

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
No. 58,788

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THE BARNES FOUNDATION, A CORPORATION

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**MEMORANDUM OPINION SUR ORDER
ASSESSING COUNSEL FEES**

OTT, J.

May 11, 2012

By Memorandum and Order dated October 6, 2011, the undersigned sustained the preliminary objections filed by The Barnes Foundation and the Commonwealth of Pennsylvania Office of the Attorney General, as *parens patriae* for charities, to two petitions seeking to reopen the proceedings which resulted in this Court's December 13, 2004 opinion permitting the Barnes Foundation to relocate its art collection from its gallery in Merion, Montgomery County to a new building in Philadelphia. The October 6, 2011 Order specified that counsel fees and costs would be assessed against the petitioners, pursuant to 42 Pa. C.S.A §2503. A hearing limited to the issue of costs and fees was held on February 2, 2012, and, by Order dated March 7, 2012, the undersigned

made awards in favor of The Barnes Foundation and against petitioners.¹ The petitioners have appealed the award against them, and the reasons for same were set forth in the undersigned's Memorandum Opinion and Order dated October 6, 2012. In addition, the Office of Attorney General filed an appeal on the grounds that the Court should have awarded costs and fees to it as well. It is this issue which we address herein.

As we noted in footnote 9 of the October 6, 2011 Memorandum Opinion and Order: "We are not aware of any authority to impose monetary sanctions that benefit the Office of the Attorney General." The Attorney General did not offer any cases or statutes to support an award in its favor in any filing or at the time of the hearing on February 2, 2012. In addition to proffering no legal basis for the entry of an award in favor of a governmental agency, the Attorney General also presented no testimony as to time spent, monetary value of such time and/or any costs incurred by that office. Indeed, at the hearing, the extent of the Senior Deputy Attorney General's participation was to make the following statement:

Your Honor, the only thing I would simply say is that the constant cost of these petitions are substantial and are being borne by a public charity, and I would urge you to find in favor of The Barnes Foundation, allow The Barnes Foundation to recover the costs it spent in having to defend against these many petitions.

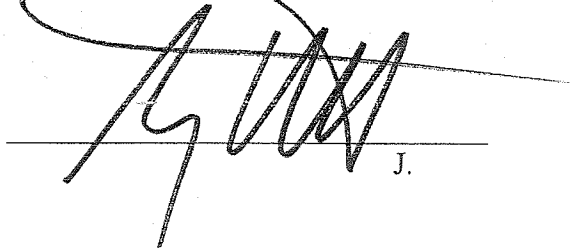
(N.T. 2/2/12, 32.)

Accordingly, the Attorney General's appeal should be dismissed because it is not

¹ The sum of \$25,000.00 was assessed against Samuel C. Stretton, Esquire; Evelyn Yaari; Sandra G. Bressler, Hope Broker; Richard Feigen; Sidney Gecker; Walter Herman; Nancy Clearwater Herman; Sue Hood; Julia Bissell Leisenring; Robert Marmon; Toby Marmon; Costa Rodriguez; Barbara B. Rosin; and Barnes Watch, jointly and severally; and the sum of \$15,000.00 was assessed against Richard Ralph Feudale, Esquire.

a party entitled to costs under 42 Pa. C.S.A §2503, and/or it failed to prove its claim,
and/or the claim was waived by the failure to present evidence in support thereof.

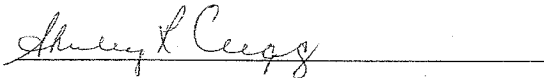
BY THE COURT:



A handwritten signature in black ink, appearing to be "R. G. Wellington", is written over a horizontal line. To the right of the signature, the letter "J." is printed.

Copies of the above
mailed May 11, 2012 to:

Ralph G. Wellington, Esquire
Samuel C. Stretton, Esquire
Richard Ralph Feudale, Esquire
Brett Miller, Esquire
Lawrence Barth, Senior Deputy Attorney General



A handwritten signature in black ink, appearing to be "Amy L. Clegg", is written over a horizontal line.