

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1488**

**CA 16-02319**

PRESENT: WHALEN, P.J., SMITH, CARNI, TROUTMAN, AND WINSLOW, JJ.

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IN THE MATTER OF THE ESTATE OF PATRICIA S.  
HAINES, DECEASED.

MEMORANDUM AND ORDER

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PETER L. HAINES AND MINNIE H. BRENNAN, AS  
COEXECUTORS OF THE ESTATE OF PATRICIA S.  
HAINES, DECEASED, PETITIONERS-RESPONDENTS;

HOLLY WEST, RESPONDENT-APPELLANT.

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CARMEL, MILAZZO & DICHIARA LLP, NEW YORK CITY (CHRISTOPHER P. MILAZZO  
OF COUNSEL), FOR RESPONDENT-APPELLANT.

BURNS & SCHULTZ LLP, PITTSFORD (ANDREW M. BURNS OF COUNSEL), FOR  
PETITIONERS-RESPONDENTS.

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Appeal from a decree of the Surrogate's Court, Steuben County  
(Marianne Furfure, S.), entered September 15, 2016. The decree, among  
other things, awarded petitioners the sum of \$868,892.96 against  
respondent Holly West.

It is hereby ORDERED that the decree so appealed from is  
unanimously affirmed without costs.

Memorandum: Petitioners, the coexecutors of decedent's estate,  
commenced this proceeding seeking, inter alia, an order directing  
respondent to return funds to the estate. Respondent asserted a  
counterclaim seeking an order directing petitioners to return to her  
shares in certain corporations that were allegedly the subject of an  
inter vivos gift from decedent to respondent. We reject respondent's  
contention that Surrogate's Court erred in determining, following a  
trial, that she failed to meet her burden of establishing a valid  
inter vivos gift. Although there is no dispute that decedent endorsed  
in blank three stock certificates in the presence of the parties,  
respondent presented no evidence that there was actual or constructive  
delivery of those certificates to her (*see generally Gruen v Gruen*, 68  
NY2d 48, 56-57 [1986]; *Bader v Digney* [appeal No. 2], 55 AD3d 1290,  
1291 [4th Dept 2008]). Respondent's remaining contentions are not  
preserved for our review inasmuch as she failed to present to the  
Surrogate the specific arguments that she now raises on appeal (*see  
generally Nary v Jonientz* [appeal No. 2], 110 AD3d 1448, 1448 [4th  
Dept 2013]).

Entered: December 22, 2017

Mark W. Bennett  
Clerk of the Court