

**Matter of Coakley-Vetter**

2009 NY Slip Op 33489(U)

June 2, 2009

Surrogate's Court, Bronx County

Docket Number: File No. XXXXX

Judge: Lee L. Holzman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

June 2, 2009

ESTATE OF LORETTA COAKLEY-VETTER, Deceased

In this proceeding to judicially settle the account of the Public Administrator, objections were filed by four alleged paternal first cousins once removed, who claim that they are the decedent's only distributees. A kinship hearing was held before the court, at which the Office of the Attorney General and the guardian ad litem for unknown distributees participated. The proof at the hearing consisted of documents and testimony by several witnesses, including two genealogists, one who performed research in Ireland and the other in the United States.

To the extent that the objectants were unable to locate certain documentary or other information they requested that, where necessary, the ameliorative provisions of SCPA 2225 be utilized in determining the distributees entitled to share in the net distributable estate. Where appropriate, the court also utilized the presumption that a person who would have been in excess of 100 years upon the date of the decedent's death predeceased her (see *Young v Shulenberg*, 165 NY 385, 389-391 [1901]).

Following the hearing, supplemental materials were submitted into evidence by the objectants on the consent of all parties, and the time to object to any post-trial evidentiary materials has expired.

The decedent died on March 22, 2000 at the age of 90. She was predeceased by her spouse and never had any issue. The decedent was one of two children born to Dennis and Mary Coakley (nee O'Neill), both of whom predeceased the decedent without other issue, and the decedent's sister Margaret Coakley also predeceased her without issue.

The decedent's mother was one of nine children born to David and Mary O'Neill (nee Crowley) in Ireland. Both maternal grandparents and seven of the decedent's maternal aunts and uncles predeceased her, four without issue (Timothy, Richard, Margaret and Honora). Another aunt and uncle predeceased the decedent with issue who also predeceased the decedent, without issue. One maternal aunt, Catherine O'Neill, is presumed to have predeceased the decedent without issue (see *Young v Shulenberg*, 165 NY at 389-391). The remaining maternal aunt, Johanna McCarthy (nee O'Neill) had one child, the decedent's maternal first cousin John McCarthy, who was born in approximately 1922, and was last seen at his mother's 1967 wake by a cousin by marriage who testified at the hearing. According to that witness, as of 1967 John McCarthy had never married, never had issue and had lived with his parents since his return from service during World War II. Between the time of his mother's death in 1967 and the death of his father approximately seven months later, the whereabouts of

the decedent's paternal first cousin John McCarthy became unknown.

As the testimony indicated that John McCarthy had served in World War II and was employed by the United States Postal Service thereafter, the parties agreed that further research should be conducted and that post-hearing affidavits with supporting exhibits could be admitted into evidence. Those affidavits and documents reveal that inquiries were made and searches were conducted for information leading to the whereabouts of John McCarthy through the following sources: (1) the Armed Services of the United States, as well as the US Air Force, US Marine Corps and US Navy; (2) federal and state-run medical, hospital and other veteran facilities; (3) the National Personnel Records Center for the United States Postal Service, which maintains postal records for postal employees whose service ended after 1910; (4) the surrogate's court of various counties; (5) various catholic schools and the Archdioceses of New York; (6) Social Security, New York City Department of Health, New York State Motor Vehicle Department, New York City Voters Registration; and, (7) numerous telephone directories, both local and nationwide, as well as other internet sources. If the name "John McCarthy" appeared in the greater New York area through a telephone or internet search, letters were written to those persons to determine whether they had information about the John McCarthy at issue, based upon his approximate year of birth and the names of his parents. No information or positive response was obtained through these avenues.

Utilizing the criteria used to determine whether a diligent search under SCPA 2225 has been made, including the size of the estate, the amount of time which has elapsed since any other possible distributees have been heard from, and the lack of any leads whatsoever as to their whereabouts, it is determined that an adequate and exhaustive search has been completed (Matter of Schrake 129 Misc 2d 671 [1985]). As a result, the court concludes that the decedent's maternal first cousin John McCarthy also predeceased the decedent without issue, and there are no maternal distributees.

With respect to the paternal line, the proof demonstrates that the decedent's father was one of two children born to Denis and Mary Hanoria Coakley (nee Sullivan) in Ireland. This was a second marriage for the decedent's paternal grandfather, and both paternal grandparents and the decedent's paternal aunt from this second marriage, Johannah White (nee Coakley), predeceased the decedent without other issue. During his first marriage to Mary Catherine McCarthy, the decedent's paternal grandfather had five children, the decedent's paternal aunts and uncles. Four of the paternal aunts and uncles are presumed to have predeceased the decedent, without other issue (see *Young v Shulenberg*, 165 NY at 389-391). The remaining paternal uncle, Cornelius Coakley, predeceased the decedent with twelve children, the decedent's paternal first cousins, all of whom predeceased the decedent, eight without issue (Catherine, Bridget, Julia, Denis, Bartholomew, Ellen, Angel and James), and three with issue

who also predeceased the decedent (Mary Frances, Anne and Margaret). The decedent's remaining paternal first cousin, also named Cornelius Coakley, had four children, all of whom survive, the decedent's paternal first cousins once removed who are the objectants herein; namely, Cornelius Coakley, Margaret Collins (nee Coakley), John Coakley and Sheila Young (nee Coakley).

Utilizing the criteria used to determine whether a diligent search under SCPA 2225 has been made, including the size of the estate, the amount of time which has elapsed since any other possible distributees have been heard from, and the lack of any leads whatsoever as to their whereabouts, it is determined that an adequate and exhaustive search has been completed (Matter of Schrake 129 Misc 2d at 671). Accordingly, it is concluded that the decedent's only distributees are his four paternal first cousins once removed, Cornelius Coakley, Margaret Collins, John Coakley and Sheila Young, each of whom is entitled to one-quarter of the net distributable estate (EPTL 4-1.1 [a] [7]).

The Public Administrator shall file an affidavit bringing her account up to date and shall settle a decree in conformity with this decision.

*Lee L. Holzman*

---

SURROGATE