

Matter of Moran

2023 NY Slip Op 32004(U)

June 14, 2023

Surrogate's Court, New York County

Docket Number: File No. 2018-3840/A

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

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

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Proceeding Pursuant to SCPA 2103 in the
Estate of

THOMAS J. MORAN,

File No. 2018-3840/A

Deceased.
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G I N G O L D , S .

In this uncontested turnover proceeding (SCPA 2103), the executor of the estate of Thomas Moran seeks an order directing respondent Apple, Inc. (Apple) to assist in the recovery of decedent's personal digital assets or data (EPTL Article 13-A). Petitioner states in the petition that she wishes to access decedent's personal information, held under his Apple user ID, which is stored on his computer, iPhone, iCloud, and/or iTunes account, including music, photographs, text messages, email correspondence, and password information. In an affidavit, petitioner (decedent's spouse) emphasizes that access to decedent's photographs and music is of utmost importance to her.

Apple did not appear in the proceeding, but the petition attaches an email from Apple personnel indicating that before access to decedent's personal data will be provided, a court order containing certain directions that would be acceptable to Apple is required. Petitioner requests that the court issue an order containing such directions, and, additionally, asks the court to allow her to reset the password to decedent's account, change the

email affiliated with the account, and change the security questions associated with the account.

The uncontroverted petition is proof of the facts alleged in it (SCPA 509). Accordingly, the court finds that (1) decedent's Apple user ID is correctly identified in the petition and that he was the sole account owner associated with that Apple ID; and (2) petitioner is the fiduciary of decedent's estate.

Based on these findings, the court directs Apple to assist in the recovery of decedent's personal digital data, which may include third-party personally identifiable information/data from decedent's account (EPTL 13-A-3.2[d][4][A]; *Matter of Gonzalez*, NYLJ, Apr. 12, 2023, at 7, col 1 [Sur Ct, NY County]). In particular, Apple is directed to provide to petitioner (1) access to digital assets other than the content of electronic communications, including but not limited to, photographs, notes, and music (see *Matter of Swezey*, NYLJ, Jan. 17, 2019, at 23, col 3 [Sur Ct, NY County]; EPTL 13-A-3.2); and (2) a catalogue of electronic communications sent or received by decedent's user ID (EPTL 13-A-1[d]; 13-A-3.2).

To the extent petitioner seeks the content of electronic communications, including email, texts, or other correspondence, sent or received by decedent (EPTL 13-A-3.1), the request is denied without prejudice to petitioner's amending the petition by affidavit filed with the court no later than 30 days after Apple

responds to the above directions. Such affidavit shall: (1) identify the specific digital assets or information she is seeking; (2) explain how disclosure of this data or information is reasonably necessary for the administration of decedent's estate (EPTL 13-A-3.1[e][3][D]); (3) describe where petitioner believes such information is stored (e.g., iCloud, iTunes, etc.); and (4) state whether decedent provided any direction for disclosure of his digital assets or provided consent for petitioner to access this data, as provided in EPTL 13-A-2.2 (see *Matter of Gonzalez*, NYLJ, Apr. 12, 2023, at 7 col 1).

The request for a finding that petitioner is the "agent" of decedent's estate and that petitioner's authorization constitutes "lawful consent" under the Stored Communications Act (18 USC 2701 et seq. [part of the Electronic Communications Privacy Act]) is premature. Such a finding is not required for disclosure of the digital assets authorized here since they are not considered content of electronic communications (see *Matter of Coleman*, 63 Misc 3d 609 [Sur Ct, Westchester County 2019]; *Matter of Murray*, NYLJ, Oct. 7, 2019, at 27, col 6 [Sur Ct, Suffolk County]).

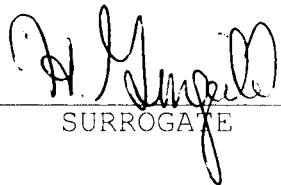
Petitioner's request to reset the password to the account, change the email affiliated with the account, and change the security questions associated with the account is denied without prejudice to petitioner's identifying the nature and extent of the information that such actions would disclose as well as

demonstrating the need to take such actions.

Based on the foregoing, the petition is granted to the extent indicated in this decision, which constitutes the order of the Court.

Clerk to notify.

Dated: June 14th, 2023



SURROGATE