

Matter of Truong Tran
2014 NY Slip Op 32056(U)
August 5, 2014
Sur Ct, New York County
Docket Number: 2012-1785/A
Judge: Nora S. Anderson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

New York County Surrogate's Court
DATA ENTRY DEPT.
AUG - 5 2014

SURROGATE'S COURT : NEW YORK COUNTY
-----X
Administration Proceeding, Estate of

TRUONG TRAN,
a/k/a TRUONG DINH TRAN,

File No. 2012-1785/A

Deceased.

-----X

A N D E R S O N , S .

In this contested administration proceeding in the estate of Truong Dinh Tran, movants, five alleged non-marital grandchildren of decedent who are cross-petitioners for letters of administration, seek an order directing the temporary administrator of the estate to undertake specific actions to assist them in establishing their kinship through DNA testing. The temporary administrator and the guardian ad litem for unknown heirs acknowledge the need to provide access to a sample of decedent's DNA, but nevertheless oppose in part the specific relief requested by the movants.¹

The DNA sample in question consists of hair obtained from decedent's body by the NYC Medical Examiner shortly after decedent's death. The sample was supplied to a DNA testing company at the direction of some alleged family members other than movants, who, thereafter, had their own DNA tested against

¹Temporary administrator Stanley Parness died after filing his partial opposition to this motion. Ernst H. Rosenberg, who has succeeded Mr. Parness as temporary administrator, has filed an affidavit concurring with that position.

it. The acquisition of the sample and the testing conducted on it occurred before the appointment of a fiduciary for the estate. The sample is currently in the custody of DNA Diagnostics Center, which is not a party to this proceeding. It is unclear whether the sample contains a sufficient quantity of decedent's DNA to allow for further testing with respect to these movants and/or other alleged distributees who also may wish to establish their kinship. A viability study must be performed to make this determination.

The five movants seek an order directing the temporary administrator to cooperate with them in authorizing DNA Diagnostic Center to conduct a viability study to determine if the existing sample may be used to conduct further testing; and, if such a study confirms that further testing can be undertaken, they ask the court to direct the temporary administrator to authorize the company to engage in testing to determine if there is a biological relationship between decedent and them. Alternatively, if the viability study reveals that no further testing of the sample is possible, movants seek an order directing the temporary administrator to authorize the company to use the information obtained in prior testing to determine their kinship. They also seek an order directing that the cost of the testing be paid by the fiduciary from estate funds.

The temporary administrator asserts that it is his duty as

the estate's fiduciary to administer the DNA sample, which is an estate asset. It appears that the company has been less than cooperative because of its concerns about having received conflicting directions from interested parties regarding the use of the sample. The temporary administrator does not oppose the motion to the extent that it results in an order establishing his authority over the DNA sample and allowing him to administer it. However, he contends that any direction regarding further testing would be premature until it is known whether, and to what extent, the sample is viable and how many alleged distributees seek access to it. He further opposes imposing the costs of testing on the estate.

The GAL for unknown distributees supports the position taken by the temporary administrator and asserts that, until a viability study is performed, any further order directing particularized testing is inappropriate.

There is no question that the decedent's DNA sample is an estate asset, subject to administration by the fiduciary, who is the only party with authority to give direction regarding its use. To eliminate any possible confusion in this regard, the court authorizes the temporary administrator to direct any further steps to be taken by anyone holding a sample of decedent's DNA.

In the event that testing of individual alleged distributees

occurs, the costs for such testing should be covered, in the first instance, by the persons seeking such testing, without prejudice to a further application for reimbursement upon an accounting.

This decision constitutes the order of the court.

USA

S U R R O G A T E

Dated: *August 5*, 2014