

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. 91-485

SAMUEL VAUGHAN & another ✓

vs.

ELIZABETH VAUGHAN.

MEMORANDUM AND ORDER

Samuel and Joan Vaughan (the elder Vaughans) brought this petition pursuant to G. L. c. 211, § 3, seeking to have this court enter a protective order to limit discovery in a divorce proceeding to which their son, Allan Vaughan, is a party. In that divorce action, the petitioners' daughter-in-law, Elizabeth Vaughan, seeks discovery of their estate plan, including wills, trusts, and other documents. Their motion for a protective order was denied in the Probate Court October 3, 1991. Following an unsuccessful petition for relief in the Appeals Court pursuant

✓ Joan R. Vaughan.

to G. L. c. 231, § 118, first para., the Vaughans petitioned this court under G. L. c. 211, § 3.

The circumstances of the underlying divorce case are as follows. Allan and Elizabeth Vaughan have been married for twenty-one years; they have no children. Allan Vaughan is forty-two years old, and is presently employed as a General Manager at Eastern Packaging, Inc. in Lawrence. His annual income, including part-time work, is approximately \$42,000. For the past four or five years, he has been receiving an annual gift of \$10,000 from his grandmother. His wife is forty-four years old, and is presently employed part-time as a benefits specialist at Atlantic Medical Center in Lynn. Her annual income is approximately \$11,500. Before their separation, Allan and Elizabeth lived in a house owned by Allan's parents, paying approximately \$200 per month rent during the thirteen 13 years they lived at the home; it appears that Elizabeth still lives in the home. The primary asset of Allan and Elizabeth is a vacation home in Maine, valued at \$250,000, which they built after purchasing the parcel of land from Allan's parents for \$1.

Elizabeth contends that, as she and Allan

have benefited from his parents' generosity in the past (allowing Elizabeth, for example, to forego the pursuit of a more lucrative career in favor of part-time work), Allan will almost certainly continue to benefit in the future, and that this likelihood represents an "opportunity for future acquisition of capital assets and income" -- a factor to be considered by the probate judge under G. L. c. 208, § 34.

The elder Vaughans had previously agreed to disclose all of Allan's vested interests in their estate, but they refused to reveal any other financial information. They contend that any other interests Allan may have in their estate are not vested, and are therefore merely expectancies and are not part of the marital estate under § 34. See Hanify v. Hanify, 403 Mass. 184, 187-188 (1988). Because these expectancies are not subject to equitable division in this divorce proceeding, the petitioners argue, they are also not discoverable.

Although it is true that Allan's expectancy interests are not subject to division, a judge, nevertheless, might properly take them into account "in determining what disposition to make of the property which is subject to division"

(emphasis in original), Davidson v. Davidson, 19 Mass. App. Ct. 364, 374-375 (1985). See also Rice v. Rice, 372 Mass. 398, 402 (1977); Frederick v. Frederick, 29 Mass. App. Ct. 329, 334 (1990); Bak v. Bak, 24 Mass. App. Ct. 608, 619 (1987). A judge should make only "reasonable assumption[s]" about expectancy interests, Frederick, supra at 334, and should use caution when taking any expectancies into account, Davidson, supra at 374. Even with these constraints in mind, however, the decision by the probate judge merely to allow discovery of this information was certainly not an abuse of discretion.

At the same time, the petitioners have legitimate privacy interests, particularly since they are not parties to the underlying action, and these interests should be protected wherever possible. The petitioners charge that in ordering them to disclose this information, the judge did not "perform the required balancing of interests, pursuant to Mass. R. Civ. P. 26 (c)." On the contrary, it appears that the judge endeavored to protect the petitioners from undue burden by offering to allow them to comply with the discovery order by affidavit rather than by

deposition and document request, and by offering to limit the information disclosed to: (1) their approximate current total net worth (plus or minus \$500,000), (2) a general description of their current estate plan and wills, and (3) the date, if any, when the estate plan or wills were last amended. The petitioners rejected the offer. The trial court can best balance the competing concerns of parties affected by a discovery order, see Cronin v. Strayer, 392 Mass. 525, 534 (1984), and the judge's search for compromise in this case represented a laudable regard for the petitioners' desire for privacy. To the extent that her order denying the petitioner's motion appears to withdraw the offer previously made and to "allow the wife's attorney to conduct discovery 'the hard way,'" this court continues to regard compromise as a welcome possibility.

The relief requested in (3), (4), (5) and (6) of the petition is denied.

By the Court (Greaney, J.)


Assistant Clerk

Entered: November 25, 1991