded on alleged undue influence time-barred). Moreover, the record supports the authenticity of decedent/Testatrix's signature on the probated will in addition to the stipulation. The record evidences that Testatrix was a frequent customer of the bank (R.107a), that the witnesses to the will were bank employees (presumably experienced in detecting spurious writing) who had probably seen her write checks and make deposits by check, see. e.g. Ligo v. Dodson, 301 Pa. 124, 151 A. 694 (1930) and that these bank employees routinely witnessed and notarized volumes of documents for its customers (R.255a, 259a), including Adelaide Briskman. In addition, there is no support in the record for petitioner's contention that the proponent knew the affidavits of the witnesses and notary to be false, in addition to which petitioner neither deposed him nor called him to testify although he was present in the courtroom during the entire trial. The record does not exclude the possibility that Adelaide Briskman, who specifically excluded her relatives in her prior will, had merely changed her mind from creating a charitable trust or foundation in her name for "the alleviation of individual hardship and poverty and the providing of relief from financial pressures and distress." Also, there was evidence in the record that local banks in Florida offered the service of executing documents for their clients (R.202a), and there is no evidence in the record that proponent was Testatrix's "personal banker" or that he had access to her bank records. He managed the branch bank. The inference drawn by the court that proponent was "trusted" by Testatrix may have its origin in the improbable testimony of contestant's two witnesses regarding Adelaide Briskman's alleged exposure for a hospital bill, despite Florida's homestead laws and a further lack of corroborating evidence (such as an unpaid hospital bill around the time her statements were made). Significantly, petitioner

produced no evidence of Testatrix's "weakened intellect" or any of her other allegations during the trial.

II. The Superior Court correctly held that subject matter jurisdiction is the threshold issue in the case at bar. Ms. Palley lacked standing to challenge the probate of the Briskman will, because 20 Pa. C.S.A. §908 mandates a threshold of compliance with its jurisdictional prerequisite that those who may sue must be "aggrieved." Thus, in accordance with other decisions of the Supreme Court and the Superior Court, this jurisdictional prerequisite cannot be waived, and may be raised at any time.

A. There was no waiver of jurisdiction.

Standing is not a question of subject matter jurisdiction in all cases. In the absence of a statute creating a cause of action and expressly designating who may sue on that cause, the inquiry into standing seeks to ascertain whether the plaintiff has a sufficient interest in the subject matter of the litigation, so as to entitle the plaintiff to make the legal challenge to the matter involved. Generally the right to object to the plaintiff's capacity to sue is waived unless it is specifically raised in the form of preliminary objections or in the answer to the complaint, Pa. R.C.P. 1028. However, where a statute creates a cause of action and designates who may sue (such as The Orphans Court Act of 1951 (codified at 20 Pa. C.S.A §908)), the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite, and the question of standing may be raised at any time by any party, or by the court *sua sponte*. Standard Pennsylvania Practice §§14:19-23. Blackwell v. Commonwealth, 567 A.2d 630, 636 (Pa. 1989); In re Duran, 2001 Pa. Super. 52, 769 A.2d 497 (issue of standing not distinguishable from subject matter jurisdiction where cause of action is statutory and legislature has designated who may bring action under statute); In re Adoption of W.C.K., 2000 Pa. Super. 68, 748 A.2d 223 (Pa. Super. 2000); Grom v. Burgoon, 448

Pa. Super. 616, 672 A.2d 823 (1996). The Groin court, explained it thus:

> In general, the question of standing is distinguishable from that of subject matter jurisdiction. However, when a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Hill v. Divecchio, 425 Pa. Super. 355, 625 A.2d 642 (1993), *alloc. denied*, 538 Pa. 613, 645 A.2d 1316 (1994). Standing then becomes a jurisdictional prerequisite to an action. Id. at 361, 625 A.2d at 645. It is well-settled that the question of subject matter jurisdiction may be raised at any time, by any party, or by the court *sua sponte*. *Id.* at 361 n.3, 625 A.2d at 645 n.3. (emphasis supplied)

448 Pa. Super. at 618-19, 672 A.2d at 824-25. *See also,* Phillips v. A-BEST Products Co., 665 A.2d 1167, 1170 (Pa. 1995); Pa. Rule of Appellate Procedure 302(a). *Accord,* Sprague v. Casey, 520 Pa. 38, 550 A.2d 184 (Pa. 1988).

Petitioner relies on cases involving appeals from administrative agencies or equity actions. However, the Register of Wills is an ex officio Clerk of the Orphans' Court Division of the Court of Common Pleas, Costigan v. Phila. Emp. Local 696, AFL-CIO, 462 Pa. 425, 341 A.2d 456 (1975) n.1., and the register of wills office is considered a minor court, not an administrative agency. Thus none of petitioner's cases were relevant to the statute in the case at bar (The Orphans' Court Act of 1951), and do not support the proposition advanced by petitioner. By way of example, petitioner's reliance on Beers v. Unemployment Compensation Board of Review, 534 Pa. 605, 633 A.2d 1158 (1993) is misplaced because the issue of waiver was not addressed in Beers. The Beers court held that in order to be "aggrieved" a party must (a) have a substantial interest in the subject-matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence," *citing* South Whitehall Township Police Serv. v. South Whitehall Township, 521 Pa. 82, 86, 555 A.2d 793, 795 (1989). Because the court determined that the plaintiffs in Beers lacked the "direct interest" required by the applicable statute, the plaintiffs did not have the required

standing to appeal. *Accord,* In Re: Trust Under Deed of Arlin S. Green, 2001 Pa. Super. 186, 779 A.2d 1152 (2001)(reargument denied); Wm. Penn Parking Garage v. City of Pittsburgh, *supra.* Hertzberg v. Zoning Board of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), which petitioner represents as being in accord with Beers, addressed the standing issue only as dicta in a footnote. While petitioner's cases are erroneously relied upon on the issue of waiver, they may be applicable insofar as they define aggrievement.

The Superior Court correctly determined that in the case at bar, standing is a question of subject matter jurisdiction under 20 Pa. C.S.A. §908(a), and that the case at bar is one of first impression on the question of "whether an heir at law of the decedent, who is not a beneficiary, but is a named **successor** trustee under a prior will, is "a party in interest aggrieved by the decree of the register" such that she has standing to appeal the decree?" Superior Court Opinion p. 6. The Superior Court correctly answered in the negative. In illustrating the remoteness of petitioner's interest, the Superior Court noted that the petitioner had even failed to demonstrate that the named trustee was unable to serve as executor and trustee of the decedent's estate pursuant to the prior (unauthenticated) will.

B. Petitioner was not "Aggrieved. "

"Standing" is the requirement that a person bringing an action be adversely affected by the matter challenged in order to assure that the person is the appropriate party to bring the matter to judicial resolution. In Re T.J., 699 A.2d 1311 (1997), *appeal granted* T.J. v. Petition of City of Philadelphia, County Office of Mental Health and Retardation, 555 Pa. 705, 723 A.2d 673, *reversed* 559 Pa. 118, 739 A.2d 478 (1999); *Accord,* Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375 (1981). 20 Pa.C.S. §908(a) provides in relevant part that a party in interest "who is aggrieved" or a fiduciary whose estate or trust is so "aggrieved" may

appeal from a decree of the register of wills (within certain time limits also provided in the statute). Respondent raised the issue of petitioner's standing and aggrievement in his appeal to the Superior Court as question two of five questions presented.

A will contest is allowed when "Any party in interest ... is aggrieved ...or a fiduciary whose estate or trust is so aggrieved..." by the probate of the will. 20 Pa. C.S.A. §908(a); Sidlow Estate, 543 A.2d 1143, 374 Pa. Super. 624 (1988). In general, a party seeking judicial resolution of a controversy must have a stake in the matter. William Penn Parking Garage, Inc. v. City of Pittsburgh, *supra.* The standing doctrine requires that a person must be an "aggrieved party" who is adversely affected by the matter he or she seeks to challenge before judicial relief may be sought. To be an aggrieved party, an individual must "(a) have a substantial interest in the subject-matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence." Ken R. on behalf of C.R. v. Arthur Z., 546 Pa. 49, 53, 682 A.2d 1267, 1270 (1996). In some cases, the interest has also been described as "direct and pecuniary, and not a remote consequence of the judgment. The interest must also be substantial." Scientific Living, I v. Hohensee, 440 Pa. 280, 270 A.2d 216 (1970). An appellate court has stated that to qualify as "immediate" rather than "remote" the party must demonstrate a "sufficiently close causal connection between the challenged action and the asserted injury to qualify." Lincoln Party v. General Assembly, 682 A.2d 1326, 1330 (Pa. Commw. 1996). *Accord,* Atlee Estate, 406 Pa. 528, 178 A.2d 722, (1962)(appeal of alternate beneficiary dismissed for lack of standing because not "aggrieved"); Bridges's Estate, 318 Pa. 591, 179 A.70 (1935).

The inquiry into standing ascertains whether a party is the proper party entitled to make the legal challenge to the matter involved. In re Trust Under Agreement of Keiser, 392 Pa. Super. 146, 572

A.2d 734, 736 (1990) *citing* William Penn Parking Garage, Inc., *supra.* A person, in an individual or representative capacity, who has no stake in the matter, has no standing. Rock v. Pyle, 720 A.2d 137, 142 (Pa. Super 1998); Treski v. Kemper National Ins. Co., 449 Pa. Super. 620, 674 A.2d 1106, 1111 (1996).

In will contests an intestate heir who would share in the estate in the absence of a will may contest the will, Rogers' Estate, 154 Pa. 217 (1893). However, consistent with the doctrine of relative revocation, setting aside the 1993 will might result in the probate of an 1984 will. Absent a specific revocation, this doctrine revives an earlier will which has been impliedly revoked by a subsequent will which is later declared invalid, and the revived will is then subject to the usual authentication procedures. Although 20 Pa. C.S.A. §908(a) provides that a testamentary trustee may be a proper party to a will contest, *see also* Martin Estate, 349 Pa. 255, 260, 36 A.2d 786 (1944)(a trustee is required to defend the trust), petitioner was named only as a contingent successor testamentary trustee in the 1984 will (R.65a). The 1984 will specifically excludes Adelaide Briskman's relatives as residuary heirs (R.58a), and after several bequests to animal rights organizations (R.58a-59a), left the bulk of her estate to a charitable foundation to be established by her executor/trustee, the purpose of which was "The alleviation of individual hardship and poverty and the providing of relief from financial pressures and distress" (R.60a-62a). Richard E. Rosin, an attorney in Philadelphia, the scrivener of the 1984 will (R.65a), was named as her executor, as well as trustee of this foundation (R.64a). Petitioner conceded that Mr. Rosin has never appeared in the instant case, and by way of a footnote in his application for allowance of appeal informed the Court that petitioner's daughters have petitioned in Florida to "remove" Mr. Rosin for his breach of fiduciary duty and have themselves appointed in his place, Superior Court Opinion p.7 n. 8, despite his probable lack of standing.

Nevertheless, petitioner is not "aggrieved," as she and her daughters would not share in the Briskman estate under either the 1993 or 1984 will, nor would they automatically succeed Mr. Rosin.

The orphans' court has been described as a special tribunal for specific cases. Hahn Estate, 471 Pa. 249, 369 A.2d 1290 (1977); Way Estate, 379 Pa. 421, 430, 109 A.2d 164 (1954). Although as a result of the merger and complete integration of the Orphans' Court into the Court of Common Pleas as a division, the division and its judges have all of the legal and equitable powers of the Court of Common Pleas, the orphans court division is still a court of limited subject matter jurisdiction, as provided by statute. See generally 20 Pa. C.S.A.§§711-715. The Superior Court was accordingly correct to decide the instant case as a question of interpretation of §908(a).

The object of all interpretation and construction of statutes (including the Orphans Court Act of 1951) is to ascertain and effectuate the intention of the General Assembly. 1 Pa. C.S.A.§1921(b). The basic tenet of statutory construction requires a court to construe the words of the statute according to their plain meaning," Grom v. Burgoon, 448 Pa. Super. at 619, 672 A.2d at 825 (Pa. Super. 1996), *citing* 1 Pa. C.S.A. §1903(a).

Section 22(a) of the Act of June 7, 1917 , P.L. 363, 20 P.S. 2082 et seq. ("Orphan's Court Act of 1917") provided that *inter alia*:

> Any party aggrieved by the definitive sentence or decree of any orphans' court or his legal representatives, may appeal therefrom to the proper appellate court within six months from the time of pronouncing such final sentence or decree.

Lochrie's Estate, 343 Pa. 165, 22 A.2d 829 (1941)(trustees under decedent's will not aggrieved parties and have no standing to appeal court's order to executors to invest funds of the estate in specified securities and to deliver the same to the trustees to be held in trust for the named beneficiaries). Clearly, the Orphans' Court Act of 1917 explicitly provided that those who may

appeal from the register of wills to the orphans' court division are to be "aggrieved." Because the act did not define the word "aggrieved," case law would determine what the term means.

The relevant statute was largely re-enacted in 1951, Act of August 10, 1951, P.L. 1163, 20 Pa. C.S.A.§2080-101 et seq.; Way Estate, *supra*. It provided in relevant part that any: "party in interest who is aggrieved by a final order or decree of the orphans' court, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the proper appellate court...." The Official Comment to the 1951 Act stated:

> **Subsection (a)**: This is suggested by Section 21(a) of the 1917 act. As in the case of Section 771 of the Orphans' Court Act of 1951 [20 Pa. C.S. § 792 repealed; see Pa. C.S. §§1722(a)(1), 5105], the persons entitled to appeal are more clearly indicated. The prohibition against the executor, as such, appealing from refusal of probate is believed to be declaratory of case law.... (emphasis added)

20 Pa.C.S.A. Purdon's p. 115. The Official Comments provided throughout the P.E.F. Code (Pa. Cons. Stat. Ann. title 20) were prepared and updated by the Joint State Government Commission. Official comments are to be given weight in the construction of statutes, Lessner v. Rubinson, 527 Pa. 393, 398, 592 A2d.678, 680 n.4 (1991), citing 1 Pa. Cons. Stat. Ann. Sec. 1939. The Orphans' Court Act of 1951 did not enlarge or diminish the jurisdiction of the orphans' court, Way Estate, 379 Pa. at 428, 109 A.2d at 169. The relevant provision of the 1951 Act (which amended the 1917 Act) is now codified at 20 Pa. § 908. Thereafter, as the Superior Court pointed out, § 908 was amended in 1972, 1974 and 1976 without inserting the words "heirs at law." Superior Court Opinion p. 8. The only change made to subsection (a) in those three amendments was to reduce the time for appeal from two years to one year, and in the last sentence of the proviso was to reduce the time for appeal from six months to three months. "Historical and Statutory Notes" 20 Pa.C.S.A. § 908 (Purdon's 2002) p. 115. In construing § 908(b), our Supreme Court has held that "While it is undoubtedly true that

procedural rules are to be construed liberally, what is involved here is a statutory requirement which explicitly provides what shall be the consequences of failure to comply." Estate of Shelly, 463 Pa. 430, 435, 345 A2d. 596, 598 (1975)(appeal dismissed because appeal bond not filed in accordance with non-waivable requirement of 20 Pa.C.S.A. § 908(b). The Superior Court correctly noted that if the Legislature had intended to permit an heir at law to **always** file an appeal from a probate of a will in which the beneficiary is not a named beneficiary, it could have specifically included "heirs at law" among those permitted to appeal the decision of a Register in § 908, but did not do so. Superior Court Opinion p. 8. Thus the Superior Court decided the instant case correctly and consistently with other relevant decisions of this Honorable Court, including without limitation Estate of Shelly, *supra*.

III. The Superior Court correctly decided that Petitioner, a contingent successor trustee under a prior unauthenticated will, lacked standing. No charitable trust existed at the time she initiated her contest of the probated will, nor was it certain that under the facts of this case such a trust would ever be created, or if created that she would or could accept its stewardship.

Petitioner's bootstrapping of facts cannot change the fact that petitioner was a mere contingent successor trustee under a prior unauthenticated will. It is premature for Mr. Rosin to either renounce or accept any trusteeship under the prior unauthenticated will until the case at bar has been resolved. Petitioner has no right or standing under Pennsylvania law (and probably the law of Florida as well) to impose any duty on Mr. Rosin (or remove him for failure to act and/or breaches of fiduciary duty) at this stage in the overall proceedings. The authorities cited by petitioner's counsel are all therefore in error, since they involve cases where a trust had actually been created or would be unquestionably created.

CONCLUSION

In a comprehensive, unanimous and well-reasoned decision, the Superior Court correctly decided this case as to jurisdiction and merits. Thus respondent respectfully contends that there is no reason for this Honorable Supreme Court to allow an appeal. Commencing with the Orphans' Court Act of 1917, the applicable legislation has provided that will contestants qualify as a "party in interest aggrieved by the register's decree," "despite any doubts there may be of the testator's intent or Appellant's motives." Superior Court Opinion p. 11, n. 9. Our courts orphans' court divisions cannot afford to open the floodgates to every suspicious heir at law with remote interests. As determined by our Legislature commencing in 1917 and confirmed through a series of amendments, and as confirmed by our Superior Court in its September 9, 2002 opinion, the floodgates were not meant to be open in Pennsylvania for cases such as are at the bar . Thus, respondent respectfully opposes the petition for allowance of appeal and prays that the petition be denied

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **Monday, December 30, 2002**, two true and correct copies of the foregoing **"Brief in Opposition to the Petition for Allowance of Appeal"** were sent by United States first class mail, postage prepaid, to:

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