

Matter of Jones

2025 NY Slip Op 34614(U)

August 21, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2022-2675/A

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

August 21, 2025

ESTATE OF DAPHNE JONES Deceased
File No.: 2022-2675/A

In this uncontested SCPA 2103 proceeding, Jacquelyn Williams (the "petitioner"), decedent's daughter who is the executor of the estate, petitions for an order awarding possession and a warrant of eviction against the respondent, Patrick Jones ("Patrick"), the decedent's son, from the decedent's two-family home located at 4437 Hill Avenue in the Bronx ("the realty"). She also seeks leave to sell the realty which is the only asset of this estate. A consent was filed for another daughter. On the initial return date of citation, the petitioner appeared with counsel and Bryon Jones ("Bryon"), another son, also appeared, waived any jurisdictional defects and admitted service of the citation on the record. Although jurisdiction was acquired over Patrick, who failed to appear, jurisdiction was incomplete over John O'Donnell, Esq. ("O'Donnell"), who represented Patrick in the underlying probate proceeding. Accordingly, the matter was marked "supplemental citation."

On the return date of supplemental citation, jurisdiction was

complete. The petitioner appeared with counsel, and Bryon appeared pro se and did not oppose the relief requested. There were no appearances by Patrick or O'Donnell, who sent a letter to the court advising that his representation was limited to the prior probate proceeding and he does not represent Patrick herein. Accordingly, the matter was marked "submitted for determination." Patrick has not appeared or indicated opposition to the court to date.

The decedent died on February 5, 2021. The decedent's spouse having predeceased, her distributees are the four children. The petitioner is the nominated executor of the decedent's will and trustee of a revocable inter vivos trust. Both instruments were executed by the decedent on February 9, 2001. The will, which was admitted to probate by decree dated November 22, 2023, is a pour over instrument that directs the residuary estate to be paid to the trustee upon the decedent's death. The four children are equal beneficiaries of the trust, into which the decedent placed all of her real and personal property and retained the right to occupy the realty during her lifetime. Upon the decedent's death, the trust assets were to be distributed to the four children in equal shares. Despite the issuance of letters testamentary, all four children executed a written stipulation in or about May, 2023, which provided, inter alia, that: the terms of the will and trust were to be disregarded; further proceedings were dispensed with; and the decedent's assets from any source were to be distributed as soon as possible to the children in equal shares.

In support of the request for possession and a warrant of eviction, the petitioner alleges that, despite entering into the stipulation, Patrick continues to reside at the realty without paying use and occupancy or overhead. He caused several floods at the premises, changed the locks and denied access to the petitioner and others for the purpose of making urgent repairs. He brandishes a gun, violated an order of protection and assaulted the other son and a nephew. The petitioner also asserts that Patrick practiced undue influence upon the decedent, causing her to execute a reverse mortgage and pocketed the proceeds. That mortgage is now in foreclosure, with arrears in excess of \$352,560. Patrick also improperly caused additional loans to be taken out for solar panels for his sole benefit and incurred additional creditors' claims against the estate.

The petitioner continues that she used her own funds to pay the funeral and administration expenses. She notes that a prospective buyer was willing to purchase the realty subject to Patrick's tenancy but cancelled the transaction because of his propensity for violence. The petitioner urges that Patrick must be immediately evicted so that the realty can be salvaged and sold.

On this state of the record, the uncontested allegations set forth in the petition constitute due proof thereof (see SCPA 509) that: (1) all four children executed a written stipulation consenting to the immediate sale of the realty and equal distribution of the net proceeds; (2) despite entering into the stipulation, Patrick continues to occupy the realty without paying use and

occupancy and caused and/or refused to mitigate flood damage to the premises; (3) he changed the locks, threatened the other beneficiaries and refuses to grant access to the premises; (4) he caused the decedent to take out a reverse mortgage and an additional loan for solar panels for his own benefit; and (5) the realty, the sole estate/trust asset, is in foreclosure and must be expeditiously sold to pay urgent administration expenses and claims. As Patrick is not a tenant, the court deems the relief requested to be ejection, rather than eviction.

Accordingly, this uncontested application is granted. The petitioner may settle a judgment of possession and warrant ejecting Patrick from the realty. Given the broad powers awarded to her in the will and trust instruments (see EPTL 11.1.1), the petitioner may take all necessary steps to marshal and market the realty for sale.

The Chief Clerk shall mail a copy of this decision, which constitutes the order of the court, to counsel for the petitioner, Patrick and Bryon.

Settle judgment and warrant and proceed accordingly.


HON. NELIDA MALAVÉ-GONZÁLEZ
SURROGATE