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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

Estate of SEATH LAMAR SIMMONS,
Deceased.

RUBY SLAUGHTER,
Petitioner and Appellant,

v.

LEATRICE CUNNINGHAM,
Objector and Respondent.

A126943

(Alameda County
Super. Ct. No. RPO5195128)

INTRODUCTION

Appellant Ruby Slaughter appeals from an order of the probate court sustaining an objection to her petition for distribution of the estate of her late brother, Seath Lamar Simmons (decedent), and ordering the estate to be distributed equally between Slaughter and the issue of Roosevelt Simmons (Roosevelt).¹ Slaughter challenges the court's finding that Roosevelt was a half sibling of the decedent and Slaughter. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The decedent died intestate on December 11, 2004. Slaughter was appointed the administrator of the estate, and on February 23, 2006, filed a petition for final

¹ We refer to Roosevelt Simmons by his first name to avoid confusion.

distribution. The estate to be distributed consisted of \$422,615.43 in cash. Slaughter identified herself as the only heir.

On April 6, 2006, Leatrice Cunningham filed an objection to the petition. Cunningham claimed to be the daughter of Roosevelt Simmons, Sr., who Cunningham claimed was the son of decedent's father, George E.W. Simmons (George), and thus a half sibling of the decedent and Slaughter. Cunningham asserted Roosevelt, who had died on March 7, 2005, left seven issue who were entitled to share in one-half of the decedent's estate.

The matter was tried before the probate court on September 28, 2009, which correctly placed the burden of proof on Cunningham, the objector. Cunningham first called as a witness Ladrena Darnell, Roosevelt's daughter. Darnell testified the decedent was her "uncle," she had referred to him as "Uncle S.L.," and he had visited her family many times in Pittsburgh. She further testified the decedent referred to Roosevelt as his brother. She did not recall, however, hearing Roosevelt ever refer to the decedent as his "brother." Darnell also had previously met Slaughter and had referred to her as "Aunt Ruby" or "Ruby." In addition, Darnell had previously met George in the late 1970's when she lived in Los Angeles and traveled to Oakland on holidays to visit with the decedent. Roosevelt joined her on one of the visits. Darnell described a "tearful, emotional reunion" between George and Roosevelt. George called Roosevelt his "son" and "[a]lways" called Darnell his "granddaughter." Slaughter also addressed Roosevelt as her "brother." Darnell identified a copy of a photograph of George, Roosevelt, and other family members; a photograph of George, herself, and her daughter; a photograph of the decedent and Slaughter; and a photograph of George and Darnell's father, Roosevelt Simmons, Sr., taken while Darnell was visiting.

Cunningham also introduced certified copies of three documents: the decedent's death record; Roosevelt's birth certificate; and Roosevelt's death record. Darnell acknowledged the name on the birth certificate was "Rusvelt Seman." Her explanation

for the discrepancy in the names was that “most people [in Mississippi] couldn’t even read or write.” She believed it was her father’s birth certificate because the “first” names of the mother and father were that of her grandmother and George, and the full name of the mother was her grandmother’s maiden name. The place of birth was listed as Wiggins, Mississippi.

Cunningham next called Slaughter as an adverse witness. Slaughter testified she was born in Wiggins. She moved to Oakland in 1952 to join the decedent, and the following year she brought her father, George, to Oakland. She “fe[lt] very strongly” Roosevelt was not related to her. Although Slaughter knew her parents were separated for many years, she was not aware they were ever divorced. George eventually returned to her mother and was with her when she passed away. She “knew” Roosevelt was not her half brother because she “knew” her father. She acknowledged the decedent encouraged her to go to Pittsburgh to meet Roosevelt’s family and that she made one trip “to see if they was related to me.” She denied that the decedent ever said he and Roosevelt were related. She also concluded the people in Wiggins, who said George had another son, Roosevelt, were mistaken, and surmised the decedent must have met Roosevelt in the service.² As for her visit with Roosevelt’s family, she “was glad to get away from there.” She felt “they couldn’t be my family, no way in the world.” Slaughter testified Cunningham and Roosevelt went to Oakland only once and “he was trying to accuse [George] of having a son.” She never heard George say Roosevelt was his son. She believed George “had no relationship with nobody but my mother.”

Slaughter introduced three exhibits: a 1941 application by Roosevelt Simmons for social security benefits, listing a March 25, 1922, birth date and Gulfport, Mississippi as the place of birth, and George Simmons and Lavader Thomas as parents; an obituary for

² No objection was made when Slaughter first offered this speculation. An objection was made and sustained as to similar testimony later.

Roosevelt (Bubba) Simmons, which refers only to his issue and makes no mention of any other relatives; and a copy of the birth certificate for “Rusvelt Seman” listing a date of birth of March 25, 1922.

After hearing argument, the probate court ruled from the bench. It found by a preponderance of the evidence that Roosevelt was the decedent’s half brother and ordered half of the decedent’s estate distributed to Roosevelt’s issue. The court observed it had heard varying testimony about the family relationship. It also found the documents to be “more consistent than inconsistent” and there were reasonable explanations for the discrepancies.

On November 23, 2009, Slaughter filed a timely notice of appeal.³

DISCUSSION

Slaughter contends the probate court’s order should be reversed because the documentary evidence does not establish that Roosevelt is the decedent’s half brother. In other words, Slaughter makes a substantial evidence challenge to the order.

The applicable standard of review is well established: “On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] ‘ “[I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.” ’ ” (*People v. Snow* (2003) 30 Cal.4th 43, 66, quoting *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) The testimony of a single witness may be sufficient. (*People v. Avila* (2009) 46 Cal.4th 680, 703, citing *People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

³ We subsequently granted Slaughter’s motion for calendar preference.

The probate court's order is supported by ample evidence. The testimony of Darnell, alone, is sufficient. Moreover, her testimony was corroborated by photographs. Her testimony also provided sufficient context for the court's conclusion that the other documents, and in particular the birth certificate for "Rusvelt Seman," were "more consistent than inconsistent." She testified that at the time Roosevelt was born, many individuals in Mississippi "couldn't even read or write." As she observed, there was a strong correlation between the names of the father and mother. In addition, the date of birth on the birth certificate and death record were consistent. Darnell's testimony also connected the names of the father and mother listed on Roosevelt's application for social security benefits.

While it is clear from the record Slaughter strongly feels her father never had another family, it was for the probate court, as the trier of fact, to weigh the varying testimony and the documentary evidence. (See *People v. Hovarter* (2008) 44 Cal.4th 983, 996-997.) We have no power to either reassess the credibility of the witnesses or to reweigh the evidence. (*Ibid.*) The probate court credited Darnell's testimony and reasonably examined the documents introduced in light of her testimony. As such, substantial evidence supports its order sustaining Cunningham's objection to the petition for distribution and ordering that half of the decedent's estate be distributed to Roosevelt's issue.

DISPOSITION

The order sustaining Cunningham's objection to the petition for distribution and ordering that half of the decedent's estate be distributed to Roosevelt's issue is affirmed.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.