

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-1156

In re Estate of Perley Briggs

On appeal from Probate Division
No. 686-11-18 Wnpr

RULING ON THE SPECIAL ADMINISTRATOR'S
MOTION FOR INJUNCTION AND OTHER RELIEF

Following the death of Mr. Perley Briggs, Ms. Sondra Jacques, his wife, petitioned the probate court to allow the will he executed in 2016. Ms. Polly Martin, Mr. Briggs' daughter, contested the 2016 will on undue influence grounds and petitioned the probate court to allow an earlier 2009 will. With the will contest delaying the appointment of a regular fiduciary, the court appointed a special administrator (Mr. John Page, Esq.) to inventory estate assets and "investigate, identify, collect, and preserve the estate of the deceased until further order." Letters of Special Administration (filed Sept. 29, 2020). Following an evidentiary hearing, the probate court disallowed the 2016 will on undue influence grounds, and Ms. Jacques immediately appealed. The probate court has not yet determined whether to allow the 2009 or any other will.

Armed with the probate court's undue influence decision, the Special Administrator undertook an investigation into Mr. Briggs' financial transactions in the years before the execution of the 2016 will and leading up to his death. He uncovered what he considers to be a suspicious "pattern" of gifts, transactions, and conveyances on balance very favorable to Ms. Jacques (wife) and very unfavorable to Ms. Martin (daughter). He surmises that this pattern is symptomatic of the same undue influence that tainted the execution of the 2016 will (as determined by the probate court). The Special Administrator suggests that he may—or may not—at some point pursue claims against Ms. Jacques: "[T]he Estate possesses claims against Ms. Jacques to recover up to \$1,101,247 in assets that Perley Briggs conveyed to Jacques before his death. The Estate intends to pursue such claims should the Civil Division agree with Judge Kilgore's ruling disallowing the [2016] Will, but for prudential reasons believes it most appropriate to delay suit until the instant appeal is resolved." Motion for Injunction 2–3 (filed July 11, 2022). These claims would be for "constructive trust, conversion, unjust enrichment and restitution" and presumably would be filed in an original civil action. *Id.* at 3.

At this time, the Special Administrator seeks: (1) a Rule 65(b) preliminary injunction enjoining Ms. Jacques from "conveying or encumbering any real or personal property to which she acquired title or control from Perley Briggs . . . in the years prior to or subsequent to the execution of his Will"; (2) a Rule 4.1 attachment on specific real property

that Mr. Briggs conveyed to Ms. Jacques “without consideration”; and (3) many Rule 4.2 orders of trustee process attaching numerous financial accounts.

This is an appeal from a decision of the probate court; it is not a civil action for damages or other relief. Although the Special Administrator asserts that the estate has grounds to assert a claim for damages in excess of \$ 1 million, he has made the tactical decision *not* to do assert the claim at this time. Consequently, this Court has no complaint before it setting forth any alleged causes of action or prayers for relief. This Court’s role is presently limited to reviewing de novo a specific ruling of the probate court, namely, its decision to disallow the 2016 will, not to exercise original jurisdiction over a civil action. The Special Administrator has produced no authority that would permit this Court to grant the relief he is requesting.

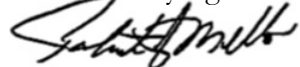
A Rule 4.1 attachment helps to ensure that assets will be available to satisfy a “judgment for damages and costs which the plaintiff may recover.” V.R.C.P. 4.1(a). There can be no claim for damages in this case, and the Special Administrator in fact has not attempted to assert any such claim in this case or elsewhere. The same goes for Rule 4.2. And the whole point of a preliminary injunction is to serve anticipated final relief. See Reporter’s Notes, V.R.C.P. 65 (“[A] preliminary injunction . . . grants relief pending final determination of the merits.”). There is no final injunction being sought in this case, and there is no other final relief in this case for which the request for a preliminary injunction has any bearing. Thus, those rules do not appear to apply to the situation at hand.

Lastly, the bench trial in this appeal is scheduled to begin on September 13, 2022, which is just two weeks away. There is no showing of the need for immediate provisional relief, and, in the absence of a clear showing of authority to grant such relief, the Special Administrator’s motion must be denied.

Order

For the foregoing reasons, the Special Administrator’s motion for an injunction and other relief is denied.

Electronically signed on 8/30/2022 9:57 AM, pursuant to V.R.E.F. 9(d)



Robert A. Mello
Superior Judge