

Matter of Huertas

2018 NY Slip Op 32665(U)

September 17, 2018

Surrogate's Court, Bronx County

Docket Number: 2018-796/A

Judge: Nelida Malave-Gonzalez

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FILED

SEP 17 2018

ACCOUNTING DEPT.
SURROGATE'S COURT
COUNTY OF BRONX

SURROGATE'S COURT, BRONX COUNTY

September 7, 2018

ESTATE OF DOMINGO HUERTAS, Deceased
File No.: 2018-796/A

In this uncontested proceeding to determine the validity of the right of election filed by the decedent's spouse, the facts are undisputed.

The decedent died on September 23, 2017. The decedent's distributees are a spouse and six children, one of whose whereabouts are unknown. The informant listed on the decedent's death certificate is a person self-characterized as a "friend." The "friend," as informant, also provided information on the death certificate that the decedent was divorced at the time of his death. When the spouse inquired about any available death benefits through the New York City Employee Retirement Service (NYCERS) she was advised, inter alia, that no information could be provided as it appeared that the decedent was divorced at the time of his death. As a result, the petitioning spouse started the process to amend the death certificate to indicate the decedent was married at the time of his death, and not divorced, by providing certifications of marriage and that there was no record of any divorce between the spouse and the decedent, by the County

Clerk, New York County Supreme Court. The death certificate was then amended.

The spouse filed a notice of election on April 12, 2018. By decree dated April 16, 2018, she was granted letters of administration limited solely to obtaining information regarding all of the decedent's testamentary and non-testamentary assets for the purpose of asserting a right of election. Upon filing the notice of election and commencing this proceeding in April, 2018, the spouse obtained jurisdiction over the New York City Employees' Retirement System ("NYCERS") and the friend, as the designated beneficiary of the decedent's NYCER's benefits, and she defaulted. In the order to show cause issued to commence the proceeding, this court issued a temporary restraining order preventing NYCERS from paying any funds, death benefits or continuing benefits to named beneficiaries of the decedent. In response to the petition, NYCERS interposed an answer setting forth the history of the spouse's submissions and effort to obtain information from NYCERS and indicated it would not distribute the death benefits until a final determination in this proceeding. NYCERS also indicates that, as of the date of the decedent's death, the actuarial present value of the option he elected as a continuing death benefit is \$211,774.70, as of June 7, 2018, the decedent's post retirement lump-sum death benefit value was \$19,176.32, neither of which has been paid, and each amount may change pending final calculations prior to distribution.

Here, the petitioner established that she was, in fact, the

decedent's spouse at the time of his death. She timely filed the right of election within six months of the date of the issuance of letters of administration and within two years after the date of the decedent's death (see EPTL 5-1.1-A [d] [1]). Furthermore, the NYCERS death benefits at issue here are testamentary substitutes subject to the right of election (see EPTL 5-1.1-A [b] [1] [G]).

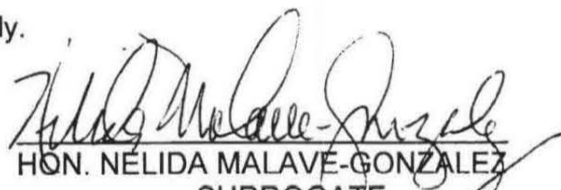
Nonetheless, in applying EPTL 5-1.1-A, the computation of the decedent's estate and that of the elective share must take into account all estate assets and testamentary substitutes. The elective share is "the pecuniary amount equal to the greater of (i) fifty thousand dollars or, if the capital value of the net estate is less than fifty thousand dollars, such capital value, or (ii) one third of the net estate" (EPTL 5-1.1-A [a] [2]). In computing the net estate, the estate debts, administration expenses and reasonable funeral expenses shall be deducted (see EPTL 5-1.1-A [a] [2]).

As the court has no information on the gross estate assets discovered by the spouse to date, or on the estate debts, funeral and administration expenses, the petition is granted to the extent that the spouse is determined to be entitled to her elective share of the NYCERS continuing and post-retirement lump sum death benefits in accord with EPTL 5-1.1-A (a) (2), subject to final calculations with respect to all estate assets, estate debts, administration expenses and reasonable funeral expenses. As the court has no information of all estate assets, debts, administration expenses and reasonable funeral expenses to date, the spouse may submit an affidavit

that there are no other estate assets and expenses known to the spouse and settle upon NYCERS the affidavit together with a proposed decree with respect to a final calculation of the spousal elective share based upon the supplemental information averred and served by the spouse.

This decision constitutes the order of the court. Notwithstanding the default of the friend/designated beneficiary, the spouse shall settle the decree and additional affidavit, together with a copy of this decision and order upon her.

Proceed accordingly.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE