

Matter of Shapiro (Schiller)

2010 NY Slip Op 34136(U)

April 6, 2010

Surrogate's Court, New York County

Docket Number: File No. 4516/2004

Judge: Webber, S.

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

APR 07 2010

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Application of Edwin S. Shapiro as co- :
executor of the estate of :

New York County Surrogate's Court
DATA ENTRY DEPT.
APR 06 2010

ANGELA SCHILLER, :

Deceased, : File No. 4516/2004

to discover property withheld. :

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W E B B E R , S .

In this turnover proceeding, the co-executor of the estate of Angela Schiller seeks judgment against the fiduciary of the estate of decedent's former husband, Lloyd A. Schiller in the sum of \$29,773.44.

The facts are undisputed. Angela Schiller and her husband, Lloyd A. Schiller died on November 30, 2004 as a result of a fire which occurred in decedent's cooperative apartment. They were both survived by children from prior marriages.

Letters testamentary issued to petitioner Edwin S. Shapiro, an attorney and Mary Baysinger on December 10, 2004 in Angela's estate. Glenn M. Schiller, Lloyd's son and an attorney, received letters in his father's estate on December 15, 2004.

Decedent's will provided in part that if Lloyd survived her, he would receive her personal property, cooperative apartment worth approximately \$4,000,000 and \$750,000. If he predeceased her, decedent's cooperative apartment and personal property would be sold and the proceeds therefrom, together with the cash bequest, would be added to her residuary estate and divided among three charities.

Lloyd's will provided that if he predeceased decedent, she

received his personal property, but his residuary estate estimated at \$85,000, would be divided equally among his four children. Lloyd made no other provision for decedent because, as he noted in his will, she was a woman of "substantial means".

Predictably a sharp dispute arose between the charities on one hand and Lloyd's children on the other regarding the order of the deaths of decedent and Lloyd.

It is undisputed that at the time of their deaths, Angela and Lloyd maintained a joint checking account at JPMorgan Chase which had a balance of \$69,914.31. During the course of settlement negotiations, it was agreed that the proceeds of such account would be divided between the two estates subject to refunding depending upon the outcome of the dispute. On January 7, 2005, Glenn withdrew \$29,773.44¹ from the joint checking account and deposited such sum into Lloyd's estate account.

The controversy was ultimately resolved by stipulation, which provided in part that certain non-probate assets, including the subject joint checking account, were deemed part of decedent's estate. Thereafter, Shapiro made numerous requests to Glenn to refund the \$29,773.44 he transferred from the joint account, but no response was forthcoming.

Finally, Shapiro commenced the instant turnover proceeding for return of the funds. Citation issued to Glenn, initially returnable

¹The amount withdrawn of \$29,773.44 was \$4,935.04 less than one-half (\$34,708.48) of the total sum of \$69,914.31. The difference is attributable to payments made for maintenance on the cooperative apartment, telephone and credit card expenses.

April 14, 2009. His former counsel appeared requesting additional time for Glenn to retain an attorney. Further adjournments were granted; however, neither Glenn nor counsel on his behalf appeared. Shortly after the final adjourned date of August 26, 2009, the court received Glenn's written response in which he conceded that he: transferred the sum of \$29,773.44 from the joint checking account in question; deposited such sum in Lloyd's estate account; disbursed the funds to himself and his three siblings, and then closed Lloyd's estate account. The document dated August 24, 2009, is signed by Glenn, appearing pro se.

Following written notice to counsel and Glenn (at the address provided by him to the court), conferences were scheduled September 23 and November 5, 2009. Counsel appeared, but Glenn did not respond or appear.

Shapiro, Glenn and Baysinger's counsel were thereafter notified by mail that a hearing was scheduled for March 23, 2010². Shapiro and counsel appeared but, Glenn did not appear nor did he provide an explanation for his absence.

We first note that although Glenn is appearing pro se, his status does not excuse him from failing to appear on scheduled court dates without good cause shown on adequate notice to the court and other

²None of the mailings sent to Glenn were returned. Even if Glenn had moved and the mailings returned due to his relocation, as fiduciary of Lloyd's estate, Glenn was required to notify the court of his change of address within thirty days of such move (see, SCPA 711[6]; Estate of Escarous, NYLJ, Jul. 25, 2005 at 24, col 1 [Sur.Ct. West. Co.]; Estate of Ball, NYLJ, Oct. 29, 2003 at 28, col 4 [Sur.Ct. Suffolk Co.]); see also, Kalamadeen v. Singh, 63 AD3d 1007 [2nd Dep't. 2009]; Central City Brokerage Corp v. Acosta, 49 AD3d 455 [1st Dep't. 2008]).


parties (see, Matter of Sakow, NYLJ, July 11, 2003 at 19, col 4 [Sur.Ct. Bx. Co. 2003]). Moreover, the record before this court demonstrates a lengthy and deliberate pattern of delay without explanation.

Based on the foregoing, the court finds Glenn's conduct in failing to attend the hearing and two court conferences without explanation both flagrant and willful (see, 22 NYCRR 202.27; *Chechen v. Spencer*, 68 AD3d 801 [2nd Dep't. 2009]; *Knowles v. Schaeffer*, 70 AD3d 897 [2nd Dep't. 2010]).

Moreover, based on Glenn's written admissions and the proof submitted, petitioner is entitled to recover the sum of \$29,773.44 together with interest from March 11, 2008, the date of the settlement agreement.

Settle decree.

Dated: April 6, 2010.



S U R R O G A T E