

Matter of Flynn

2026 NY Slip Op 31646(U)

April 20, 2026

Surrogate's Court, New York County

Docket Number: File No. 2023-1886/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
YORK COUNTY OF NEW YORK

Petition for Cy Pres Relief Pursuant to EPTL 8-1.1, Will of

MICHAEL ROBIN FLYNN,

Deceased.

DECISION and ORDER

File No. 2023-1886/A

GINGOLD, S.

This is an uncontested petition by Akeel Williamson and Michael Johnson, co-executors of the estate of Michael Robin Flynn (hereinafter, "co-petitioners"), requesting that this court exercise its cy pres power pursuant to EPTL section 8-1.1(c) regarding a disposition of the decedent's residuary estate.

Background

Decedent's will dated November 17, 2019 (hereinafter, "the will") was admitted to probate by decree of this court. Co-petitioners were appointed as the co-executors of the estate.

The decedent made numerous charitable bequests in his will. The will identifies four charitable beneficiaries to whom decedent's co-executors must distribute the residuary funds. Those entities are as follows: NYC School for the Blind; NYPD Widows and Orphans Fund; FDNY Widows and Orphans Fund; and FBI Widows and Orphans Fund.

As it turns out, the above four named charitable beneficiaries do not exist as written. Accordingly, confident of the decedent's general charitable purpose and seeking to prevent these bequests from lapsing, co-petitioners allege that they diligently searched for charitable organizations closely aligned with the decedent's charitable intent. The results of this search by co-petitioners, detailed in their cy pres petition before this court, are reviewed below.

First, co-petitioners address the tenth paragraph of the will, in which decedent left fifty thousand dollars (\$50,000.00) to "The NYC School for the Blind." While no entity exists under such name, co-petitioners allege that the organization that appears to be closest in line with the decedent's intent is The Fund for New York City Public Schools, Inc. D/B/A The Fund for New York City Public Schools. Within this fund is a program called Educational Vision Services (EVS).

Second, co-petitioners address the eleventh and twelfth paragraphs of the will, in which decedent left ten thousand dollars (\$10,000.00) to “NYPD Widows and Orphans Fund” and “FDNY Widows and Orphans Fund,” each, respectively. Again, no entities exist under these names. However, co-petitioners identify the New York Police & Fire Widows’ & Children’s Benefit Fund, which serves New York City, as an organization that closely approximates the decedent’s intent for both bequests.

Finally, in the thirteenth paragraph of the will, the decedent left ten thousand dollars (\$10,000.00) to “the FBI Widows and Orphans Fund.” Co-petitioners allege that the field office of the FBI provided them with the name and address of their affiliated charitable organization, the Former Agents of the FBI Foundation. Co-petitioners assert that this organization does in fact assist FBI widows and the children of fallen agents through a foundation known as the Former Agents of the FBI Foundation.

Co-petitioners request this court to apply the cy pres doctrine and approve the alternate charitable beneficiaries, as identified above. All the alternate charitable beneficiaries, as well as New York’s Attorney General, have consented to this proceeding.

Discussion

The cy pres doctrine codified in EPTL Section 8-1.1 empowers the court to direct the charitable disposition necessary to accomplish the testator’s intent where literal compliance with the terms of the bequest has become impossible or impracticable. To invoke the cy pres doctrine, the court must find: (1) that the gift is charitable in nature; (2) that the donor demonstrated a general, rather than specific, charitable intent; and (3) that the particular purpose for which the gift or trust was created has become impossible or impracticable to achieve (*see, e.g., Matter of Othmer*, 185 Misc 2d 122 [Sur Ct, Kings County 2000]).

With respect to the first requirement, there is no question that the bequests at issue are charitable in nature. The referenced bequests are respectively dedicated to education for the blind and financial assistance to the families of public safety officers who died in the line of duty. Both purposes serve recognized charitable interests – namely, education and support for families of public safety officers – which courts have long held confer a public benefit (*see, e.g., Matter of Davidge*, 200 App Div 437, 193 NYS 245 [2d Dept 1922]). The dispositions are plainly charitable in nature.

As to the second requirement, the will reflects a general charitable intent. The decedent

disposed of the vast majority of his estate, including the residuary, in favor of charitable and religious beneficiaries (*Matter of Kramer*, 20 Misc 3d 383 [Sur Ct, Nassau County 2008]; *Othmer*, 185 Misc 2d at 127). Moreover, the will included a no gift-over provision addressing the disposition of a charitable share in the event of a lapse – a factor consistently recognized as supporting a finding of general charitable intent (*see, e.g., Matter of Goehringer*, 69 Misc 2d 145, 149-150 [Sur Ct, Kings County 1972]).

Finally, with respect to the third requirement, it is impossible for these four referenced bequests to be implemented because the organizations as identified do not exist.

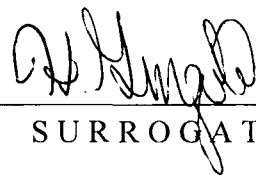
Under these circumstances, the court concludes that literal compliance with paragraphs ten, eleven, twelve and thirteen of the will is impossible and that the decedent’s charitable intent is best accomplished by modifying the terms of each paragraph to benefit the charitable organizations identified by the co-petitioners. Specifically, this means that the bequest to “The NYC School for the Blind” be redirected and paid instead to The New York City Public Schools’ Educational Vision Services; the bequests to “The NYPD Widows and Orphans Fund” and “The FDNY Widows and Orphans Fund” be redirected and paid instead to the New York Police and Fire Widows’ and Children’s Benefit Fund, respectively; and the bequest to the FBI Widows and Orphans Fund” be redirected and paid instead to The Former Agents of the FBI Foundation.

Accordingly, it is hereby

ORDERED that the petition be granted in its entirety.

The Clerk of the Court shall mail a copy of this Decision and Order to the parties whose names and mailing addresses appear below.

Dated: April 20, 2026



SURROGATE

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