

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32321
C/kmb

_____AD3d_____

Argued - September 6, 2011

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-01339

DECISION & ORDER

In the Matter of Betty C. Tognino, deceased.
John Tognino, appellant; Robert Tognino,
et al., respondents.

(File No. 349608)

Steven L. Kroleski, Pelham, N.Y., for appellant.

Neal J. Roher, Garden City, N.Y., for respondents.

In a proceeding for the construction of a living trust, the petitioner appeals, as limited by his brief, from so much of an order of the Surrogate's Court, Nassau County (Riordan, S.), dated December 23, 2009, as granted that branch of the respondents' motion which was to dismiss the petition pursuant to CPLR 3211(a)(7) and stated that if the petitioner is unsuccessful in contesting the amendments to the decedent's living trust he will forfeit his bequest.

ORDERED that the appeal from so much of the order dated December 23, 2009, as stated that if the petitioner is unsuccessful in contesting the amendment to the decedent's living trust he will forfeit his request, is dismissed, as the petitioner is not aggrieved by that portion of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order dated December 23, 2009, is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondents, payable by the appellant.

September 27, 2011

Page 1.

MATTER OF TOGNINO, DECEASED

“Merely because the order appealed from contains language or reasoning that a party deems adverse to its interests does not ‘furnish a basis for standing to take an appeal’” (*Castaldi v 39 Winfield Assoc., LLC*, 22 AD3d 780, 781, quoting *Pennsylvania General Ins. Co. v Austin Powder Co.*, 68 NY2d 465, 472-473). The appellant is not aggrieved by the statement in the order appealed from that if he is unsuccessful in contesting the amendments to the decedent’s living trust he will forfeit his bequest.

The Surrogate’s Court properly granted that branch of the respondents’ motion which was to dismiss the petition since the petitioner failed to allege that any provision of the trust was ambiguous and, therefore, failed to state a cause of action for the construction of the decedent’s living trust (*see* CPLR 3211[a][7]; *cf. Williams v Williams*, 36 AD3d 693).

The petitioner’s remaining contention is without merit.

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court