

Jurisdiction of the Probate, Federal and Common Pleas Courts?

By Daniel B. Evans

It's rare for the U.S. Supreme Court to issue an opinion on an estate dispute, and still rarer when it involves a former Playboy Playmate. (The latter would be "rarer" as in "never.") The resulting opinion is helpful to estate practitioners not only in understanding when we might (or might not) be pulled into federal court, but also the differences between the Orphans' Court and the Court of Common Pleas and how each of those courts might have jurisdiction over an estate dispute.

Federal Courts

The Playboy Playmate in question is Vickie Lynn Marshall, aka Anna Nicole Smith, aka "Playboy Playmate of the Year 1993." She was one of the parties to *Marshall v. Marshall*, 547 U.S. ___, 126 S. Ct. 1735, No. 04-1544, www.supremecourtus.gov/opinions/05pdf/04-1544.pdf (5/1/2006).

Were it not for the celebrity status of Mrs. Marshall, the dollar amount at issue (\$449 million), and the interesting federal jurisdictional issues raised by the litigation, the case would have been a fairly routine fight between a second wife and her step-son over the husband's/father's estate, so the relevant facts can be briefly stated.

In 1994, Vickie Lynn Smith married J. Howard Marshall, who was both much older and much (much) wealthier than she, and he died a little more than a year later, in 1995. Mrs. Marshall was not a beneficiary under her husband's will, but filed claims against the estate which claims were bitterly disputed by her step-son as executor. While the probate proceedings were underway in Texas, Mrs. Marshall filed for bankruptcy in

California, which is where the case gets interesting to the Supreme Court.

For some reason, the step-son (Mr. Marshall) chose to follow her to California and file a claim against her in bankruptcy court alleging that she had defamed him by public statements made by her lawyers in Texas. Having filed a claim in the bankruptcy court, Mr. Marshall was within the jurisdiction of the federal court in California, and Mrs. Marshall filed counter-claims against him for (among other things) his allegedly tortious interference with her husband's intent to make gifts to her during his lifetime.

Mrs. Marshall's counter-claim raises numerous issues, not the least of which is whether Texas law (which is still controlling even in the California bankruptcy) even allows a cause of action for tortious interference with lifetime gifts. However, the issue that went to the United States Supreme Court was whether the federal courts have jurisdiction to hear a claim which "would ordinarily be decided" by the state probate courts.

However, the issue that went to the United States Supreme Court was whether the federal courts have jurisdiction to hear a claim which "would ordinarily be decided" by the state probate courts.

The "probate exception" to federal jurisdiction is based on language found in one of the first statutes enacted by Congress under the Constitution, the Judiciary Act of 1789. The origin, history and evolution of the probate exception are described in the Supreme Court's opinion and will not be repeated here, but the court's reasoning and conclusions are worth summarizing.

First, the Supreme Court recognized that probate proceedings are "in rem" proceedings, meaning that the probate court determines the rightful ownership of the estate that is considered to be in the possession of the court. (In an "in personam" proceeding, which is the more usual kind of court action, the court determines the rights of persons against each other without necessarily attempting to control the administration or disposition of any particular piece of property.) It is therefore clear that a federal court has "no jurisdiction to probate a will or administer an estate." *Marshall*, slip opinion at 13, quoting *Markham v. Allen* 326 U.S. 490, 494 (1946).

Second, the Supreme Court recognized the general principle that "when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res." Slip opinion at 14. The application of this general principle to the federal probate exception means that a federal court should not "disturb or affect the possession of property in the custody of a state court." Slip opinion at 14. However, federal courts are not barred from adjudicating matters outside of the probate of the will and the administration and distribution of the estate.

In the case of *Marshall v. Marshall*, Mrs. Marshall was seeking an in personam judgment against her step-son for actions he had taken during her father's lifetime, and she was not challenging the validity of the will or the administration or distribution of the estate. The Supreme Court therefore ruled that the federal courts could have jurisdiction over her claims, and that the state of Texas could not prevent the federal courts from hearing that type of claim by reserving to one of its own courts exclusive jurisdiction over that type

(Continued on Page 17)

Daniel B. Evans is a sole practitioner in Philadelphia, and serves as chair of the Section.

**ARTICLE: Jurisdiction
of the Probate, Federal
and Common Pleas Courts?**

(Continued from Page 16)

of claim. Slip opinion at 17. Because the federal courts otherwise have jurisdiction over claims relating to bankruptcy proceedings, the Supreme Court held that the federal courts were not precluded by the probate exception from hearing tort claims of the type brought by Mrs. Marshall. (This is not to say that Mrs. Marshall won, because there were other issues still to be resolved on remand.)

The Supreme Court therefore ruled that the federal courts could have jurisdiction over her claims, and that the state of Texas could not prevent the federal courts from hearing that type of claim by reserving to one of its own courts exclusive jurisdiction over that type of claim.

Some of the popular reports of the decision made it sound like the probate exception has ended, and federal courts will soon be flooded with various kinds of estate disputes. Such reports of the death of the probate exception were an exaggeration.

Probate Exception in Pennsylvania

One civil complaint that was quickly filed in the Eastern District of Pennsylvania following the *Marshall* decision was also quickly dismissed for lack of jurisdiction by reason of the probate exception because the property at issue was held by an executor in an estate which was still under administration in Pennsylvania. The complaint was dismissed in a one-sentence order with an explanatory footnote, but the footnote is worth quoting in full, both because the opinion is otherwise unpublished and because it is a good example of how the probate exception should continue to apply to complaints filed in federal court:

“In moving to dismiss the complaint, the defendants contend that this court lacks jurisdiction because the Pennsylvania Orphans’ Court is the exclusive forum for resolving this dispute. I agree.

“At its core, this a family dispute among three siblings over ownership of a religious icon that has been passed down in the family over generations. The issue is whether the icon was properly gifted from their mother, Marsoula Economos, to her daughter, Cleopatra Economos, both of whom have since died. Michael and Nicodemos Economos, Cleopatra’s brothers and the plaintiffs in this action, contend that the defendants, Cleopatra’s children, have improperly retained the icon. The [plaintiffs] contend that their grandmother had conditionally gifted the icon to their mother, who was to transfer it to a museum in Greece the first time she had an opportunity to travel to Greece. Cleopatra died never having delivered the icon to the museum.

“The probate exception to federal jurisdiction limits a federal court’s power to grant relief in either pure probate matters or matters ancillary to probate. See Judiciary Act of 1789, ch. 20. & 11, 1 Stat. 78. Federal courts have jurisdiction only where “relief can be granted without challenging the probate court’s determinations or management of the *res*.” *Golden v. Golden*, 382 F.3d 348, 358-59 (3d Cir. 2004). The exception protects the state’s interest “in managing all challenges addressing the estate *res* located in that state or with which the state has some meaningful connection. The interest is no less compelling if the estate *res* is distributed by trust rather than by a will.” *Id.* at 359. The probate exception does not apply to actions whose subject matter is only incidental to probate and can be maintained in

federal court because the exercise of jurisdiction would not interfere with the probate proceedings.

“The Supreme Court has concluded that the probate exception reserves to state probate courts the probate of a will and the administration of a decedent’s estate. *Marshall v. Marshall*, 126 S.Ct. 1735, 1748 (2006). The exception precludes federal courts from disposing of property that is in the custody of a state probate court, but it does not bar federal courts from adjudicating outside of those confines and otherwise within federal jurisdiction. *Id.*

“At oral argument, defense counsel represented that the icon is an asset of Cleopatra’s estate, which is currently being administered in the Delaware County Orphans’ Court. It was listed on the inventory of the estate and inheritance taxes were paid on the appraised value of the icon. The estate is still pending. In *Marshall*, the Supreme Court reiterated that federal courts lack the power to dispose of an estate asset that is under the supervision of a state court. 126 S.Ct. at 1748. Thus, this action must be dismissed pursuant to the probate exception for lack of jurisdiction.”

Economos v. Peters, No. 06-1773 (U.S.D.C. E.D.Pa. 7/12/2006), note 1.

Orphans’ Court Jurisdiction

The mandatory jurisdiction of the Orphans’ Court is described in 20 Pa.C.S. § 711, and the types of cases that are listed are the cases that must be heard in the Orphans’ Court and not in any other division of the Court of Common Pleas. The *in rem* nature of Orphans’ Court jurisdiction is well illustrated by § 711(17), which provides that the Orphans’ Court has mandatory jurisdiction over disputes over the title to personal property “in the possession of the personal representative, or registered in the name of the decedent or his nominee, or alleged by the personal representative to have been in the possession of the

(Continued on Page 18)

ARTICLE: Jurisdiction of the Probate, Federal and Common Pleas Courts?

(Continued from Page 17)

decedent at the time of his death.” So if someone is alleged to have taken property of the decedent, the date the property was taken is important. If property is taken from the decedent’s house (or bank account or brokerage account) after the decedent has died, the Orphans’ Court has jurisdiction to adjudicate the proper ownership of the property and whether it should be returned. But if the property is taken *before* the death of the decedent, any action by the personal representative to recover the property would have to be in the civil division of Common Pleas, and not the Orphans’ Court.

So if someone is alleged to have taken property of the decedent, the date the property was taken is important.

Civil Court Jurisdiction

Generally speaking, the Orphans’ Court has jurisdiction over the property owned by the decedent or in possession of the decedent at death, but no jurisdiction to resolve disputes over ownership or possession before death. The property owned or possessed by the decedent at death is the res that the Orphans’ Court controls, and all other rights of the decedent against any other person or any other property must be resolved through actions in other courts, which could include federal courts.

A recent example of the kind of “estate litigation” that can take place in the civil division of Common Pleas is *McNeil v. Jordan*, No. 268 MAP 2003, www.aopc.org/OpPosting/Supreme/out/J-70-2004mo.pdf (3/21/2006), rev’ng 814 A.2d 234 (Pa. Super. 2002). In deciding whether the plaintiff was entitled to discovery after filing a summons and before filing a complaint (or before filing an amended complaint), the Supreme Court referred to the action as “will contest litigation,” and the action did relate to

a will and a decedent’s estate, but the action was filed in the civil division of Common Pleas and not the Orphans’ Court. The complaint was filed in the civil division because the plaintiff was alleging that the defendant had tortiously prevented the decedent from executing a new will that would have benefited the plaintiff. The decedent had admittedly never signed a new will, so there was no new will to probate and no will contest for the Orphans’ Court to hear, and there was no legal basis upon which the Orphans’ Court could distribute the estate except in accordance with the will that was actually probated. Under those circumstances, the plaintiff’s only remedy was to sue the defendants for the damages suffered by the plaintiff because of their tortious actions. (Whether the plaintiffs should have such a cause of action is a different question for a different article.)

So the civil division can have jurisdiction to hear actions that look and sound like estate litigation that would ordinarily be heard in the Orphans’ Court. But, just like a federal court does not have jurisdiction over an action that would “disturb or affect” an estate administration in state court, the civil division of Common Pleas cannot hear an action that would have the effect of overturning or reversing an adjudication of the Orphans’ Court. Section 3358 of the Probate, Estate and Fiduciaries Code, 20 Pa.C.S. § 3358, prohibits any “collateral attack” on any decree entered in accordance with the code if the court which entered the decree had jurisdiction to do so. So, in *Kern v. Kern*, 2005 PA Super. 422, No. 18 WDA 2005, www.aopc.org/opposting/superior/out/a31011_05.pdf (12/19/2005), rearg. den. (3/6/2006), app. den. No. 200 WAL 2006 (8/1/2006), the Superior Court upheld the dismissal of an action in Common Pleas against the beneficiaries of an estate for a wrong alleged to have been committed by the decedent, holding that the action was a prohibited collateral attack upon the decree of distribution in the estate. P.E.F. Code Section 3521 allows petitions to correct “errors” in adjudications of the accounts of per-

sonal representatives if the petition is brought within five years of the confirmation of the account, and the court shall “give such relief as equity and justice shall require.” The Superior Court agreed that the remedy in section 3521 was the sole remedy available to the plaintiff, and that the failure of the plaintiff to utilize the procedure set forth in 20 Pa.C.S.A. § 3521 cannot be rectified by the imposition of a “constructive trust.” *Kern v. Kern*, 2005 PA Super. 422 at paragraph 22.

[A]ctions for torts are based on in personam jurisdiction and not in rem jurisdiction, which means that they can (and sometimes must) be litigated in Common Pleas, or even in federal court if there is diversity of citizenship or other grounds for federal jurisdiction.

Conclusion

Estate practitioners are used to litigating “estate matters” in the Orphans’ Court, and actions for tortious interference with inheritance or donative rights look like the kind of disputes over estates and gifts that should be resolved in the Orphans’ Court. But actions for torts are based on *in personam* jurisdiction and not *in rem* jurisdiction, which means that they can (and sometimes must) be litigated in Common Pleas, or even in federal court if there is diversity of citizenship or other grounds for federal jurisdiction. ■