

94PR908 (10/19/95)

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

CASE NO. 94PR908

IN THE MATTER OF THE ESTATE OF

OLA JEAN FRANKLIN,

Deceased.

AMENDED ORDER

Ola Jean Franklin died on April 27, 1994. A pro se Petition for appointment of Clementine Brown as Personal Representative, along with a pro se Petition for Probate of a Will, were filed with this Court on May 9, 1994 and the same were approved by the Registrar on May 13, 1994. From the outset, Clementine Brown failed or refused to carry out the duties of a Personal Representative according to the provisions of the Colorado Probate Code and failed to act impartially towards the beneficiaries of the estate. In November 1994 when no inventory had yet been provided to the beneficiaries, notice to creditors had not been published and the evidence suggested that no action had been taken to administer the estate, the decedent's surviving spouse, Horace E. Hamilton, through counsel, filed with this Court a demand for notice as to all proceedings and a Petition to Take Elective Share.

Clementine Brown, then the Personal Representative, denied the Petition of the surviving spouse and filed an opposition to the surviving spouse's petition alleging equitable grounds - in derogation of the provisions of the Colorado Probate Code which provide that the statutory share is the legal right of the surviving spouse, not a decision of the Personal Representative. There has never been a contention that Mr. Hamilton was not the surviving spouse of the decedent. In addition to the opposition interposed by Clementine Brown, the three adult children of the decedent, Clyde Franklin, Carolyn Franklin and Pearly Banks weighed in against the surviving spouse's Petition by joining in her objection filed with the Court on November 29, 1994. The minor child of the decedent is in the custody of the surviving spouse and is not represented by counsel; he filed no pleading in response to the Petition to Take Elective Share.

A hearing was scheduled on the Petition to Take Elective share and the objections thereto before the Honorable Field C. Benton on April 11, 1995. This Court observes that between November 1994 and the hearing on April 11, 1995 no action was apparently taken to advance the administration of the estate; no notice to creditors was made or filed with the Court, no inventory was filed with the Court. In short, in nearly a year since the Court had

appointed Clementine Brown as Personal Representative and had charged her with the responsibilities of a fiduciary she had done virtually nothing to advance the administration of the estate. Furthermore, she failed to appear at the hearing on April 11, 1995 where the hearing on her objection to the surviving spouse's Petition was held thereby wasting everyone's time. During the hearing, her counsel advised the Court that he intended to resign as her attorney because of her failure to cooperate.

On April 19, 1995 Judge Benton entered the following order:

"FINDS AND ORDERS that Horace E. Hamilton, as surviving spouse of Ola Jean Franklin, deceased, is entitled to claim and receive one-half (1/2) of the augmented estate of the deceased as defined by C.R.S. 15-11-202.☐

On April 13, 1995, two days following the hearing, counsel for Clementine Brown filed a motion with the Court requesting leave to withdraw as counsel to Clementine Brown. In his motion to the Court, counsel states, in part:

"This Estate involves an issue concerning the decedent's spouse taking the statutory share of the estate after being disinherited in the decedent's will. Counsel for the Estate made recommendations to the Personal Representative, Clementine Brown, with respect to said issue, but the Personal Representative is not inclined to accept said advice and refused to even look at the proposed stipulation. She also failed to appear in Court on April 11, 1995, at 11:00 a.m., even though counsel informed her of the time and location of the hearing and discussed with her the issues to come before the Court the day before the hearing.

...Counsel cannot properly represent the estate without the cooperation of the Personal Representative.☐

Following Judge Benton's retirement, this Court granted counsel's motion to withdraw. Subsequently, Ms. Brown proceeded pro se.

On May 5, 1995, now more than a year after the death of the decedent and a year since the appointment of Clementine Brown as Personal Representative, Mr. Hamilton, the decedent's surviving spouse, petitioned this Court for Removal of the Personal Representative Clementine Brown. In his Petition the surviving spouse lists as bases for his Petition: Clementine Brown's actions in opposing his entitlement to the statutory share, failure of the Personal Representative to administer the estate, failure to respond to correspondence, refusal to appear at hearings, failure to protect assets of the estate, concealment of assets, and the personal Representative's stated resolve to disobey the law and the orders of Court in connection with the administration of the estate, particularly to the detriment of the surviving spouse/claimant. Notice of the Hearing on the removal motion was given to all of the following according to the Certificate of Service filed by Marvin Dansky, counsel to Mr. Hamilton:

Clementine Brown, Personal Representative
3576 Forest St.
Denver, CO 80209

Clyde E. Franklin
2726 Williams Street
Denver, Colorado 80205

Pearly Banks
9375 E. 17th Avenue
Aurora, Colorado 80010

Horace E. Hamilton
2902 York Street
Denver, Colorado 80205

Carolyn Jones
5961 Chambray Loop #3
Ft. Belvoir, VA 22060

Malachi Hamilton
2902 York Street
Denver, Colorado 80205

Douglas McKinnon, Esq.
5984 S. Prince St. #103
Littleton, Colorado 80120-1955

The Court held a hearing on the Petition to Remove the Personal Representative on June 6, 1995. Clementine Brown appeared at this hearing with new counsel, Angela Thomas, Esq., who requested a continuance which was denied. This Court found that, pursuant to C.R.S. 15- 12-611 good cause having been shown for the removal of the Personal Representative Clementine Brown, she should be forthwith removed as personal representative in the best interests of the estate. Subsequently a written Order removing Clementine Brown was entered by the Court on June 12, 1995.

At the hearing on June 6, 1995, the Court advised counsel of the Courtis deep concern that the administration of the estate had languished for over a year and that it was the intention of this Court to complete the administration promptly. The Court directed the Clementine Brown to deliver the accounts and records and assets of the Estate to her then-counsel, Angela Thomas, to be picked up by the Successor Personal Representative. At the time of the hearing on June 6, 1995, charges of waste of estate assets were made as were charges of concealment of assets and an attitude of defiance and uncooperation pervaded the proceeding. The Court informed all interested parties in open Court that it was the Courtis intention to appoint a fiduciary to gather the assets and administer the estate in light of the situation. The Court expressed its view that the best interests of the estate would be served by the Courtis appointment of a successor Personal Representative. The Court afforded the parties an opportunity to agree among themselves on a successor. The Court granted all interested parties time to submit to the Court the name of a mutually agreeable successor personal representative.

Within the allotted time the surviving spouse and the decedent's adult son submitted statements to the Court nominating different parties and indicating a failure to agree. The two adult daughters of the decedent filed no nominations. The Court concluded that it was not in the best interests of the estate to appoint any of the nominated successors due to the multiple conflicts of interests between the decedent's surviving spouse and minor child on the one hand and the three adult children of the decedent on the other hand. One of the adult children was being represented by Angela Thomas, Esq. who had previously been counsel to Clementine Brown, this presented another serious conflict as one of the duties

faced by the successor personal representative would clearly be to investigate the actions taken by Clementine Brown. Mr. Clyde Brown was not an appropriate choice as successor fiduciary in part because of his opposition to the elective share and in part because he has remained in possession of real estate belonging to the estate and may have failed to make rental payments on time or in full. Subsequently, he failed or refused to communicate with the Successor Personal Representative.

On July 6, 1995 the Court entered an Order appointing the Public Administrator of the City & County of Denver as the Successor Personal Representative of the Estate of Ola Jean Brown and directing the Clerk of the Court to issue Letters of Appointment. All Court pleadings were served on all interested parties and their counsel. From and since July 6, 1995 Mr. Steenrod has been the Personal Representative of the estate and has had all of the powers pertaining thereto. Mr. Steenrod began an effort to collect and take possession of the assets of the estate, meeting with delay, resistance, defiance and lack of cooperation and culminating in his Request to the Court for Forthwith Delivery of Estate Accounts and Records on August 18, 1995 wherein he sought a second Order directing Clementine Brown and her prior counsel Angela Thomas to comply with the Court's June 6, 1995 order. The Court's second Order directing the former Personal Representative and her former counsel to comply with the Court's orders was entered on August 30.

On August 21, 1995 Clyde Franklin requested that the Court grant relief from its prior Orders requiring compliance with the Court's June 6, June 12 and July 6 Orders, in the nature of a Rule 60b motion. The matter was scheduled for a hearing on October 11 and the hearing was held. The Court denied the motion for relief from prior orders in rulings from the bench.

After further consideration, the Court incorporates in part and amends in part its bench ruling of October 11, 1995.

IT IS HEREBY ORDERED:

The Court concludes that it is premature to appoint a Successor Personal Representative at this time. Therefore, the Court revokes its Order of July 6, 1995 insofar as a Successor Personal Representative is appointed and substitutes the following Orders in its stead:

The Court finds that an emergency exists as to the administration of this estate. The Court appoints the Public Administrator, R. L. Steenrod, as the Special Administrator of the Estate of Ola Jean Franklin and Letters of Special Administration shall issue with the following authority:

the Special Administrator is to take control of and possession of all assets which comprise or have comprised the estate of Ola Jean Franklin;

the Special Administrator is authorized to take any legal actions necessary to collect estate assets or to restore assets to the estate;

the Special Administrator is authorized to undertake such actions as may be required to investigate the administration which has previously occurred, including the allegations that assets have been hidden or wasted; and generally conduct such actions as will lead to the possession of and inventory of the assets of this estate;

the Special Administrator is directed to file with the Court and serve on all interested parties and counsel a complete inventory as required by the Colorado Probate Code as soon as reasonably practical;

the Special Administrator is to have the full cooperation of any party who has possession or knowledge of any assets of this estate and failure to cooperate will result in this Court's imposition of sanctions against the uncooperative party or parties and if appropriate their counsel. The Court has suspended a decision on the imposition of penalties against Clementine Brown pursuant to C.R.S. 15-12-722 and 723 for failure to comply with previous court orders; however, the Court has reminded Clementine Brown of the Court's authority to do so if current orders are not complied with immediately and fully;

the Special Administrator is to prepare and file with the Court and serve on all interested parties a plan of distribution of the estate including a calculation of the augmented estate.

Following the completion of the duties of the Special Administrator described above, the Court will again provide all interested parties with an opportunity to petition this Court for appointment of a Successor Personal Representative, and the Court will consider the priority and fitness of each person with priority for appointment, including persons nominated by will, the surviving spouse and all of the adult children of the decedent.

DATED: October 19, 1995 BY THE COURT

C. Jean Stewart

JUDGE