

Matter of Goldstein

2019 NY Slip Op 35255(U)

March 25, 2019

Surrogate's Court, Queens County

Docket Number: File No. 2016-1612

Judge: Peter J. Kelly

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This opinion is uncorrected and not selected for official publication.

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT : QUEENS COUNTY

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Probate Proceeding, Estate of

REBEKAH GOLDSTEIN a/k/a
BOK HI GOLDSTEIN a/k/a
BOK HI KIM,

File No. 2016-1612

Deceased.
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In this proceeding, petitioner, Sarah Goldstein Berson ("Sarah"), daughter of the decedent, seeks an order directing the objectant, Sam Goldstein ("Sam"), to pay one-half of the transcript charges occasioned by a seven day trial on the contested issue of the decedent's domicile. Sam opposes the motion and, in addition thereto, has filed a cross-motion to strike petitioner's amended petition for probate.

Upon review of the papers and exhibits filed in support of the motion and cross-motion, as well as the opposition and replies thereto, and after oral argument on the record, the court finds as follows:

As background, a hearing as to domicile was previously ordered by the court in response to petitioner's motion for summary judgment dismissing the objections to probate and Sam's cross-motion for summary judgment seeking to dismiss the

petition on the grounds that the court lacked subject matter jurisdiction over the decedent's estate as the decedent was not a domiciliary of Queens County at the time of her death. Based on the parties' contradictory submissions, the court determined that issues of fact existed and an immediate trial on the issue of domicile was ordered (CPLR R. 3212[c]).

The trial was commenced on July 10, 2018, encompassed six days of testimony, and concluded on July 23, 2018. Petitioner's counsel, objectant's counsel, and respondent pro se, David Goldstein ("David"), all actively participated in the trial. On the last day of the trial, petitioner filed an amended petition for probate with the court, the particulars of which are discussed infra.

Subsequently, petitioner's counsel ordered a transcript of the proceeding through Tristar Court Reporting, Inc., one of several court-approved transcription service providers. Objectant's counsel balked at the \$4.00 per page price, citing a different provider that purportedly could provide the same services at \$3.00 per page, and further stated that David should also pay one-third of the charges. David, notwithstanding his lively participation in the trial, refused to pay any of the above costs. The transcription charges ultimately totaled \$5,564.05.

As a preliminary matter, the court finds that Tristar's service charges in this

regard are on par with those customarily charged by similar court-approved providers. Further, the furnishing of the transcript to the court was necessary in order for the referee to render a report of his findings. Indeed the referee directed counsel to order the transcripts "with all due haste so a decision could be rendered." Subsequent to the decision, counsel for petitioner moved to overrule and set aside the referee's report, and counsel for objectant cross-moved to confirm the report. Although the motion and cross-motion were both ultimately withdrawn by counsel on February 14, 2019, the court observes that both sides utilized copies of the transcript in their respective moving papers. All of the parties who participated in the trial were benefitted by petitioner's compliance in expeditiously obtaining the transcripts.

Accordingly, the court in its discretion finds that the necessary and reasonable expenses of the trial transcripts should be borne equally between the parties to the litigation that occasioned the need for the hearing in the first place (SCPA § 2301[2], [4]). To wit, Sarah, the petitioner, Sam, the objectant, and respondent pro se, David, who in that capacity, was permitted to question witnesses at length and otherwise directly participated in said trial.

Inasmuch as Sarah's counsel has already paid the sum of \$2,782.04 directly to Tristar Court Reporting, Inc., Sam and David are each directed to reimburse

petitioner's counsel the sum of \$463.68 within fifteen days of the date of service of a copy of this decision and order. Additionally, Sam and David shall each remit the sum of \$1,391.01 directly to Tristar Court Reporting Inc., representing the balance of the transcription bill due within the time frame set forth above.

The court now turns to objectant's cross-motion which seeks to strike the amended probate petition filed by the petitioner in this proceeding. In this regard, CPLR R 3025(a) provides as follows:

Amendments Without Leave. A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.

Here, the probate proceeding was initially verified and filed on April 18, 2016. Sam's verified Objections to Probate were served and filed on or about November 10, 2016. The amended probate petition, which seeks to change the estimated value of the decedent's personal property from \$1,580.00 to \$150,000.00 was verified and filed without court leave on or about July 23, 2018, well beyond the applicable time limit. As the petitioner did not seek leave of the court or obtain a stipulation from the parties as contemplated in CPLR R 3025(b) and (c), the amended petition is a nullity. Accordingly, the cross-motion to strike the amended

pleading is granted.

This is the decision and order of the court.

Dated: March 25, 2019



SURROGATE