

Estates and Trusts Case Summaries
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January 1, 2015 – September 15, 2015

Estates

Funeral Expenses

[In re Taylor, N.C. App. \(July 7, 2015\)](#)

Daughter of decedent paid for funeral expenses. Daughter filed a request for reimbursement after the deadline for presentation of claims passed. Executor filed a petition to disallow the request and rejected the claim. Executor filed a final accounting that did not include reimbursement of funeral expenses. Daughter objected to final accounting. Clerk entered order granting reimbursement of funeral expenses. Executor appealed. Superior court reversed clerk's order. Daughter appealed. NC Court of Appeals held funeral expenses constitute a claim against the estate and as such the claim must be presented within the time limits set forth in GS 28A-19-3. Funeral expenses are not a reimbursable expense that (i) may be submitted at any time prior to the closing of the estate, or (ii) are automatically presented or exempted from presentation. In addition, a dispute over a claim for reimbursement of funeral expenses is not within the jurisdiction of the clerk of superior court to hear. If the claim is filed, then rejected and not referred by the personal representative, the claimant must then commence a civil action for recovery of the funeral expense claim within the time limits set forth in GS 28A-19-16 or else it is barred.

Attorneys' Fees

[In re Taylor, N.C. App. \(July 7, 2015\)](#)

Non-attorney personal representative hired an attorney to assist personal representative with estate administration and litigation related to the estate. Beneficiary daughter objected to the final account, in part, on the basis that the attorneys' fees were unreasonable. Clerk entered an order approving only a portion of the fees. Personal representative appealed. Superior court vacated clerk's order and approved the fees in total. Beneficiary daughter appealed. The NC Court of Appeals held the clerk has the authority to review attorneys' fees shown on a final accounting for reasonableness where the non-attorney personal representative hires an attorney to do work on behalf of the estate. In the order approving or denying attorneys' fees, the clerk must make findings of fact and conclusions of law sufficient to allow for meaningful review on appeal.

Declaratory Judgment; Rights under a Will

[Brittian v. Brittian, N.C. App. \(Sept. 15, 2015\)](#)

The daughter of the decedent submitted a will for probate that contained a marking striking through the name of the decedent's granddaughter. After the will was admitted to probate and letters issued to the daughter as executrix, the clerk wrote a letter to the executrix stating that the marking was not a valid partial revocation and did not disinherit the granddaughter. The executrix disagreed and as a result filed an action in superior court for a declaratory judgment to determine the rights of the parties under the will under G.S. 1-254. The superior court

entered an order dismissing the matter on the basis that the proper mechanism for challenging the will was by filing a caveat. Executrix appealed. The NC Court of Appeals, reversing the superior court, held that the executrix, as an interested party, properly filed a declaratory judgment action rather than a caveat because the question before the court concerned the construction of the will and the effect of the marking on the parties' rights under the will. It did not involve a challenge to the validity of the will itself.

Trusts

Payable on Death Account; Totten Trusts

[Nelson v. SECU, N.C. App. \(Aug. 4, 2015\)](#)

Decedent signed State Employees' Credit Union (SECU) paperwork for a statutory "Payable on Death" account, transferred \$85,000 to the account, and designated his daughter as the beneficiary. Upon his death, the SECU paid the funds to the beneficiary. The decedent's other two children sued the beneficiary and the SECU. The other children argued that the decedent and SECU failed to create a statutory payable on death (POD) account under GS 54-109.57A and that the statute provides the only means for creating such an account. The NC Court of Appeals disagreed and held that a grantor may create an account that will pass to a named beneficiary upon death by complying with (1) the statutory requirements of GS 54-109.57A for POD accounts with a credit union (or other applicable POD statute depending on the financial institution), or (2) the common law requirements for Totten or tentative trusts. Although the decedent failed to create a valid statutory POD account in this case, the court held that the decedent created a valid common law Totten trust because the decedent (i) expressed intent to create the trust, (ii) identified a specific sum of money to place in the trust account, and (iii) identified the beneficiary of the trust. The court noted that it was not necessary to use the word "trust" to create a valid trust. Further, the court found that the decedent transferred a present beneficial interest to the beneficiary upon creation of the trust, a necessary component for the formation of a valid trust.

Uniform Transfers to Minors Act

[In Matter of Allesandrini, N.C. App. \(Feb. 17, 2015\)](#)

Father established accounts for his children under the Uniform Transfers to Minors Act (UTMA) and named himself as custodian. Mother on behalf of herself and two children filed a special proceeding before the clerk for an accounting. Mother and two children alleged, among other things, father improperly withdrew custodial funds. Clerk ordered father to file accountings. Father filed accountings which showed that he had paid for certain expenses of the children out of pocket and later reimbursed himself from the custodial accounts. Because the clerk recused himself due to a conflict of interest, the matter was removed to superior court pursuant to [G.S. 7A-104\(b\)](#). Superior court granted summary judgment in favor of the father, mother appealed. The issue on appeal was whether it is a *per se* breach of the custodian's fiduciary duty under [G.S. 33A-12](#) for the custodian to pay expenses of a minor out of pocket and then later reimburse himself from the custodial funds. The court, using the Uniform Trust Code and related decisions as guidance, determined that under the UTMA the court will not undertake to control the exercise of discretionary power by the custodian except to prevent an abuse of

discretion. A custodian under the UTMA abuses his or her discretion if the custodian (1) acts dishonestly, (2) acts with an improper motive, (3) fails to use his judgment, or (4) acts beyond the bounds of reasonable judgment. In the present case, the evidence did not show that the father did any of these things. It instead showed that he paid expenses for the benefit of the children from his personal funds and later reimbursed himself from the UTMA accounts. This fact alone did not constitute a breach of his duties as a custodian of the accounts.