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IN THE

Supreme Court of Virginia

RECORD NO. 161419

STEVEN C. GRAY,

Appellant,

v.

FRANCES BINDER, et al.,

Appellees.

BRIEF *AMICUS CURIAE*
IN SUPPORT OF APPELLEES

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Virginia:

In the Supreme Court of Virginia

Steven C. Gray,	Record No. 161419
Appellant	Circuit Court No. FI-2012-0002036
v.	
Frances Binder, et al.,	From the Circuit Court of Fairfax County
Appellees	

Brief *Amicus Curiae*

Comes now the Virginia Conference of Commissioners of Accounts, by counsel, and files this, its brief *amicus curiae* in support of the determination in the trial court.

Statement of the Case

The statement of the case contained in the appellant's opening brief is generally accurate, with two exceptions:

First, the commissioner did not conduct the hearing in this matter in response to a petition for aid and direction. The fiduciary sent a letter to the commissioner of accounts on November 1, 2013, inquiring whether the Commissioner could hear issues of heir determination and will interpretation. The

commissioner responded affirmatively on December 3, 2013. The fiduciary wrote to the commissioner on December 9, 2013, requesting such a hearing. On January 21, 2014, the commissioner sent notice of a hearing for receiving proof of objections or other matters of concern related to the administration of the estate of Albert Frank Bahnfleth, Jr., pursuant to Virginia Code § 64.2-1209 to be heard on April 9, 2014. On January 31, 2014, the fiduciary wrote to the commissioner transmitting a number of documents, including a petition styled "Petition to Commissioner of Accounts for Aide [sic] and Direction: For Construction of the Will of Albert Frank Bahnfleth, Jr., and Determination of Identity and Shares of Heirs & Beneficiaries." The correspondence also included a number of evidentiary materials related to the heirs of the decedent. This document was sent to the commissioner in connection with the already scheduled hearing and the commissioner treated all the materials as hearing correspondence. The fiduciary did not file

the petition with the circuit court nor seek a decree of reference related to such matters.[1]

Second, in his report issued January 5, 2015, the commissioner found that "all bequests in the will had lapsed pursuant to Virginia Code § 64.2-418, and the decedent's estate passes pursuant to the provisions governing intestate distribution."[2] The commissioner did not find that all provisions of the will failed.

Mr. Gray maintains that the circuit court lacked subject matter jurisdiction to construe the will of Albert Frank Bahnfleth, Jr., or determine the beneficiaries of his estate when the matter arose pursuant to exceptions from the determination of the commissioner of accounts in his commissioner's report dated January 5, 2015.

Statement of Facts

In a hearing conducted pursuant to Virginia Code § 64.2-1209, the commissioner determined that Steven Gray was

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[1] Consolidated Statement of Facts ¶6, Joint Appendix at 156-157.
[2] Commissioner's Report at p.8, Joint Appendix at 12.

not an heir of Albert Frank Bahnfleth, Jr. The circuit court reviewed and confirmed this determination.

Standard of Review

This appeal is a matter of statutory interpretation and therefore a pure matter of law subject to *de novo* review.[3]

Argument and Authorities

The instant appeal challenges the jurisdiction of the circuit court to construe the decedent's will, when the matter arises pursuant to exceptions from the determination of the commissioner of accounts. The appellant relies upon a recent decision of the Virginia Supreme Court that addressed the limited jurisdiction of the General District Courts in Virginia.[4] The case holds that where a lower tribunal lacks subject matter jurisdiction to rule on a matter and the higher tribunal's jurisdiction is derivative of the lower

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[3] Laws v. McIlroy, 283 Va. 594, 598, 724 S.E.2d 699, 702 (2012); *accord*, Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007); Crawford v. Haddock, 270 Va. 524, 528, 621 S.E.2d 127, 129 (2005); Ainslie v. Inman, 265 Va. 347, 352, 577 S.E.2d 246, 248 (2003); *see also* Lamar Co. v. City of Richmond, 287 Va. 322, 325, 757 S.E.2d 15, 16 (2014); PKO Ventures, LLC v. Norfolk Redevelopment & Hous. Auth., 286 Va. 174, 182, 747 S.E.2d 826, 830 (2013).

[4] Parrish v. Fannie Mae, 292 Va. 44, 787 S.E.2d 116 (2016).

tribunal's jurisdiction on appeal, the higher tribunal also lacks jurisdiction.[5] The case is inapplicable to the instant matter.

In Virginia, the commissioner of accounts is not a lower tribunal of limited jurisdiction; rather the circuit court appoints the commissioner of accounts to provide general supervision of fiduciaries within the Court's jurisdiction.[6] The Court does not delegate its judicial authority to the commissioner of accounts,[7] rather the commissioner of accounts is appointed for the purpose of assisting the Court and not to supplant or replace it.[8]

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[5] *Id.*, 292 Va. at 49, 787 S.E.2d at 120.
[6] Virginia Code § 64.2-1200.
[7] Green v. Green, 199 Va. 927, 931, 103 S.E.2d 202, 205 (1958);Raiford v. Raiford, 193 Va. 221, 229, 68 S.E.2d 888, 893 (1952) (relating to referrals to commissioners in chancery). The present office of commissioner of accounts evolved from the established office of commissioner in chancery. The 1873 Code of Virginia provided that "the judge of each circuit court having jurisdiction of the probate of wills and granting administration in the state shall designate one of its commissioners in chancery, who shall be known as the commissioner of accounts." Va. Code of 1873, ch. 128, § 1. Thus, most circuit courts generally treat the commissioner of accounts as having the same general authority as a commissioner in chancery, in addition to the statutory duties and responsibilities of the commissioner of accounts. *See, e.g.* In re Trustee's Sale of the Property of Willie Brown, 67 Va. Cir. 204, 211 (2005).
[8] Hoffecker v. Hoffecker, 200 Va. 119, 124, 104 S.E.2d 771, 775 (1958).

Virginia Code § 64.2-1209 provides as follows:

> Any interested person, or the next friend of an interested person, may, before the commissioner of accounts, insist upon or object to anything which could be insisted upon or objected to by such interested person if the commissioner of accounts were acting under an order of a circuit court for the settlement of a fiduciary's accounts made in a suit to which such interested person was a party.

It is generally held in Virginia that:

> While interpreting statutes, courts must ascertain and give effect to the legislature's intention, which is to be deduced from the words used, unless a literal interpretation would result in a manifest absurdity. When, as here, the General Assembly uses words that are clear and unambiguous, courts may not interpret them in a way that amounts to a holding that the legislature did not mean what it actually has expressed. In other words, courts are bound by the plain meaning of clear statutory language.[9]

The plain meaning of Virginia Code § 64.2-1209 expressly authorizes the commissioner of accounts, upon request of an interested person, and without an independent order or reference from the circuit court, to hear any matter related to the settlement of a fiduciary’s account that the circuit court has the authority to

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[9] Horner v. Dep't of Mental Health, Mental Retardation, & Substance Abuse Servs., 268 Va. 187, 192, 597 S.E.2d 202, 204 (2004)(citations omitted).

refer to the commissioner. Interested person includes the fiduciary.[10] The authority of the circuit court to refer matters to the commissioner is plenary,[11] and is limited only by the jurisdiction of the circuit court itself. "There is no question of law or equity, or of disputed fact, which [the commissioner] may not have to decide, or respecting which he may not be called upon to report his opinion to the court."[12]

Counsel for Mr. Gray concedes that the circuit court has the authority to refer to the commissioner the matter that the commissioner heard.[13] Under the express terms of Virginia Code § 64.2-1209, the commissioner may hear any matter which the court has authority to refer, upon the request of an interested person and without a separate referral from the court. As the court has

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[10] *See* In re Estate of Moore, 55 Va. Cir. 78 (2001); In re Trust of Southall, 49 Va. Cir. 169 (1999); Coulter v. Herring, 42 Va. Cir. 308 (1997).

[11] Raiford, 193 Va. at 226, 68 S.E.2d at 892. *See also* Virginia Code § 8.01-609.

[12] Bowers' Adm'r v. Bowers, 70 Va. (29 Gratt.) 697, 700 (1878).

[13] Brief of Applellant at 15. Virginia Code 8.01-607.B(2)(ii) provides that the referral may be initiated "upon motion of the court, sua sponte." Thus, a referral does not require agreement of the parties or even that one of the parties file a motion. The court may refer a matter on its own motion, *sua sponte*.

the authority to refer the matter in question to the commissioner, the commissioner may hear it.[14]

The Circuit Court of the City of Norfolk had occasion to discuss the scope of the authority of the commissioner of accounts, stating

> To perform his duties on behalf of the court, a Commissioner's authority must extend to every aspect of law or fact related to a fiduciary's duties, qualifications, and actions that may affect the rights of a beneficiary of an estate or a fund before him. No question of law, equity, or disputed fact concerning an account should be insulated from a Commissioner's inquiry. Were a Commissioner of Accounts to be prohibited from considering such matters, how could he accurately and effectively assist the court?[15]

Thus, the commissioner is not an inferior tribunal of limited jurisdiction, and the jurisdiction of the circuit court is not derivative of the commissioner's jurisdiction. Rather, the commissioner's authority is derivative of the circuit court itself, and extends to "anything which could be insisted upon or objected to by such

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[14] A corollary rule is that a commissioner does not have jurisdiction to hear a matter already before the circuit court absent an order of reference from the circuit court. Thus, any person objecting to the jurisdiction of the commissioner may divest that jurisdiction upon filing a petition in the circuit court addressing the same issue.

[15] In re Trustee's Sale of the Property of Willie Brown, 67 Va. Cir. at 211 (2005)(citations omitted).

interested person if the commissioner of accounts were acting under an order of a circuit court for the settlement of a fiduciary's accounts."[16]

CONCLUSION

For these reasons, both the circuit court and the commissioner of accounts had subject matter jurisdiction to hear and determine the matter before each of them in the above-styled matter.

Respectfully submitted

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[16] Virginia Code § 64.2-1209.

CERTIFICATE OF MAILING

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