

Crooke v Crooke

2021 NY Slip Op 30562(U)

February 22, 2021

Supreme Court, Kings County

Docket Number: 517822/2019

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22nd day of February, 2021.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

-----X

KENNETH CROOKE,

Plaintiff,

- against -

Mot. Seq. 1

Index No. 517822/2019

DECISION AND ORDER

TYLER JABARI CROOKE, TYREESE JORDAN CROOKE AND TYLIA CROOKE as the sole surviving heirs at law of LISA CROOKE, THE ADMINISTRATION FOR CHILDREN'S SERVICES (ACS), VINCENT HAIGLER, JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Defendants.

-----X

<u>The following papers numbered 1 to 4 read herein:</u>	<u>NYSCEF No.</u>
Motion/Affidavit/Affirmation Annexed/Exhibits.....	<u>8 - 16</u>
Supplemental documents	<u>21 - 25</u>

In this action to partition and sale real property, known as 206 Sheffield Avenue, Brooklyn, New York 11208 (Block 3719, Lot 25), plaintiff, Kenneth Crooke ("plaintiff"), moves (Motion Seq. 1) pursuant to CPLR § 306 (b) for an Ex Parte Order granting plaintiff an extension of time to effectuate service of the Summons and Verified Complaint upon defendants Tyreese Jordan Crooke, Tyler Jabari Crooke, Tylia Crooke (referred to herein collectively and interchangeably as "defendants" and "defendant-heirs") and further, for the appointment of a Guardian Ad Litem to

accept service on behalf of the defendants and to represent their interests in the proceeding. Plaintiff further requests that this action be discontinued against defendant Vincent Hagler (the father of Tylia Crooke) should the court grant the relief sought herein.

In support of the motion, plaintiff annexed his affidavit dated June 28, 2019; the affirmation of his attorney, Joseph A. Ledwidge, Esq., dated December 16, 2019; and a copy of the Summons and Verified Complaint with supporting documents. Plaintiff also annexed affidavits of service prepared by process servers, Belise Musanabera ("Ms. Musanabera") and Camille Ogle ("Ms. Ogle") dated November 25, 2019 and October 1, 2019, respectively. Ms. Musanabera states that a copy of the pleadings were served upon defendant, JP Morgan Chase Bank, National Association on August 21, 2019.

Ms. Ogle indicates that the pleadings were served upon defendant, The Administration for Children Services ("ACS"), on October 1, 2019. In a separate affidavit of due diligence dated December 6, 2019 (also annexed to plaintiff's motion), Ms. Ogle outlines the quantity and quality of attempts at personal delivery of the summons and complaint upon defendants Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke. Regarding Tylia Crooke, Ms. Ogle states that multiple attempts were made without success to effectuate service upon Tylia Crooke by serving her father, Vincent Hagler, at 1660 Fulton Street, Apt 5FF, Brooklyn, New York 11213. Concerning Tyler Jabari Crooke, Ms. Ogle states that numerous attempts were made, to no avail, to effectuate service at 509 Cleveland Street, Brooklyn, New York 11208 (between August 28, 2019 and October 25, 2019). Ms. Ogle states that neither personal nor substituted service could be effectuated, because the only individual of suitable age and discretion at the 501 Cleveland address is plaintiff herein, Kenneth Crooke, who is Tyler Jabari Crooke's grandfather. Finally, Ms. Ogle explains that service upon Tyreese Jordan Crooke was attempted through ACS, since Tyreese Jordan Crooke was a ward of ACS. Ms. Ogle indicates that a copy of the summons and complaint were left at the Subpoena Window on the 4th Floor of the ACS office located at 150 Williams Street, New York, New York 10038. However, Ms. Ogle acknowledges that Tyreese Jordan Crooke did not receive service of the summons and complaint via delivery of the documents to that location. Ms. Ogle further states that

she made several attempts to reach the ACS Supervising Attorney, Penina Oren, by phone to no avail. Ms. Ogle's affidavit of due diligence is supplemented by a letter dated November 14, 2019 from an ACS employee, Nancy Thomson ("Ms. Thomson"), that is addressed to plaintiff's attorney, Mr. Ledwidge. In the letter, Ms. Thomson acknowledges receipt of a copy of the summons but advises that Tyreese Jordan Crooke is no longer in ACS custody. Ms. Thomson further advises that a copy of the summons was forwarded to Tyreese Jordan Crooke's last known address by certified mail and that same was returned unclaimed. Ms. Thomson indicates that she sent another copy of the summons by regular mail on November 14, 2019, after verifying Tyreese Jordan Crooke's address.

By affidavit dated June 28, 2019, plaintiff explains that he and his daughter, Lisa Crooke, owned the subject property (206 Sheffield Street, Brooklyn, New York) as tenants in common pursuant to a deed dated July 24, 1997 and filed in the Office of the City Register of the City of New York on October 6, 1997. Plaintiff further explains that Lisa Crooke (decedent) expired on December 9, 2017 and was survived by her children and the defendants herein, Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke. Plaintiff states that the decedent was never married and has no heirs, other than the defendant-heirs, who by operation of law, inherited equal shares of the fifty (50) percent interest previously owned by the decedent. Additionally, plaintiff indicates that Tyler Jabari (19 years old) resides with him at 509 Cleveland Street, Brooklyn, New York; Tyreese Jordan Crooke, who was 17 years old at the time, was under the custody of ACS; and Tylia Crooke (8 years old) resides with her father, Vincent Haigler, who, to the best of his knowledge, resides at 1660 Fulton Street, Apt 5FF, Brooklyn, New York. Further, plaintiff asserts that he is seeking to partition the subject property, because the premises is uninhabitable, an extreme hazard, and at risk of imminent foreclosure by the lien holder, JP Morgan Chase Bank. Plaintiff also indicates that the property, which has incurred fire damage, is vacant with no known policy of insurance, which poses a risk of liability to plaintiff and the defendant-heirs. Plaintiff asserts that a partition and sale of the property, together with an accounting of carrying costs and other expenses incurred to maintain such property, is urgently required to protect the parties' respective interests.

The motion, initially returnable in or around January 9, 2020 was administratively transferred to this court. In or around April 2020, the court determined that additional information and a further showing of due diligence was required. In accordance therewith, plaintiff's counsel obtained, and e-filed, the following documents on January 19, 2021: 1) an Admission of Service signed by defendant Vincent Haigler on December 2, 2020; 2) an Admission of Service dated December 29, 2020 from Tyreese Jordan Crooke, who endorsed the document before a notary public as "Tyreese Crooke Hogan;" and 3) the affidavit of Robert Pozzi ("Mr. Pozzi"), a counselor employed with the American School for the Deaf, dated January 8, 2021.

In their respective Admissions of Service, Vincent Haigler, on behalf of his daughter, Tylia Crooke, and Tyreese Jordan Crooke (aka Tyreese Crooke Hogan), acknowledge timely receipt, and waive personal service of the Summons and Complaint, Notice of Pendency, Request for Judicial Intervention, and notice of the instant motion.

Mr. Pozzi, in his affidavit, avers that he has been a counselor at the American School for the Deaf for six (6) years, during which time he has become familiar with Tyler Jabari Crooke, who is a student at the school. Mr. Pozzi states that he was assigned as Tyler Jabari Crooke's counselor for five years, from 2015 through 2020, during which time he met with Tyler Jabari Crooke two times per week to develop Tyler's social, behavior, and coping skills. Mr. Pozzi further states that Tyler, who is now 21 years old (D.O.B. November 25, 1999), has the mental capacity of a minor. Mr. Pozzi also opined that Tyler Jabari Crooke is incapable of understanding the instant proceeding.

The court notes that plaintiff, through his attorneys, appeared at the court conference, held on January 20, 2021 via Microsoft Teams. Defendants Vincent Haigler and JP Morgan Chase Bank failed to appear.

NOW, upon review of all of the documents submitted, including the supplemental filings, and, after conference, the court hereby finds that it is in the best interest of minor child, defendant Tylia Crooke, and, the interest of justice warrants, that each defendant-heir herein, including Tyler Jabari Crooke and Tyreese Jordan Crooke (also known as Tyreese Crooke Hogan), though both over

the age of eighteen (18), be appointed a Guardian Ad Litem to address outstanding or prospective due process issues, if any, and a Special Attorney to represent their individual interests concerning the partition and sale of certain real property known as 206 Sheffield Street, Brooklyn, New York 11208 (Block 3719, Lot 25).

Accordingly, it is hereby

ORDERED, that the instant application is granted, on default, to the extent that plaintiff is hereby granted an extension of time pursuant to CPLR § 306 (b) to serve a late Summons and Complaint upon defendants Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke (aka Tyreese Crooke Hogan), and it is

ORDERED, that the branch of plaintiff's application seeking the appointment of a Guardian Ad Litem is granted to the extent that a Guardian ad Litem is appointed to address any outstanding due process issues as provided herein, and a Special Attorney is hereby appointed to represent the legal interests of defendants Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke (aka Tyreese Crooke Hogan); and it is further

ORDERED, that Rudyard F. Whyte, Esq. of the Cochran Firm, at 55 Broadway, 23rd Floor, New York, New York 10006, upon filing a written consent and statement of qualifications, is hereby authorized, designated, and empowered to appear herein as the Guardian ad Litem and may accept late service of the Summons and Complaint dated August 9, 2019, or pursuant to any Admissions of Service procured by the plaintiff to date, as well as any documents that may be served prospectively, on behalf of defendants Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke (aka Tyreese Crooke Hogan); and it is further

ORDERED, that Norman Williams, Esq. of Williams Law Office, P.C., at 1001 6th Avenue, 11th Floor, New York, New York 10018, upon filing a written consent and statement of qualification, is hereby authorized, designated, and empowered to appear as a Special Attorney on behalf of defendants Tylia Crooke, Tyler Jabari Crooke, and Tyreese Jordan Crooke (aka Tyreese Crooke Hogan), to protect and defend the legal interests of said defendants, as heirs of decedent, Lisa Crooke; and it is further

ORDERED, that this action, upon consent, may be discontinued against defendant, Vincent Haigler; and it is further

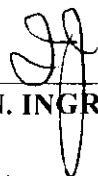
ORDERED, that this action is discontinued against defendant, the Administration for Children’s Services (“ACS”) on behalf of defendant, Tyreese Jordan Crooke (aka Tyreese Crooke Hogan), who is now over the age of eighteen (18) and thus, no longer under the custody and care of ACS, and it is further

ORDERED, that the appointees named herein shall comply with Rule 36 of the Chief Judge and Section 35-a of the Judiciary Law of the State of New York, and it is further

ORDERED, that plaintiff’s attorney shall serve a copy of this Order with Notice of Entry, upon Guardian ad Litem, Rudyard F. Whyte, Esq., Special Attorney, Norman Williams, Esq., Vincent Haigler, the Administration for Children’s Services, and JP Morgan Chase National Bank, within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.

ENTER



HON. INGRID JOSEPH, J.S.C

**Hon. Ingrid Joseph
Supreme Court Justice**