58

082280

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

IN RE: ESTATE OF HOLLIS GRANT KEENER, SR.	:	
HOLLIS GRANT KEENER, JR. et. al.,	:	Case No. CL 78936
Petitioners,	:	Fiduciary No. A-5004
v.	:	
DEBRA KEENER, et. al.	:	
Respondents.	:	

ORDER

THIS MATTER came before the Court for trial on July 14, 2008 and July 25, 2008; and

IT APPEARING TO THE COURT, based on the evidence adduced at trial and the arguments of counsel; it is

ORDERED that the Will of Hollis Grant Keener, Sr., attached to the Petition in this matter, be admitted to probate; it is further

ORDERED that Petitioner Thomas Keener is hereby appointed Personal Representative of the Estate of Hollis Grant Keener, Sr.; it is further

~~ORDERED that no bond is required of said Personal Representative; it is further~~

ORDERED that Respondent/Counter-Plaintiff Debra Keener has no standing in this matter as she forfeited her share of the Hollis Grant Keener Revocable Living Trust; it is further

ORDERED that the counter-claim filed by Respondent/Counter-Plaintiff Debra Keener is hereby rendered moot; and it is further

Ordered that Petitioner's motion for an award of Attorney's fees is denied; and it is further

ORDERED that this matter is hereby dismissed with prejudice. ~~as all the beneficiaries of the Estate of Hollis Grant Keener, Sr. and the Hollis Grant Keener Revocable Living Trust were properly named as parties, properly served in this matter, and failed to respond to the pleadings or join the counter-claim filed by the Respondent/Counter Plaintiff Debra Keener.~~ see

ENTER: _____
Judge

DATE: 8/22/08

I ASK FOR THIS:

_____
Shelly R. Collette, Esq. VSB #74779
Pirsch & Associates, PLLC
1307 Duke Street
Alexandria, Virginia 22314
(703) 548-5182
(703) 548-5659 facsimile
Counsel for Petitioners

SEEN AND ~~objected to~~ on the basis of grounds raised in D's mot. for reconsideration and at trial.

_____
H. Jan Roltsch-Anoll, Esq. VSB# 29690
Szabo, Zelnick & Erickson, P.C.
12610 Lake Ridge Drive
Woodbridge, Virginia 22192
(703) 643-2666
(703) 643-2666 facsimile
Counsel for Respondent Debra Keener

082280

1 Keener as Administratrix of the Estate.
2 What about the car title? What is the
3 physical mechanical status of that?
4 MS. COLLETTE: Your Honor, that was
5 supplied by Respondent prior to trial.
6 THE COURT: So, that leaves then the
7 request for attorney fees, which I will get to.
8 The relief sought by the Defendant is, of
9 course, not in the same status. But I, frankly, find
10 central to that whole thing the forfeiture issue.
11 Now, let's look at that for a minute. The
12 language of the document which is, I believe, the last
13 addendum unnumbered, admitted in this litigation as
14 Exhibit 8 for the Plaintiff, reads in relevant part as
15 follows: Any person that objects to or contests any
16 provision of this trust, in whole or in part, shall
17 forfeit his or her entire distribution otherwise payable,
18 et cetera.
19 So, what effect is to be given that now is
20 one question I think is central to the resolution of the
21 counterclaim. First of all, was there an attempt to
22 contest any provision of the trust by the Defendant -- by
23 the Defendant and counter-claimant. First of all, as I

1 said before, this is an issue in this litigation. This
2 is an issue I'm going to resolve today. I made that
3 clear at the hearing. I made that clear to counsel. I
4 invited you to adduce whatever other evidence you thought
5 you needed to in order for the Court to make a fair
6 resolution of that. You did so, I assume, and here we
7 are.
8 So, what effect is to be given that. What
9 did Ms. Keener do? What she did was she attempted to
10 have this estate administered as an intestate estate.
11 The effect of that would be that the property would be --
12 If she had been successful in that effort, this property
13 would have passed under the laws of intestate succession
14 under the rules of this Commonwealth. What is the
15 necessary effect of that? It would not have gone to the
16 trust. None of it. Zero. The trust would not have been
17 funded with any of the assets owned by the decedent at
18 the date of his death.
19 So, that was what she sought to
20 accomplish. She took an oath there was no will, I think,
21 having reason to know that was incorrect. But be that as
22 it may, she took an oath there was no will and sought to
23 have the estate administered as an intestate estate. As

1 I said, if successful, that would have defeated the
2 purpose of the trust in whole. Does that constitute --
3 Does that trigger the forfeiture provision? I think
4 absolutely. I don't think any other conclusion is
5 supportable. No other conclusion is logical. To contest
6 and try to defeat the entire trust is, per force, to
7 contest a provision of the trust; in fact, all provisions
8 of the trust. That's the way I see it.
9 Now, is that equitable? Before you get to
10 whether or not that is equitable, the Court has to deal
11 with its fundamental obligation, and that is to enforce
12 the will of the testator. The law is clear that the will
13 of the testator, when it can be ascertained, should be
14 enforced. The will of the person who makes the will
15 should be enforced. The will of the decedent should be
16 enforced. The Court is not to second guess that and say,
17 well, I don't think that's right, I don't think that's
18 fair, I don't think that's nice, et cetera.
19 In this context, that effectively works
20 for forfeiture of her share of this. That relief is,
21 one, draconian; and, two, mandated under the rules as I
22 see them. There is no other solution for that. That is
23 the necessary result of the application of the facts of

1 this to the law.
2 So, she forfeits her share of this. What
3 effect then to all the rest? I think that renders moot
4 everything else in this case. If she has no standing,
5 she has no share in this, then she has no justiciable
6 interest in it, no right to complain, and the balance of
7 the counterclaim becomes moot.
8 It is, in my view, that simple. And that
9 is the product precisely and purely of her attempt to --
10 not her attempt -- her successful attempt to qualify as
11 administratrix of the estate and have this estate
12 administered as an intestate estate. That is contesting
13 the trust.
14 So, that is, in short, the ruling I'm
15 making. There are some loose ends in that which haven't
16 quite been addressed. I'll let you talk to your
17 respective clients and see what transpires.
18 Now, I can set this for another date, or
19 I'll leave it to counsel to file such other pleadings as
20 you think are necessary. In fact, I think that might be
21 the best thing to do.
22 I will add parenthetically that -- No, I
23 will not. That's the ruling. Any questions?

1 Court is adjourned.

2 (Whereupon, at approximately 2:45 o'clock, p.m.,

3 the hearing in the above entitled matter was concluded.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23