Matter of Sullivan v Sullivan
2022 NY Slip Op 31737(U)
June 10, 2022
Family Court, Tompkins County
Docket Number: Docket No. O-00476-22
Judge: Mary M. Tarantelli
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STATE OF NEW YORK
FAMILY COURT : COUNTY OF TOMPKINS

In the Matter of a Proceeding under Article **8** of the Court Family Act	File No. 8471 Docket No. O-00476-22 Docket No. O-00479-22
Michelle L. Sullivan, Petitioner, – against –	Docket No. O-00481-22 Docket No. O-00482-22
William P. Sullivan, Daniel Sullivan, Tracy Goodrich and John Sullivan, Respondents.	**DECISION AND ORDER OF DISMISSAL** June 10, 2022

OPINION OF THE COURT

Mary M. Tarantelli, J.

These are four related proceedings for protective orders originated by Petitioner against siblings of her deceased husband pursuant to Family Court Act article 8.

The gravamen of the petitions are disputes over the estate of Petitioner's deceased husband, the care of Respondents' mother, ownership of the real property where Petitioner, her deceased husband and Respondents' mother all resided before the death of Petitioner's husband and before Respondents' mother was hospitalized, and Respondents' exclusion of Petitioner from "family meetings and gatherings." Petitioner charges Respondent William P. Sullivan with illegally disclosing her protected health information in violation of the HIPAA and "knowingly misconstru[ing] [her] financial transactions" in a letter to her attorney. Petitioner alleges that statements contained in the letter are inconsistent with statements made to her in a text message before her husband's death. Following her husband's funeral last year, Petitioner accuses Respondents Daniel Sullivan and John Sullivan with driving their mother to the disputed property "with her wheelchair [and] walker" and "assisting her into the house," moving their mother's vehicle to Respondent Tracy Goodrich's property, even though it had been utilized to care for their mother, withdrawing money from their mother's and father's bank accounts, and Petitioner accuses all Respondents with returning to their lives, some in other states, without consulting Petitioner or making any arrangements for their mother's care. Petitioner alleges Respondent Tracy Goodrich "false[ly] report[ed]" to law enforcement that Petitioner had "various weapons [and had made] threats." However, Petitioner separately acknowledges that she possessed weapons that belonged to her deceased husband, and that Respondent Tracy Goodrich "falsely stated [Petitioner] had to give [Goodrich] [the] guns." Petitioner does not articulate what threats were falsely

reported. Petitioner accuses Respondents of "greed and disdain" and displaying "increasing … animosity towards [her]" that has put her in "fear of … retaliation" on par with an unspecified "[p]sychological … attack[]" directed at "their own mother to the point where she ended up hospitalized." Instead of taking their mother into one of their homes upon her imminent discharge from the hospital, Petitioner alleges "they are attempting to force [her] to … care" for their mother in "her" home. Petitioner complains that Respondents expect her to care for their mother uncompensated and that they have "not communicat[ed] [with her] except to threaten [her] by text … [or] FAX" and that they have made "disturbing unannounced personal visits to ["her"] property" "leaving [Petitioner's] family and property exposed to their criminal vandalism, destruction and theft." The "vandalism, destruction and theft" is not set forth in the pleadings; rather, Petitioner concedes she "ha[s] no way of knowing what damages they [allegedly] caused or items they destroyed or removed from the property." Nevertheless, to facilitate these purported incidents of "vandalism, destruction and theft," Respondents Daniel Sullivan and John Sullivan, according to Petitioner, have plied her cousin—who now resides with Petitioner and other members of her family at the disputed property—with marijuana. Petitioner alleges that Respondent John Sullivan is "extremely aggressive" and "often 'peels out' of [Petitioner's] [gravel] driveway in a rage, kicking up huge rocks … [that] could be deadly to … small children [and] animals."

"It is well established that Family Court is a court of limited jurisdiction, constrained to exercise only those powers granted to it by the State Constitution or by statute. In accordance with the Constitution, the Family Court Act provides [Family C]ourt with concurrent jurisdiction (shared with the criminal courts) over 'family offenses.' The statutory procedures concerning family offenses are set forth in article 8 of the Family Court Act, and section 812 enumerates the crimes which, if committed between persons in specified relationships, constitute family offenses." *Matter of Lisa T. v King E. T.*, 30 NY3d 548, 551 (2017) (internal quotation marks and citations omitted). In addition to other specified relationships not relevant here, "Family Court has jurisdiction over any proceeding concerning family offenses arising from incidents between members of the same family or household. Members of the same family or household include [persons related by consanguinity or affinity and] persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time." *Matter of Christina R. v James Q.*, 185 AD3d 1240, 1240 (3d Dept 2020) (citations omitted); *see* Family Ct Act § 812(1)(a),(e).

Persons related by consanguinity share the same blood, Black's Law Dictionary (11th ed 2019), consanguinity. The relationship is acquired at birth and cannot be severed, although the relationship may not be legally recognized upon termination of parental rights. *See Matter of K.J. v K.K.*, 23 Misc 3d 754, 758-59 (Fam Ct, Orange County 2009). "A relationship of affinity is 'the relation that one spouse has to the blood relatives of the other spouse[.]'" *Matter of KR v FB*, 70 Misc 3d 449, 451-52 (Fam Ct, Suffolk County 2020), quoting Black's Law Dictionary 70 (10th ed. 2014). Generally, "[t]he relationship by affinity is terminated upon the death of the spouse."

Matter of Decker v Seamon, 18 Misc 3d 1101(A) (Fam Ct, Otsego County 2007); *see Matter of Anstey v Palmatier*, 23 AD3d 780, 780 (3d Dept 2005); *see also Matter of Orellana v Escalante*, 228 AD2d 63, 65 (4th Dept 1997) (affinity terminated by divorce). However, an exception has been recognized in other contexts where there are surviving issue of the marriage. In 1847, the Chancery Court observed that "[t]he death of [a] husband … w[ill] … sever[] th[e] tie of affinity, entirely, [in the absence of] living issue of the marriage, in whose veins the blood of both parties [i]s commingled, [with such commingling having the effect of] preserv[ing] the relationship by affinity through the medium of such issue of the marriage. [Thus, the law recognizes a] distinction between the severance of the tie of affinity by the death of the husband, or wife, without issue, and the continuance of the tie between the blood relatives of the decedent and the survivor, through the medium of living issue of the marriage[.]" *Paddock v Wells*, 2 Barb Ch 331. This exception has been applied in the context of family offense proceedings in other states. *See e.g. D.O. v M.O.*, CN17-02462, 2017 WL 4390420 (Del Fam Ct 2017). Here, there are no allegations that the parties are related by blood or continue to be related by marriage through surviving issue of Petitioner's marriage to Respondents' brother. Accordingly, the petition is insufficient to confer subject matter jurisdiction on the basis consanguinity or affinity.

The court next considers whether the parties may be members of the same family of household based upon an "intimate relationship." "The [Family Court Act] does not define intimate relationship but it does exclude casual acquaintances and ordinary social or business associations and is otherwise decided on a case-by-case basis. In determining whether an intimate relationship exists, the court considers, among other things, the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Additionally, the relationship should be direct and not one based upon a connection with a third party." *James Q.*, at 1240-41 (3d Dept 2020). By "radically expand[ing]" the definition of "members of the same family or household" to include "persons … who are or have been in an intimate relationship" in 2008, the "Legislature intended to extend the statute's reach to … (1) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household and (2) persons who are or have been in an intimate or dating relationship regardless of whether such persons have lived together at any time." *Matter of Jessica D. v Jeremy H.*, 77 AD3d 87, 90 (3d Dept 2010); *see Matter of Mark W v. Damion W*, 25 Misc 3d 1148, 1150 (Fam Ct, Kings County 2009) ("The legislative history of the 2008 Amendment indicates that the legislature intended to extend the protections of the Family Court Act primarily to dating couples who are not married or who do not share a child in common, and same-sex partners"); *Matter of Amanda AA. v Jennifer BB.*, Fam Ct, Tompkins County, Sept. 23, 2010, Brockway, J. at 2, available at http://decisions.courts.state.ny.us/fcas/fcas_docs/2010sep/54013902010101_1285342402608_fam.pdf (accessed Jun. 10, 2022). The parties clearly have never been in a dating-type relationship and the allegations do not demonstrate that the parties ever lived in the same household, but that they are only connected through Petitioner's deceased husband. Since the parties are not in an intimate relationship and are not otherwise members of the

same family or household, the court does not have subject matter jurisdiction over any family offenses that may have been committed between them.

Even assuming the Petitioner has the requisite relationship with Respondents to confer jurisdiction, the petition fails to sufficiently state a family offense. "To the extent that [P]etitioner alleges false accusations" by Respondent William P. Sullivan, "[s]he has not described any of the conduct required to originate a family offense proceeding." *Matter of Brennan v Anesi*, 283 AD2d 693, 694 (3d Dept 2001). "Even accepting as true the allegations in the [p]etition that [Respondent William P. Sullivan]'s conduct in contacting her attorney amounted to [false accusations,] threats and intimidation against [Petitioner] …, and according them the benefit of every reasonable inference, there is no basis for finding that this conduct constituted harassment, coercion or any other family offense against the [Petitioner] herself." *Matter of Millie S. v Thomas S.*, 60 Misc 3d 493, 497-98 (Fam Ct, Kings County 2018). Significantly, Respondent William P. Sullivan does accuse Petitioner of anything in the letter. He asked her attorney to confirm or deny information he had obtained from others to "help[] [him] clarify any misperceptions or untrue allegations regarding [Petitioner], my brother [Petitioner's deceased husband], [his] mother's property, and [his] brother's estate." Assuming for purposes of this decision that Respondents did not reasonably conclude they had a license or privilege to be on the disputed premises, *see People v Basch*, 36 NY2d 154, 159 (1975) ("a person … who honestly believes that he is licensed or privileged to enter, is not guilty of any degree of criminal trespass"); *People v McCargo*, 226 AD2d 480, 481 (2d Dept 1996) (belief may be "reasonable" notwithstanding "intrafamilial differences"), trespass is simply not actionable as a family offense. *People v Malone*, 3 AD3d 795, 797 (3d Dept 2004). Petitioner's "fear" of a "[p]sychological … attack[]" "is simply too speculative to provide a factual basis for the claim" that Respondents have engaged in or will engage in an unlawful course of conduct. *Matter of Tammy TT. v Charles TT.*, 204 AD3d 1336, 1339 (3d Dept 2022); *see* Penal Law § 120.45(1),(2); 240.26(3). Regarding the remaining allegations, including sending "*threat[s]* by text … [or] FAX," "vandalism, destruction and theft," "kicking up *huge* rocks" and "*false[ly]* reporting" "various weapons [and] *threats*," they are "too vague" to sufficiently allege a family offense. *Matter of Latava P. v Charles W.*, 171 AD3d 525 (1st Dept 2019). "Finally, [P]etitioner's conclusory allegations of harassment[, coercion and stalking] … fail to sufficiently state any acts of [R]espondent[s] that would constitute the offense[s]." *Anesi*, 283 AD2d at 694-95, citing *Matter of Jones v. Roper*, 187 A.D.2d 593, 593 (2d Dept 1992).

Therefore, based upon all of the foregoing, the petitions are each summarily dismissed. The parties' disputes may more properly be addressed in Surrogate's Court pursuant to SCPA 2103 or in an action in Supreme Court for a determination of their respective interests in real and personal property pursuant to NY RPAPL article 15 and CPLR 3001.