

Matter of O'Leary
2022 NY Slip Op 31690(U)
May 31, 2022
Surrogate's Court, New York County
Docket Number: File No. 2015-4628
Judge: Nora S. Anderson
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 : NEW YORK COUNTY

-----X
Proceeding for Judicial Settlement of the Account of
Frances O'Leary, as Executor of the Estate of

File No. 2015-4628

MARY O'LEARY,

Deceased.

-----X
ANDERSON, S.

In this contested accounting proceeding in the estate of Mary O'Leary, objectant Elena O'Leary moves for summary judgment on her objections to the executor's account.

Background

Decedent died on October 4, 2013, survived by five adult children. Her will, which was admitted to probate in Bronx County, appointed her daughter, a lawyer (herein, "petitioner"), as executor of her estate. Petitioner commenced the instant proceeding in the Bronx County Surrogate's Court for judicial settlement of her account, in which she valued the estate at approximately \$230,000. One of decedent's other daughters, a residuary beneficiary (herein "objectant" or "movant"), filed two objections to the account. In the first, she objects to petitioner's legal fees and, in the second, she alleges that petitioner failed to account for the proceeds amounting to \$15,453 from decedent's life insurance policy as an estate asset. The accounting proceeding was subsequently transferred to this court and thereafter, objectant moved for summary judgment on both objections. Petitioner opposes the motion.

Legal Standard on a Motion for Summary Judgment

The premise of a summary judgment motion is that the movant's position is supported by the record as a matter of law (*F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d 186, 188 [1st Dept 2002]). Since a summary ruling against a party's position eliminates that party's recourse

to a trial, such relief is to be regarded as a “drastic measure” and should be granted only cautiously (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d at 188). The movant has the threshold burden of submitting admissible evidence establishing a prima facie case (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). If the movant satisfies such burden, it then falls to the party opposing summary judgment to demonstrate a genuine issue of material fact requiring trial (*id.*). When adjudicating such motions, the court’s function is not to resolve issues of fact, but merely to determine whether such issues exist (*Sillman v Twentieth Century-Fox Film Corp.*, *supra*).

Objection to Legal Fees

In her petition for judicial settlement of her account, petitioner seeks legal fees for legal services she purports to have provided the estate while acting as counsel to herself as the estate’s fiduciary. In her affidavit of legal services, petitioner states that her fees between October 2013 and March 2015 totalled \$2,000, representing 21 hours at approximately \$100 per hour. Petitioner subsequently submitted a second affidavit in which she claims entitlement to additional legal fees for (i) the five hours she spent preparing her motion to dismiss the objections, a motion which was ultimately denied by this court, and (ii) the five hours she spent preparing a supplemental account and “a proposed order for distribution” of the remaining estate assets. She also seeks reimbursement of \$2,275 she had paid to a lawyer, as well as reimbursement for disbursements associated with the filing of her motion to dismiss.

Movant objects to petitioner’s request for any legal fees whatsoever, arguing that since petitioner also receives executorial commissions, her claim for legal fees constitutes “double dipping.” Movant contends that “any service provided to the estate would have come under

[petitioner's] role as [executor] and compensation for any such services would be included in the [statutory] commissions”¹

In addition to statutory commissions, a fiduciary who provides legal services to the estate is allowed compensation “as appear[s] to the court to be just and reasonable” (SCPA 2307[1]). However, a fiduciary cannot charge legal fees for time spent on tasks that are “executorial” in nature (*see Matter of Schoonheim*, 158 AD2d 183, 187-188 [1st Dept 1990]; *Matter of McCranor*, 176 AD2d 1026 [3rd Dept 1991]; *Matter of Goodman*, NYLJ, June 1, 2015, at 25 [Sur Ct, NY County 2015]). Executorial tasks have been defined as those tasks capable of being performed by a layperson (*see Matter of Passuello*, 184 AD2d 108, 111 [3rd Dept 1992]; *Matter of McCranor*, *supra*, 176 AD2d at 1027). Whether any of the tasks for which petitioner is seeking legal fees were executorial in nature is clearly a question of fact. Petitioner disputes objectant’s allegations in this regard, and the brief descriptions contained in petitioner’s time records do not provide the court with a sufficient basis for making a factual determination on this issue. Since objectant has failed to make a prima facie case that the legal fees requested by petitioner are excessive or otherwise improper as a matter of law, her motion for a summary determination on her objection to legal fees is denied.²

¹Objectant also argues that any legal fees for services rendered prior to decedent’s death cannot be charged to decedent’s estate without decedent’s expressed intent to be so charged, although, according to petitioner’s time sheets, petitioner only charged for services rendered subsequent to decedent’s death

² Objectant misconstrues this court’s prior decision denying petitioner’s motion to dismiss the objection to legal fees. In that decision, the court held that, since the objection was not facially invalid, it could not be *dismissed* on the pleadings as a matter of law. Such holding

Objection regarding Proceeds from Life Insurance Policy

The movant's second objection concerns the proceeds of \$15,453 that petitioner received from decedent's life insurance policy. Movant does not dispute that decedent designated petitioner as the beneficiary of the policy without any reference to petitioner's status as the named executor. However, she contends that decedent intended for the proceeds of the policy to be used for decedent's funeral expenses and that, since the estate was charged for the funeral expenses, the insurance proceeds should be deemed an estate asset. The funeral expenses totalled approximately \$14,000. Decedent's will directs that "funeral expenses be paid by my Executrix or Executor hereafter named."

Objectant submits affidavits from her sibling stating that decedent had expressed her intention on several occasions that the insurance proceeds be used to pay her funeral expenses. Objectant also proffers a letter dated December 24, 1996, from the issuer of the policy, which was found in the funeral home's files. The letter reflects that decedent had requested that the beneficiary of the policy be changed to decedent's son Michael, who was purportedly decedent's caregiver at the time. Objectant contends that this letter, and the fact that the funeral home possessed a copy of it, demonstrates decedent's intent that "the funeral home she had chosen . . . be aware of the policy's existence as it was meant to pay for her funeral." She further contends that decedent's having changed the beneficiaries at least twice "to name the person whom she expected to [care for her] clearly shows that decedent expected the beneficiary to be her agent in fulfilling decedent's intent" for the policy proceeds to be used for her funeral expenses.

Despite the evidence submitted by objectant regarding decedent's intent, she has failed to establish a prima facie case that her objection is valid as a matter of law. Ironically, objectant

does not lead to the conclusion that the objection can be *sustained* as a matter of law.

concedes that decedent had designated petitioner, in her individual capacity, as the beneficiary of the insurance policy. Typically, that fact would be deemed determinative as to the recipient of the policy proceeds (*see, e.g., McCarthy v Aetna Life Ins. Co.*, 92 NY 2d 436 [1998] [where the deceased insured had designated his then-wife as the beneficiary of his life insurance policy, she was entitled to the policy proceeds at his death despite their divorce and despite the insured's stated wishes in his will that his father receive all "insurance benefits"]). While the evidence offered by objectant may be sufficient to raise a factual issue as to whether decedent intended for petitioner to receive the policy proceeds, such evidence falls far short of establishing her intent as a matter of law (*see, e.g., Membrives v HHC TRS FP Portfolio*, 196 AD3d 560 [2d Dept 2021] [finding that the movant failed to make out a prima facie case given the conflicting evidence on a material factual issue]; *American Express v Uniroyal*, 164 AD2d 275, 277 [1st Dept 1990] ["[I]f it is necessary to refer to extrinsic facts, which may be in conflict, to determine the intent of the [contracting] parties, . . . summary judgement should be denied"]).

In sum, objectant has failed to make a prima facie case for either of her two objections, and for that reason, her motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

Dated: 5/31, 2022


SURROGATE