

**Matter of Tortora**

2009 NY Slip Op 32210(U)

September 24, 2009

Supreme Court, Nassau County

Docket Number: 344418/2009

Judge: John B. Riordan

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SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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In the Matter of the Application of Debra A. Rydzewski, as  
Administratrix of the Estate of

JANEEN TORTORA,

Deceased,

File No. 344418

Dec. No. 571

for leave to compromise a certain cause of action for  
personal injuries and conscious pain and suffering of the  
decedent and to render and have judicially settled an  
account of the proceedings as such administratrix.

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This is a miscellaneous proceeding to compromise a wrongful death action. The petitioner is the decedent’s mother, Debra A. Rydzewski. The respondent, decedent’s father, Robert Tortora, has moved, in the alternative, (i) to compel the petitioner to respond to the respondent’s outstanding discovery demand, (ii) to preclude petitioner from giving testimony at trial, or (iii) to strike the petition.

The decedent, Janeen Tortora, was involved in a motor vehicle accident, which resulted in her death seven days later on October 11, 2006. She was twenty-five years old at the time of her death. At the time of her death, the decedent was survived by her mother, Debra A. Rydzewski, and her biological father, Robert G. Tortora, who were divorced. The estate commenced a wrongful death action in Supreme Court, Nassau County, which was settled for \$1,250,000. The compromise action seeks to award the balance, after payment of legal fees, to petitioner on the basis that the respondent abandoned the decedent. According to petitioner, she and the respondent separated when the decedent was two years of age. An Order of Support was issued by the Family Court of the State of New York, Nassau County on August 5, 1983, directing respondent to pay \$70.00 per week for support. Petitioner claims respondent willfully

refused to provide support and that an order was issued amending the prior order and establishing arrears. In addition, petitioner claims respondent emotionally and physically abandoned the decedent. She characterized the relationship between the decedent and the respondent as mere acquaintances.

Additionally, the respondent has filed a Notice of Claim against the estate in the amount of \$14,700 which seeks reimbursement for the decedent's funeral expenses and hotel accommodations, meals, car rental and travel expenses for the respondent and others.

Respondent served the petitioner with a Notice to Produce which requested the following:

**“DOCUMENTS REQUESTED:**

1. Decedent's fiancé previously offered to Decedent in exchange for marriage a certain engagement ring. With respect to this engagement ring, set forth the following:
  - a. Set forth the type of engagement ring that was in the possession of the Decedent (i.e. cut, carats, style, etc.).
  - b. Set forth the date that Debra Rydzewski requested the return of the ring to her.
  - c. Set forth documents evincing the sale of such ring by Debra Rydzewski.
  - d. Set forth the amount of money that said engagement ring was sold for.
2. Set forth and provide documents regarding the type of vehicle Decedent owned at the time of her death (i.e. make, model, etc.).
3. Set forth and provide documents concerning the disposition of said vehicle:
  - a. If said vehicle was sold, provide copies of all documentation, including motor vehicle documents evincing the sale of said vehicle.

- b. Provide documents concerning the amount of money the vehicle was sold for, and set forth who received the money and what was done with said sums of money representing the sale of the vehicle.
4. Set forth and itemize all bank accounts that Decedent had at the time of her death:
  - a. Provide copies of all such bank account statements at the time of death.
  - b. Provide copies of all documents evincing the disposition of all such bank accounts.
  - c. Provide copies of documents concerning the disposition of assets of said bank accounts and to whom such money was transferred.”

Petitioner responded to the Notice to Produce and objected to the requests on the grounds that (i) the demands seek information, as opposed to documentation, and the petitioner is not required to create new documents and (ii) the information and documentation requested are irrelevant to the proceeding.

Thereafter, respondent made the instant motion. According to respondent, “the issues contained in the demands are predicated upon credibility issues and potential impeachment of credibility issues of the Petitioner.” Respondent argues that the “central issue here” is the credibility of the petitioner since it is the petitioner’s testimony that the court will rely upon in deciding the issue of abandonment. According to respondent’s counsel, “[i]t is obvious that the petitioner is motivated by money to do whatever is essentially necessary for her to do to obtain the entire proceeds of the settlement, and therefore her credibility is at issue.” Respondent’s counsel also argues that the idea that respondent has requested the production of new documents is a “foolish argument” since the demand is, in fact, requesting documents “known to already exist.”

Generally, there is full disclosure of all matter “material and necessary” in the prosecution or defense of an action or proceeding (CPLR 3101 [a]). It is well settled that the court has broad discretion over the discovery process to decide whether information sought is “material and necessary” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). The words “material and necessary” are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy. The test is one of usefulness and reason (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]); *see also Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740 [2001]). Nevertheless, a party may refuse to respond to demands which are “palpably improper” (*Watson v Esposito*, 231 AD2d 512, 516 [Sup Ct, Nassau County 1996]). A demand for material is palpably improper if it seeks material that is of a confidential and private nature, irrelevant to the issues in the case or overbroad (*Shapiro v Central General Hospital*, 171 AD2d 786 [2d Dept 1997] ; *see also Watson v Esposito*, 231 AD2d 512, 516 [Sup Ct, Nassau County 1996]). “A party is entitled to disclosure only insofar as the items sought are material that is relevant and useful with respect to the issues involved” (*Matter of Schneier*, 50 AD2d 715, 716 [4th Dept 1975]). “Legitimate discovery extends to documents that can lead to the disclosure of admissible proof, as well as admissible proof itself” (*Linroc Enterprises, Inc., v 135 9 Bdwy. Assoc.*, 186 AD2d 95 [1st Dept 1992]). “Thus, as is the case with so many areas of the law, the court employs a balancing test. In discovery applications, the court balances the likelihood and the extent to which requested disclosure will assist the moving party in preparing for trial against the burden that will be imposed upon the other party should the requested disclosure be ordered.” (*Matter of Poster*, 2009 NY Slip Op 29346 [Sur Ct, Bronx County]).

Here, the documents concerning the decedent's engagement ring, the type of vehicle the decedent owned, and the bank accounts decedent maintained at the time of death are not germane to the issue of abandonment and have no bearing on the controversy, and therefore, are palpably improper. Accordingly, the motion is denied in its entirety.

This constitutes the decision and order of the court.

Dated: September 24, 2009

JOHN B. RIORDAN  
Judge of the  
Surrogate's Court