

<b>Matter of Dow</b>
2026 NY Slip Op 30918(U)
February 19, 2026
Surrogate's Court, Bronx County
Docket Number: File No. 2020-1833
Judge: Nelida Malave-Gonzalez
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SURROGATE'S COURT, BRONX COUNTY

February 19, 2026

ESTATE OF WAYNE DOW, Deceased  
File Nos.: 2020-1833 and 2020-1833/A

In this contested estate, Alvin R. Dow, the decedent's brother, and a sister, Jacqueline Bazemore ("the petitioners"), filed a petition seeking letters of administration contending that they and three other siblings are the decedent's only distributees. Milan Monroe, formerly known as Milan Paris Dow ("the cross-petitioner") filed objections to the petition and a cross petition seeking letters alleging that she is the decedent's daughter and sole distributee. The petitioners continued to repudiate the cross-petitioner's status after they were provided with authenticated documents naming the decedent as her father. The cross-petitioner then filed a motion for summary judgment pursuant to CPLR § 3212 seeking to preclude the petitioners from filing objections to her cross petition, dismissing their petition for lack of standing pursuant to SCPA 1001, granting her cross petition and appointing her administrator of the estate. The cross-petitioner also requests that the court award her legal fees, costs and disbursements incurred in filing this

application and grant sanctions against the petitioners and their attorney with additional appropriate relief.

On the return date of the summary judgment motion, an off calendar conference was held with counsel for the parties and a member of the court's Law Department during which the parties consented to a submission schedule. Accordingly, the court marked the matter "objections/opposition to be served and filed by January 9, 2026 with any reply by January 22, 2026" and the motion was adjourned to the reply date. The petitioners have not filed objections or opposition to date. On the adjourned calendar date, although court personnel telephoned petitioners' counsel multiple times, only counsel for the cross-petitioner appeared. The petitioners having failed to file objections to the cross petition or opposition to the motion, the Surrogate granted the motion on the record, and the matter was marked "motion granted as unopposed with decision to follow." Thereafter, petitioners' attorney e-mailed the court requesting an additional conference. However, the cross-petitioner's attorney did not consent to the same, and the summary judgment motion remains unopposed.

## **BACKGROUND**

The decedent died on April 30, 2020 at the age of 60. He never married. The petitioners petitioned for letters naming themselves and three sisters as the decedent's only distributees on or about July 18, 2020. At that time the cross-petitioner was under the age of 18. After attaining majority, the cross-petitioner filed a cross petition with a copy a report of birth issued by

the New York City Department of Health and Mental Hygiene, Office of Vital Records (“Department of Health”), on April 15, 2006 that did not list a father. Although the cross-petitioner filed copies of a corrected birth certificate issued on August 3, 2010 listing the decedent as her father and an acknowledgment of paternity executed by the decedent on February 4, 2010, the petitioners continued to argue that the cross-petitioner lacks standing, as the decedent’s name does not appear on her original birth certificate and the initial submission of the corrected birth certificate was an unauthenticated copy.

Multiple conferences were held with the parties and counsel and members of the court’s Law Department attempting to resolve the issues. the City failed to respond to “so-ordered” subpoenas directing them to produce authenticated documents. Thereafter, the cross-petitioner filed an authenticated “corrected birth certificate” dated August 3, 2010 and an acknowledgment of paternity document signed by the decedent on February 4, 2010. In further support, counsel filed affidavits from two long time family friends of the decedent stating that the decedent continued to maintain a close relationship with the cross-petitioner and held himself out as her father during his lifetime and provided copies of all these documents to the petitioners’ attorney. Although the petitioners’ attorney was cautioned by the court on multiple occasions that sanctions may be imposed should his clients continue to seek to be appointed, the petitioners continue to aver that the documents are insufficient to prove paternity, are demanding DNA testing

and seek to be appointed fiduciaries of the estate.

### **THE CROSS-PETITIONER'S CONTENTIONS**

In support of summary judgment, the cross-petitioner's attorney avers that the petitioners never had standing to serve as administrators of the estate since they are not distributees of the decedent pursuant to SCPA 1001. Although the cross-petitioner filed certified copies of her birth certificate and an acknowledgment of paternity executed by the decedent and her mother, as well as affidavits from the decedent's friends evidencing that the decedent recognized her as his daughter and maintained a parental relationship with her, the petitioners continue to fail to recognize her status and thwart her efforts to become appointed administrator of the estate.

Therefore, counsel asserts that the cross-petitioner has fulfilled the requirements set forth in EPTL 4-1.2 establishing her status as a distributee (EPTL 4-1.2 [a] [2] [a], [C]). Despite the filing of these authenticated evidentiary documents, the petitioners and their attorney failed to consent to the standing of the cross-petitioner as the decedent's daughter and sole distributee, and it is not necessary to seek DNA genetic marker tests to evidence such standing (EPTL 4-1.2 [2] [C]). Counsel also opines that the deliberate continued refusal by the petitioners and their attorney to recognize the cross-petitioner's status and withdraw their petition constitutes frivolous conduct and creates an undue burden on his client and the court. In any event, as the petitioners failed to file opposition as directed by the court, or appear on the adjourned return date of this motion, they are in

default (SCPA 302 [3]). Accordingly, counsel urges the court to issue a decree dismissing the siblings' petition, awarding letters of administration to the cross-petitioner as well as imposing legal fees and costs incurred in this motion and additional sanctions upon the petitioners and their attorney .

### **SUMMARY JUDGMENT**

Summary judgment cannot be granted unless it clearly appears that no material issues of fact exist (see *Phillips v Joseph Kantor & Co.*, 31 NY2d 307 [1972]; *Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]). The movants must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Friends of Animals, Inc. v Associated Fur Mfrs. Inc.*, 46 NY2d 1065 [1979]). When the movants have made out a prima facie case, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Summary judgment is a drastic remedy which requires that the party opposing the motion be accorded every favorable inference and issues of credibility may not be determined on the motion but must await the trial (see *F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d 186 [1<sup>st</sup> Dept 2002]).

### **DETERMINATION**

EPTL 4-1.2 (2) (C), as amended in 2010, states, inter alia, that a non marital child may inherit from his or her father and paternal kindred, if paternity was established during the decedent's life or "paternity has been established by clear and convincing evidence which may include but is not limited to . . . (ii) evidence that the father openly and notoriously acknowledged the child as his own." The affidavits of the two disinterested family friends clearly demonstrate that the decedent openly and notoriously declared to others that he was the cross-petitioner's father and maintained a parent-child relationship with her until his death. Moreover, the decedent and the cross-petitioner's mother signed an Acknowledgment of Paternity LDSS-441 form which was filed with the Department of Health and decedent never requested rescission of the document or filed a proceeding seeking rescission establishing paternity pursuant to EPTL 4-1.2 (4). Although the petitioners appear to question the validity of those documents, they are not signatories to the documents and lack standing to bring a proceeding seeking to rescind them (see FCA § 522; *Butler v Suffolk County*, 146 AD3d53 [2d Dept 2017]).

Accordingly, the Surrogate's Court "must" grant letters of administration pursuant to the order of priority set forth in SCPA 1001 (see SCPA 1001[1] [b]; *Matter of Pfeferblum*, NYLJ, Mar. 24, 2010 at 34, col 3 [Sur Ct, Bronx County 2010]). As the cross-petitioner has demonstrated her status as the decedent's daughter and sole distributee, she is entitled to be appointed administrator (SCPA 1001 [b]).

**SANCTIONS AND OTHER REQUESTED RELIEF**

The court may award cost or impose financial sanctions against a party or its counsel or both who engages in frivolous conduct pursuant to Uniform Rules of Surrogates' Court (22 NYCRR 130-1.1). Such conduct is defined pursuant to 22 NYCRR 130-1.1 (c) (1) if it is completely without merit in law or (2) undertaken primarily to delay or prolong the resolution of the litigation, or to harrass or maliciously injure another. Even after being presented with authenticated documents establishing that the decedent openly and notoriously recognized the cross-petitioner as his daughter and signed an instrument acknowledging paternity in 2010, the petitioners continued to assert that the documents were specious and insist that the cross-petitioner submit to DNA testing. They belatedly conceded that they "might" withdraw their petition should the cross-petitioner agree to pay certain claims and their attorney's legal fees. They continued to press the cross-petitioner, who was only 18 years old when the cross petition was filed and has limited resources, with frivolous and meritless demands, even after being made aware of their lack of standing and warned by the court that doing so was frivolous and might result in imposition of sanctions (see NYCRR 130-1.1; Yan v Klein, 35 AD3d 729 [2<sup>nd</sup> Dept 2006]). Accordingly, the court determines that, although the petitioners' claims were not frivolous when their petition was originally filed, after being presented with authenticated birth documents, the petitioners continued to press meritless claims solely to impede and delay the cross petition, which warrants imposition of

reasonable legal fees and costs incurred by the cross-petitioner in bringing this motion in a sum to be determined, as well as awarding sanctions (see NYCRR § 130-1-3; *Distel v Distel*, 241 AD3d 1149 [1<sup>st</sup> Dept 2025]).

Although the cross-petitioner's verified assertions remain unopposed and would normally constitute due proof therefor (SCPA 509), given the circumstances and consideration of the entire record, this decision constitutes the order of the court granting summary judgment to the cross-petitioner as follows: (1) granting the cross-petitioner's objections to the siblings' petition and dismissing the siblings' petition for lack of standing; (2) determining that the cross-petitioner is the decedent's daughter and sole distributee; (3) awarding letters of administration to the cross-petitioner upon filing a bond in the penal sum of \$ 1,900,000.00; (4) awarding the cross-petitioner reasonable legal fees and costs incurred in bringing this application to be paid by the petitioners in an amount to be determined; and (5) imposing sanctions for frivolous conduct against the petitioners and their attorney in the sum of \$ 750.00 to be paid to the Lawyers' Fund for Client Protection.

With respect to the imposition of fees for legal services and costs incurred in bringing this motion, the cross-petitioner is to serve and file an affirmation of services with time sheets on or before March 11, 2026. Opposition, if any, is to be served and filed by the petitioners on or before April 8, 2026. The cross-petitioner is to serve and file a reply, if any, on or before April 28, 2026, and the issue of such award will be marked

“submitted” as of the reply date. Any claims that the petitioners might assert against the estate must be presented within the statutory period and in proper form to the duly appointed fiduciary of the estate (see SCPA 1802, 1803).

Settle decree and proceed accordingly.

  
HON. NELIDA MALAVÉ-GONZÁLEZ  
SURROGATE