

Estate of Antolin

2020 NY Slip Op 34482(U)

March 6, 2020

Surrogate's Court, Bronx County

Docket Number: 422A2002/B

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

March 6, 2020

ESTATE OF RUFITA ANTOLIN, Deceased
File No.: 422A2002/B

In this withdrawal proceeding, multiple alleged nieces, nephews, grandnieces, a grandnephew, and the fiduciaries of the estate of an alleged post-deceased sister, as well as five alleged post-deceased nieces, seek, inter alia, a decree directing the Comptroller of the State of New York (the Comptroller) to pay them the balance of the funds deposited for the credit of this estate being held pursuant to a decree dated March 4, 2011. A kinship hearing was held before a member of the court's Law Department designated to hear and report, upon the consent of all parties. More than 10 days have elapsed since the mailing of the referee's report, and no party has moved to modify or overrule the report.

Based upon the documentary evidence, it was established that the decedent died on February 15, 2002 at the age of 87. She was predeceased by her spouse and had no children. Although petitioners identified and provided documents for eight alleged siblings, the testimony

presented at the hearing indicated that the decedent had at least nine siblings, and there was incomplete or no documentation concerning the decedent's father, a brother, five grandnieces and a grandnephew. Moreover, many of the documents presented were uncertified and unauthenticated copies, and the testimony of the genealogist relied on submissions from the petitioners rather than certified documents directly obtained from the original issuers. Accordingly, the parties stipulated that the hearing continue so that the claimants could provide additional evidentiary proof and testimony.

Over a year later, no new documents were filed by the petitioners, other than a revised family tree chart and supplemental genealogist report. The parties, including the Attorney General, then filed a written stipulation pursuant to which, inter alia, the matter was to be submitted for determination and submission without further testimony or documentation.

The petitioners urge that SCPA 2225 (b) should be utilized to allow a relaxed burden of proof. The statute provides that

"If it appears to the satisfaction of the court that diligent and exhaustive efforts have been made from all available sources to ascertain the existence of distributees, or members of a class of devisees, legatees or beneficiaries, that at least three years have elapsed since the death of the decedent, or of such legatees, devisees or beneficiaries, other than those stated in the record, and that no claim to a share in the estate or trust has been made by any person whose relationship or existence has not been established in the record, the Court may make a determination that no distributees of the decedent or class of distributees exists, or that no such devisee, legatee or beneficiary, or members of a class of legatees,

devises or beneficiaries exists, other than those whose status is established in the record before the court.”

In any event, the petitioners’ request that any defect in the submissions would be cured by the request that the share of a whereabouts unknown distributee remain on deposit at the Comptroller.

In her final report, the guardian ad litem appointed for unknown and whereabouts unknown distributees notes that the genealogist, who has limited experience as an expert witness in Surrogate’s Courts of the State of New York, acknowledged that he had “tremendous problems” obtaining relevant documents from the record keeping departments in Puerto Rico after Hurricane Maria, as the decedent’s relatives lived in rural areas. Nonetheless, in the guardian ad litem’s opinion, the genealogist did not demonstrate diligent and exhaustive efforts from all available sources to ascertain the existence of distributees, and the submissions fall far short of the standards set forth in SCPA 2225. The guardian ad litem indicates, for example, the genealogist could have sent an employee to Puerto Rico to try to obtain records or engage a reliable local genealogical researcher there, as well as in the New Jersey towns where alleged distributees resided. Further, he also could have utilized internet genealogical searches, sent inquiries to the tax authorities, Social Security Administration or engaged a “skip tracer.” The guardian ad litem continues that the assets on deposit approximate \$185,000, and perhaps the due diligence efforts and testimony were proportionate to the size of the estate. Accordingly, she defers to the court to decide whether the petitioners’

application should be granted.

For kinship to be established to the satisfaction of the Court, there must be an evidentiary showing how the claimant is related to the decedent, and that no other persons of the same or a nearer degree of relationship survived the decedent(see Matter of Gavin, 41 Misc 3d 232 [Sur Ct, Erie County 2013]; Matter of Mack, NYLJ, Sept. 29, 2011 at 32, col 5 [Sur Ct, Suffolk County 2011]; Matter of Alao, NYLJ, March 19, 2002 at 18, col 6 [Sut Ct, Kings County 2002]). Pedigree takes the form of oral testimony, preferably by a disinterested person such as a professional genealogist, with documentary evidence required to corroborate it. The corroborating documents generally consist of public documents such as birth, death and marriage certificates, United States census and naturalization records, and court records, "semi-public" documents, such as church and cemetery records, foreign language documents and private documents, such as family letters and inscriptions in a family bible (see Matter of Kuberka, 22 Misc 3d at 1104 [A], 2208 NY Slip Op 5299 [U] [Sur Ct, Erie County 2008]). Claimants who fail to proffer evidence to exclude the possible existence of persons who would have an equal right to share in the estate, fail to establish their rights as distributees (see Matter of Perry, 29 Misc 3d 1221 [A], 2009 NY Slip Op 52781 [U] [Sur Ct, Erie County 2009, affd 78 AD3d 1590 [4th Dept 2010]; Matter of Kuberka, 22 Misc 3d at 1104 [A]; Matter of Shrake, 129 Misc 2d 671 [Sur Ct, Bronx County 1985]).

Although the petitioners request that SCPA 2225 (b) should be utilized because of the length of time that passed since the decedent's death

and aver that it appears unlikely that the decedent had any other distributees, on this state of the record, and the not so modest value of the estate, the court concurs with the findings of fact and conclusions in the referee's report and determines that SCPA 2225 (b) is inapplicable herein because the "diligent and exhaustive efforts required to be made "from all available sources" were not made (see Matter of Gavin, 41 Misc 3d at 212; Matter of Schrake, 129 Misc 2d at 671). Accordingly, as the class of the siblings of the decedent and their descendants has not been properly established, the subject proceeds should remain on deposit with the Comptroller and the withdrawal proceeding is hereby dismissed, without prejudice to the right of any alleged distributee seeking to prove his/her status as a distributee in a future proceeding (see 22 NYCRR § 202.25 [b]; Matter of Anderson, NYLJ, July 25, 2011 at 18, col 5 [Sur Ct, Bronx county 2011]).

The award for legal services rendered by counsel for the Public Administrator and the guardian ad litem shall be fixed in the decree to be entered hereon.

Settle decree.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE