



OUTER HOUSE, COURT OF SESSION

[2021] CSOH 59

P459/20

OPINION OF LADY POOLE

In the petition

PAOLO CIARROCCA

Petitioner

against

ANDREA CIARROCCA

Respondent

Petitioner: Party
Respondent: Party

2 June 2021

Introduction

[1] This is a petition to the court in connection with the estate of the late Ann Sherrede Ciarrocca (the “**deceased**”). She died on 18 September 2017. She left a will appointing two of her sons, Andrea Ciarrocca (“**AC**”) and Paolo Ciarrocca (“**PC**”), as her executors.

Confirmation was granted on 19 March 2018. The estate of the deceased has not yet been distributed due to difficulties between the executors. PC has therefore brought this petition for removal of AC as executor. I heard proof and submissions over 2 days from 18 May 2021. On the basis of the factual findings and reasons set out below, I have decided that AC should be removed from the office of executor of the deceased.

Factual findings

[2] The deceased had three sons, Marco Ciarrocca (“**MC**”), AC and PC. The deceased was married to Stefano Ciarrocca, the father of MC, AC and PC. The deceased and Stefano Ciarrocca went through a process of legal separation in Italy. Lawyers were involved in reaching a separation agreement in approximately 2010, among other things dividing up matrimonial property, and matters were resolved amicably.

[3] The deceased lived for some time in a flat in Haven Green in London (the “**London property**”). In approximately 2012 the deceased decided to move to Edinburgh. Two of her sons lived in the Edinburgh area; PC lived in Bonnyrigg, and AC had his own flat in Silvermills (the “**Silvermills flat**”). MC lived in Berlin. In order to put the deceased in funds to buy a flat in Edinburgh, MC bought a half share of the London property. Chartered surveyors called Buntings valued the London property. The deceased sold a half share of the London property to MC in an arm’s length transaction involving lawyers, at an agreed purchase price of half of the valuation by Buntings. The deceased required to pay capital gains tax on the sale, and the chartered surveyors confirmed the purchase price to the tax authorities. Thereafter MC and the deceased rented the flat in London to tenants through a letting agent called Match a Property (the “**London letting agents**”), and divided the net proceeds of rental equally. Using the proceeds of sale of half of the London flat, the deceased bought a flat in Edinburgh in Hopetoun Street (the “**Edinburgh property**”).

[4] In 2015, while living in Edinburgh, the deceased became ill with cancer. Private nursing carers were ultimately engaged to help with her care. Her sons would visit her, although MC less so as he lived in Berlin. AC visited the deceased frequently. He would sometimes stay overnight in the Edinburgh property, particularly when his mother’s health

worsened, although his residence was the Silvermills flat. AC also accompanied the deceased to some medical appointments. The deceased died on 18 September 2017 in St Columba's hospice in Edinburgh.

[5] The deceased left a will dated 22 June 2017 which was registered on 11 October 2017. In her will, the deceased declared her domicile as Scottish. She appointed AC and PC as her executors. She directed her lawful debts and funeral expenses to be settled from her estate, and left the residue to be divided equally between her three sons, AC, PC and MC.

[6] Campbell Smith LLP were instructed jointly by AC and PC as solicitors in the executry. Campbell Smith acted in this role until 19 July 2019 when, acting on advice from the Law Society, they withdrew from acting, due to AC having at that point told them they were not authorised to act on his behalf. AC also queried one of their bills, and in late 2019 Campbell Smith agreed to write it off to bring their involvement to a conclusion.

[7] During the period they acted as executry solicitors, Campbell Smith submitted the application for confirmation on behalf of the estate. AC's address given in both the will and the application for confirmation was the Silvermills flat. Confirmation was granted on 29 March 2018. The total estate for confirmation was £780,838.66. It included the Edinburgh property, valued at £280,000 at the date of death. Furniture, contents and personal effects were valued in the inventory for confirmation at £2,000. Bank accounts were also included, totalling over £143,000. The estate also included the deceased's share of the London property, valued at £355,000 for the half share at the date of death. (That valuation had again been carried out by Buntings. Buntings had been instructed due to their prior knowledge, having previously valued the London property in 2012.) The estate attracted an inheritance tax liability. The money in the bank accounts covered most of the tax liability, but there was a shortfall. Stefano Ciarrocca gifted funds to the estate to meet the balance of

this liability so confirmation could be granted. The only assets remaining in the estate for division thereafter were the Edinburgh property, the half share of the London property, and the furniture, contents and personal effects in the Edinburgh property.

[8] In approximately October 2017, after the death of the deceased, AC went to reside in Berlin where his brother MC and his family lived. AC arranged for Royal Mail to redirect his mail to PC's house in Bonnyrigg (Royal Mail wrote to him there on 18 June 2018 to say his redirection service ended on 11 July 2018). On arrival in Germany AC initially stayed with MC, but from 12 November 2017 AC took a tenancy in Berlin. MC assisted him with finding a flat to rent, obtaining a residence permit, and enrolling on a language course. While AC was away he rented out his Silvermills flat, having entered into a one year tenancy agreement to let it to tenants on 1 October 2017.

[9] Initially after the death of the deceased the three brothers amicably worked together to try to work out the best way of dividing the remaining assets in the estate between the three beneficiaries. MC did not want to give up the half share he already owned of the London property, but recognised it would be difficult to realise the deceased's half share in the open market if he was still co-owner. MC therefore offered to take the half share of the London property, and make a balancing payment to the estate for the amount its value exceeded his one third share in the residue. On 12 April 2018 AC emailed PC and MC to say he agreed to MC's proposal that the estate was divided so PC and AC owned 50% each of the Edinburgh property, and MC took the half share of the London property, paying the difference in value of £143,000 to PC and AC.

[10] That agreement did not work out, due to issues with MC obtaining a mortgage, and AC emailing on 14 May 2018 that he thought London property prices had gone up and he wanted to convert his assets into cash. Since that time, many proposals and counter

proposals have been made as to the division of the estate, none of which have come to fruition. They have involved various permutations, for example PC taking the entirety of the Edinburgh property and he and MC transferring cash to AC, or AC becoming sole owner of the Edinburgh property by selling his Silvermills flat to enable him to make a balancing payment to the other beneficiaries, and so on. It has never been possible to reach agreement for varying reasons, one time because PC's acceptance of a proposal was conditional on the three brothers meeting to divide the contents of the Edinburgh property which AC did not agree to, another time because AC wanted a revaluation of the properties and PC did not consider it necessary, and other times because AC made claims unsupported by any evidence that there should be additional assets of varying values in the estate, which neither PC nor MC considered were well founded.

[11] In 2018, relationships started to deteriorate between the brothers. There had been a plan for all three to meet in the Edinburgh property on 16 and 17 June 2018 to divide the contents. AC had emailed PC and MC on 30 April 2018 to say he would be in Edinburgh from 15 to 19 June 2018. MC met AC at the airport in Berlin, as they were on the same flight to the UK, but AC indicated he wanted to be left alone. AC did not make it onto the plane, and did not turn up to the meeting in Edinburgh. MC and PC therefore made a photographic inventory of what was in the flat. They did not divide the contents in AC's absence. On 1 July 2018 AC emailed PC saying that he had decided he would no longer be communicating with MC.

[12] Some time after that, AC returned to Edinburgh. Without prior reference to or agreement with either PC or MC, AC went to live in the Edinburgh property, rather than his own Silvermills flat. On 5 September 2018 AC emailed his tenants of the Silvermills flat to renew the lease for another year at an increased rent. PC went to the Edinburgh property as

part of his occasional checks on it. He discovered AC was living there. PC emailed AC on 19 October 2018 to say he had learned that morning that AC was staying in the Edinburgh property, and MC and PC agreed that AC should not be staying there. AC changed the locks on the Edinburgh property without giving either PC or MC a key. Campbell Smith, the estate solicitors, wrote to PC and AC on 11 March 2019 to say both executors were entitled to access to the Edinburgh property and should have keys. They wrote again on 16 July 2019 to say executors should all have keys, and that neither had a right to take sole control of the property. Nevertheless, AC resided in the Edinburgh property for a period of about 22 months until July 2020, and only moved out after the present petition had been brought. While there AC did not pay any rent to the estate. Meantime he rented out his Silvermills flat either to tenants, or on Airbnb where it was listed at between £100 and £120 a night. He met a number of ongoing expenses in relation to the Edinburgh property while he was living there, including some council tax, and factor expenses including insurance. In July 2019, AC changed the utility bills for the Edinburgh property, such as gas and electricity, into his sole name. He also changed the council tax bills into his own name. He upgraded the ensuite bathroom in the Edinburgh property, having obtained an estimate for this work of £5,400, half to be paid in cash, from a Mikey Fung of Edinburgh Home Improvements.

[13] AC suggested to PC that they meet with the estate solicitors in October 2018. PC asked AC what the meeting was to be about, because lawyers' fees were expensive. PC did not consider that any of the matters raised by AC in response warranted advice from solicitors that had to be obtained in a meeting which he would have to take time off work to attend, rather than by using email or phone. AC then obtained a further property valuation of the London property on 26 October 2018 from the London letting agents. The valuation

was that the London property should be placed on the market for between £750,000 and £775,000 to achieve a sale figure in the region of £725,000 (the date of death valuation for confirmation was £710,000).

[14] The furniture, furnishings and personal effects in the Edinburgh property were not of high value (in the estate inventory they had been valued at £2,000). Nevertheless, as the possessions of their mother, they had a high sentimental value to MC, PC, and AC. After the planned meeting in June 2018 to divide the contents of the Edinburgh property had been unable to go ahead due to AC's absence, AC did not agree to a further meeting to divide the contents. Instead in February 2019 AC unilaterally sent four packages by DHL to PC containing some of the contents of the Edinburgh property with a declared value of £300, and incurred DHL charges in doing so. PC described the packages as containing a "hodge podge of random things" such as a broken iron, books, and other broken and damaged items. AC did not send any items directly to MC. He suggested in effect that lifetime gifts by the deceased should be MC's share, or PC could give him some of the items he had sent PC. AC retained the rest of the contents while living in the Edinburgh property.

[15] AC decided personally to instruct a firm of solicitors to advise him. Campbell Smith were at this time still acting as the executry solicitors. PC received a letter from Gibson Kerr acting on behalf of AC on 11 February 2019. It contained one of the many proposals and counter proposals made in the executry, to the effect that AC would become sole owner of the Edinburgh property in return for AC making balancing payments, and later on 20 February 2019 that AC should be given credit for estate expenses he had borne in relation to the Edinburgh property. PC said he would agree to the transfer of the Edinburgh property to AC if the three beneficiaries would meet in the Edinburgh property to divide up its contents which were of sentimental value. AC did not agree to that condition, on the

basis he had already divided the contents. Gibson Kerr wrote again on 5 April 2019 suggesting among other things that the Edinburgh property was revalued with a view to AC making a proposal about division after that, AC continuing to live in the Edinburgh property retaining the keys meantime, and the London property being revalued. By this time PC had decided he also needed to be personally advised and had instructed Ferguson Law. After a joint meeting including clients was suggested by Ferguson Law on 25 April 2019 and declined, Ferguson Law recommended PC instruct litigation solicitors Blackadders. Gibson Kerr stopped acting on behalf of AC around about this time. Blackadders wrote to AC on 27 June 2019 making another proposal on behalf of PC that included revaluation of the Edinburgh and London properties in view of the time which had elapsed since the date of death valuations. On 30 June 2019 AC responded to Blackadders disputing the propriety of how the division of the estate was being progressed.

[16] AC also took steps to try to obtain the proceeds of rental income on the London property. The share of the rental income from the London property due to the estate was originally paid by the London letting agents into an estate account held by Campbell Smith as executry solicitors. Outgoings on the estate, such as Campbell Smith's fees and factor's expenses on the Edinburgh property, were met from this rental income. On 4 May 2019 AC emailed the London letting agents without copying in PC. He gave his personal bank account details and asked all letting revenues to be paid into it (even though the estate could have at most a claim to half of them). The London letting agents responded that revenues were paid under pre-existing arrangements, but if a mandate from co-executors was obtained then that could be actioned. After Campbell Smith had withdrawn from acting as executry solicitors on 19 July 2019, they ceased to maintain the estate account into which rental income had been paid by the London letting agents. Since that time the London

letting agents have retained the half share of rental income owned by the estate in an account, pending distribution of the estate. (On 9 October 2020 the London letting agents forwarded a statement showing that they were paying half of the rental income for the London property to MC and the other half into an account for the deceased's estate, which at that point sat at £7,780.26.) On 22 July 2019 AC emailed the London letting agents requesting the rental income of the half share of the London property to be paid half to him and half to PC, without having consulted PC or obtaining his consent as co-executor. On 22 July 2019 PC requested the London letting agents disregard the entirety of AC's email, using intemperate language including that AC was making an attempt to illegally use estate funds for personal use. AC then made a further attempt to annex rental income on the London property through the medium of a limited company. On 19 August 2019 a company called Ventivo Ltd was incorporated as a private company limited by shares. AC was the director and sole shareholder. AC issued a first invoice on 3 February 2020 from Ventivo Ltd addressed to the estate of the deceased, seeking to claim £2,984 which represented the bill for his personal legal advice from Gibson Kerr of £2,864 and £120 said to be due to Campbell Smith. On 5 February 2020 AC sent a second invoice from Ventivo Ltd this time addressed to the London letting agents, for the sum of £3,104, to cover the legal bills just mentioned and an additional £120 for "legal advice on 4 February 2020 for rental income payment" (which appeared to cover legal advice he had in effect given himself). The London letting agents had never had any contractual or other relationship with Ventivo Ltd. PC wrote to the London letting agents on 7 February 2020 refusing permission as co-executor for funds to be released to Ventivo Ltd or AC, and saying he and MC had received legal advice that AC's actions were attempted fraud. On 17 February 2020 debt collectors called Wilkins Hope & Co, instructed by Ventivo Ltd, started to pursue the

London letting agents for the debt allegedly due under the second Ventivo Ltd invoice. PC and MC contacted the debt collectors who decided to take no further action once the situation was explained to them. AC's actions caused friction with the London letting agents, who were not sure they could continue letting out the London property given AC's actions. MC was concerned about this because he lived in Berlin and relied on the London letting agents to deal with his half share of the London property. It would also have been disadvantageous to the estate if the London letting agents had withdrawn, because of the potential problems that would have created with the collection of the estate's half share of rental income. MC had a longstanding relationship with the London letting agents, and after discussing matters they agreed to continue after MC said he would keep AC under control. MC was annoyed about AC's actions. MC considered that by this time AC had tried to take over the Edinburgh property and was now trying to take over the London property too. MC sent AC an intemperate email on 25 February 2020 among other things calling AC a conman.

[17] AC made a number of attempts to claim sole ownership of the Edinburgh property. In August 2019 AC sent a document to Blackadders, who were at the time acting for PC, headed up "Ann Ciarrocca's Estate" and claiming amongst other things that he was the owner of the Edinburgh property. In the same document he inconsistently claimed he was owed more than £50,000 by the estate, then £15,000 by the estate. On 9 September 2019 he emailed the London letting agents and PC saying among other things that he was assuming that the Edinburgh property was his. AC wrote to Blackadders on 19 September 2019 saying among other things that since he had not heard from them he would proceed to transfer the Edinburgh property into his name, and asked them to let him know if they could help him with the title deeds of his property. Blackadders responded that it was not legally possible

for AC to transfer the property into his name unilaterally. At times AC claimed the Edinburgh property had been his home since 2016. This was not true, because his places of residence had been the Silvermills flat and Berlin, until taking up residence in the Edinburgh property in 2018 without the consent of the co-executor and other beneficiaries. It was also irrelevant because the Edinburgh property was owned by the deceased and formed part of her estate, to be distributed in accordance with the terms of her will. AC also started making unsubstantiated claims that more money was due to the estate from family members. For example in 2019 he started to claim MC had not paid enough for his half share of the London flat in 2012, and his father Stefano Ciarrocca should have given the deceased more in the Italian legal separation settlement in 2010. No such debts had been contained in the estate confirmed to. AC suggested that the notional amounts of these debts should be PC and MC's share of the estate along with the London property, and AC should take the entirety of the Edinburgh property. AC produced no evidence for these allegations, and no professional advice that there were any such claims, or if there were that they subsisted despite the lapse of time. The sale of the half share of the London flat had proceeded on the basis of a professional valuation. Both it, and the legal separation settlement, had involved arm's length transactions with the involvement of lawyers. AC's allegations came at a time when he was seeking to justify taking the whole of the Edinburgh property. The value of the Edinburgh property in the inventory for confirmation was considerably more than a one third share of residue. If AC had taken the whole of the Edinburgh property, it would have been an unequal share of the residue of the estate confirmed to, to the detriment of other beneficiaries.

[18] On 28 February 2020, PC gave notice to AC to vacate the Edinburgh property by 10 April 2020 or an action would be raised. On 3 March 2020 PC again wrote to AC saying

he must vacate the Edinburgh property by 10 April 2020 to avoid court action, as AC had no right or title to stay there as it was estate property. That day AC wrote to PC saying he had not answered his questions or given any proposals, and saying things AC had done were legitimate expenses (and he had saved the estate having to pay one of Campbell Smith's invoices), and requesting PC either to be "propositive" or step down. On 4 March 2020 AC wrote further emails to PC. AC accused PC of slandering and threatening him and said among other things "Since we do not get along, and I do not trust you the best solution is to proceed in writing".

[19] PC then decided to instruct Brodies LLP to litigate on his behalf because he preferred the litigation strategy they suggested to one suggested by Blackadders. On 15 May 2020, Brodies wrote to AC to say they had been instructed by PC to bring an action to remove AC as executor. They offered two numbered options for division of the estate, failing which court action would be brought. AC wrote back on 16 May 2020 to Brodies to dispute what was said, saying among other things that he had been officially resident in Edinburgh since 2010, PC had refused to attend a meeting with the estate solicitors, PC had behaved illegally and incompetently and made false accusations, and AC was due expenses incurred in the executry. AC further emailed on 19 May 2020 to say that he required a formal apology. The petition was brought and first orders were granted by the court on 2 June 2020.

[20] AC removed from the Edinburgh property in June 2020. After that there was activity trying to get the Edinburgh property on the market by both AC and PC. Although by then the petition had been brought, PC still wished to try to resolve matters without the expense of the court action. On 28 June 2020 AC wrote to Brodies with a proposal for the Edinburgh property to go on the market, and MC buying a 50% share of the London property, with the

petition being cancelled. On 30 June 2020 AC wrote to Brodies saying he would have to lodge answers to the petition and he also wanted an apology and compensation. On 2 July 2020 AC wrote to Brodies expressing a desire to get the Edinburgh property on the market by the end of July 2020. On 6 August 2020 PC wrote to AC to say he had arranged an appointment with an estate agent to proceed with putting the Edinburgh property on the market. He stated that as it was his right as an executor to have access and that the estate agent needed to be able to view the property, he had had the locks changed, but had a set of keys made for AC and AC should let him know how he wanted PC to give them to him. AC's response was to email Brodies that day saying he had called out a locksmith after PC had changed the locks. AC was issued an invoice by Edinburgh (Forth) Lock and Security £80 for opening and replacing a euro lock on 5 August 2020. AC had also contacted the police on 5 August 2020 to report that there had been a break in. The police, after making investigations including speaking with PC wrote to AC saying "As I stated earlier, this will remain as part of the ongoing civil matter and will not require any further police involvement". The meeting PC had suggested to AC with the estate agent was not able to happen. On 11 August 2020 PC wrote to AC to say he had finally managed to access the Edinburgh property and was appalled at the state it was in. Other issues were raised in the letter, including the need for AC to give PC keys unconditionally, asking AC to provide him with details of the estate agent he was dealing with, and suggesting they have an exploratory meeting with prospective new executry solicitors. On 12 August 2020 AC then wrote to Brodies saying they should tell PC to stop sending him emails as he was harassing him. On 26 August 2020 PC wrote to AC to say he had instructed an estate agent to obtain a valuation of the rent due to the estate due to AC's occupation of the Edinburgh property and a valuation for sale. PC again said he would have a locksmith change the locks and would

give AC a set of keys. AC responded to Brodies on 26 August 2020 saying there was a new security lock on the Edinburgh property, and to obtain the keys PC needed to meet two conditions (which were payment of £6,000 and a formal apology). AC sent later correspondence demanding to be refunded and an apology. AC did not discuss with PC either which estate agent was to be used for marketing the property, or modalities such as where proceeds of sale would be paid. AC unilaterally put the Edinburgh property on the market. PC then contacted his solicitor on 6 September 2020 to say he was shocked to find out that AC had put the Edinburgh property on the market without PC's involvement. By then PC had lost trust in AC and had been checking property listings, and saw the Edinburgh property there. The agents AC had instructed had put the Edinburgh property on the market without properly checking whether AC had good title to instruct a sale on his own or to sell it on his own. After complaints by PC, the property was withdrawn from the market with immediate effect. The home property report had valued the Edinburgh property at £300,000. On 7 September 2020 AC emailed Brodies to say that, because PC had written in early August saying he wanted to put the property on the market, AC had put it on the market "and the only way to proceed was to defer the costs and not give the agency the key" and asking consent to the sale. PC was not prepared to let the agents instructed by AC handle the sale, because he did not have confidence in them after not having checked AC's title, and also because he considered it imperative in the circumstances for there to be an agreement as to where sale proceeds would be paid before the Edinburgh property was marketed. On 22 September 2020 PC proposed to AC that Campbell Smith was reinstructed to market the Edinburgh property. AC responded to PC's agents on 23 September 2020 that he would have to take legal action. There has been no further action since then to market the Edinburgh property.

[21] The petition for removal of AC as an executor meantime proceeded in the Court of Session. On 7 November 2020 AC wrote to Brodies to say he would accept £200,000 for his shares of the two properties, if the petition was dropped. He later added in a demand for payment of £10,000 of expenses and various other conditions. On 11 November 2020, AC emailed the court saying he no longer wished to be an executor. A minute of resignation was then prepared by Brodies and sent to AC. PC remained concerned about the legal expense of the petition. AC's communication that he no longer wished to be an executor led PC to believe that he could conclude the proceedings representing himself and thereby save legal expense. Brodies withdrew from acting. AC did not ultimately sign the draft minute of resignation, saying the petition should be dropped. On 11 January 2021 PC emailed AC an inventory of a joint bundle of productions which he proposed to lodge with the court, containing both documents PC had provided (6/1 to 6/69) and AC had provided (7/1 to 7/14). AC emailed back and said "I do not think we can find an agreement for the required document of January 19th". PC proceeded to lodge the joint bundle without AC's agreement. The rest of the procedural history of the court action is in paras [24] to [26] below.

Preliminary procedural issues

[22] There were two preliminary procedural issues for determination at the proof. The first was whether to proceed in the absence of AC, who was absent. The second was whether to take into account material sent to the court by AC which was not in accordance with court procedures. PC submitted that the proof should proceed because of AC's history of non-attendance, and the lack of substance to various procedural issues he had raised. PC also submitted that many of the emails and documents AC had sent to the court were not

part of the process and should not be taken into account. They did not conform to court procedures, PC did not know if he had received them all, and he might be disadvantaged if the court had regard to them.

[23] After considering the procedural history of the case, and the matters raised in correspondence, I decided it was in the interests of justice to proceed in AC's absence. It was appropriate nevertheless to hear evidence before determining the substance of the petition, given the nature of the issues raised and that answers had been lodged. There was much to be said for PC's representations that I should not take into account material sent to the court by AC which had not been lodged in accordance with standard court procedures. In the highly unusual and exceptional circumstances of this case, I decided to have regard to the many emails and documents AC had submitted, as well as late adjusted answers dated 12 October 2020, both in determining whether to proceed and when determining the merits of the petition. I did so having regard to the issues raised in the petition, the fairness of the court considering both PC and AC's cases before coming to a decision, the parties' lack of legal representation, and PC's detailed personal knowledge of the case. During the course of the proof, PC was afforded a full opportunity to comment on the terms of adjusted answers and expenses claimed by AC, and to make detailed submissions. Having been involved as executor and as a party to the court proceedings throughout, PC was in my opinion in a good position to deal with all relevant matters raised by AC.

[24] It is necessary to set out the procedural history to explain why I considered it fair to proceed in the absence of AC. A summary is as follows:

2 June 2020 First orders were granted by the court after the petition had been lodged. At that time PC was legally represented.

6 July 2020 Answers were lodged by AC as a party litigant on 6 July 2020.

Near the beginning, they summarise his position that he “pleads not guilty to the petition...and has tried to act competently, divide the assets asap, and save the Estate money throughout the process”. They set out in detail his response to the petition.

Near the end the answers state: “Since the respondent is a director of two companies, he has not got time or funds to participate directly in the petition hearing, as this is only delaying the winding up of the estate”.

3 August 2020 PC’s agents enrolled a motion for further procedure, pursuant to rule 14.8 of the Rules of Court, which had been intimated to AC.

5 August 2020 The court issued an interlocutor allowing adjustment until 30 September 2020, and appointed the case to call by order on 14 October 2020.

14 October 2020 The case called by order in accordance with the court’s previous interlocutor. AC was absent, but the court considered correspondence from him. The court allowed a proof. It also appointed 12 November 2020 for parties to address the court on further procedure, noting in the minute of proceedings that this hearing would be an opportunity for AC to address the court on further procedure.

12 November 2020 The procedural hearing appointed by the court in its previous interlocutor took place. AC was again not present. The minute of proceedings noted AC had emailed the court on 11 November 2020 stating that he no longer wished to be an executor and would not be participating in that hearing. The court fixed dates for the proof previously allowed for 2 March 2021 and the three following days, and detailed procedural orders were made in connection with the proof, including the leading of evidence in chief by witness statement, the lodging of such witness statements, productions and an agreed joint bundle, and a pre-proof by order

hearing on 11 February 2021. After the proof it appears that agents for PC prepared a minute of resignation, but ultimately AC declined to execute it.

21 December 2020 The solicitors for PC intimated to the court that they had withdrawn from acting.

19 January 2021 PC lodged a joint bundle of productions with the court, containing productions for PC and documents earlier provided by AC. AC had not agreed the joint bundle.

11 February 2021 The pre-proof by order hearing took place, at which both parties were present. The minute of proceedings noted AC informed the court that he had told agents for PC he would not be resigning as executor. The court made orders for AC to lodge documents by 16 February 2021 and continued the hearing to 18 February 2021.

18 February 2021 At the continued hearing, at which both parties were present, the court issued an interlocutor continuing consideration of whether to receive AC's documents until 25 February 2021.

25 February 2021 After a lengthy continued hearing, at which both parties were present, the court allowed PC's motion for discharge to be dropped at the bar, refused his motion for allowance of lay representation by his brother MC (who was also a beneficiary), appointed the lodging of reading lists, and continued all other matters to the proof diet of 2 March 2021. In the minute of proceedings it is noted among other things that there had been a discussion about appointment of a judicial factor. It was noted that the procedural judge was not making any order for such an appointment in these proceedings, but she wished the parties to be aware that there were other mechanisms to achieve the ultimate distribution of the estate. She was

asked to note the respondent's stated intention that, if the petition succeeded, he might consider such an appointment. The procedural judge expressly stated that this was not before her and that she was finalising the preparation for next week's proof.

2 March 2021 AC did not attend the proof diet. The court discharged the diet due to AC's absence, and a peremptory diet was fixed for 17 March 2021.

17 March 2021 AC appeared at the peremptory diet, insisted in his answers, and said he was able to conduct his case by video conferencing. A further diet of proof before answer was allowed by the court. After consultation with parties, during which AC asked the court to reach a verdict as soon as possible or appoint a judicial factor, proof dates were set down for 18 May 2021 and the three following days.

[25] Thereafter a substantial number of emails were received by the court from parties, in particular from AC. The clerk of court contacted parties on 5 May 2021 explaining, among other things, that the emails being sent by parties were not in accordance with standard court procedures, and neither the judge nor the court would enter into correspondence with either party about the merits of this case in advance of the assigned proof hearing. Parties were informed that the case would be heard at the assigned proof diet, unless a formal motion to discharge had been enrolled and granted by the court in advance of the assigned hearing; that no such formal motion had been received by the court; and that the court would not accept informal email correspondence about this matter. Parties were informed that if the case had not been discharged using formal court procedures, it would proceed at the assigned diet. The likely consequence was that if either party was not present, the case would be determined in their absence. The clerk of court then set out the procedure likely to be followed at the proof, subject to the judge's orders at the hearing.

[26] AC sent a number of emails to the effect that he would not be attending the hearing as he considered it to be unlawful. He attached a purported minute under rule 15 of the Rules of the Court of Session to an email of 7 May 2021, and asked the clerk to let him know if it did not comply with procedures. The clerk of court sent a copy of rule 15 to AC and informed him that his email correspondence did not comply with the procedures in the Rules of Court for applications by minute. AC continued to email the court. The effect of his correspondence in summary was that he did not intend to turn up because in his view a proof could not proceed fairly for reasons he gave. The clerk informed AC that the hearing at which he could address the judge was on 18 May 2021 at 10.00am. Joining details for the court days on 18 and 19 May 2021 were sent to AC by the clerk of court. Those details were also sent to other participants, who were able successfully to join the hearings using them. AC did not attend, but during the proof emailed the court, referring to his emails about procedural breaches, and asking when he would receive feedback on his answers and note.

[27] At the hearing of 18 May 2021 I declined to receive the purported rule 15 minute, because it did not comply with the requirements of the Rules of Court and was incompetent. Nevertheless I went on to consider whether there was any unfairness in proceeding, having regard to AC's absence and the substance of the various matters raised by him in his email correspondence. I was in no doubt, after considering all matters, that it was in the interests of justice to proceed. A petition had been presented to the court under chapter 14 of the Rules of Court, and PC was entitled to have the matters in it determined by the court. Answers to that petition had been lodged by AC and adjusted. AC had also been given opportunities to attend hearings, lodge productions, witness lists and witness statements, and attend the proof fixed for dates convenient to both parties. AC's response to the issues raised in the petition was before the court in the documents he had provided. AC had a

history of non-attendance at court hearings. The court had throughout given AC ample opportunity to attend, both when procedural matters were determined and for the hearing on the merits of the petition. There was no doubt that AC was aware of the proof but had nevertheless chosen not to attend. It would be contrary to the interests of justice if his deliberate absence from the hearing prevented the court from determining the substance of the petition. Dealing briefly with some specific matters raised by AC:

- (a) The petition is not incompetent and nor is the court unable to determine it because the petitioner is designed as Paolo Ciarrocca rather than Paolo Sherrede Ciarrocca and a beneficiary is described in the petition as Marco Ciarrocca rather than Marco Sherrede Nicola Ciarrocca.
- (b) AC's complaint of a breach of rule 14.8 of the Rules of the Court of Session is unfounded. After answers had been lodged, on 3 August 2020 PC's then agents intimated and enrolled a motion for further procedure as required by rule 14.8 of the Rules of the Court of Session. That motion was dealt with by the court on 5 August 2020, and an interlocutor was issued making procedural orders.
- (c) AC's complaint that he had not known of the hearing of 14 October 2020 until the day before and so it was unfair to proceed is without substance. The order for further procedure made by the court on 5 August 2020 allowed a period of adjustment of the petition and answers until 30 September 2020, and appointed the cause to call by order on 14 October 2020. Given the terms of this interlocutor, there is no good reason why AC, as a party to the action, would not have been aware of the hearing of 14 October 2020 until the day before it. In addition, the interlocutor of 14 October 2020 fixed a further

hearing on 12 November 2020 at which AC was entitled make representations on further procedure, although in the event he declined to attend it.

- (d) AC's complaint that the adjusted petition, joint bundle and witness statements lodged by PC are unlawful is without foundation. The court's interlocutor of 5 August 2020 allowed further adjustment. The court's interlocutor of 12 November 2020 allowed, among other things, productions to be lodged by parties by 22 December 2020, and by 19 January 2021, PC to lodge a joint bundle and parties to lodge witness statements which would stand as evidence in chief. AC did not agree to the joint bundle because he maintained it contained "various inaccuracies and personal examples violating my privacy". AC's disagreement with the substance of PC's documents is a matter for proof, and it is not open to him to frustrate the lodging of relevant documents for consideration of the court by withholding agreement to the proposed bundle.
- (e) Other matters of which AC complained, such as PC and another witness impugning his probity and health, or not mentioning things he thought they should have spoken to, or had inappropriately emailed him about the expenses of the case, are part of the substance of the petition to be determined, insofar as they bore on AC's fitness to be an executor. They are not reasons for the petition not to proceed at all. The raising of these issues in the court proceedings does not violate AC's human rights.
- (f) AC complained of delay in the determination of the petition to date. It is evident from the procedural history that considerable periods of delay were caused by AC being absent from hearings ordered by the court. The matters

raised in the petition can and should still be determined. Proceeding with the hearing avoids any further delay.

In my opinion, AC's objections to the proof proceeding, and his absence from the proof, are part of a pattern of AC attempting to obstruct progress towards determination of the substance of the petition. I decided that it was in the interests of justice to proceed to hear evidence and determine the petition in his absence.

The proof

[28] Evidence was heard at the proof from PC and also MC, followed by submissions from PC. Under the court order of 12 November 2020, witness statements stood as PC and MC's evidence in chief. In correspondence, AC objected to PC and MC's witness statements because he considered they had made false accusations. In my opinion, this was not a good reason not to take into account the witness statements or refuse to hear evidence from PC and MC. The matters AC raised could however be taken into account as part of my assessment of the credibility and reliability of PC and MC's evidence.

[29] As well as their evidence in the witness statements, PC and MC gave additional oral evidence. In general, having heard PC and MC and considered the totality of the evidence, I found both to be credible and reliable witnesses, although at times intemperate to the court. They had also been intemperate in some of the correspondence sent during the executry. Some of this correspondence referred to AC in unflattering terms. Nevertheless, the fact this correspondence had been written and sent did not adversely affect my overall assessment of the credibility and reliability of PC and MC on matters relevant to the determination of the petition. It was clear that the executry period had been a fraught and stressful time for all three brothers. The correspondence had to be seen in that context.

[30] As well as the witness evidence, I took into account written material before the court. I did not accept as fact everything put before the court, and indeed not all of it was relevant. The facts I found proved on the balance of probabilities, on the basis of the evidence before me, have already been set out in this opinion.

Governing law

[31] No authorities were cited to me. The law I applied in determining this petition is summarised in the recent case of *Campbell v Campbell's Executors* [2021] CSOH 3 as follows.

“25. Executors appointed under a will have duties to gather in the estate of a deceased person, to pay debts (including any tax due on the estate), and to distribute any remaining assets to beneficiaries in accordance with the wishes of the deceased expressed in the will. A grant of confirmation gives executors title to do so. An executor is regarded as a trustee of the estate of the deceased, and has fiduciary duties to beneficiaries.

26. This petition seeks removal of executors appointed under the will of the deceased, and appointment of a judicial factor, at common law. The courts have often been cautious about removing trustees such as executors at common law. In *Gilchrist's Trustees v Dick* (1883) 11 R 22, trustees under an antenuptial contract did not consult solicitors, did not keep records, and allowed trust funds to be invested in a business illegally. In a short extempore judgement, the court refused to remove the trustees and said:

‘The remedy suggested is that the trustee should be removed and a judicial factor appointed; but in order to justify us in adopting so extreme a measure as removal of a trustee, there must be something more than mere irregularity or illegality. We are not in the habit of removing trustees unless there has been a decided malversation of office, and there is nothing of that kind here. There is no suggestion that the trustees did not act in perfectly good faith’.

In *MacGilchrist's Trs v MacGilchrist* 1930 SC 635, the court found that mere lack of co-operation or disharmony between trustees, or mere negligence on the part of a trustee even if it results in some loss to the trust, may not afford sufficient grounds for the removal of a trustee. However, persistent, wilful neglect, contempt, and obstruction, which taken together render execution of a trust a practical impossibility, may be sufficient grounds to remove a trustee (at 638); or unreasonable and wilful refusal to perform the duty of a trustee (at 639). The test applied by the court in *Shariff v Hamid* 2000 SCLR 351 in refusing to remove trustees was whether on the facts there was something equivalent to, or as bad as, malversation of office when a trustee obstinately refuses to acknowledge his legal duty and to discharge his legal responsibility, with the result of bringing the affairs of the trust into confusion.

27. The court may be guided by the welfare of beneficiaries when deciding whether to change trustees, and might in principle remove a trustee if the continuance of that trustee would prevent the trusts being properly executed (*Ewing's Trustees v Ewing* (1885) 13 R (HL) 1 at 25). The courts have intervened to remove executors where they have obstructed the administration of an estate by ignoring correspondence and refusing to sign documents resulting in administrative deadlock (*Wilson v Gibson* 1948 SC 52). There are other situations in which trustees have been removed, discussed under reference to authority at paragraphs 4.25 - 4.26 of the Scottish Law Commission's Discussion Paper No 126 on Trustees and Trust Administration. One example which may lead to removal is where there is unacceptable conflict between an executor's personal interests and fiduciary duties. Where an action based on fraud during a deceased's lifetime was brought against that deceased's estate by one of the trustees of that estate, the court found he could not also continue as a trustee of the deceased's estate (*Cherry v Patrick* 1910 SC 32). However, a conflict may not result in removal if it was anticipated by the testator. In *Dryburgh v Walker's Tr* (1873) 1 R 31 trustees did not call in loans even though that might have been advantageous to beneficiaries, because the testator had known of the borrower's financial problems and had elected to give the trustees powers not to call up the money. There were no grounds for removal. 'It is not a ground for displacing executors that they have personal interests conflicting with their duty as executors. The law supposes that they are able to reconcile their interest and their duty until the contrary is proved' (*Birnie v Christie* (1891) 19 R 334 at 338 per Lord M'Laren). Whether or not the court will grant an application to remove executors depends on the circumstances of the case''.

Decision on the merits of the petition

[32] The deceased died on 18 September 2017, having left clear and simple instructions in her will about the destination of her estate. Confirmation was granted on 29 March 2018. In over 3 years since then, the executors have been unable to make progress on distributing the estate in accordance with the wishes of the deceased, due to ongoing disagreements between them. Solicitors acting for the estate have withdrawn from acting, and the executors have not been able to agree on appointment of replacement estate solicitors. There is deadlock, and the affairs of the trust are in confusion. Continuance of the co-executor arrangements in the will in my opinion would prevent the estate being properly administered. The intervention of the court is clearly warranted.

[33] Applying the governing law to the facts I have found, I am satisfied that AC should be removed as executor by the court. I acknowledge that cases such as *Gilchrist's Trustees v Dick* (1883) 11 R 22 and *MacGilchrist's Trs v MacGilchrist* 1930 SC 635 make it clear that executors will not be removed lightly, and there needs to be more than mere irregularity or illegality. Nevertheless in my opinion AC's actions over the course of the executry amount to malversation of office, and the legal test for removal of an executor is met. I have in mind in particular the following actions which are incompatible with the proper exercise of AC's fiduciary duties to all of the beneficiaries. First, AC's unilateral decision to reside in the Edinburgh property between approximately October 2018 to July 2020, without agreement of his co-executor and beneficiaries, and without paying rent to the estate, was a breach of fiduciary duty. AC personally benefited from use of estate assets to the detriment of beneficiaries. He lived in the Edinburgh property without paying rent, enabling him to rent out his own residence, the Silvermills flat, for personal financial gain. That was a clear conflict of interest. I accept AC may have paid some bills for upkeep on the Edinburgh property during that time, which might be charges on the estate to be paid before distributing residue, but that did not entitle AC to use an estate asset in this way. Second, AC's unilateral decision about division of the contents of the Edinburgh property also was an abuse of his position of trust. The will clearly left residue of the estate, which included the contents of the Edinburgh property, to be divided between three beneficiaries equally. How that division should be accomplished was a decision for the two executors appointed, and not for AC to make unilaterally. AC's unilateral division of contents was not in accordance with equal division of residue to three beneficiaries, as he retained the majority of the assets, and sent none to one of the beneficiaries at all. The fact that the deceased may or may not have made lifetime gifts was irrelevant, because AC as executor was entrusted to

distribute what the deceased owned at her date of death in accordance with the terms of the will. Third, AC's actions in trying to divert proceeds of rent from the London property directly to himself on three different occasions, to his own bank account (requesting first all of that revenue, then later half of it), and later through the medium of a company of which he was sole director and shareholder and thereafter debt collectors, was contrary to the interests of the estate. The will left residue to be divided equally between three beneficiaries. There was no agreement from the co-executor to payment to AC (or any company he controlled) of all or half of the revenues of the London property during the period of the estate administration. AC's actions in relation to the rental proceeds of the London property caused friction with the London letting agents, thereby putting the letting arrangements and estate income at risk, which was not acting in the best interests of the trust. Fourth, the facts I have found show that for most of the period of the administration of the estate AC has behaved erratically. He has changed his mind frequently about proposals for division, has refused to deal with the original estate solicitors and has not co-operated with appointment of replacement estate solicitors, has at times refused to communicate with his co-executor or other beneficiaries, has made unsubstantiated claims about property not confirmed to, has claimed that property worth more than one third of the residue of the estate is his, and unilaterally put the Edinburgh property on the market without the selling agents being properly informed about the other executor. His actions have obstructed the proper administration of the estate, prevented the wishes of the deceased being executed, and have been to the detriment of other beneficiaries. AC's behaviour has resulted in deadlock in administering the estate, and while he remains in post, in my opinion it will not be possible for the estate to be divided as set out in the deceased's will. AC's actions viewed as a whole amount to malversation of office and I

therefore remove him as executor. I wish to make explicit that my decision is not based on any issue of mental ill health. For an executor to be removed on grounds of mental incapacity, two medical certificates would ordinarily be required (*Lees, Petitioner* (1893) 1 SLT 42). No such certificates have been produced, and there was no medical evidence before the court of a mental health diagnosis. AC is removed as executor because, on the facts I have found, he has repeatedly acted in breach of fiduciary duties and in malversation of office.

[34] The next question for the court is whether it should make any further orders. The petition is brought under chapter 14 of the Rules of Court, and under rule 14.10 the court may make such order to dispose of a petition as it thinks fit, whether or not such order is sought in the petition. The petition is brought to the court's *nobile officium*, the court's extraordinary equitable jurisdiction which enables it to order an outcome which is just, fair and right. Reflecting this position, the prayer of the petition sought specific orders, but also "to do further or otherwise in the premises as your Lordships shall seem proper". Although the petition did not expressly seek appointment of a judicial factor, a previous judge had asked parties to consider this matter, and the email from the clerk of court to parties dated 5 May 2021 explaining procedure to be followed at the proof stated that parties would have an opportunity to make submissions on orders they sought "for example removal of an executor/no order/appointment of a judicial factor". As the respondent had expressed some interest in appointment of a judicial factor to the court, in the interests of fairness I considered whether a judicial factor should be appointed.

[35] In the light of the evidence before me, I find that appointment of a judicial factor is not warranted at this stage. That is firstly because PC remains as an executor so a judicial

factor is not necessary, and secondly because a judicial factor is not currently in the best interests of the estate. I explain both of these reasons further below.

[36] In my opinion, there are insufficient grounds for removal of PC as an executor at this stage, and he will therefore remain as an executor of the deceased's estate. In contrast to AC, PC has not acted in malversation of office, and the high legal tests for removal of an executor are not met. In coming to this conclusion, I have considered criticisms levelled at PC in correspondence from AC and in the adjusted answers. In my opinion, most of these criticisms were not justified, and to the extent that they had any foundation in fact, did not amount to malversation of office either viewed separately or cumulatively. I deal with AC's main criticisms in turn. It is irrelevant that AC considered he was next of kin and carer for the deceased, or that she made earlier wills. This court is concerned with the administration of the deceased's estate under her last will and testament. Her estate at the date of death falls to be divided under the terms of that will. AC maintains that PC should have registered the deceased's death with the Italian authorities, but that is a matter for Italian law, and not a legal requirement for executors under Scots law with which this court is concerned. It was reasonable to use Buntings to value the London property for the purposes of the estate inventory, given that they had valued the property previously in 2012. There is no duty on executors frequently to revalue estate property once it is confirmed to, and it was reasonable for PC to resist this being done until mid-2019 given the potential expense of revaluations. I do not agree with AC that PC was at fault when he did not agree to one meeting with executry solicitors in 2018. There are other ways of communicating with executry solicitors than a face to face meeting, and on the facts I have found PC acted reasonably at that point in declining to attend such a meeting. While at times PC has been intemperate in communications in relation to the estate, he has had considerable

provocation given the facts I have found about the actions of AC. PC's communications do not come anywhere near the standard of malversation of office. Nor has PC acted unreasonably in refusing to take forward AC's unevidenced and unsubstantiated claims that other family members owe enforceable debts to the estate. No foundation in fact has been produced for AC's allegations. The context in which AC made those allegations was an attempt to justify AC receiving more property from the estate confirmed to than he is properly entitled to under the deceased's will. In the circumstances, rather than showing malversation of office, PC's rejection of AC's allegations was the appropriate course of action for an executor. I am also satisfied on the evidence that PC is aware that some expenses incurred by AC may fall to be paid as a debt on the estate before residue can be distributed equally. PC appreciates that properly vouched expenses settled by AC in respect of the Edinburgh property during the executry period, such as factor, council tax and insurance expenses, may qualify as executry debts, and PC plans to engage executry solicitors to finalise the executry and advise him on matters such as these and any question of rent due to the estate for AC's period of occupation of the Edinburgh property. PC also has duties to all beneficiaries to safeguard the estate against unwarranted claims of expenses. In the state of deadlock that has ensued due to AC's actions, it is not malversation of office for PC to have declined so far to meet AC's claims. It is entirely proper for PC to have refused to distribute revenues from the London property to beneficiaries to date, since the destination of those funds will depend on the final division of all estate property, a stage of the executry which has not yet been reached. I did consider that the change of locks by PC on the Edinburgh property in August 2020 called for an explanation, in circumstances in which PC (together with AC) had received letters from Campbell Smith (the then estate solicitors) on 11 March 2019 and 16 July 2019 stating that neither executor should be

preventing the other from accessing the Edinburgh Property by seeking to change the locks. However, I accept PC's evidence that the lock change was carried out on the advice of new agents, in an attempt to enable the Edinburgh property to be marketed at a time it appeared AC was agreeable to it being sold, and that PC immediately offered his co-executor keys so was not trying to prevent his access. On the evidence I also find that PC had a reasonable explanation for not agreeing to the Edinburgh property being marketed by the agents AC had unilaterally instructed in August 2020. PC was entitled to have reservations about those agents continuing to act, given that they had put the property on the market without properly checking AC had title to market it unilaterally, and without any agreement with both executors about where the sale proceeds would go. PC's caution was understandable, given the background of AC's conduct in relation to rental income from the London property and AC involving the police in August 2020. It is relevant that PC proposed an alternative to try to move things forward, and although AC refused, the suggestion of Campbell Smith was understandable given that in the past AC and PC had been able jointly to instruct that firm for a considerable period of time. The true reason the sale of the Edinburgh property has not been able to proceed is because of deadlock caused by AC's actions. Although PC has instructed a number of different firms of solicitors in this case, I am satisfied this is not indicative of any inability to work with solicitors to finalise the executry. It is clear from correspondence before me that Campbell Smith resigned due to AC's actions; it was reasonable of PC to instruct Fergusons Law to advise him personally given the difficulties that had arisen and that AC was at that time taking personal legal advice from Gibson Kerr; and reasonable for PC then to move to litigation solicitors when contemplating bringing a petition, and to select the litigation solicitors whose strategy more closely fitted PC's aims. I have not found as a matter of fact that PC has removed part of the

contents of the Edinburgh property. It was reasonable for PC to write to AC drawing his attention to the issue of court fees in the context of this litigation. None of AC's criticisms amount to malversation of office by PC. Looking at matters more positively, PC is in a good position to complete the executry. He has detailed knowledge of the estate and its assets. PC is able and willing to finish administering the estate because he wishes to do this for his mother, despite the difficulties he has experienced with AC and the fact that he will need to continue to deal with AC. The deceased had wished PC to be an executor, and it is appropriate that her wishes are carried out in part even if AC has been removed. What is left to be done to complete the executry is not unduly complex. It will involve realising the value of two properties, resolving any issue of rent and expenses on the Edinburgh property during the period of the estate administration, paying any remaining debts then dividing the residue (including any remaining rental income from the London property and the contents of the Edinburgh property) equally between three beneficiaries. The remaining work is capable of being carried out by PC being advised by executry solicitors. For all these reasons, given that PC will remain as an executor, appointment of a judicial factor at this stage is not necessary.

[37] Appointment of a judicial factor at this stage is also not in the best interests of the estate. Appointment of a judicial factor is likely to be a substantial charge on the estate, reducing the ultimate entitlement of the beneficiaries. AC will remain a beneficiary with whom the person administering the estate must communicate. The documentation before the court, and the experience of the court in this litigation, tends to suggest communication with AC for anybody administering the estate is likely to be frequent, onerous and time consuming. A judicial factor would be entitled to charge professional fees to the estate for time dealing with estate matters. Neither PC nor MC wish their entitlement to be reduced

by the estate having to bear the expense of a judicial factor. Appointment of a judicial factor might also increase the time taken to complete the administration of the estate. I do not consider that at this stage it is in the interests of justice to appoint a judicial factor to the estate.

[38] For all of these reasons, AC is removed from the office of executor of the deceased. PC will continue as sole executor. The terms of the deceased's will are otherwise unaffected. MC, AC and PC remain as residuary legatees, entitled to an equal share of the residue of the estate.

Expenses

[39] The prayer of the petition sought expenses of the petition against AC, which failing for the expenses to be a good charge against the estate of the deceased. At the conclusion of the proof, PC moved for expenses. PC has succeeded in this petition, and expenses should follow success. Having regard to the findings in fact I have made, and the conduct of this litigation by AC, I award expenses against AC as an individual.