

**Matter of Zara**

2014 NY Slip Op 30854(U)

April 4, 2014

Sur Ct, New York County

Docket Number: 2013/4002

Judge: Nora S. Anderson

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New York County Surrogate's Court  
DATA ENTRY DEPT.  
APR 4 2014

SURROGATE'S COURT : NEW YORK COUNTY

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In the Matter of the Application for  
Termination of a Trust created under  
Paragraph (b)(2) of Article Fifth  
of the Last Will and Testament of

File No.2013/4002

ELEANOR WOOD ZARA,

Deceased.

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A N D E R S O N , S .

This is an application to terminate a trust under the will of Eleanor Wood Zara ("testator") on the ground that the trust's continuation is no longer economical (EPTL § 7-1.19). All interested parties have consented to the relief sought.

The trust in question was established under testator's will, which was admitted to probate on June 22, 1945. Testator's daughter, Mai Zara James, is the trust's sole income beneficiary. Upon Ms. James's death, the principal is to be disposed of as she appoints in her will or, in default of such appointment, it is to be distributed to testator's descendants. The presumptive remainder beneficiaries are the four children of testator's deceased son.

Ms. James and Reliance Trust Company of Delaware, as trustee, request that the trust be terminated and that all the principal be distributed to Ms. James. The value of the trust principal is approximately \$250,000. According to the petition, income distributed annually to Ms. James, net of expenses, has been less than \$5,000. The petitioners contend that these figures justify the conclusion that continuation of the trust is

uneconomical within the meaning of EPTL § 7-1.19 and that termination is therefore warranted.

When "the expense of administering a trust is uneconomical," section 7-1.19 of the EPTL permits a court to terminate the trust as long as the terms of the trust instrument do not prohibit early termination and provided that such termination would not defeat the specified purpose of the trust and would be in the best interests of the beneficiaries. The statute was enacted in 2004 as a narrow exception to the general rule that a testamentary trust, as an irrevocable expression of a testator's intent, is indestructible (see *Matter of Keriotis*, NYLJ Jan. 23, 2009, at 28, col 3 [Sur Ct, Kings County 2009]; see also *Matter of Abel*, NYLJ Aug. 22, 2000, at 28, col 6 [Sur Ct, Nassau County]).

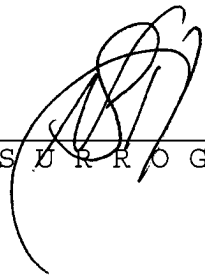
After reviewing the instant petition and the terms of the trust, the court is not persuaded that early termination is warranted in this case. First, although testator left half of her residuary estate in trust for Ms. James for the duration of her lifetime, she left the other half of her estate outright to her other child when the latter attained the age of 30. Furthermore, the terms of the trust provide Ms. James with only the trust's income during her lifetime - no discretionary distributions from trust principal are permitted. Thus, testator clearly intended that the trust corpus would be distributed outright only upon Ms. James's death. Such an intent should be

respected by the court, even where all the interested parties are willing to ignore it (see *Matter of Abel*, NYLJ Aug. 22, 2000, at 28, col 6 [Sur Ct, Nassau County]; *Matter of Cohen*, NYLJ Jan 3, 2001, at 26, col 5 [Sur Ct, Nassau County]; see also *Matter of Wentworth*, 230 NY 176 [1920]).

Moreover, the size of the trust fund is not so insignificant as to render its continuation impracticable (compare *Matter of Bouchter*, NYLJ, Apr. 3, 2009, at 40, col 3 [Sur Ct, Bronx County 2009] [terminating trust valued at \$24,000]; *Matter of Miller*, NYLJ, Sept. 4, 2007, at 35, col 2 [Sur Ct, Bronx County 2007] [terminating trust valued at \$71,000] with *Matter of DeMarco*, NYLJ, Nov. 1, 2006, 21, col 3 [Sur Ct, Kings County] [denying application to terminate trust as uneconomical where trust was valued at \$173,000]; *Matter of Dauman*, 12 Misc 3d 1173[A], 2006 NY Slip Op 51162[U] [Sur Ct, Nassau County 2006] [denying application to terminate trust valued at \$300,000]).

In light of petitioners' failure to demonstrate that the continuation of the trust would be economically impracticable under EPTL 7-1.19, their request for its early termination is denied.

This decision constitutes the order of the court.

  
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S U R R O G A T E

Dated: *April 4*, 2014