

Matter of Martin

2023 NY Slip Op 31387(U)

April 27, 2023

Surrogate's Court, New York County

Docket Number: File No. 2019-269/C

Judge: Hilary Gingold

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Accounting of the Public Administrator of
the County of New York, as Administrator
of the Estate of

File No. 2019-269/C

CELESTE MARTIN,

Deceased.

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G I N G O L D , S .

Incident to her final accounting in the estate of Celeste Martin, the Public Administrator requests a determination of the identity of decedent's distributees.

Based upon the proof submitted at a kinship hearing held before a court-attorney referee, in which a guardian ad litem appointed to represent unknown distributees participated, the court finds that decedent was survived by eight maternal first cousins once removed (one of whom post-deceased) and four paternal first cousins once removed (two of whom post-deceased) as her sole distributees.

Two other objectants, Marianne Honan Lopapa and Pamela Honan Macri (collectively, "claimants") are not related to decedent, but their stepmother was decedent's first cousin. Claimants argue that their stepmother was like a mother to them. One claimant claims her stepmother was the only mother she had ever known. Both claimants called her "mom" and thought of her as their mother, and she thought of claimants as her daughters. They were a "very close,

loving family." Their stepmother bequeathed claimants a little over half of her estate in her will. Even though their stepmother never legally adopted claimants, or even indicated her intent to adopt claimants, claimants argue that they were equitably adopted by their stepmother based on this loving mother-daughter relationship. Through this argument of equitable adoption, claimants also claim they are entitled to inherit a portion of decedent's estate, as they should be considered decedent's first cousins once removed.

The doctrine of equitable adoption has long been recognized in New York under limited circumstances (*See, e.g., Middleworth v Ordway*, 191 NY 404 [1908] [finding a contract to care for an infant entitled the infant to take by contract as much as a natural child would take under the law of succession]; *Estate of Douglas Fischer*, 2002 NYLJ Lexis 1328 [Sur Ct, NY County 2002] [indicating one party was a claimant under equitable adoption]; *Rodriguez v Morris*, 136 Misc 2d 103 [Sur Ct, Suffolk County 1987] [recognizing a cause of action for a petitioner claiming equitable adoption]; *Matter of Riggs*, 109 Misc 2d 644 [Sur Ct, NY County 1981] [discussing the applicability of the doctrine of equitable adoption]).

A determination of equitable adoption is a factual question based on the agreement and circumstances of the case, requiring a hearing (*See Matter of Mazzeo*, 95 AD2d 91, 93-94 [3d Dept. 1983]). "This doctrine does not create a legal adoption..., but is merely an exercise of the court's equitable powers whereby a child is

permitted to enforce the agreement to adopt made by the decedent and thereby acquire the rights in intestacy that he would have had if the decedent had complied with the said agreement" (*Rodriguez*, 136 Misc 2d at 105). Thus, under equitable adoption, the child "takes, not by the law of succession, but by contract, to the same extent that a natural child would take according to the law of succession" (*Middleworth*, 191 NY at 414). "Proof of the contract must be clear and convincing" (*Mazzeo*, 95 AD2d at 93).

"To apply the doctrine of equitable adoption, the contract to be enforced must be definite and certain, be free of fraud, duress and misrepresentation, be equitable, have mutuality of obligations and remedies, and be founded upon consideration" (*Id.*). "The mere fact that equity would justify such a contract will not satisfy the necessity of proving that such contract in fact was made" (*Holt v Tuite*, 188 NY 17, 23-24 [1907]).

Here, claimants argue that they had a parent-child relationship with their stepmother, and thus, an equitable adoption occurred. They have no evidence of any contract made by their stepmother to care for or adopt them. Claimants' own testimony confirms that there was no contract; and that, further, the stepmother never promised to adopt claimants. These claimants never indicated any promise to be viewed as a contract, or even at what point their stepmother is presumed to have equitably adopted them. These claimants were united in their separate testimonies

indicating that although their stepmother could have adopted them after their biological mother died, there was no attempt to commence an adoption proceeding. Moreover, the stepmother was never the claimants' legal guardian, claimants never lived with their stepmother, and there is no evidence claimants received any financial support from their stepmother.

Notably, claimants' stepmother and father moved to Virginia in 1973, three years after they married. Claimants never lived in Virginia with their father and stepmother. Furthermore, no equitable adoption could have occurred in Virginia as Virginia law does not recognize the doctrine of equitable adoption (*See Clarkson v Bliley*, 185 Va 82 [1946] ["[I]n the matter of inheritance there is no place for equitable considerations, whether springing from contract or from a course of conduct."]; *Moore v Richardson*, 345 F Supp 75 [WD Va 1972] [declining to apply the doctrine of equitable adoption]; *Fray v Callahan*, 22 Va Cir 205 [1990] ["It may be argued that 'virtual' or 'equitable' adoption is contrary to the public policy of Virginia."])).

Even if the court were willing to consider claimants' arguments as to equitable adoption, the claimants here are not entitled to inherit from decedent under the laws of intestacy. "An equitable adoption does not create a legal adoption of a child but is merely an exercise of the court's equitable powers to permit the child to acquire rights in intestacy based upon an agreement to

adopt" (*Matter of Fairhurst*, 43 Misc 3d 1214 [A], 1214 [A] [Sur Ct, Nassau County 2014]). "[T]he doctrine does not create a legal relationship between the equitably adopted child and the heirs of the adoptive parent" (*Id.*). An equitable adoptee does not even have standing to vacate a decree granting letters of administration, and would only be entitled to pursue his claim against the equitable adopter as a creditor (*See Mazzeo*, 95 AD2d at 94). The doctrine of equitable adoption is so limited that it is only applied for the benefits of the child against the equitable adopter's property (*See Fairhurst*, 43 Misc 3d at 1214 [A]).

In *Matter of Riggs*, the objectants were the nieces and nephews of the decedent's stepfather (*See* 109 Misc 2d at 644). The objectants argued that the decedent's stepfather had equitably adopted the decedent under the laws of New Jersey (*See id.* at 644-45). The New York County Surrogate's Court held that such an equitable adoption rule would only be enforceable by a child against an alleged adoptive parent's property, and thus, the objectants were not entitled to inherit from the decedent (*See id.* at 647-48).

The laws of succession do not apply to equitable adoption, and any rights claimants would have through equitable adoption would only be by contract (*See Fairhurst*, 43 Misc 3d at 1214 (A); *Riggs*, 109 Misc 2d at 647). Just as in *Riggs*, had the claimants here established equitable adoption, they would be limited to any

interest in their stepmother's estate solely through intestacy. However, they would still have no rights under the laws of succession to any of decedent's estate. As their stepmother's cousin, decedent had no contractual relationship with claimants under the rules of equitable adoption in any jurisdiction, much less in New York. Based on the foregoing, those objections of said claimants are hereby dismissed.

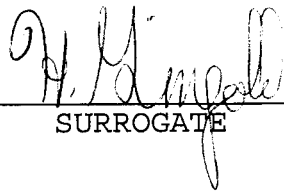
The court is satisfied that diligent and exhaustive efforts have been made, without success, to ascertain the existence of other distributees, that more than three years have elapsed since decedent's death, and that no claim to a distributive share in the estate has been made by any other person. It is therefore determined that no other distributees exist (SCPA 2225). The report of the guardian ad litem indicates that he is satisfied that the identities of the distributees have been established.

Accordingly, pursuant to EPTL 4-1.1(a)(7), the Public Administrator is directed to distribute one-half the net estate to Marsha Mullane, Donna Myers, Paul Figueroa, Stephen Figueroa, Trudi Carter, Bruce F. Carter, Deborah Carter Wilkinson, and John Near as fiduciary of the estate of David Douglas Carter, and the other half of the net estate to Kerry Smith Brooks, Maureen Smith Guglielmino, Kerry S. Brooks as fiduciary of the estate of Scott C. Smith, and Judy A. Smith, as fiduciary of the estate of Martin C. Smith, Jr.

The Public Administrator shall supplement her account by affidavit, and, as so supplemented, the account is settled.

Settle decree.

Dated: April 27th, 2023



SURROGATE