

Matter of Israel

2017 NY Slip Op 31645(U)

June 6, 2017

Surrogate's Court, Nassau County

Docket Number: 2014-380501/B

Judge: Margaret C. Reilly

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

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Probate Proceeding, Will of

DOROTHY M. ISRAEL,

Deceased.

**DECISION AND ORDER
File No. 2014-380501/B
Dec. Nos. 32792
32893**

-----X
PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition.....	1
Stipulation of Settlement.....	2
Supplemental Report of Guardian ad Litem.....	3
Affidavit of Heirship.....	4

PROCEDURAL HISTORY

Two issues have been presented to the court in this probate proceeding: (1) the court’s review and approval of a stipulation of settlement; and (2) the fixing of a fee for a guardian ad litem. In addition, the court must authorize the execution of the stipulation by the guardian ad litem.

BACKGROUND

Dorothy M. Israel (the decedent), a resident of East Meadow, New York, died on June 14, 2014, at the age of 95. The decedent left a will dated October 20, 2009, in which she directed the division of her residuary estate into six shares, with one share to be distributed to each of the following: (1) Maryknoll Fathers and Brothers; (2) Maryknoll Sisters; (3) Redemptorist Fathers of Our Lady of Perpetual Help; (4) St. Elizabeth Ann Seton Regional

School; and (5) Society of St. Vincent de Paul; and (6) the decedent's nephew, Walter Kreher (Walter E. Kreher, Jr.), if he survives the decedent. The will nominates the decedent's sister-in-law, Lillian Kreher, as executor.

According to the petition for probate filed by Lillian Kreher (the petitioner), the decedent's nephew, Walter E. Kreher, Jr., predeceased the decedent. Article Five of the decedent's will provides that if any portion of the decedent's estate shall not be effectively disposed of under her will, such portion shall be distributed to the decedent's distributees in accordance with the New York State laws of intestacy.

An affidavit of heirship filed by Daria M. Kreher, a niece of the decedent, shows that the decedent died at the age of 95. She was not survived by a spouse, parents or issue, but was survived by the issue of her four siblings, named below:

1. Walter E. Kreher, Sr., who predeceased the decedent and was survived by three children: Daria M. Kreher, Donna Finger, both of whom survived the decedent, and Walter E. Kreher, Jr., who predeceased the decedent and was survived by two children, Michelle Kreher and Walter Kreher.

2. William Kreher, who predeceased the decedent and was survived by three children: Madeline McNamaway, Geraldine Kreher, and William H. Kreher.

3. James C. Kreher, who predeceased the decedent and was survived by four children: Joanne Earley, Jill Mayne, Jamie Shay, and Jan Policastro.

4. Margaretta Kreher, who predeceased the decedent and was not survived by any children.

Accordingly, the petition indicates that Walter E. Kreher Jr.'s 1/6 share of the decedent's estate, which was not effectively disposed of, will be distributed, in accordance with Article Fifth of the will, to the decedent's surviving nieces and nephews, by division into 10 shares, with one share going to each of : (1) Daria M. Kreher; (2) Donna Finger; (3) William H. Kreher; (4) Madeline McManaway; (5) Geraldine Kreher; (6) Joanne Earley; (7) Jill Mayne; (8) Jamie Shay; (9) Jan Policastro; and (10) Michelle Kreher and Walter Kreher, the children of predeceased nephew, Walter E. Kreher, Jr. A guardian ad litem was appointed by the court to represent the interests of Walter Kreher, who is a minor.

Notice of probate was given to the five charitable residuary beneficiaries as well as the Office of the New York State Attorney General (the Attorney General). Waivers of process and consent to probate were filed by Daria M. Kreher, Donna Finger and Michelle Kreher. In addition, a prior will is on file with the court, and the probate petition lists William Stevenson and Kathleen Rigney as interested parties who are adversely affected by the later will offered for probate. Each of these adversely affected individuals filed a notice of appearance in the probate proceeding.

Preliminary letters testamentary issued to the petitioner on April 27, 2015 and were most recently renewed on October 3, 2016. The most current application for extension of preliminary letters testamentary, filed on September 19, 2016, shows no real property, no liabilities, and cash on hand totaling \$563,225.97.

Examinations pursuant to SCPA § 1404 were conducted on August 31, 2015 and November 6, 2015, and objections to the will were filed by Kathleen Rigney and by

Madeline McManaway on November 30, 2015. Following the filing of objections, a citation and a supplemental citation pursuant to SCPA § 1411 were issued by the court and served on all of the beneficiaries named in the will. Notices of appearance were filed by the Attorney General, The Redemptorist Fathers of Our Lady of Perpetual Help, and Maryknoll Fathers and Brothers.

THE STIPULATION OF SETTLEMENT

A stipulation of settlement (the stipulation) was executed by: (1) the petitioner and her attorney; (2) Kathleen Rigney and her attorney; (3) Madeline M. McManaway; and (4) the guardian ad litem appointed by the court to represent the interests of grandnephew Walter Kreher. The stipulation provides for a payment of \$80,000.00 to Kathleen Rigney, an objectant who is a named residuary legatee under a prior will of the decedent on file with the court. The stipulation also provides for the withdrawal of all objections to the will that had been filed by Kathleen Rigney and by Madeline M. McManaway, and further provides that the stipulation and a notice of settlement will be submitted by the parties to the court.

The stipulation is conditioned upon: (1) the guardian ad litem's submission of a report in which she consents to the terms of the stipulation; and (2) the court's approval of the report filed by the guardian ad litem.

REPORT OF THE GUARDIAN AD LITEM

The report of the guardian ad litem reviews the petition and the supporting documents, as well as the background of the estate. The guardian ad litem reviews the terms of the will offered for probate and the details concerning its execution, as well as the

examination of the draftsman/witness and one of the other two witnesses to the decedent's execution of the will. In paragraph (31) and (32) of the report, the guardian ad litem addresses the terms of the stipulation. The guardian ad litem then recommends that the will be admitted to probate and that letters testamentary issue to Lillian Kreher.

ANALYSIS

The petition before the court raises several issues which must be addressed by the petitioner and by the guardian ad litem before the stipulation of settlement can be approved and the will admitted to probate:

1. The Stipulation of Settlement

As noted above, the stipulation of settlement filed with the court reflects its execution by (1) the petitioner and counsel; (2) Kathleen Rigney and counsel; (3) Madeline M. McManaway; and (4) the guardian ad litem. However, the court cannot approve the stipulation at this time, or the execution of the stipulation by the guardian ad litem, because the implementation of the stipulation would reduce the amount passing to charity by 5/6 of \$80,000.00, or \$66,666.67, without the knowledge or consent of the Attorney General, The Redemptorist Fathers of Our Lady of Perpetual Help, and Maryknoll Fathers and Brothers, each of which filed a notice of appearance after being served with the SCPA § 1411 citation. The court notes further that the notice of settlement of the stipulation was served by counsel for the petitioner only on the signatories to the stipulation, and not on the other parties who had appeared.

The court requires that: (a) The Redemptorist Fathers of Our Lady of Perpetual Help;

(b) Maryknoll Fathers and Brothers; and (c) the Attorney General, on behalf of the ultimate charitable beneficiaries, consent to the stipulation in writing or be given due notice of the proposed settlement by service of a supplemental citation explicitly setting forth the intended reduction in distributions to the charitable beneficiaries.

2. The Report of the Guardian ad Litem

The guardian ad litem is directed to file a supplemental report, after the filing of consents by the charitable beneficiaries or the return date of a supplemental citation served upon the charitable beneficiaries and the Attorney General's Office as directed above, in which the guardian ad litem consents to the stipulation or withholds her consent, and offers her recommendation as to whether the stipulation should be approved by the court.

The fee of the guardian ad litem will be addressed in a subsequent decision.

CONCLUSION

1. The petitioner is directed to obtain written consent to the stipulation from: (1) Maryknoll Fathers and Brothers; (2) Redemptorist Fathers of Our Lady of Perpetual Help; and (3) the Attorney General, or to serve those organizations and the Attorney General with a supplemental citation, filed by the petitioner and issued by the court, that reflects the petitioner's request for approval of the stipulation that will reduce the amount passing to charity by \$66,666.67.

2. Following the filing of consents to the stipulation by the charitable beneficiaries and the Attorney General, or the return date of a supplemental citation served upon those of the charitable beneficiaries and the Attorney General who did not consent to the stipulation,

the guardian ad litem is directed to file an updated report in which she will expressly consent, or expressly withhold her consent, to the stipulation, and will also recommend whether the stipulation should be approved by the court.

3. Preliminary letters testamentary were last renewed on October 3, 2016 and expired on April 3, 2017. The petitioner may apply for the renewal of preliminary letters testamentary pending the submission of the documents directed by the court, an updated report by the guardian ad litem, and the issuance of a subsequent decision.

This is the decision and order of the court.

Dated: June 6, 2017
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Sheryl Bergstein, Esq.
Karol & Sosnik, PC
Attorneys for Lillian Kreher
600 Old Country Road
Garden City, New York 11530

Jules A. Epstein, Esq.
Jules A. Epstein, P.C.
Attorney for Lillian Kreher
521 RXR Plaza, East Tower, Suite 521
Uniondale, New York 11556

Pamela Sharpe, Esq.
Guardian ad Litem for Walter Kreher
181 8th Avenue
Sea Cliff, New York 11579

Andrew M. Krisel, Esq.
Attorney for Kathleen Rigney
44 Court Street
Brooklyn, New York 11201

Jack D. Matza, Esq.
Attorney for William Stevenson
265 Sunrise Highway, Suite 44
Rockville Centre, New York 11570

Madeline McManaway
6520 Roosevelt Street
Falls Church, Virginia 22043

Jack D. Matza, Esq.
Ross & Matza
Attorneys for William Stevenson
265 Sunrise Highway, Suite 44
Rockville Centre, New York 11570