IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE \$ No. 207, 2012 ESTATE OF KATARYNA \$ Court Below-0

Court Below-Court of Chancery

§ of the State of Delaware

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§ ROW Folio #125514-N-MA

Submitted: September 24, 2012 Decided: November 13, 2012

Before BERGER, JACOBS and RIDGELY, Justices.

ORDER

This 13th day of November 2012, upon consideration of the appellants' opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) Peter Kostyshyn and Patricia Kostyshyn (the "Kostyshyns") appeal from the Court of Chancery's April 4, 2012 order adopting the final report of the Master in Chancery dated March 23, 2012.¹ The State of Delaware moves to affirm the Court of Chancery's order on the ground that it is manifest on the face of the opening brief that this appeal is without

¹ Ch. Ct. R. 144(a)(2).

merit.² We agree, affirm the Court of Chancery's order, and grant the State's motion to affirm.

- (2) The record before us reflects that, on November 1, 2011, the State of Delaware's Division of Revenue (the "State") filed a motion in the Court of Chancery for a writ of garnishment regarding the Estate of Kataryna Kostyshyn (the "Estate").³ The State sought to garnish funds payable to the Kostyshyns by the Estate to satisfy judgments entered against them in the Superior Court and the Court of Common Pleas in the amount of \$5,555.70.
- (3) On December 1, 2011, a hearing was held before the Master in Chancery. The State appeared and sought an order garnishing the Estate funds. Patricia Kostyshyn appeared on behalf of herself and purportedly on behalf of her brother, Peter, who is incarcerated. Peter also participated in the hearing by telephone. The Kostyshyns argued that they owned the funds and opposed the State's motion for a writ of garnishment. At the conclusion of the hearing, the Master ruled that the Kostyshyns had established their ownership of the funds, and that the State had established that the judgments

² Supr. Ct. R. 25(a).

³ Kataryna Kostyshyn was the Kostyshyns' mother.

entered on behalf of the Superior Court and the Court of Common Pleas were validly entered.

- (4) On March 23, 2012, after receiving documentation from the State reflecting the finality and amount of the judgments, the Master issued her draft report. Under Court of Chancery Rule 144(a)(1), the parties had one week in which to take exception to the draft report. On April 4, 2012, the Chancellor, noting that no exceptions had been taken to the Master's draft report, issued a final order approving and adopting the Master's findings.
- (5) In this appeal, the Kostyshyns argue that the Register of Wills mishandled the Estate from the beginning. They also argue that Peter was improperly denied his right to appear personally before the Court of Chancery to assert his claims.
- (6) Because the Kostyshyns took no exceptions to the Master's report or the Chancellor's order, any claim they purport to assert in this Court is procedurally barred.⁴ Because the Kostyshyns' claim may not be considered in this appeal,⁵ the order of the Court of Chancery must be affirmed.

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⁴ Matter of Marta, 672 A.2d 984, 986 (Del. 1996).

⁵ Supr. Ct. R. 8.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated,

there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The order of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice