Matter of New York City Health & Hosps. Corps. Elmhurst Hosp. Ctr. (DeMartino)

2017 NY Slip Op 33568(U)

March 2, 2017

Surrogate's Court, Queens County

Docket Number: File No. 2012-722/A

Judge: Peter J. Kelly

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT: QUEENS COUNTY

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In the Matter of the Application of New York City Health and Hospitals Corporations Elmhurst Hospital Center For the Appointment of a Guardian of

File No: 2012-722/A

ALDO DeMARTINO,

An Incapacitated Person.

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The within matter was set down for a hearing on the issue of whether the decedent's marriage should be annulled and, consequently, whether the respondent was entitled to a distributive share of his estate. A condensed procedural history is necessary for a full understanding of the issues involved.

During decedent's lifetime, a proceeding was instituted in Supreme Court, Queens County, pursuant to MHL Article 81, for the appointment of a personal needs and property management guardian. A copy of this petition was served on the respondent who, at the time such proceeding was commenced, could be characterized as decedent's live-in caregiver. During the pendency of the Article 81 proceeding, the decedent and defendant traveled to Georgia where they were allegedly married on February 4, 2011.

Upon their subsequent return to New York, the Supreme Court Justice presiding over the guardianship proceedings, upon being notified of this event, held several hearings at which decedent, respondent and several other individuals testified. At the conclusion of these hearings, the court annulled the "marriage" finding decedent did not have the requisite capacity to enter into

such.

An appeal ensued, during the pendency of which the decedent died. The Appellate Division, Second Department, in determining the appeal held, inter alia, that while the "evidence before the Supreme Court was legally sufficient to establish that [decedent] was incapacitated ..." and entitled to an annulment, the respondent had not been given notice and an opportunity to be heard as to this specific branch of relief, because a formal application had never been made to amend the guardianship petition to include the annulment of the marriage as an additional form of relief (Matter of Dandridge 120 AD3d 1411).

"[I]n order to foster judicial economy", since the assigned Supreme Count Justice had already taken several days of testimony with decedent participating, the matter was remitted to Supreme Court on September 24, 2014 for a hearing on the issue of the capacity of decedent to enter into a marriage with respondent and a new determination of whether the marriage should be annulled. Unfortunately, the untimely death of such Justice a short time thereafter prevented any further deliberations on his part.

This matter then remained in Supreme Court without further hearings or resolution until it subsequently was transferred to this court. Upon receipt of the file in July of 2016, a preliminary conference was held and a discovery schedule established. The matter was then set down for a hearing and final disposition on November 29, 2016. After conclusion of the hearing and upon receipt of the transcripts of the proceeding, the court finds as follows.

During the hearing Petitioner submitted documentary evidence, including

hospital and medical records; expert testimony from doctor Joseph Jeret who is a board certified Psychologist and Neurologist; and the prior transcripts of the proceedings held in Supreme Court. This evidence clearly and convincingly established, prima facie, that decedent did not have the mental capacity to enter into a marriage (See Campbell v. Thomas 73 AD3d 103; In Re Dandridge, supra; DRL§ 7[2]).

In opposition, the respondent, who testified in her own behalf, failed to present any credible evidence to establish otherwise.

While respondent did present a marriage license procured in Georgia, it is abundantly clear that an adequate inquiry into decedent's competency was not conducted prior to its issuance, and the qualifications, training and knowledge of decedent's prior medical history possessed by the individual who issued the license, to the extent such proof is in the record, was outweighed by the opinion of the expert witness and evidence proffered by Petitioner. In any event, even pursuant Georgia statutory law, a valid marriage requires parties able to contract, the existence of an actual contract, and consummation according to law (OCGA §19-3.1). This court is absolutely convinced that decedent lacked the capacity to contract at the dates in question.

It also appears questionable as to whether a valid ceremony ever took place given the confusing testimony provided by respondent regarding the multiple ceremonies that occurred and the transfer and processing of the marriage license.

The balance of respondent's testimony regarding the parties relationship

and "marriage" can best be classified as convoluted, unconvincing and, in part, unrealistic to the point of fantasy.

Accordingly, the court finds that as decedent lacked the testamentary capacity to knowingly enter into marriage, his purported marriage to respondent on February 4, 2011 is null and void and is annulled as of that date.

Settle Decree.

Date: March 2, 2017

SURROGATE