

98PR1876 (2/16/00)

PROBATE COURT CITY AND COUNTY OF DENVER STATE OF COLORADO

Case No. 98PR1876

IN THE MATTER OF

The Estate of JAMES F. KELLY
Deceased.

ORDER

THIS MATTER comes before the Court on a Motion to Dismiss filed by Michael Kelly. The Motion to Dismiss is aimed at the personal representative's Petition for Trust Accounting and Accounting for Funds Transferred by Decedent During Life (hereinafter "Petition for Accounting"). Mr. Kelly claims that the Petition should be dismissed for insufficient process, insufficient service of process, lack of personal jurisdiction, and lack of subject matter jurisdiction.

I. Process and Service of Process

Mr. Kelly asserts that the Petition should be dismissed for insufficient process and insufficient service of process because the Petition for Accounting was served by itself, without any notice of hearing or summons and citation. The Court DISAGREES.

Service of process or notice in probate matter is governed by C.R.S. Section 15-10-401. *Michels v. Clemens*, 140 Colo. 82, 342 P.2d 693 (1959). This section does not require that Notice of Hearing accompany a petition. Instead, Notice of Hearing is only required to be mailed at least ten days before the time set for the hearing, and a summons and a citation need not be filed immediately upon the filing of a petitioner. C.R.S. Section 15-10-401 (1999). Here, a hearing on this matter was not set at the time the petition was filed; therefore, notice of hearing was not required. Moreover, the personal representative has served Michael Kelly, making this portion of his Motion to Dismiss MOOT.

II. Personal and Subject Matter Jurisdiction

The Court REJECTS Mr. Kelly's arguments that this Court lacks jurisdiction over the foreign trust and foreign corporation (the Gandalf Fund) for purposes of ordering an accounting of trust activities and transfers made by the decedent into the Gandalf Fund prior to the decedent's death.

The personal representative brought this accounting action pursuant to C.R.S. Section 15-12-723 and C.R.S. Section 15-16-303. She asserts that she has a right to discover these trust and Gandalf fund assets in order to properly carry out her fiduciary duties. Namely, she needs an accounting so that estate and income tax returns can be completed and proper estate and trust administration can progress after certain misappropriated estate funds are recovered.

A. Personal Representative's Obligations

The Colorado Probate Code is designed to be liberally construed in order to promote its underlying purposes and policies. C.R.S. Section 15-10-102(1). One purpose of the Colorado Probate Code is to promote a speedy and efficient system for settling a decedent's estate. C.R.S. Section 15-10-102(2)(c). The Denver Probate Court has jurisdiction over the affairs and estates of decedent's domiciled in Denver County. C.R.S. Section 15-10-301(1)(a). See also *In re Estate of Lembach*, 622 P.2d 606 (Colo. App. 1980).

In administering an estate, a personal representative has a duty to settle and distribute the estate as expeditiously and efficiency as possible while remaining consistent with the best interests of the estate. See C.R.S. Section 15-12-703(1) (1999). See also C.R.S. Section 15-1-804(1) (a fiduciary has the power to perform "every act reasonably necessary to administer the estate"). It is well settled that the personal representative must discover and value assets for the beneficiaries and file proper estate and income taxes. 33 C.J.S. 173, p. 814: Colorado Lawyer.

In order to facilitate the performance of their statutory duties, personal representatives are vested with broad powers. *Fry & Co. v. District Court*, 653 P.2d 1135 (Colo. 1982). Such powers logically include acquiring information of non probate assets and assets located in other states. The personal representative may seek such information in order to fulfill her fiduciary duties, settle the decedent's affairs, and to be relieved of liability and accountability.

B. Appointment of Special Administrator

Subsequent to the filing of the Petition for Accounting and the Motion to Dismiss, the Court met with all counsel and a decision was made to appoint a Special Administrator in this case. The Court issued an Order on February 3, 2000 appointing R.L. Steenrod as Special Administrator.

The role of the Special Administrator is, in part, to determine what value is to be reported to the Internal Revenue Service, under IRC Section 2038, by virtue of inclusion in the decedent's estate, of his revocable living trust. In order to complete this assignment, the Special Administrator has obligations both to the probate court with jurisdiction over the administration of the estate and to the federal and state taxing authorities. The discovery of information concerning the value of the assets in the decedent's revocable living trust is necessary and access to the trustee's accounts and records will be required to fully complete that assignment.

The Special Administrator is also required to list any potential claims for recovery of assets that should be pursued. This will include an investigation of assets contained within the Gandalf Fund since estate funds may have been misappropriated into this corporation. Therefore, Mr. Kelly will also be required to provide the necessary information so that the Special Administrator can fully fulfill his duties.

The Court has looked at Mr. Kelly's argument that the court's jurisdiction does not attach under C.R.S. section 15-12-723 until the court evaluates the complaint and cites the suspected person to appear. The Court FINDS that the personal representative has satisfied that the personal representative has followed the proper procedures and the Court will instigate future proceedings on this matter.

February 16, 2000

C. Jean Stewart
Judge, Probate Court