

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
HAMILTON COUNTY, OHIO**

IN RE ESTATE OF	:	CASE NO. 965166
VIRGINIA K. METZ	:	
	:	OPINION REGARDING
	:	APPOINTMENT OF
	:	FIDUCIARY
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This matter came before Judge Wayne F. Wilke on December 18, 1996, concerning competing applications to administer the estate of the decedent herein, Virginia K. Metz. Present were applicants Alvin E. Metz, who was represented by W. Kelly Lundrigan, and Janice A. Metz, who was represented by Dennis P. Hartmann. At the close of oral arguments, the Court ordered that both parties file memorandums in support of their applications: Alvin E. Metz was to file his memorandum on or before January 2, 1997, and Janice A. Metz was to file hers on or before January 8, 1997.

FACTS

This case concerns competing applications to administer an estate brought by two individuals, each of whom were nominated to serve as executor by the testator. Virginia K. Metz died testate on August 28, 1996. She was survived by five children, to wit: Thomas E. Metz, Sr., Robert L. Metz, Janice Ann Metz, Joyce Ann Metz, and Alvin E. Metz, Jr. On November 18, 1996, Janice A. Metz applied to be appointed Executrix of this estate. Her brother, Alvin E. Metz, Jr. applied for authority to administer the estate over three weeks later on December 12, 1996. Item IX of the decedent's will nominates Alvin E. Metz, Jr. to be appointed Executor. In case Alvin E. Metz, Jr. failed to seek that

appointment or to fulfill his fiduciary duties, the decedent nominated Thomas E. Metz, Sr. to serve in that capacity. In case of that individual's declination, the testator nominated Janice A. Metz to serve as executrix.

Janice A. Metz notified both Alvin E. Metz, Jr. and Thomas E. Metz, Sr. of her intention to be appointed Executrix and asked that they either accept or renounce their appointment pursuant to R.C. §2113.12. As stated above, Alvin E. Metz, Jr. filed a competing application while Thomas E. Metz, Sr., did not. Both were present at the hearing on December 18, 1996.

#### CONCLUSIONS OF LAW

At the outset, the Court must make a determination of whether the will offered for probate should be admitted. Otherwise, Janice A. Metz' position would be untenable and all five children would have equal rights to administer the estate.

The Court finds that the will offered for probate appears on its face to comply with R.C. §2107.03 and shall therefore be admitted to probate.

With respect to the appointment of an executor for the estate, R.C. §2113.12 provides that if a person named as executor in a decedent's will neglects to appear and accept the appointment after being cited to do so, then the probate court "shall grant letters testamentary to the other executor, if there is one capable and willing to accept the trust..." Alvin E. Metz, Jr. testified *inter alia* that he was willing to withdraw his application provided his sister paid him the fiduciary fee. When that testimony is combined with the fact that Alvin E. Metz, Jr. waited three and one-half months after his mother's death to apply to administer the estate, it is clear that he is not a suitable person

to administer this estate and that the estate would be best served by the appointment of another individual.

With respect to Thomas E. Metz, Sr., he was present at the December 18, 1996 hearing. Despite his contention that the reason he had not filed to administer the estate was that he was “never given the opportunity”, Thomas E. Metz, Sr. has still not availed himself of the opportunity to administer this estate. He has yet to file an application to administer the estate over three weeks after the hearing was held. Thomas E. Metz, Sr.’s actions, or rather his inaction, refute his position that he has been denied the opportunity to administer this estate. His refusal to take steps to administer the estate make the conclusion inescapable that Thomas E. Metz, Sr. has clearly and unambiguously renounced his right to administer the estate.

Janice A. Metz, on the other hand, has taken active measures to administer this estate. She has demonstrated herself to be a suitable appointment. Consequently, the Court shall appoint Janice A. Metz Executrix of the Estate of Virginia K. Metz.

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WAYNE F. WILKE, JUDGE

cc: Dennis P. Hartmann  
W. Kelly Lundrigan