

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Audrey Ross,

Plaintiff

vs.

Policemen's Relief and
Pension Fund of the City
of Pittsburgh,

Defendant

Civil Division

G.D. 02-21202

PRELIMINARY OBJECTIONS

Filed on behalf of
Policemen's Relief
and Pension Fund of
the City of Pittsburgh,
Defendant

Counsel of record for
this party:

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Audrey Ross,)	
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Plaintiff)	Civil Division
)	
vs.)	
)	
Policemen's Relief and)	G.D. 02-21202
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of Pittsburgh,)	
)	
Defendant)	

PRELIMINARY OBJECTIONS

Now comes the defendant, Policemen's Relief and Pension Fund of the City of Pittsburgh, by its attorneys, James A. Wymard and Norma Chase, and in support of its objections states as follows:

1. Plaintiff's complaint fails to state a cause of action upon which relief can be granted.

2. Specifically, plaintiff asks that defendant be held to be bound by a decree entered in another proceeding. Plaintiff admits that defendant was not a party to that proceeding. The decree, accordingly, cannot bind defendant.

Date: _____

Norma Chase
Attorney for Defendant

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BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

In this case, plaintiff seeks to compel defendant to pay her a surviving spouse benefit on the basis of an Orphans' Court decree finding her to be the common law widow of Gregory William Adams, a deceased City of Pittsburgh police officer and a participant, during his lifetime, in the Policemen's Relief and Pension Fund of the City of Pittsburgh.¹

For purposes of the preliminary objections, which are in the nature of a demurrer pursuant to Pennsylvania Rule of Civil Procedure 1017(a)(4), the facts pled by plaintiff must be accepted as true. *Greenspan v. United Services Automobile*

¹ The Fund is a creature of statute, 53 P.S. §23644 et seq. 53 P.S. §23654.2 provides that, if a married participant chooses to provide survivor benefits, a surviving spouse will receive one half of the amount of the pension paid to the participant at retirement, provided that the surviving spouse was married to the participant for at least two years at the time of the participant's death. If there is no eligible surviving spouse, each dependent child shall receive one fourth of the participant's benefit or an equal share of the spousal benefit, whichever is less, until reaching age 18. If there are no children and no surviving spouse, any dependent parents shall receive the payments the surviving spouse would have received. 53 P.S. §23654.3 extends to all participants the right to elect a survivor benefit. In no event is there any benefit payable to a participant's estate.

Association, 471 A. 2d 856 (Pa. Super. 1984). Other than party identification, these are the facts pled:

Gregory William Adams, a beneficiary of the Fund, died on June 19, 2001. At the time, he was domiciled at plaintiff's address. (Paragraph 3.)

A decree was entered in Orphans' Court proceedings by the Honorable Walter R. Little finding that Audrey Ross and Gregory William Adams were husband and wife. (Paragraph 4.)

The decree is captioned "Audrey Ross v. Gregory Williams [sic] Adams" and was entered at No. 1232 of 2002. It was filed on August 23, 2002. The opinion indicates that the action was brought in order to establish plaintiff's eligibility for a surviving spouse benefit. The opinion identifies the benefit source as the Fraternal Order of Police. (Decree referred to in Paragraph 4 and appended to plaintiff's complaint as Exhibit A.)

The heirs of decedent -- his two daughters -- were given notice of the action, appeared, and contested the declaration of marriage. (Paragraphs 6 and 7.)

The Fund was presented with the decree and refused to pay benefits, stating its reason as follows:

The Fund was not made a party to the action, received no notice of it, and had no opportunity to litigate the issue of whether a common law marriage took place between Ms. Ross and Mr. Adams.

(Paragraph 9 and letter referred to therein and appended to plaintiff's complaint as Exhibit B.)

This court is not, however, required to draw unjustified inferences or to accept plaintiff's conclusions of law.

Greenspan, supra. Plaintiff's conclusions are:

That the Orphans' Court had jurisdiction "over the marriage" (Paragraph 5);

That the heirs of Gregory William Adams were the only necessary parties to the action to determine marital status and that the Fund had no right to participate in the action (Paragraphs 6 and 10); and

That the Fund's refusal to pay benefits was without justification and in total disregard of a court order

(Paragraph 9).

Plaintiff asserts that Orphans' Court had jurisdiction pursuant to 20 Pa. C. S. A. §711(19) and §712(3), and 72 Pa. C. S. A. §952 and §732. The question is not one of jurisdiction; subject matter jurisdiction undoubtedly lies in the Court of Common Pleas of Allegheny County. The question is what division of the court should exercise that jurisdiction. 20 Pa. C. S. A. §711, Mandatory exercise of jurisdiction through orphans' court division in general, states in pertinent part:

Except as provided in section 712 of this code (relating to nonmandatory exercise of jurisdiction through orphans' court division) and section 713 of this code (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

(1) Decedent's estates. The administration of the real and personal property of decedents' estates and the control of the decedent's burial.

. . . .

(19) Marriage licenses, as provided by law.

Plaintiff does not cite subsection (1) as a basis for Orphans' Court jurisdiction, from which we may infer that, as suggested by the decree, there is no estate in this case. As for subsection (19), this case does not present any issue relating to a marriage license.

20 Pa. C. S. A. §712, Nonmandatory exercise of jurisdiction through orphans' court division, states in pertinent part:

The jurisdiction of the court of common pleas over the following may be exercised through either its orphans' court division or other appropriate division:

. . . .

(3) The disposition of any case where there are

substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section.

Since there is no matter enumerated in §711 involved in this case, §712(3) is inapplicable.

42 Pa. C. S. §952 states that each division of the court is vested with the full jurisdiction of the whole court. The Declaratory Judgment Act, 42 Pa. C. S. §7531 et seq., states at §7532² that all courts of record have the power to grant declaratory relief.

Thus, while the matter was not properly before the Orphans' Court, the problem is not one of lack of subject matter jurisdiction. The defect is waivable; however, defendant never waived it. Had defendant been given the opportunity to participate in the proceedings, it would have objected to the matter being heard in Orphans' Court.³

Defendant cannot be bound by a proceeding in which it was

² Presumably plaintiff's reference to §732 is intended as a reference to §7532; there is no §732.

³ As set forth in the letter appended to the Complaint as Exhibit B, defendant believes that such matters belong in the Family Division. The relief sought is authorized by the Pennsylvania Divorce Code, 23 Pa. C. S. §3306, Proceedings to determine marital status, which states:

When the validity of a marriage is denied or doubted, either or both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage and, upon proof of the validity or invalidity of the marriage, the marriage shall be declared valid or invalid by decree of the court and, unless reversed upon appeal, the declaration shall be conclusive upon all persons concerned.

This provision should be construed consistently with the Declaratory Judgment Act.

given no opportunity to participate. The Declaratory Judgment Act states at §7540(a):

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

Neither *res judicata* or collateral estoppel applies against a defendant who was neither party nor in privity with a party in the prior proceeding: *Balent and Barto v. City of Wilkes-Barre*, 542 Pa. 555, 669 A. 2d 309 (1995). See also *Allison Park Contractors et al. v. Workers Compensation Appeal Board*, 731 A. 2d 234 (Pa. Commw. 1999). In that case, the Commonwealth Court held that a determination of marital status made in the Family Division of the Court of Common Pleas of Allegheny County was not binding on the employer. The claimant had named the decedent's parents as defendants in the Family Division proceedings; the outcome was a consent decree recognizing the marriage. The employer had not been a party to the Family Division proceedings. While the discussion emphasizes that the declaratory judgment was a consent decree, the court also points out, in Notes 2 and 3 at 236 and 237, the inapplicability of collateral estoppel to a party who was not involved in the prior action.

Plaintiff's complaint speaks as if defendant defied an order of court; however, the Orphans' Court decree did not order defendant to do anything. The opinion does not even mention defendant. There is, furthermore, no finding as to when the marriage began; plaintiff would have had to be married to the decedent for at least two years prior to his death to be eligible for benefits. See Note 1 *supra*.

The complaint as it presently stands does not state a claim on which relief can be granted. However, since plaintiff retains the right to seek a declaration of common law marriage, and has now named the proper defendant, the interests of judicial economy would be served by an order sustaining defendant's preliminary objections but giving plaintiff the opportunity to amend her complaint accordingly.⁴

Respectfully submitted,

Norma Chase
Attorney for Defendant

⁴ If plaintiff does so, defendant will seek the transfer of this matter to the Family Division pursuant to Allegheny County Rule 198.10(b).

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ORDER

AND NOW, to-wit, this ____ day of _____, 20____, it is hereby ORDERED, ADJUDGED, and DECREED that defendant's preliminary objections are SUSTAINED. Plaintiff is granted leave to amend her complaint within 20 days so that it states a request for a declaration of the existence of her alleged common law marriage to Gregory William Adams. If plaintiff fails to do so, her complaint may be dismissed upon praecipe of defendant.

BY THE COURT:
