

Matter of Cowell

2016 NY Slip Op 31287(U)

July 12, 2016

Surrogate's Court, New York County

Docket Number: 2009-1355/B

Judge: Rita M. Mella

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

New York County Surrogate's Court

Date: JULY 12, 2016

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Proceeding to Settle the Account of the Public Administrator
of the County of New York as Temporary Administrator
of the Estate of

GIGI CARRIER COWELL,

DECISION

File No.: 2009-1355/B

Deceased.

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M E L L A, S.:

The court considered the following submissions in determining these motions:

	<u>Date filed</u>
1. Notice of Motion	October 22, 2015
2. Affirmation of Peter S. Schram, Esq., in Support	October 22, 2015
3. Notice of Cross-Motion	January 27, 2016
4. Memorandum of Law in Opposition to Motion and in Support of Cross-Motion	January 27, 2016
5. Affirmation of Glenn A. Opell, Esq., in Opposition to Cross-Motion	February 5, 2016
6. Second Supplemental Report of the Guardian <i>ad Litem</i>	February 23, 2016

In a proceeding to settle the account of the Public Administrator as temporary administrator of the estate of Gigi Carrier Cowell, petitioner moved, purportedly for summary judgment, on the basis that objectant Claire Carrier, executor of the will of decedent's post-deceased biological brother, Leonard A. Carrier, lacked standing. Objectant cross-moved, asking the court to treat the motion as one to dismiss objections and then to deny it. At the February 9, 2016 return day of the motion and cross-motion, the court granted the cross-motion to the extent of treating petitioner's application as a motion to dismiss objections (*see* CPLR 3211).

Decedent Gigi Carrier Cowell, age 71, a domiciliary of New York, died intestate on March 19, 2009, leaving a \$25 million estate. The instant dispute concerns the status of decedent's post-deceased biological brother, Leonard S. Carrier, specifically, whether, at the time of his death, he was the sole distributee of decedent's estate.

Background

In 1979, decedent, age 41, was adopted in the State of Florida by Shirley Ione Cowell, age 57. Decedent had been in a romantic relationship with Shirley since 1960, and the relationship continued until Shirley's death on October 29, 1997. Upon Shirley's death, decedent benefited, both as a beneficiary under Shirley's will (which was probated in Florida) and, by virtue of her status as Shirley's adopted daughter, as the beneficiary of a trust that had been created in 1946 by Shirley's grandmother.¹

In 2001, decedent's biological mother, Anna Carrier, died intestate, leaving a \$200,000 estate. Decedent and Leonard successfully petitioned in Florida — purportedly as Anna's sole distributees — for appointment as co-administrators of Anna's estate. At a time when Leonard, a retired professor, was living on his pension and his savings [**O's memo, filed 12/4/14, at p 4, and O's memo, filed 1/27/16, at p 12**], he willingly agreed to divide Anna's estate equally between himself and decedent.

When decedent died, Leonard petitioned for letters of administration. The Public Administrator, invoking Domestic Relations Law § 117, opposed the petition. On November 24, 2009, letters of temporary administration issued to the Public Administrator.

Leonard died on June 26, 2014. His wife, Claire, was appointed executor of his will.

On October 20, 2014, the Public Administrator petitioned for settlement of her account as temporary administrator of decedent's estate. The prayer for relief included a request that: "the Court determine that Leonard Carrier is not a distributee of decedent." A guardian *ad litem* was appointed to represent decedent's unknown distributees in the accounting proceeding. On

¹Decedent's status as beneficiary of this 1946 trust was established after litigation in Florida courts.

December 4, 2014, Claire, as executor of Leonard's will, filed objections to the account, based on petitioner's refusal to recognize Leonard as decedent's distributee. The guardian *ad litem* filed a report and two supplemental reports in which she states that her attempt to identify any distributee of the decedent's had been unsuccessful and recommends that petitioner's account be settled and that decedent's net estate be deposited with the Commissioner of Finance of the City of New York.

Instant Motions

Assuming as true objectant's allegations that decedent and Leonard had "maintained a close, loving relationship at all times following the adoption, up to decedent's death in 2009," [Schram affirmation, filed 10/22/15, ¶ 13], and that "Decedent never considered her 'natural familial ties to have been severed,'" [PA's memo, filed 12/4/14, at page 2; *see also* Opell reply affirmation, filed 2/5/16, ¶ 14] petitioner nonetheless argues that the Florida adoption terminated any right of succession through decedent's biological parents (*see* DRL § 117). Both the guardian *ad litem* and the Attorney General support petitioner's motion.

Objectant acknowledges that, if the court were to apply DRL § 117, the court would find that the Florida adoption had terminated any right of succession, through decedent's biological parents, to decedent's estate and, accordingly, that Leonard is not decedent's distributee. But objectant asks that the court "freely use its inherent equitable power to avoid the application of DRL § 117," [O's Memo, filed on 1/27/16, at page 9] because, presumably, Shirley would not have adopted decedent had the law permitted them to marry, and, further, "compelling circumstantial evidence exists that the Decedent did not believe her adoption had any impact whatsoever on intestate rights within her natural family." [O's memo, filed 1/27/16, at page 15]

Objectant, however, cites no governing authority for such proposition.

Discussion

To determine the rights of succession through decedent's biological parents, the court looks to the law of New York, where decedent was domiciled at death, rather than to the law of Florida, where the adoption occurred (*see Matter of White*, 205 Misc 198 [Sur Ct, New York County 1953]).

Decedent is not the first person to have died intestate and thus deprived someone who may have been dearest to her — but who happened not to be her distributee — of an interest in her estate. Decedent, however, could have avoided such circumstance by executing a will or executing a trust agreement and funding the trust or registering assets in the form of a testamentary substitute.

Here, although decedent's "distributees shall be the same as if [she] were the birth child of the adoptive parent" (DRL § 117 [1] [f]), no such distributee has yet been identified (*see* EPTL 4-1.1). Nonetheless, the court is constrained to apply the law. All rights of succession through decedent's biological parents having terminated upon the making of the order of adoption (*see* DRL § 117 [1] [a] and [b]), Leonard A. Carrier, decedent's post-deceased biological brother, was not a distributee of decedent's estate.

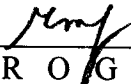
This is not to ignore objectant's citation of precedents that left biological parents free to claim inheritance rights from adoptees where the adopting parent was not a stepparent and the biological parent was intended to remain a custodian of the child (*Matter of Evan*, 153 Misc 2d 844 [Sur Ct, New York County 1992]; *Matter of A.J.J.*, 108 Misc 2d 657 [Sur Ct, New York County 1981]). Instead, this is only to recognize that the cited precedents are distinguishable

from the present case, for at least two reasons: (1) the best interests of an adoptive minor child, pivotal in those cases, are not implicated here, and there is thus nothing to impel equity to insulate the present parties from the operation of DRL § 117; and (2) in this case, unlike the case of each cited precedent, the ruling that objectant seeks would cause injury to competing claims by members of the adoptive family.

Accordingly, the motion to dismiss the objections of Claire Carrier, executor of Leonard A. Carrier's will, is granted.

This decision, together with a transcript of the February 9, 2016 proceedings, constitutes the order of the court.

Dated: July 12, 2016


S U R R O G A T E