

**Marie HIMMELBERGER, Executrix
of the Estate of Sharon Warnock,
Appellant**

v.

**COMMONWEALTH OF Pennsylvania,
Department of REVENUE, BUREAU
OF INDIVIDUAL TAXES, Inheri-
tance Tax Division.**

No. 1453 C.D. 2011.

Commonwealth Court of Pennsylvania.

Submitted on Briefs Feb. 13, 2012.

Decided May 10, 2012.

William H. Sturm, Jr., Myerstown, for
appellant.

Thomas J. Gohsler, Deputy Chief Coun-
sel, Harrisburg, for appellee.

Before: McGINLEY, Judge, COVEY,
Judge, and COLINS, Senior Judge.

OPINION BY Judge McGINLEY.

Marie Himmelberger (Appellant), Executrix of the Estate of Sharon Warnock (Decedent), disputes an order of the Court of Common Pleas of Berks County (common pleas court) that sustained the Notice of Inheritance Tax Appraisalment, Allowance or Disallowance of Deductions and Assessment of Tax issued by the Pennsylvania Department of Revenue (Revenue), Department of Individual Taxes, Inheritance Tax Division.

Appellant and Revenue stipulated to the following:

1. . . . Decedent and . . . Appellant, while residents of the State of New Jersey, entered into a New Jersey Civil Union on March 8, 2007.
2. Decedent died testate February 25, 2010, a resident of Berks County, Pennsylvania.

3. Decedent's Last Will and Testament, executed July 15, 2008, appointed Appellant executrix of the estate.

4. Appellant was also a designated beneficiary under the Will of certain estate assets.

5. Letters Testamentary were granted March 3, 2010.

6. On August 31, 2010, Appellant, acting as executrix, filed a Resident Decedent Pennsylvania Inheritance Tax Return with the Office of the Register of Wills, Berks County, Pennsylvania, and paid the sum of \$17,010.41 toward the Pennsylvania Inheritance Tax due.

7. *The Inheritance Tax Return as filed identified Appellant as a Civil Union Partner of Decedent.* (emphasis added).

8. *The Inheritance Tax Return as filed valued the estate assets to be received by Appellant as beneficiary at \$604,179.25.* (emphasis added).

9. *The Inheritance Tax Return as filed assessed the inheritance tax due on the estate assets received by Appellant at zero (0) percent tax rate.* (emphasis added).

10. *The Inheritance Tax return as filed claimed a Family Exemption of \$3,500.00 on behalf of Appellant.* (emphasis added).

11. On February 7, 2011, the Commonwealth of Pennsylvania, Department of Revenue, Bureau of Individual Taxes, Inheritance Tax Division issued a Notice of Inheritance Tax Appraisalment, Allowance or Disallowance of Deductions and Assessment of Tax.

12. *The Notice assessed the Inheritance Tax due on the value of the assets received from the estate by Appellant at the collateral rate of 15%.* (emphasis added).

13. *The Notice denied a deduction to the estate on behalf of a family exemp-*

tion claimed under the Probate, Estates and Fiduciaries Code. (emphasis added).

14. *The Notice claimed the sum of \$91,528.42 was due as additional tax as of February 22, 2011.* (emphasis added).

Stipulation of Facts, June 1, 2011, Paragraphs 1–14 at 1–2; Reproduced Record (R.R.) at 79a.

The common pleas court sustained Revenue's Notice of Inheritance Tax Appraisal, Allowance or Disallowance of Deductions and Assessment of Tax and concluded that "Appellant is not a child, parent, or spouse of the decedent, and further, there is no legitimate reason to apply New Jersey law or treat Appellant any differently than any other member of the non-familial class of survivor." Opinion of the Common Pleas Court, September 28, 2011, at 13.

Before this Court and in her Concise Statement of Errors Complained of on Appeal, Appellant challenges:

1. Whether the trial court committed errors of law and/or abused its discretion when in [sic] failed to specially address the following . . . :

a. Whether, for Pennsylvania Inheritance Tax purposes, a New Jersey civil

1. Pursuant to New Jersey law, a "civil union" is defined as a "legally recognized union of two eligible individuals of the same sex established pursuant to this act [and that] [p]arties to a civil union shall receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage." N.J.S.A. 37:1–29. "For two parties to establish a civil union in this state, it shall be necessary that they satisfy all of the following criteria: (a) not be a party to another civil union, domestic partnership or marriage in this State; (b) be of the same sex; and (c) be at least 18 years . . ." N.J.S.A. 37:1–30.

2. Section 1704 of the Marriage Law provides: It is hereby declared to be the strong and longstanding public policy of this Common-

union¹ is the equivalent of a marriage between persons of the same sex.

b. Whether, if a New Jersey civil union is not the equivalent of a marriage between persons of the same sex, [Section 1704 of the Marriage Law]^[2] 23 Pa.C.S. § 1704 is inapplicable.

c. Whether, if a New Jersey civil union is not the equivalent of a marriage between two persons of the same sex, and if [Section 1704 of the Marriage Law,] 23 Pa.C.S. § 1704 is inapplicable, does the Full Faith and Credit clause of the United States Constitution^[3] require Pennsylvania to recognize New Jersey law relative to the taxation of same sex couples and apply the spousal tax rate to the assets received by Appellant.

Concise Statement of Errors Complained of on Appeal, August 15, 2011, Paragraph 1(a-c) at 1–2.

These issues were raised and argued before the common pleas court and ably disposed of in the comprehensive opinion of the Honorable P.W. Schmehl. Therefore, this Court shall affirm on the basis of that opinion. *In Re: Estate of Sharon Warnock, Marie Himmelberger, Executrix of the Estate of Sharon Warnock v. Pennsylvania Department of Revenue, Bureau*

wealth that marriage shall between one man and one woman. *A marriage between persons of the same sex* which was entered into in another state or foreign jurisdiction, even if valid where entered into, *shall be void in this Commonwealth.* (emphasis added).

3. The Full Faith and Credit Clause of the United States Constitution provides:

Full Faith and Credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

of *Individual Taxes, Inheritance Tax Division*, (No.0610-0286), filed September 28, 2011.

ORDER

AND NOW, this 10th day of May, 2012, the order of the Court of Common Pleas of Berks County in the above-captioned matter is affirmed.



Anthony WILLIAMS, Petitioner

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, Respondent.

Commonwealth Court of Pennsylvania.

Submitted on Briefs May 4, 2012.

Decided May 24, 2012.

Background: Prisoner filed a pro se application for summary relief, requesting that the Department of Corrections be ordered to properly compute his sentence and give him credit for all time served. The Department filed a cross-application for summary relief.

Holding: The Commonwealth Court, No. 324 M.D. 2011, Pellegrini, President Judge, held that prisoner was entitled to have all time spent in custody credited against maximum release date.

Summary relief granted.

1. Mandamus ⇌73(1)

Sentencing and Punishment ⇌1157

Prisoner was entitled to have all time spent in custody credited against his maximum release date, and, thus, was entitled to mandamus relief when Department of

Corrections calculated an incorrect maximum release date based on determination that sentence in first of two cases still had an open maximum release date when it did not, and applied only partial credit for time served to the maximum release date in both cases because the minimum date had expired; in the first case, both the minimum and the maximum release dates had expired. 42 Pa.C.S.A. § 9760(1).

2. Action ⇌66

An application for summary relief may be granted if a party's right to judgment is clear and no material issues of fact are in dispute.

3. Mandamus ⇌10, 12

Relief in mandamus will be granted to compel the performance of a ministerial act, where the plaintiff establishes a clear legal right to relief and a corresponding duty to act by the defendant.

Anthony Williams, pro se.

Maria G. Macus-Bryan, Assistant Counsel, Mechanicsburg, for respondent.

BEFORE: PELLEGRINI, President Judge and BROBSON, Judge and COLINS, Senior Judge.

OPINION BY President Judge PELLEGRINI.

Anthony Williams (Williams) has filed a pro se Application for Summary Relief requesting this Court to order the Department of Corrections (Department) to properly compute his sentence and give him credit for all time served. The Department has filed a Cross-Application for Summary Relief. For the reasons that follow, Williams' Application is granted