COURT OF CHANCERY
OF THE
STATE OF DELAWARE

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

May 15, 2014

Julianne E. Murray, Esquire
Murray Law, LLC
109 N. Bedford Street
Georgetown, DE 19947

Stephen P. Ellis, Esquire
Ellis & Szabo, LLP
9 North Front Street
Georgetown, DE 19947

RE: Beverly McCarty and Ragen McCarty v. John M. McCarty, Jr as an Executor of the Estate of Michael L. McCarty
C.A. No. 8705-MA

Dear Counsel:

Pending before me is a Motion to Dismiss Beverly McCarty as a Petitioner filed by Respondent John M. McCarty, Jr., Executor of the Estate of Michael L. McCarty. I have reviewed the response to the motion filed by Petitioners Beverly McCarty and Ragen McCarty. For the reasons that follow, I recommend that Respondent's Motion to Dismiss be granted by the Court.

On July 5, 2013, Petitioners Beverly McCarty and Christine McCarty, as legal guardian of Ragen McCarty, filed a petition under 12 *Del. C.* § 1309 to contest the Last Will and Testament of Michael L. McCarty (hereinafter the "Decedent") dated March 5, 2013. Beverly is the mother of the Decedent and

Ragen is the adult daughter of the Decedent. On August 7, 2013, before any answer was filed, the Petition was amended to remove Christine as a party and to replace her with Ragen because Christine was not, in fact, Ragen's legal guardian. On August 9, 2013, counsel for Respondent entered his appearance and on October, 1, 2013, filed an Answer to the Amended Petition to Contest a Will.

On February 6, 2014, Respondent moved to dismiss Beverly as a Petitioner because she is not an interested party to this litigation given that she is neither a beneficiary of the will that is being contested (or any prior will of the Decedent) nor an intestate beneficiary of her son's estate. On February 19, 2014, Beverly responded to the motion, arguing that she was unaware of any case law or rule that would preclude her from being one of the petitioners as she is a contingent beneficiary in the case of intestacy should anything happen to Ragen. Further, she argues that as Ragen's grandmother and the biological mother of the Decedent, she has established a sufficient nexus to the matter to be a party.

Contrary to Beverly's belief, there is case law that precludes her from being one of the petitioners in a will contest. "[I]t is held that no person may contest a will who has no interest in the estate which may be affected by the probate of the proposed will; and the interest must be pecuniary and one detrimentally affected by the will, and not a mere sentimental interest." *Conner v. Brown*, 3 A.2d 64, 74 (Del. Super. 1938). Ragen, not Beverly, is a beneficiary of Decedent's estate

under the current will and a prior will dated October 24, 1989 (hereinafter "the 1989 Will"), which was attached as an exhibit to the Petition. Under 12 *Del. C.* § 502(1), Ragen would be the sole intestate heir of the Decedent's estate. Ragen thus has standing on the basis of her status as beneficiary of Decedent's estate and as intestate heir. *See Scholl v. Murphy*, 2001 WL 576224, at *5 (Del. Ch. May 7, 2001) ("Plaintiff's status as an intestate heir to the [decedent] is sufficient to make him an interested party for the purposes of both 12 *Del. C.* § 1309 and Chancery Court Rule 17."). Furthermore, should anything subsequently happen to Ragen during the course of this litigation, Ragen's estate would be substituted as the real party in interest here.

Other than her sentimental interest in this matter as the mother of the Decedent and grandmother of Ragen, Beverly has no standing to prosecute this suit. Therefore, I recommend that the Court approve the motion to dismiss Beverly as a petitioner.

Sincerely,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz