

Matter of Rankin

2007 NY Slip Op 30426(U)

March 21, 2007

Sur Ct, Nassau County

Docket Number: 0332036

Judge: John B. Riordan

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SURROGATE'S COURT: STATE OF NEW YORK
COUNTY OF NASSAU

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In The Matter of the Account of Proceedings of David
Guggerty, Public Administrator of Nassau County,
as Administrator of the Estate of
 LOUISE RANKIN,

File No. 332036

Decision No. 945

Deceased.

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In this accounting of the Public Administrator, the issue of kinship was referred to a court attorney/referee pursuant to SCPA 506. Hearings were conducted and various documents were admitted in evidence, including the purported family tree. All parties stipulated to waive the report of the referee and to allow kinship issues to be decided by the court based upon the transcripts of the hearing, the documentary evidence and the arguments made by the attorneys for claimant and the guardian ad litem representing the interests of unknown distributees.

Louise Rankin died intestate, a resident of Nassau County, on January 19, 2004. Letters of Administration issued to the Public Administrator of Nassau County on March 22, 2004. The account filed by the Public Administrator shows receipt of principal and income totaling \$791,724.30.

Objections were filed by a party claiming to be the sole distributee of Louise Rankin. Jackie Williamson claims to be the paternal first cousin of the decedent. For the reasons below, the court sustains the objections to the account and concludes that claimant is Louise Rankin's sole distributee.

In order to establish their rights as distributees, the claimants in a kinship proceeding must prove: 1) their relation to the decedent; 2) the absence of any person with a closer degree of consanguinity to the decedent; and 3) the number of persons having the same degree of

consanguinity to the decedent or to the common ancestor through which they take (*Matter of McMorrow*,, NYLJ April 12, 2001, at 23 col. 1 [Sur Ct, Bronx County]; 2 Harris, New York Estates, 21:3 at 21-1 [5th ed 1996]). Claimant, who alleges to be distributee of the decedent, has the burden of proof on each of these elements (*Matter of Cruz*, NYLJ, January 7, 2002 at 29, col. 4 [Sur Ct, Kings County]; *Matter of Balacich*, NYLJ, January 24, 1997, at 30, col. 2 [Sur Ct, Kings County]). The quantum of proof required to prove kinship is the fair preponderance of the credible evidence (*Matter of Jennings*, 6AD3d 867 [3rd Dept 2004]; *Matter of Whelan*, 93 AD2d 891 [2d Dept 1983] *affd* 62 NY2d 657 [1984]).

Based upon the evidence presented before the court/attorney referee, the court makes the following findings of fact and conclusions of law:

1. The decedent, Louise Rankin, died intestate on January 19, 2004 and letters of administration issued to the Public Administrator on March 22, 2004. The Public Administrator has now filed a petition to settle his account.
2. The evidence indicates that decedent never married and never had any issue, natural or adopted.
3. Decedent's parents, Florence Mills Rankin and Tom Rankin, and grandparents, Ella Remsen Mills and Stephen Mills and Jane Gainey Rankin and George Rankin, predeceased her.
4. The decedent was the only issue of her parent's marriage.
5. The decedent had one maternal uncle, Clarence Mills, who predeceased decedent. Clarence Mills had two issue, Lois Mills and Donald Mills, who predeceased decedent.
6. As to the maternal side of the decedent's family tree, the court is satisfied by the proof showing that no aunts, uncles or first cousins survived the decedent.
7. As to the paternal side of the decedent's family tree, the decedent had one paternal aunt, Mary Evans Rankin, who predeceased decedent. Mary Evans Rankin had one daughter, Jacqueline Dodge Williamson, a/k/a Jackie Williamson who was alive and adult at the time of decedent's death. The evidence is persuasive to the

court that no aunts or uncles survived the decedent and that there are no other first cousins other than Jacqueline Dodge Williamson, claimant herein.

Therefore, based upon the evidence before the court, it is held that the decedent, Louise Rankin, is survived by only one distributee, her paternal first cousin, Jacqueline Dodge Williamson. She is entitled to decedent's entire net estate. The court notes that there was no other objection to the account and it is hereby approved.

Counsel to the Public Administrator is directed to settle a decree and file the proposed decree with an affidavit of legal services on or before March 27, 2007 and their fee shall be fixed at the foot of the decree. The guardian ad litem has submitted his report and affidavit of services. They show he spent in excess of thirty-one (31) hours on the matter, including the hearings and a commission to take testimony in the State of Georgia. Based upon the criteria established by *Matter of Freeman*, (34 NY2d 1 [1974]) as applied to guardians ad litem (*Matter of Burk*, 6 AD2d 429 [1st Dept 1958]), the court awards the guardian ad litem the fee of \$7,500.00. The court also approves the guardian's expenses (\$1,172.95) which were incurred in connection with the commission in the State of Georgia.

The foregoing guardian ad litem fee shall be paid within 30 days of the date of the entry of the decree herein.

Settle decree.
Dated: March 21, 2007

JOHN B. RIORDAN
Judge of the
Surrogate's Court

