Estate of Thorne
2025 NY Slip Op 30655(U)
January 3, 2025
Surrogate's Court, Bronx County
Docket Number: File No. 2021-1247
Judge: Nelida Malave-Gonzalez

SURROGATE'S COURT, BRONX COUNTY

January 3, 2025

ESTATE OF MABEL THORNE, also
known as MABEL G. THORNE, Deceased
File No.: 2021-1247

This is an uncontested proceeding by the decedent's granddaughter ("the petitioner") to probate, as an ancient document, an instrument dated October 29, 1982 ("the will") and be awarded letters of administration c.t.a. The decedent died on March 19, 1992 at the age of 80. The decedent's distibutees are a post-deceased spouse and two post-deceased sons who are survived by the petitioner, two other granddaughters and a grandson. The whereabouts of the decedent's step-daughter who is the sole distributee of the post-deceased spouse are unknown. The three other grandchildren consent to the application. On the return date of second supplemental citation, service by publication was effectuated upon the whereabouts unknown step-daughter and possible additional unknown distributees, and a guardian ad litem ("GAL") was appointed to represent their interests. Counsel for the Attorney General and Public Administrator, who were also cited, appeared and stated on the record that they did not oppose the application.

The two-page instrument, which is regular on its face and was drafted by an attorney, bears the signatures of three witnesses, one of whom is the attorney draftsman, and contains an attestation clause. It nominates Herbert Thorne ("Herbert"), a post-deceased son who is the petitioner's father, as executor. The decedent's daughter in law, who is also deceased, is the designated successor executor. Herbert is also devised the decedent's realty located in the Bronx. After up front bequests of an automobile and $1,000 to two grandsons, all tangible personal property is bequeathed to the petitioner who is the sole residuary beneficiary. The instrument also references beneficiary designations for the two post-deceased sons in several de minimis life insurance policies.

In support of the application, counsel for the petitioner affirms that the attorney witness is now deceased and the signature of one witness is illegible, and that witnesses cannot be identified or located. Counsel continues that mailings to the third witness were returned as "undeliverable" and, despite diligent efforts to locate her, her whereabouts remain unknown. Accordingly, counsel requests that the court dispense with the testimony of the three attesting witnesses and that the instrument, which was duly executed over 42 years ago, be admitted to probate as an ancient document. As the nominated executor and successor executors are deceased and there are no additional fiduciary appointments in the instrument, he also requests that the petitioner be appointed administrator c.t.a. of the decedent's estate.

In further support, the petitioner filed an affidavit stating that

she discovered the will after the decedent's death in her father's file cabinet. At that time, the will appeared to be intact and unsuspicious, with no alterations or deletions. Affidavits of heirship are also filed from the petitioner and two long time friends of the decedent corroborating, inter alia, that the decedent's only distributees are the post-deceased spouse and the two post-deceased sons, who are collectively survived by the four grandchildren.

The guardian ad litem reports that, upon review of the filed documents, he spoke to counsel for the petitioner and independently attempted to contact his ward and the attesting witnesses, to no avail. He notes that the post-deceased spouse, who receives no bequest, survived the decedent for three years. Although his ward was appointed voluntary administrator of the post-deceased spouse's estate in 1995, it appears that estate remains unadministered and no notice of intention to assert a right of election was filed. The GAL: continues that the will was attorney supervised creating the presumption of due execution, it was discovered in the file cabinet of the post-deceased son who was the nominated executor, it is unsuspicious in nature, and there is no evidence that the decedent suffered from any mental disability or lack of testamentary capacity at the time of execution. It also appears that the decedent's testamentary plan, in which she left everything to her children, is in accordance with standard estate planning practices. Therefore, the GAL does not object to the relief sought and recommends that the instrument be admitted to probate.

To be admitted to probate as an ancient document, a will must be more than 30 years old, unsuspicious in nature and taken from a natural place of custody (see Matter of Brittain, 54 Misc 2d 965 [Sur Ct, Queens County 1967]). Moreover, the attestation clause is entitled to weight in determining due execution (see Matter of Cottrell, 95 NY 329 [1884]).

Accordingly, as the propounded instrument meets the requisite criteria to be admitted to probate as an ancient document, the petition is granted. In the absence of any opposition, the application for the issuance of letters of administration c.t.a. to the petitioner is also granted. Letters of administration c.t.a. shall issue to the petitioner subject to the provisions of SCPA 805(3) with regard to the disposition of any realty in which the decedent had an interest.

Decree signed.

HON. NELIDA MALAVÉ-GONZALEZ
SURROGATE