

**Matter of Parente**

2009 NY Slip Op 33145(U)

December 21, 2009

Surrogate's Court, Nassau County

Docket Number: 356171

Judge: John B. Riordan

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

-----X

In the Matter of the Application of Joseph A. Mazarella  
for Full Letters of Administration in the Estate of

File No. 356171

BETTY ANN PARENTE  
a/k/a BETTY PARENTE,

Dec. No. 686

Deceased.

-----X

In the Matter of the Application of Joseph A. Mazarella  
for Full Letters of Administration in the Estate of

File No. 356177

CATHERINE ANN PARENTE  
a/k/a CATHERINE PARENTE,

Dec. No. 687

Deceased.

-----X

In the Matter of the Application of Joseph A. Mazarella  
for Full Letters of Administration in the Estate of

File No. 356176

STEPHANIE ANN PARENTE  
a/k/a STEPHANIE PARENTE,

Dec. No. 688

Deceased.

-----X

In the Matter of the Application of Joseph A. Mazarella  
for a Determination of Decedent’s Interest in Property  
in the Estate of

File No. 356171

BETTY ANN PARENTE  
a/k/a BETTY PARENTE,

Dec. No. 691

Deceased.

-----X

Before the court are four related petitions filed by Joseph A. Mazarella as temporary administrator of the estates of Betty Ann Parente, Catherine Ann Parente and Stephanie Ann Parente: (1) a petition for full letters of administration without bond in the estate of Betty Ann Parente; (2) a petition for full letters of administration without bond in the estate of Betty’s

minor daughter, Catherine Ann Parente; (3) a petition for full letters of administration without bond in the estate of Betty's adult daughter, Stephanie Ann Parente; and (4) a petition for the determination of Betty Ann Parente's interest in real property, a condominium and a cooperative apartment.

Betty, Catherine and Stephanie all died on April 20, 2009, allegedly at the hand of their respective husband and father, William Parente. William allegedly committed suicide and died later that same day. Petitioner was granted temporary letters of administration in the estates of Betty, Catherine and Stephanie on July 14, 2009. Petitioner is Betty's cousin, and he is a first cousin once removed of Catherine and Stephanie, but he is not a distributee of their estates. In addition to allegedly being survived by William, Betty was survived by one sister, Phyllis Cuteri. Ms. Cuteri filed a waiver of citation, renunciation and consent to the appointment of Joseph A. Mazarella to serve without bond as administrator in connection with each of the three estates.

#### I. The Three Petitions for Full Letters of Administration

The relief sought in each of the first three petitions, in addition to the issuance of full letters without bond to petitioner or to the Public Administrator, is that the court issue a decree that:

- (1) on April 20, 2009, Betty died first, followed by Catherine, followed by Stephanie, with William the last to die;
- (2) neither William nor his distributees may receive a share of any of the estates of Betty, Catherine and Stephanie; and
- (3) the distributees of William's estate may not be issued letters of administration in connection with these estates.

Citation for each petition issued on May 20, 2009 and supplemental citations issued on June 24, 2009. Citation was duly served on the Public Administrator, who at the time had been

appointed temporary administrator of William's estate and who subsequently received full letters, and on the distributees of William's estate, namely, his aunt and uncle and the seven adult children of William's two predeceased uncles. Notices of appearance were filed on behalf of (1) the Public Administrator; (2) Leonard C. Aloï, who is the surviving trustee of William's life insurance trust; and (3) Anthony J. Salierno and Kathleen Salierno, who also filed notices of claims against Betty's estate, which claims were rejected by the temporary administrator. None of William's distributees appeared.

On August 12, 2009, the Public Administrator filed a verified answer and objection to each of the petitions before the court. The Public Administrator argues that the relief requested must be denied because petitioner failed to establish: (1) that Betty and Stephanie died intestate<sup>1</sup>; (2) that petitioner is eligible to receive letters pursuant to SCPA 707; (3) a basis for determining the order of death; (4) that William was responsible for the deaths of Betty, Catherine and Stephanie; (5) William's disqualification to receive a share of the estates of Betty, Catherine and Stephanie; (6) the disqualification of William's distributees to receive a share of the estates of Betty, Catherine and Stephanie; and (7) the disqualification of the fiduciary of William's estate or William's distributees to receive letters of administration in these three estates. The Public Administrator further asserts that the requested appointment is premature, as there has not been an adequate search for wills which might have been left by Betty and Stephanie and in which each may have nominated an executor. In the event that petitioner is able to prove that William caused the deaths of Betty, Catherine and Stephanie, the Public Administrator's answer raises the affirmative defenses of insanity, intoxication, mental illness, duress, extreme emotional disturbance, and the influence of mind-altering drugs.

---

<sup>1</sup>No challenge has been made to the intestacy of Catherine, who was a minor.

Petitioner filed a reply on August 26, 2009 in response to the Public Administrator's objections. Petitioner maintains that he does not bear the burden of proof to establish eligibility for letters, as the issuance of preliminary letters serves as a preliminary determination of eligibility. He asserts that an extensive search for wills left by Betty and Stephanie was unsuccessful. Petitioner further states that on information and belief, even without having received the final laboratory results, Betty died first, then Catherine, then Stephanie, and finally, William. In support of William's culpability in the deaths of Betty, Catherine and Stephanie, petitioner refers to information contained in the death certificates and annexes a copy of the crime report issued by the Baltimore County Police Department.

The court will address each of the issues raised in the pleadings.

(A) Intestacy of Decedents

The Public Administrator asserts that petitioner has not established that Betty and Stephanie died intestate. However, more than six months have passed since temporary letters of administration were issued in connection with the estates of Betty and Stephanie. During that time, counsel for petitioner and counsel for the Public Administrator had access to and searched decedents' properties and records. To date, no wills have been found. As required, each of the petitions for the estates of Betty and Catherine includes petitioner's statement to the effect that a diligent search for a will was made and that no will was found (1 Harris, New York Estates: Probate, Administration and Litigation § 4:30, at 4-8 [5th ed]). It is reasonable to now conclude, based upon these comprehensive searches and petitioner's statements upon information and belief, that Betty and Stephanie died intestate. The court further notes that full letters of administration in connection with the estate of William were applied for and issued to

the Public Administrator on November 10, 2009, which implies respondent's parallel conclusion that William, too, died intestate.

(B) Petitioner's Eligibility to Receive Letters

The Public Administrator argues that petitioner has not established that he is not ineligible to receive letters, but petitioner does not bear the burden of proving his eligibility. Any party with an interest in an administration proceeding may challenge the granting of letters on the basis that the petitioning party is ineligible to receive letters (1 Harris, New York Estates: Probate, Administration and Litigation § 4:103, at 4-30 [5th ed]). The court previously granted petitioner temporary letters. The Public Administrator has not introduced any facts to challenge the issuance of letters to petitioner on the basis of ineligibility under SCPA 707.

(C) Order of Death and William's Responsibility for the Deaths

Petitioner asks the court to issue a decree determining that Betty died first, followed by Catherine, then Stephanie and finally William. Petitioner further requests that the decree set forth that all four family members died at the hand of William. In support of this requested relief, petitioner submitted copies of death certificates for William, Betty, Catherine and Stephanie, each of which reflects that death occurred at 3 p.m. on April 20, 2009. As noted by petitioner, the death certificates for Betty, Catherine and Stephanie state that the cause of death was homicide, while the death certificate for William states that he died as a result of suicide. Petitioner also filed a copy of the Baltimore County Police Department Crime report, dated April 23, 2009. It indicates that the deaths of Betty, Catherine and Stephanie were homicides, and that the suspect in these homicides is William. All of these documents appear to support petitioner's position that Betty, Catherine and Stephanie died before William. However, no evidence was presented as to the order of death among Betty, Catherine and Stephanie.

Respondent objects, maintaining that petitioner has not sufficiently established any of these points.

Arguably, based upon the death certificates and the police report, petitioner has made a prima facie showing that Betty, Catherine and Stephanie died before William, and that William killed them before committing suicide. However, the court must hold a hearing so that the respondent is given the opportunity to rebut the evidence presented, as these issues and the issue of the entitlement of William and his heirs to inherit from these three estates, as discussed more fully in (D) below, are inextricably linked.

(D) Disqualification of William and his Distributes from Receiving a Share of the Estates

Petitioner asks the court to issue a decree directing that William and his distributees are disqualified from receiving a share of the estates. It is well established law that one who takes the life of another should not be permitted to profit from his own wrong and shall be barred from inheriting from the person slain (*Riggs v Palmer*, 115 NY 506 [1889]; *see also Matter of Covert*, 97 NY2d 68 [2001]; *Matter of Miller*, 17 Misc 2d 508 [Sur Ct, Nassau County 1959]; *Matter of Sparks*, 172 Misc 642 [Sur Ct, New York County 1939]). In *Riggs v Palmer* (115 NY 506, 511 [1889]), the court articulated the basic principle that “[n]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime.” Although there is no express statutory provision denying to one who killed the right to inherit from his victim, (*but cf.* EPTL 4-1.6 regarding joint bank accounts), numerous cases since *Riggs v Palmer* have reaffirmed the applicability of the common law general principle that one should not be permitted to profit by taking the life of

another and, in particular, that one who feloniously murders shall not be entitled to share in his victim's estate (*Matter of Covert*, 97 NY2d 68 [2001]; *Petrie v Chase Manhattan Bank*, 38 AD2d 206 [1st Dept 1972], *mod*, 33 NY2d 846 [1973], *rearg denied*, 34 NY2d 668 [1974]; *Matter of Jacobs*, 2 AD2d 774 [2d Dept 1956], *affd*, 3 NY2d 723 [1957]; *Bierbrauer v Moran*, 244 AD 87 [4th Dept 1935]; *Matter of Kirkman*, 120 Misc2d 278 [Sur Ct, Broome County 1983]; *Matter of Bach*, 81 Misc 2d 479 [Sur Ct, Dutchess County 1975], *affd* 53 AD2d 612 [1976]; *Matter of Grey*, 76 Misc2d 720 [Sup Ct, Albany County 1974]; *Matter of Loud*, 70 Misc2d 1026 [Sur Ct, Kings County 1972]; *Matter of Miller*, 17 Misc2d 508 [Sur Ct, Nassau County 1959]). These cases essentially hold that there is no vesting of the estate in the wrongdoer because the crime precludes the wrongdoer from becoming a distributee (*Matter of Sparks*, 172 Misc 642 [Sur Ct, New York County 1939]; *Matter of Wolf*, 88 Misc 433 [Sur Ct, New York County 1914]).

The basic rule has been expanded so that the wrong need not have been committed with an intent towards acquiring the victim's property or even with a desire to bring about the victim's death (*Matter of Sparks*, 172 Misc 642 [Sur Ct, New York County 1939]). In addition, the common law principle has been applied to wrongdoers other than a legatee under a will or a distributee in intestacy. The courts have similarly denied a beneficiary of a life insurance policy from receiving the life insurance proceeds where he stabbed the insured to death (*Matter of Loud*, 70 Misc2d 1026 [Sur Ct, Kings County 1972]) and barred an individual convicted of manslaughter from receiving death benefits on behalf of his victim under the Retirement and Social Security Law (*Matter of Grey*, 76 Misc2d 720 [Sup Ct, Albany County 1974]).

This court has held that “[a] criminal conviction either by plea or after trial is conclusive proof of its underlying facts in a subsequent civil proceeding and collaterally estops a party from

relitigating the issues” (*Matter of Mirissis*, NYLJ, Mar. 16, 1993, at 25, col 3 [Sur Ct, Nassau County], citing *Merchants Mutual Insurance Company v Arzillo*, 98 AD2d 495 [2d Dept 1984] and *Grayes v DiStasio*, 166 AD2d 261 [1st Dept 1990]). However, in connection with the petitions now before this court, the alleged wrongdoer, William, is deceased, and has not and can not be tried in a criminal court for a determination of guilt or innocence.

“[T]he law is the same whether we consider the right to inherit or the right to collect the proceeds of insurance ... When the killer has been convicted of intentional homicide (murder or voluntary manslaughter) no hearing is probably necessary. In all other cases a hearing must be had to establish a forfeiture, i.e., proof that the beneficiary intentionally and feloniously took the life of the insured. When there has been a conviction of a crime other than intentional homicide, proof may be offered of the criminal conviction but a full hearing is required. Such is also the requirement when the killer is dead (generally suicide) ... ”

(*Matter of Loud*, 70 Misc2d 1026, 1027 [Sur Ct, Kings County 1972] [emphasis added]).

Therefore, a hearing before this court will be necessary to determine whether William killed his wife and daughters.

Moreover, application of the law barring a killer from inheriting from his victim, as established in *Riggs v Palmer*, is not always straightforward, and not all wrongful conduct will disqualify a person as a distributee (5 Warren’s Heaton, Surrogate’s Court §74.13 [7<sup>th</sup> ed.]). In *Matter of Eckhardt* (184 Misc 748 [Sur Ct, Orange County 1945]), a woman, who was a somnambulist, killed her husband. She was acquitted on the grounds that she did not know the nature and quality of her act. The court reasoned that the wife was not profiting from her own wrong since she had not done anything “legally wrong.” Similarly, there is some authority that if the killing was unintentional or accidental, the rule will not be applied (*Matter of Savage*, 175 Misc2d 880 [Sur Ct, Rockland County 1998] [holding that one who kills by accident does not

forfeit the right to inherit from the decedent]; *Matter of Wolf*, 88 Misc 433 [Sur Ct, New York County 1914] [husband convicted of manslaughter for killing his wife was permitted to take as a distributee where it appeared that he killed her when he really intended to kill her paramour]). If the killing was done in self-defense (*Matter of Savage*, 175 Misc2d 880 [Sur Ct, Rockland County 1998]) or by reason of insanity (*Matter of Wirth*, 59 Misc2d 300 [Sur Ct, Erie County 1969]), the principle barring the person from profiting from his wrong is likewise inapplicable.

For the reasons stated above, the possibility remains that even if petitioner can establish that William caused the deaths of his wife and daughters, petitioner may be unsuccessful in establishing that William and his heirs may not inherit from these estates. The Public Administrator, as the administrator of William's estate, has asserted multiple justificatory affirmative defenses which, if successfully proven, may lead to a determination that William is not disqualified from inheriting by his actions. It would therefore be premature at this time to adjudicate whether William or his distributees may inherit from the estates of Betty, Catherine and Stephanie.

#### (E) Issuance of Letters to William's Distributees

The prayer for relief which asks the court to determine that the fiduciary or distributees of William's estate may not receive letters testamentary has been rendered moot. Petitioner is the only party who applied to the court for letters of administration; the fiduciary and distributees of William's estate did not apply.

## II. Determination of Betty's Interest in Property

In the fourth petition, which seeks a determination of Betty's interest in property, petitioner, as temporary administrator of Betty's estate, requests an order and decree: (1) finding that William wrongfully caused the death of Betty; (2) adjudicating that William be deemed to

have predeceased Betty; (3) vacating William's interest in (a) the home and real estate located at 4 First Street, Garden City and (b) a condominium located at 575 Dune Road, unit 30, in Westhampton Beach, both owned by Betty and William as tenants by the entirety, and (c) 425 shares of stock and a lease pertaining to a cooperative apartment located at 9265 Shore Road, unit 6H, in Brooklyn, owned by Betty and William; and (4) allowing said property and any other property to pass to Betty's distributees (excluding William), pursuant to EPTL 4-1.1. The petition reflects that the Public Administrator is the only party required to be cited.

The Public Administrator filed a verified answer asserting that there is no factual or legal basis to determine who caused the death of Betty, to impose the legal fiction that William predeceased Betty or to disqualify William and his distributees. Respondent asserts that it is premature to make these determinations prior to the court's determination of who is responsible for Betty's death. The Public Administrator further argues that no search has been made for Betty's will or William's will, and notes that the magnitude of outstanding claims against William's estate makes it unlikely that any property would ever pass to William or his distributees. He then raises multiple affirmative defenses and concludes that in the event that Betty died intestate, her property should be disposed of pursuant to EPTL 4-1.1, except that property owned by Betty and William as tenants by the entirety vested in William as the surviving tenant, unless it is proven that William wrongfully caused Betty's death. The Public Administrator argues that even if petitioner proves that William wrongfully caused Betty's death, William's interest in the property may not be completely extinguished. Respondent also addresses the disposition of insurance policies on William's life and joint bank accounts

Some of the issues presented by this petition are identical to the issues raised in the petitions for full letters of administration, and all of the issues are inextricable. The court agrees with the Public Administrator that any adjudication of the issues presented in the petition for a determination of Betty's interest in property would be premature prior to a hearing.

### III. Conclusions

The facts surrounding the estates presently before the court are particularly dolorous, and the court is sensitive to the desire of all parties to the proceedings to move forward expeditiously. However, until such time as a hearing may be held, the court is unable to address those portions of the prayers for relief which seek a decree setting forth the order of deaths, the person responsible for the deaths, the ineligibility of William or his heirs to inherit a portion of the estates of Betty, Catherine and Stephanie, and a determination of Betty's interest in the property. At the same time, as noted above, the three applications of Joseph A. Mazzarella for letters of administration in the estates of Betty, Catherine, and Stephanie are the only ones before the court. While Mr. Mazzarella is not a distributee of Betty's estate, a non-distributee may be granted letters where no distributee is eligible and the non-distributee has qualified (1 Harris, New York Estates: Probate, Administration and Litigation § 4:73 at 4-20 [5th ed]). Letters in each estate shall issue to petitioner upon duly qualifying pursuant to SCPA 708. Until the court determines, pursuant to a hearing, whether William and his distributees are disqualified from inheriting from these estates, the administrator shall post a bond for the full amount of each estate.

A conference in this matter has been scheduled for January 5, 2010, at 2:30 p.m., for the dual purpose of (1) determining whether any outstanding issues exist on which the parties may

agree, as it is possible that additional information has come to light since the petitions and responsive papers were filed, and (2) scheduling a hearing.

This constitutes the decision and order of the court.

Submit decrees.

Dated: December 21, 2009

JOHN B. RIORDAN  
Judge of the  
Surrogate's Court