

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1751

**IN THE MATTER OF THE SUCCESSION
OF JANET JEFFREY PHILLIPS**

CONSOLIDATED WITH

NO. 2009 CA 1752

**IN THE MATTER OF THE SUCCESSION
OF CAREY A. PHILLIPS**

Judgment Rendered: June 11, 2010

**Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Case No. 13987 c/w 14130**

The Honorable Ralph Tureau, Judge Presiding

**Anthony T. Marshall
Gonzales, Louisiana**

**Counsel for Appellants
Eric Williams, Kim Williams,
Stanley Phillips, Stella Clinton,
and Barry Williams**

**Ben R. Miller, Jr.
Scott D. Huffstetler
Baton Rouge, Louisiana**

**Counsel for Appellees
Successions of Janet Jeffrey Phillips
and Carey A. Phillips**

BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

McCleendon, J. concurs and assigns reasons.

GAIDRY, J.

In this matter, five out of sixteen legatees appeal a trial court judgment homologating the revised final accounting and ordering the legatees to restore to the succession money received by them to which they were not entitled. We affirm.

FACTS AND PROCEDURAL HISTORY

This matter involves a dispute over the statutory testaments of Carey A. Phillips, who died on July 6, 2005, and Janet Jeffrey Phillips, who died on December 8, 2005. Letitia Lowe-Ardoin, the Phillips' certified public accountant, and Francis Z. Williams, a relative of the Phillips, were appointed as independent co-executors as provided for in the testaments. The successions, which both named the same sixteen equal legatees, were consolidated on March 29, 2006.

On June 20, 2007, the first annual accounting of the independent co-executors was homologated with no opposition filed by any of the legatees. On October 19, 2007, the independent co-executors filed a petition for final accounting and for possession. Legatees Eric Williams and Kim Williams filed a rule to traverse the final accounting on November 2, 2007, requesting a new detailed final accounting, on the grounds that the accounting by the independent co-executors was insufficient and lacked any detailed and supporting documentation. On December 18, 2007, the court homologated the final account and placed the universal legatees in possession of one-sixteenth of the remaining property, noting that the opposition of Eric Williams and Kim Williams had been resolved and no other oppositions had been filed.

On December 15, 2008, the independent co-executors filed an amended petition for amended final accounting due to an error in the final

accounting which resulted in an overpayment to each of the legatees of \$11,547.36. The independent co-executors filed a rule to show cause why the legatees who had been inadvertently overpaid should not return the funds which they had no right to receive.

Legatees Eric Williams, Kim Williams, Stanley Phillips, Stella Clinton, and Barry Williams (collectively, "the opposing legatees") filed an opposition to the amended accounting and asked the court to defer ruling on the amended final accounting until the legatees could have an independent accounting done to make sure that the estate was administered properly. At a February 2, 2009 hearing on the matter, the opposing legatees told the court that they were not trying to get out of repaying any amount they owed, but were only asking the court to allow them to have an independent accounting prior to the legatees being ordered to repay the money. Accordingly, an independent certified public accountant was appointed to review the final accounting; that accountant confirmed that the amended final accounting was correct and that the legatees received funds to which they were not entitled. Another hearing was held on April 6, 2009, at which the opposing legatees argued that even though the independent accountant confirmed that the amended accounting was correct, they were still opposed to the homologation of the amended accounting because they were not given access to all of the supporting documentation.

The court noted that the opposing legatees had requested an independent accounting and had received an independent accounting. Based upon that independent accounting and the other evidence before it, the court homologated the amended final accounting and ordered the legatees to restore to the Successions the funds they received in excess of the amount to which they were entitled. This appeal followed.

DISCUSSION

On appeal, the opposing legatees argue that the court erred in homologating the final accounting without allowing them to review detailed financial records of the succession. However, a review of the applicable law reveals that the legatees were not entitled to this sort of detailed accounting.

Louisiana Code of Civil Procedure article 3333 provides that when an accounting is requested by legatees, it shall show “the money and other property received by and in the possession of the succession representative at the beginning of the period covered by the account, the revenue, other receipts, disbursements, and disposition of property during the period, and the remainder in his possession at the end of the period.” Positive and direct proof of every item is not required. *See Succession of Wederstrandt*, 19 La. Ann. 494 (La. 1867). Accordingly, the co-executors’ accounting is satisfactory and the court did not err in homologating the amended final accounting and ordering the legatees to repay money to which they were not entitled.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed to the appellants, Eric Williams, Kim Williams, Stanley Phillips, Stella Clinton, and Barry Williams.

AFFIRMED.

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McCLENDON, J., concurs and assigns reasons.

Given that the opposing legatees requested and received an independent accounting, I concur with the result reached by the majority. However, I disagree with the majority's analysis to the extent that the opinion seems to bar the ability of legatees to investigate representations made in the final accounting of successions.