

**Matter of Staine**

2025 NY Slip Op 32664(U)

June 30, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2018-1093/A

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

June 30, 2025

ESTATE OF DENNIS STAINE, Deceased  
File No.: 2018-1093/A

In this accounting proceeding filed for an insolvent estate by the Public Administrator (the "PA"), jurisdiction was acquired over unknown distributees by publication, the Attorney General ("AG"), an alleged daughter and the New York City Department of Social Services ("DSS"), whose Medicaid claim is allowed. On the return date of citation, counsel for the PA and the Attorney General ("AG") appeared along with the alleged daughter, who was unrepresented and indicated opposition, and the matter was adjourned to afford the alleged daughter additional time to retain an attorney. On the adjourned date, counsel for the PA appeared along with the alleged daughter, who indicated that she wished to proceed pro se and was afforded additional time to file objections, and the matter was further adjourned. On the final adjourned date, verified objections having been filed by the alleged daughter (hereinafter the "objectant"), the court directed that the objections would be treated as opposition to a deemed summary judgment motion by the PA pursuant to CPLR § 3212 seeking to dismiss the objections and pay the entire net distributable proceeds to the DSS, and the PA was afforded additional time to file a reply. The PA filed a reply, the guardian ad litem

("GAL") appointed to represent unknown distributees filed a report, and the summary judgment was submitted for determination. DSS has not appeared or asserted opposition to date.

The decedent died intestate on February 2017 at the age of 81. He was widowed and a long term nursing home resident. The objectant is the informant on the decedent's death certificate, that does not state the names of the decedent's parents. The account lists \$41,535.53 in total assets, \$1,056.35 in paid administration expenses, \$2,076.78 in unpaid legal services with \$2,076.78 commissions owing, as well as DSS's presented and allowed Medicaid claim in the sum of \$354,290.88 that remains unpaid.

In her objections, the alleged daughter ("objectant") asserts that she is the decedent's sole distributee. She explains the omission of the decedent on her birth certificate was due to her mother's "incapacity during her birth and continuing." The objectant further alleges that she submitted legal documents demonstrating that the decedent was her father to the New York State Comptroller's Office (the "Comptroller") concerning unclaimed estate funds. The objectant also claims financial hardship as the sole support of four children with limited funds from her employment as an educator in South Carolina and hopes for a distribution from the estate.

In further support, the objectant annexes unauthenticated copies of: (1) her birth certificate; (2) an admission form from the Riverdale Nursing Home dated April 14, 2014 listing the objectant as a daughter of the decedent; (3) a form for the objectant's emergency contacts listing the

decedent as next of kin; (4) a handwritten note to the objectant allegedly signed by the decedent expressing love and that he is sending her money to rent a tuxedo and buy boots for him; (5) a letter from Compassionate Care offering the objectant bereavement counseling; and (6) correspondence from the Comptroller referencing unclaimed funds and that the signature of an estate representative and a copy of letters of administration are required. The objectant concludes that, although she has limited funds, she would endeavor to provide additional documentation upon request.

Counsel for the PA replies that the net estate will likely be between \$34,000 to \$36,000, DSS's asserted lien greatly exceeds this amount and the objectant has not yet proven kinship. Even if kinship were established, distributees can only inherit the net estate of a decedent after payment of administrative costs, reasonable funeral expenses and just debts of the estate. Where, as here, the estate is insolvent because of administrative costs and debts, there is no inheritable estate. As fiduciary of the estate, the PA does not have the power to reject proper claims against the estate in preference to any distributees. The objectant fails to raise any issues concerning the propriety of DSS's claim or dispute that DSS paid for the care of the decedent, and her objections only broadly assert economic hardship and that she is the decedent's daughter and distributee.

PA's counsel continues that New York State directives mandate recovery of properly paid Medicaid payments from the estate of a person over the age of 55 who received Medicaid payments. There are exceptions

that are inapplicable herein for an “undue hardship” exception where the estate asset is the sole income-producing asset of the beneficiaries such as a family farm or family business or the decedent’s home is the primary residence of the beneficiary. The directives continue that undue hardship will not be found based solely on the inability of a beneficiary to maintain a pre-existing lifestyle or if the alleged hardship is the result of Medicaid or estate planning involving divestiture of assets.

Counsel concludes that she contacted DSS to ascertain whether the objectant’s hardship claim might qualify as a hardship exemption and was informed that, even if the kinship claim were properly documented, the objectant’s circumstances would not qualify her for an undue hardship exemption, as the economic hardship was not caused by assertion of the lien.

The GAL reports that it appears that the objectant has not sufficiently established kinship, since the birth certificate does not list the decedent, there is no DNA test or proof of paternity, nor any other legal documentation submitted to establish a biological or adoptive relationship with the decedent. She also opines that the objectant has not established sufficient undue hardship to allow her a share of the estate after payments to creditors and that all the transactions listed in the account appear proper. Accordingly, the GAL recommends that the objections be dismissed, the claim presented by DSS be allowed and that the account be judicially settled.

Summary judgment cannot be granted unless it clearly

appears that no material issues of fact exist (see *Phillips v Joseph Kantor Co.*, 31 NY2d 307 [1972]; *Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]). The movants must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Friends of Animals, Inc. v Associated Fur Mfrs. Inc.*, 46 NY2d 1065 [1979]). When the movants have made out a prima facie case, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Summary judgment is a drastic remedy which requires that the party opposing the motion be accorded every favorable inference and issues of credibility may not be determined on the motion but must await the trial (see *F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d 186 [1<sup>st</sup> Dept 2002]).

The objectant has had ample time and opportunity to establish that she is a distributee of the decedent and that there are no other distributees, but has failed to do so. She submitted copies of a birth certificate where the name of her father is blank, and other documents, all of which are not in evidentiary form. Even if kinship were established, there would be no distributions to her, since DSS' Medicaid claim must be allowed. The right to recover for Medical Assistance from an estate is mandated by federal and state law (see 42 USC § 1396p [b] [1] [B] [I]; Social Services Law § 369 [2]

[b] [l] [B]; Matter of Snell, 194 Misc 2d 695 [Sur Ct, Nassau County 2003]). The decedent was over 55 and a long term nursing home resident whose charges were paid by Medicaid through DSS, which is a preferred creditor. He was not survived by a spouse, child under the age of 21 or blind or disabled child, and recovery against the estate is mandated, as DSS is a preferred creditor. The objectant's claim for a hardship exemption is unavailing, as she did not share financial resources with the decedent and her finances were not directly impaired by imposition of the Medicaid claim.

Accordingly, the court grants summary judgment to the PA dismissing the objections and allowing the payment of the Medicaid claim asserted by DSS as a preferred creditor to the extent of the net distributable assets remaining.

The PA is to bring the account up to date and settle a decree judicially settling her account consistent with this decision, which constitutes the order of the court.

The Chief Clerk is directed to mail a copy of this decision and order to counsel for the PA, the GAL, DSS and the pro se objectant.

Settle decree and proceed accordingly.

  
HON. NELIDA MALAVÉ-GONZÁLEZ  
SURROGATE