IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAILA M. QURESHI	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
EXECUTORS OF MANZOOR H.	:	
QURESHI'S ESTATE, et al.	:	NO. 04-03869

M E M O R A N D U M O R D E R

December 13, 2004

Gene E.K. Pratter, J.

AND NOW, this 13th day of December, 2004, upon consideration of the 1) Motion for Appointment of Counsel and 2) Motion to Proceed In Forma Pauperis, filed by Naila M. Qureshi ("Plaintiff") on August 16, 2004, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion to Proceed In Forma Pauperis is GRANTED; however,

2. Plaintiff's Motion for Appointment of Counsel is DENIED because this Court lacks jurisdiction in this matter pursuant to Federal Rule of Civil Procedure 12(b)(1) ("lack of jurisdiction over the subject matter"), as explained in greater detail below.

Based upon the plain language of the pro se Complaint and the Motion to Proceed In Forma Pauperis filed by Ms. Qureshi, the nature of the matters complained about are of the type properly addressed by the Orphans' Court Division of the Court of Common Pleas for the county in which (a) the decedent resided or (b) the widow resides. Moreover, there is no indication in the handwritten Complaint or the Motion to Proceed In Forma Pauperis that Qureshi's cause of

action could be heard by a federal court in the exercise of diversity jurisdiction. See 28 U.S.C. § 1332.

Recognizing that Ms. Qureshi is a pro se litigant, the Court finds it appropriate to provide additional explanation to her as to the reason for the dismissal of her complaint. Thus, if Ms. Quireshi seeks and secures counsel[1] to pursue her claims in the proper forum, such counsel will have this additional background information.

Federal courts are empowered to hear disputes between citizens of different states. Id. However, there is a probate exception to federal courts' exercise of diversity jurisdiction. See Golden v. Golden, 382 F.3d 348, 354 (3d Cir. 2004) (citing Markham v. Allen, 326 U.S. 490 (1946); Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 45 (1909); Moore v. Graybeal, 843 F.3d 706, 709 (3d Cir. 1988)).

As a matter of background, in 1874 the United States Supreme Court found that "a court of equity will not entertain jurisdiction of a bill to set aside a will or the probate thereof" and, as a result, dismissed the action before it. In re Broderick's Will, 88 U.S. (21 Wall.) 503, 509 (1874). The Supreme Court's analysis explained that the Judiciary Act of 1789 and its progeny granted our federal courts **equitable** powers coextensive with those held by the English Chancery Court in 1789. Golden, 382 F.3d at 357 (citing the Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 78; Markham, 326 U.S. at 494; Canal-Louisiana, 215 U.S. at 43). However, the federal courts were not granted the power to probate a will or administer an estate because, at the time the Judiciary Act of 1789 was enacted, probate matters in England were assigned to the ecclesiastical courts and not the Chancery Court. Id; see also, Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988);

[1] The bar association in the county where plaintiff resides may be able to refer her to trusts and estates attorneys willing to consider pro bono or other representation.

Rice v. Rice Found., 610 F.2d 471, 475 (7th Cir. 1979). Similarly, with regard to the power to provide **legal** relief, American federal courts' power was limited by the Judiciary Act of 1789 to be coextensive with the English common-law courts. Golden, 382 F.3d at 357 (citing Markham, 326 U.S. at 494; Rice, 610 F.2d at 475). Hence, probate matters were excluded. This probate exception covers both "pure" probate matters and those matters "ancillary" to probate. See, e.g., Farrell v. O'Brien, 199 U.S. 89, 110 (1905); Dragan v. Miller, 679 F.2d 712, 715 (7th Cir. 1982), cert. denied, 459 U.S. 1017 (1982); Rice, 610 F.2d at 475. However, "strictly in personam disputes, whose subject matter relates only incidentally to probate, can be maintained in federal court because the exercise of jurisdiction under such circumstances would not 'interfere with the probate proceedings or [require the court to] assume general jurisdiction of the probate or control of the property in the custody of the state court.'" Golden, 382 F.3d at 358 (quoting Markham, 326 U.S. at 494).

Therefore, in Golden, the Court of Appeals for the Third Circuit articulated a number of principles to be followed by this Court, with regard to probate matters, in order to consider whether a federal court may maintain jurisdiction over a probate-related matter such as the one that appears to be at the heart of Ms. Qureshi's complaint. First, federal courts lack the power to probate a will. Markham, 326 U.S. at 494. Second, if a will has been probated, allowing an action seeking (expressly or in fact) to challenge or contradict the judgment of the probate court is normally deemed an impermissible interference with probate. See Moore, 843 F.2d at 710; see also, Georges, 856 F.2d at 973. Similarly, the probate exception prohibits federal courts from deciding claims challenging management of the estate, such as Ms. Qureshi seeks this Court to do here. See Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 465-67 (1939). Third, nevertheless, a federal court may exercise jurisdiction over an otherwise excluded probate-

related matter if the matter would be maintainable inter partes in the respective state courts of general jurisdiction, such as the courts of common pleas in Pennsylvania. Golden, 382 F.3d at 358 (citing Sutton v. English, 246 U.S. 199, 205 (1918); Farrell, 199 U.S. at 110-11; Moore, 843 F.3d at 709). Thus, a state may constrict the scope of the probate exception (and thereby expand the potential jurisdiction of the federal courts) by allowing its courts of general jurisdiction to decide challenges to probate. See Golden, 382 F.3d at 358.

In other words, a federal court has the power to entertain in personam diversity actions if their resolution will not undercut the past probate of a will or result in the federal court "assum[ing] general jurisdiction of the probate or control of the property in the custody of the state court." Id. (quoting Markham, 326 U.S. at 494). Thus, if relief could be granted by the federal court without challenging the probate court's determinations or management of the res (the assets of the estate at issue), the exercise of federal jurisdiction will not interfere with the probate and is permitted. Golden, 382 F.3d at 358. Accordingly, if the claims are maintainable inter partes in the state courts of general jurisdiction, the state has presumably decided that, as a matter of law, such actions would not disrupt the business of the state probate courts. Id.

With regard to Ms. Qureshi's handwritten complaint, however, Pennsylvania law does not vest in its courts of general jurisdiction (i.e., the courts of common pleas) any power to establish rights in an estate based on theories such as undue influence, forgery or breach of fiduciary duty of the administrator. See Golden, 382 F.3d at 362. The jurisdictional result may be different, however, if Ms. Qureshi had filed a properly drafted complaint for the tort of fraud, for which she may have had a viable cause of action and thereby may permit the Court to maintain jurisdiction based on the diversity of the parties. See 28 U.S.C. § 1332.

Fraud is a well-established tort in the Commonwealth of Pennsylvania. See, e.g., Gibbs

v. Ernst, 538 Pa. 193 (1994). However, in such a situation, for the Court to maintain jurisdiction, a complaint based upon a theory of fraud could not in any way challenge the Orphans' Court probate of the estate of Monzoor Qureshi. See Golden, 382 F.3d at 362. Similarly, Golden suggests that a claim for tortious interference with inheritance could also be heard by a federal court exercising its diversity jurisdiction. Id. at 364. In such circumstances, regardless of the fact that the tort is necessarily entwined with probate, a cause of action for interference with inheritance is a claim brought in personam, id, and the Pennsylvania state courts recognize tortious interference with inheritance as a viable a legal theory, which the courts of general jurisdiction are empowered to hear. Id. (citing Mangold v. Neuman, 91 A.2d 904, 907 (Pa. 1952); Cardenas v. Schober, 783 A.2d 317, 325-26 (Pa. Super. Ct. 2001)).

Therefore, for the reasons stated above, and because the Court could not determine, based on a very indulgent reading and review of the Complaint, that Ms. Qureshi's allegations qualify to be heard by this Court pursuant to diversity jurisdiction, her Complaint must be DISMISSED, without prejudice. In doing so, the Court emphasizes that, with the assistance of counsel, Ms. Qureshi may well muster such facts and contentions to submit a viable complaint to this Court or to the appropriate Orphans' Court Division of a county court of common pleas, depending upon how integral true probate issues are to her claim.

It is so ORDERED.

BY THE COURT:

/S/
GENE E.K. PRATTER, J.
UNITED STATES DISTRICT JUDGE