

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF: BARBARA LEE WATERS, deceased.

FILE NUMBER: 10-31879-DE

OPINION AND ORDER

This matter is before the court on a request by the personal representative for an order directing that Kevin Goethe turn over certain items of personal property to the estate. There is also a request that the court impose a constructive trust, issue a judgment of conversion, and enter an order for payment of costs and attorney fees.

FACTS

Barbara Waters was a divorced woman with three children from a previous marriage. In 2001, she began living with Kevin Goethe and his son in what one of the children's lawyers called a "meretricious relationship." Mr. Goethe also had a son who lived with him. Mr. Goethe and Ms. Waters never married, although he asked her to marry him and in fact had purchased an engagement ring. Ms. Waters was diagnosed with cancer and told Mr. Goethe it would be unfair of her to marry him because of her illness.

Mr. Goethe built and furnished the house that the family lived in. He testified when the house was being planned, Ms. Waters asked that it have separate bedrooms for each of her daughters because they had never had separate bedrooms before. Mr. Goethe

testified that he made sure that each of Ms. Waters' daughters had an extra-large bedroom.

When Mr. Goethe and Ms. Waters moved in together, they combined their household furnishings. Mr. Goethe testified that where they had duplicate items, they kept the better items for their own use and donated the other items to Goodwill. Mr. Goethe purchased some other items including a set of gold-colored flatware and beds for Ms. Goethe's children. He also purchased two dogs, a black Labrador named Maddie and a Maltese terrier named Chauncey; and various other items which he said were either gifts for Ms. Waters or "for the house". Ms. Waters also purchased items for the house and created some quilted items that were used as decorations in the house.

Ms. Waters' purported holographic will was attached to the Application for Informal Probate and/or Appointment of a Personal Representative which was filed November 19, 2010. A Register's Statement and Letters of Authority were issued November 19, 2010. A review of the purported will reveals it does not meet the requirements set forth in MCL 700.2502(2) and therefore is not a valid holographic will. While testimony established that it was in Ms. Waters' handwriting, it is not signed with a signature at the end; rather it is signed "Mom" above the dispositive provisions. The document is not dated, although an envelope bearing the date July 1, 2010, is attached to it.

Ms. Waters died August 29, 2010. Her children continued to live in Mr. Goethe's home until Saturday, October 9, when they moved out. Mr. Goethe objected to the children taking the beds from their rooms, but eventually told them they could have them.

He also told the children that they could come to get their mother's belongings, but he wanted to be present when they did.

On Sunday, October 10, Mr. Goethe sent a message to Lindsay Waters and told her the children should come and pick up their mother's belongings by 2 p.m. Mr. Goethe said he had purchased nine tote boxes. He and his family packed them with items from Barb's closet and left them on the porch, along with 3 boxes and two bags.

Mr. Goethe was not at his house when the children got there. After looking at the items, the children concluded that more of Ms. Waters' property was still in the house. They tried unsuccessfully to call Mr. Goethe, and Lindsay went to Mr. Goethe's mother's home looking for Kevin. After some heated discussion, Kevin's sister-in-law told Lindsay that she had a key to Kevin's house, and that she could go in. Mr. Goethe testified that he had not given anyone authority to go into the house; in fact he had said he wanted to be there when Ms. Waters' belongings were removed.

Sarah, Lindsay, and Matt Waters went into Mr. Goethe's house and removed almost everything they thought was their mother's. Mr. Goethe testified when he returned, it looked to him like the house had been "ransacked," and pictures received as an exhibit supported that description. Family photographs were removed, and in one case, a photo of Ms. Waters and Mr. Goethe was ripped in two, with Mr. Goethe's part of the photo returned to the frame and Ms. Waters' part of the photo taken. Other pictures of Mr. Goethe were turned face down and left that way.

Some items, including Chauncey the dog, were left in Mr. Goethe's house. As part of the court process, lists of items were exchanged that the parties respectively claimed. Some items of Ms. Waters' jewelry were in Mr. Goethe's safe and remain there.

Some items taken by the children were returned during the January 31 court hearing, including some photos. Some items, like Christmas ornaments made of Swarovski crystal, which Mr. Goethe claimed were worth \$1500, were on a mantelpiece. Mr. Goethe testified the items were gone. The children testified they had not taken them. The list Mr. Goethe filed of items that were taken said that he was unable to recall or identify all of the items that were taken.

Mr. Goethe disposed of some items that belonged to Ms. Waters. He sold her sewing machine, which he had bought for her. He gave her jewelry cabinet to his sister-in-law. He apparently still has an item the parties describe as an “angel doll,” but he testified he will return it to the estate.

CONCLUSIONS OF LAW

This case is a textbook example of the headaches, heartaches, and expense that can result from inadequate estate planning. The people involved tried to do what they thought was right, or what Ms. Waters wanted, regardless of the legalities. The court cannot in good conscience adopt either extreme position: neither Mr. Goethe’s, that everything in the house belonged to him if he bought it; nor the children’s, that they should be entitled to anything their mother had any connection with, regardless of who bought it or how it was used.

It is understandable that parties might try to accomplish things Ms. Waters said she wanted, but there is a difference between saying or writing down what you hope will happen and taking the proper legal steps to assure that a court will enforce your intentions. This court is left to balance the legalities and the realities as best they can be balanced.

The first and most important reality is that items of personal property that belonged to Ms. Waters at the time of her death should belong to her estate and ultimately be distributed to her children.

Ms. Waters had the ability to take things out of her estate by making gifts while she was alive. A gift requires both an expression of intent and delivery, or relinquishment of control. This court finds based on Mr. Goethe's testimony, that Ms. Waters expressed an intention that Mr. Goethe should receive her opal necklace and her tiger-eye necklace. Delivery of these items took place because they were in a common area where both he and Ms. Waters had access to them. Mr. Goethe later confirmed the delivery when he placed them in his safe, where they were under his exclusive control.

Ms. Waters' jewelry chest was conveyed to Mr. Goethe's sister-in-law after Ms. Waters' death. The jewelry chest belongs to Ms. Waters' estate and must be returned. Ms. Waters' sewing machine falls into the same category. Mr. Goethe must pay the estate the \$125 he received when he sold the sewing machine.

Ms. Waters' children had the opportunity to remove items they believed belonged to their mother from Mr. Goethe's house, although they did so without his permission and in a manner that can at best be described as "offensive". Mr. Goethe's testimony both on January 3 and January 31, 2001, can be interpreted to mean that he was withdrawing his claims for the return of some, but not all of those items. The family photographs are one of the exceptions. This court finds that the estate is not entitled to sole possession of every picture of Ms. Waters. Some photographs were returned to Mr. Goethe during the January 31 hearing. In the event that Mr. Goethe requests the return of additional

photographs, this court retains jurisdiction to order the return of other photographs, or their duplication at estate expense.

Other items have disappeared. Mr. Goethe credibly testified that there was a pink table runner in his house before the children removed items. The runner is now gone. The same applies to the Swarovski crystal items Mr. Goethe claimed were worth \$1500. These items were in the home before the children entered it. They all testified that the items were not removed. Based on that testimony, the court finds they abandoned the estate's claim to these items. However, Mr. Goethe has been deprived of them and is entitled to compensation.

Both sides of this case have claimed Chauncey, the Maltese terrier. Mr. Goethe purchased the dog and claimed it was registered with the American Kennel Club in his name. Nearly everyone who testified said that Chauncey was "Barb's dog". Ms. Waters, in her written expression of her wishes, said Sarah should get Chauncey. Mr. Goethe testified that he talked to Ms. Waters twice during her last illness and said Sarah should not get the dog. Chauncey has been living with Mr. Goethe for the six months since Ms. Waters' death. This court determines that Chauncey should be awarded to Mr. Goethe in lieu of compensation for items which either disappeared from his house or items to which he might have had a reasonable claim as household items he owned in common with Ms. Waters.

The other dog, Maddie, was a completed gift to Matt Waters and should be delivered to him.

The gold-colored flatware was purchased by Mr. Goethe and apparently used as a household item. Mr. Goethe may retain it.

The cookie sheets, ice cream scoop, and pot holders may be retained by the estate.

This estate has been open since November 19, 2010. Because of the dispute over ownership of items, an inventory has not yet been filed. An inventory should be filed within thirty days of the date of this order. All of the items returned by Mr. Goethe or removed from his home should be valued and included in the inventory. This court retains supervision over the estate.

IT IS HEREBY ORDERED:

- 1.) That disposition of disputed property shall be as stated in the foregoing opinion;
- 2.) The complaint for conversion against Kevin Goethe is HEREBY DISMISSED.
- 3.) The request for imposition of a constructive trust is HEREBY DENIED.
- 4.) The request for imposition of costs and attorney fees against Kevin Goethe is HEREBY DENIED.

DATED:

HONORABLE MICHAEL J. ANDEREGG P10166
Probate Judge