

Matter of Neumann
2019 NY Slip Op 32619(U)
August 30, 2019
Surrogate's Court, New York County
Docket Number: 2016-4105/C
Judge: Rita M. Mella
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

New York County Surrogate's Court

Date: AUGUST 30, 2019

-----X
In the Matter of the Petition of Belinda Neumann Donnelly
Pursuant to SCPA 2102(5) for Advance Payment on Account
of Her Interest in the Estate of

DOLORES ORMANDY NEUMANN,

DECISION and ORDER

Deceased.

File No.: 2016-4105/C

-----X
M E L L A, S.:

On the record, at the call of a special calendar on August 30, 2019, the court granted the petition of Belinda Neumann Donnelly to the extent of authorizing a \$500,000 advance distribution¹ to her, pursuant to SCPA 2102(5),² from the estate of her mother, decedent Dolores Ormandy Neumann.³ Decedent's other children, Melissa Neumann and Kristina Neumann, joined by their father, Hubert Neumann, had opposed the application on various grounds. None, however, had merit. A prior motion by Melissa⁴ for an order dismissing this petition was denied by this court in a decision dated August 7, 2019, which held that the arithmetic requirements of SCPA 2102(5) had been satisfied (*Matter of Neumann*, NYLJ, Aug. 12, 2019, at 18, col 3 [Sur Ct, NY County]). As to the other requirement for relief, *i.e.*, petitioner's need, respondents did not refute the allegations that Belinda and her family had been ousted from their long-term

¹A \$750,000 advance had been sought in the petition.

²That statute authorizes the court to "advance to any beneficiary of an estate all or part of any beneficial interest to which [s]he is entitled when the property of the estate applicable to the payment of debts, legacies and expenses exceeds by at least one-third the amount of all known claims, legacies having priority and beneficial interests of the same class and the beneficiary needs such payment for h[er] support or education or of h[er] family" (SCPA 2102[5]).

³Petitioner also currently serves as the preliminary executor of decedent's estate.

⁴First names are used in this decision to avoid confusion, since several of the parties share the same surname.

residence, which they had previously enjoyed rent-free, and that a certain trust for which Hubert serves as trustee had stopped making payments for the tuition of Belinda's children. Indeed, respondents confirmed such allegations.⁵ As a result, petitioner established need within the meaning of the statute because such need finds its "reference [in] the lifestyle [petitioner] previously enjoyed" (*Matter of Goldman*, 150 AD2d 267, 268 [1st Dept 1989]), a standard that has long been applied in New York (*see Lockwood v Lockwood*, 3 Redf 330, 332 [Sur Ct, Westchester County 1878]).

Respondents contend that petitioner's other assets and the other assets of her children, specifically two trusts established by Hubert for the benefit of Belinda's two sons⁶ (no similar trust has been established for the benefit of her daughter) should be the subject of discovery and should be used or exhausted first, but that is also not within the contemplation of the statute. Instead, one seeking an advance need not "be forced to liquidate her assets" in order to maintain the lifestyle she previously enjoyed (*Goldman*, 150 AD2d at 268). In light of respondents' failure to refute the allegations of the ouster of Belinda's family from their rent-free home and the elimination of significant tuition payments for the benefit of her three children, they have not

⁵Hubert admits in his answer that he had ceased making these distributions. At oral argument, Hubert's counsel explained that Hubert, as trustee, was directed by the trust instrument to inquire into Belinda's financial resources outside the trust fund and that Hubert had refused to make the tuition payments for his grandchildren only after Belinda failed to provide him with the financial information that he had requested. His counsel then confirmed that, prior to the disagreements among these family members arising after decedent's death, Hubert had never required such information from Belinda.

⁶Belinda serves as the trustee of these trusts.

established grounds for further discovery or a hearing as to petitioner's or her family's need.⁷

Respondents' other arguments require little discussion. Melissa's assertion that the complete picture of the assets available in the estate is unclear – this in light of a pending IRS audit and possible other claims and expenses – provides no basis upon which to deny the petition. First, the arithmetic requirement of section 2102(5) safeguards against this court's advancing excessive amounts, as explained in the court's decision resolving the prior motion to dismiss. Second, as *Goldman* makes clear, an advance can be authorized even when the status of the person as a beneficiary is unclear, because a repayment bond can be imposed (*Goldman*, 150 AD2d at 268, citing *Matter of Milbank*, 49 AD2d 848 [1st Dept 1975]). Here, although Belinda's status as beneficiary is not controverted, to allay any possible concerns as to an excessive advance, the court, in the exercise of discretion, will require that petitioner post a repayment bond in the amount of the advance (*see* SCPA 2101[4]).

Finally, the defense raised in the respective answers of Hubert, Melissa and Kristina, that there should be an interim accounting by Belinda before an advance is awarded, is supported by no authority. The need for an accounting presents an entirely separate issue. In this regard, it should be noted that the court denied Kristina's petition to compel an interim account from Belinda as preliminary executor, when that matter was returnable before the court on August 21, 2019.

Accordingly, under all the circumstances presented, including the substantial size of the estate, the court granted the petition to the extent of authorizing a \$500,000 advance to Belinda

⁷The court notes in this regard that putting the parties to the time and expense of conducting extensive discovery and a full evidentiary hearing on the question of need, as respondents suggest be done, would tend to undermine the salutary purposes of the statute.

Neumann Donnelly from the estate of Dolores Ormandy Neumann upon her posting a repayment bond in that amount.

This decision, together with the transcript of the August 30, 2019 proceedings, constitutes the order of the court.

Dated: August 30, 2019



SURROGATE