

Matter of Spier
2018 NY Slip Op 31387(U)
June 21, 2018
Surrogate's Court, Nassau County
Docket Number: 2014-382103/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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**In the Matter of the Application of PAMELA SPIER,
as Administrator of the Estate of**

DECISION & ORDER

RICHARD A. SPIER,

Deceased,

File No. 2014-382103/B

Dec. No. 34546

**To Discover and Turnover Property Withheld and
Belonging to the Estate of RICHARD A. SPIER,
Deceased,**

Petitioner,

-against-

ELLEN VIGNEAUX AND SANDRA N. BUSELL,

Respondents.

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PRESENT: HON. MARGARET C. REILLY

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

Notice of Motion for Summary Judgment.	1
Affirmation in Support of Motion for Summary Judgment with Exhibits.	2
Memorandum of Law in Support of Motion for Summary Judgment.	3
Affirmation In Opposition to Motion with Exhibits.	4
Memorandum of Law in Opposition to Motion.	5
Reply Affirmation in Further Support of Motion with Exhibits.	6
Reply Memorandum of Law in Further Support of Motion.	7

In this SCPA § 2103 discovery proceeding, the respondent, Ellen Vigneaux, moves for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the petition. Petitioner, Pamela Spier, opposes the motion.

The decedent, Richard A. Spier, died a resident of Nassau County on October 18, 2014, survived by his two adult children, Ian Spier and Ellen Vigneaux, as his only

distributees. The last will and testament of the decedent, dated August 21, 2013, was admitted to probate without objection by decree dated December 18, 2014 and letters testamentary issued to Ellen Vigneaux that same date. The will contains a specific bequest to the Long Beach Public Library and further provides that: 23% of the residuary estate is bequeathed to the decedent's daughter, Ellen Vigneaux; 23% of the residuary estate is bequeathed to the decedent's granddaughter, Rachel Vigneaux; 18% of the residuary estate is bequeathed to the decedent's grandson, David Vigneaux; 18% of the residuary estate is bequeathed to the decedent's grandson, Robert Spier; and 18% of the residuary estate is bequeathed to the decedent's granddaughter, petitioner Pamela Spier. The will made no provision for the decedent's son, Ian Spier.

On February 20, 2015, letters of limited administration, for the purpose of discovery only, issued to Pamela Spier. On March 23, 2015, Pamela Spier filed a petition for discovery and turnover of real property withheld from the estate. The petition alleges that the deed executed by the decedent on March 25, 2014, conveying his residence at 44 Matlock Street, Lido Beach, New York ("the Premises") to Ellen Vigneaux, while retaining a life estate for himself, is a gross deviation from the decedent's estate plan embodied in his will; that the decedent lacked the requisite capacity to execute an instrument conveying title to the Premises at the time the deed was executed; and that execution and delivery of the deed was the product of the respondent's undue influence, fraud, coercion and duress practiced upon the decedent. Sandra N. Busell was named in the petition as a respondent solely in her capacity as the attorney who prepared the deed conveying the Premises to respondent Ellen Vigneaux. The petition seeks: (1) an inquiry respecting the Premises; (2) an order directing Ellen Vigneaux and Sandra N. Busell to attend the inquiry and be examined concerning the

conveyance of the Premises; (3) an order directing Ellen Vigneaux and Sandra N. Busell to produce documents in their possession relating to the conveyance of the premises; and (4) an order directing Ellen Vigneaux to deliver and turnover title to the Premises, or the proceeds derived from the conveyance of the Premises, to the estate of the decedent. Issue was joined by service of an answer on behalf of respondent Ellen Vigneaux.

Pursuant to an order to attend and be examined dated March 23, 2015, both Ellen Vigneaux and Sandra Busell were examined on May 1, 2015. Pamela Spier appeared at an examination before trial on March 24, 2016. Maria Galante, an attorney who worked with Sandra Busell, was also deposed. Discovery appears to have been completed and a note of issue has been filed.

Respondent Ellen Vigneaux moves for summary judgment dismissing this proceeding, arguing that she has established prima facie her entitlement to summary judgment upholding the deed conveying the Premises to her from the decedent and that petitioner's claims that the decedent lacked the necessary mental capacity to sign the deed and that the deed was procured by undue influence, coercion, duress or fraud should be dismissed.

Summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The court's function on a motion for summary judgment is issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). Consequently, it is incumbent upon the moving party to make a prima facie showing of entitlement to summary judgment as a matter of law (CPLR 3212 [b]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). If the moving party meets his or her burden, the party opposing the motion must produce evidentiary proof in admissible form sufficient to establish the existence of a material issue

of fact that would require a trial, however, “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to overcome a motion for summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Through the evidence submitted in support of her motion, the respondent Ellen Vigneaux has established her prima facie entitlement to judgment as a matter of law by demonstrating that the deed was duly executed by the decedent, that the decedent possessed the requisite legal capacity, that no undue influence had been exercised upon him and that no fraud had been committed. In opposition to the respondent’s prima facie showing, the petitioner has failed to raise triable issues of fact sufficient to defeat summary judgment, offering only suspicion, speculation and conjecture (*Harris v Pitts*, 109 AD3d 790 [2d Dept 2013]).

The proponent of an inter vivos gift must establish the following elements by clear and convincing evidence: (1) the intent on the part of the donor to make a present transfer; (2) actual or constructive delivery of the gift to the donee; and (3) acceptance by the donee (*Gruen v Gruen*, 68 NY2d 48 [1986]). Petitioner contends that respondent has not met her burden of proving the decedent’s donative intent. However, the deposition testimony of each of the witnesses present at the execution of the deed and the documentary evidence submitted by the respondent, when taken as a whole, clearly demonstrates that the decedent intended to transfer ownership of his residence to the respondent. The purported issues of fact raised by the petitioner’s counsel either mischaracterize the deposition testimony of the witnesses or take it out of context.

Petitioner fails to raise an issue of fact as to the decedent’s capacity to execute the deed. Generally, competence is presumed and a party seeking to set aside a deed for lack of

capacity must establish that the grantor did not understand the nature of the transaction at the time of the conveyance (*Matter of Nurse*, 160 AD3d 745 [2d Dept 2018]). Petitioner's own deposition testimony as to her communications with the decedent does not support her claim that the decedent lacked the necessary capacity to transfer the Premises to the respondent. Moreover, the affidavits of the petitioner's parents offered in opposition to the motion also fail to demonstrate that the decedent lacked the requisite capacity to execute the deed. While those affidavits refer to certain of the decedent's physical infirmities, they provide no evidence of any lack of mental or intellectual capacity and merely offer speculation, insinuation and surmise, which are insufficient to defeat summary judgment (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Petitioner's claim of undue influence is similarly unsubstantiated. Generally, the burden of proof for a claim of undue influence is on the party asserting the claim, unless a confidential relationship is established, which then shifts the burden of proof to the beneficiary of the transaction to show that it was fair and free from undue influence (*Matter of Albert*, 137 AD3d 1266 [2d Dept 2016]). A familial relationship is not necessarily a confidential relationship, however, circumstances that demonstrate inequality or a controlling influence may establish the existence of a confidential relationship (*Matter of Bonczyk v Williams*, 119 AD3d 1124 [3d Dept 2014]). While the evidence adduced by the respondent in support of her motion indicates that she was supportive of the decedent, her actions did not rise to the level of creating a confidential relationship and thus the burden of proof on undue influence rests with the petitioner. However, even if this court were to conclude that there was a confidential relationship between the respondent and the decedent, the deposition testimony demonstrates that the deed transaction at issue herein was free of undue influence

as there is no indication of any coercion, duress or importunity by the respondent (*Matter of Walther*, 6 NY2d 49 [1959]). Moreover, there is no indication of any fraud by the respondent.

Accordingly, the respondent's motion for summary judgment is **GRANTED** and the proceeding is dismissed.

Settle decree.

Dated: June 21, 2018
Mineola, New York

E N T E R:

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

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