

Matter of Sanford

2018 NY Slip Op 33357(U)

December 14, 2018

Surrogate's Court, Nassau County

Docket Number: 2015-382743/A,B,C,D

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Application of Jacqueline
Sanford, as Administrator of the Estate of**

DECISION

**File No. 2015-382743/A,B,C,D
Dec. No. 35324**

JOSEPH SANFORD, JR.,

Deceased,

**for leave to allocate and distribute the proceeds of
an action for the wrongful death of said decedent
and to judicially settle the account.**

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition with Exhibits.	1
Citation with Proofs of Service.. . . .	2
Waivers and Consents.. . . .	3
Notice of Appearance.	4
Attorney’s Affirmations (2).	5
Account.	6
Proposed Decree.	7

In this uncontested proceeding for leave to allocate and distribute the proceeds of causes of action for conscious pain and suffering and wrongful death of the decedent, the petition seeks a decree: (1) authorizing and empowering the administrator to allocate and distribute the net proceeds of the settlement of the claim and cause of action for the wrongful death of the decedent in the form of a structured settlement with a cost to the defendants David Friend and Wendy Friend for up-front cash and future periodic payments at a cost in the sum of \$1,250,000.00; defendant Paramount Construction Corp., in the sum of \$500,000.00; and defendant EM Professional Painting, in the sum of \$1,000,000.00. The settlement is a

structured settlement to consist of “up-front” cash of \$1,542,700.88, plus the sum of \$1,207.299.12 for the cost of structured settlement annuities to provide for the future periodic payments as set forth herein; (2) allocating \$226,773.90 of the gross recovery to the cause of action for the decedent’s conscious pain and suffering and \$2,523,226.10 of the gross recovery to the cause of action for the decedent’s wrongful death; (3) directing payment in satisfaction of the workers’ compensation lien; (4) distributing the net recovery for the cause of action for wrongful death, after payment of attorneys’ fees and disbursements and the workers’ compensation lien, pursuant to *Matter of Kaiser* and EPTL 5-4.3, as follows: Jacqueline Sanford (96.17%) \$1,605,115.91; Janisha Sanford (3.83%) \$63,876.46; and Isaiah Smith (0%); (5) distributing the net recovery for the cause of action for personal injury, after payment of attorneys’ fees and disbursements, pursuant to EPTL 4-1.1, as follows: Jacqueline Sanford \$100,000.00; Janisha Sanford \$25,000.00; and Isaiah Smith \$25,000.00; (6) directing that a portion of the net settlement proceeds should be paid in the form of a structured settlement providing for future periodic payments as follows: (A) to Janisha Sanford: a guaranteed lump sum payment of \$25,000.00 on 5/31/2021; a guaranteed lump sum payment of \$28,500.00 on 5/31/2024; a guaranteed lump sum payment of \$31,146.58 on 5/31/2027 (annuity issuer: the Prudential Insurance Company of America; cost of annuity to GEICO: \$73,326.95); directing that the aforementioned payments be paid whether or not Janisha Sanford is alive. In the event that Janisha Sanford dies at any time prior to the receipt of all payments described as guaranteed, the balance of any guaranteed payment(s) shall be paid to her estate or to any such person she may so designate; (B) to Jacqueline Sanford: beginning 6/3/2019, \$1,999.00 monthly for life, guaranteed for 29 years, with the last guaranteed payment on 5/3/2048

(annuity issuer: New York Life Insurance Company: cost of annuity to Electric Insurance Company: \$500,000.00); beginning 6/3/2019, \$1,980.52 monthly for life, guaranteed for 29 years, with the last guaranteed payment on 5/3/2048 (annuity issuer: Pacific Life & Annuity Company; cost of annuity to GEICO \$500,000.00); beginning 6/3/2019, \$520.48 monthly for life, guaranteed for 29 years, with the last guaranteed payment on 5/3/2048 (annuity issuer: The Prudential Insurance Company of America; cost of annuity to GEICO \$133,972.17); directing that the aforementioned payments be paid whether or not Jacqueline Sanford is alive. In the event that Jacqueline Sanford dies at any time prior to the receipt of all payments described as guaranteed, the balance of any guaranteed payment(s) shall be paid to her estate or to any such person she may so designate; (7) directing payment of the respective portions of the up-front cash of the settlement payable to Janisha Sanford and Jacqueline Sanford; (8) modifying the provisions in the letters of administration heretofore issued to the petitioner on January 13, 2015 to permit the relief requested; (9) dispensing with the filing of a bond; and (10) judicially settling the account of Jacqueline Sanford, as administrator.

Joseph Sanford died intestate, a resident of Nassau County, on December 23, 2014, survived by his wife, Jacqueline Sanford (petitioner), and two adult children, a son, Isaiah Smith, and a daughter Janisha Sanford. Letters of limited administration issued to the petitioner on January 13, 2015. Waivers and consents to this proceeding have been filed by Isaiah Smith, Janisha Sanford, the Fire District of New York Mutual and the New York State Department of Taxation and Finance. There are no other parties whose consent is necessary or who are entitled to notice of this proceeding (EPTL 5-4.4 [a]; 22 NYCRR 207.38 [c]).

The decedent died as a result of injuries he sustained as a firefighter when he was

caused to fall through an unprotected and unguarded hole in the floor of premises owned by David and Wendy Friend, that was under repair/renovation/construction. An action was commenced in Supreme Court, Nassau County against David and Wendy Friend, Paramount Construction Corp., the general contractor at the site, and its subcontractor, E/M Expert Corp., d/b/a EM Expert Painting. A settlement was reached as set forth above and an application was made to the Supreme Court, Nassau County, pursuant to EPTL 5-4.6, to compromise the action and to fix and allow attorneys' fees and disbursements. On April 30, 2018, the Hon. Thomas Feinman issued an order approving the settlement of the action in the total sum of \$2,750,000.00 and approving the proposed structured settlement. By that same order, attorneys' fees of \$909,496.19 and disbursements of \$21,511.44 were also approved.

Out of the total settlement of \$2,750,000.00, the petitioner seeks to allocate \$226,773.90 (8.2463236%) to the cause of action for the decedent's conscious pain and suffering and \$2,523,226.10 (91.7536764%) to the cause of action for the decedent's wrongful death. Given the circumstances of the decedent's death, this allocation of the settlement proceeds is approved.

The decedent's funeral expenses were paid in full by the Inwood Fire Department, which does not seek reimbursement of same. The petitioner is not seeking statutory commissions. The Fire District of New York Mutual has asserted a workers' compensation lien for \$8,276.61, which shall be paid from the wrongful death portion of the settlement proceeds.

After payment of a proportionate amount of the attorneys' fees and disbursements, the net proceeds for the cause of action for the conscious pain and suffering of the decedent, in the

sum of \$150,000.00, shall be distributed , pursuant to EPTL 4-1.1, as follows: the petitioner, the decedent's surviving spouse, is entitled to \$100,000.00 as her distributive share; Janisha Sanford, the decedent's daughter, is entitled to \$25,000.00 as her distributive share; and Isaiah Smith, the decedent's son, is entitled to \$25,000.00 as his distributive share.

The net recovery in a wrongful death action is distributed to the decedent's distributees in accordance with their anticipated years of support from the decedent in proportion to the pecuniary loss suffered by each (*Matter of Kaiser*, 198 Misc 582 [Sur Ct, Kings County 1950]). Accordingly, after payment of a proportionate amount of the attorneys' fees and disbursements, and after payment of the workers' compensation lien in the amount of \$8,276.61, the net proceeds for the cause of action for the wrongful death of the decedent, in the sum of \$1,660,715.76, shall be distributed as follows: the petitioner, as the decedent's surviving spouse, is entitled to 96.17%; Janisha Sanford, as the decedent's daughter, is entitled to 3.83%, and Isaiah Smith, the decedent's son, is entitled to none of the net settlement proceeds of the wrongful death cause of action.

The petitioner is not required to file a bond herein. The account of the petitioner is judicially settled. The restrictions on the letters of administration previously issued to the petitioner shall be removed to allow her to effectuate the settlement.

The decree submitted has been reviewed and found to be in proper order and it will be signed.

Dated: December 14, 2018
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Sullivan Papain McGrath & Cannavo, P.C.
120 Broadway
New York, New York 10271

John A. Ardito, Esq.
Ardito & Ardito, LLP
659 Franklin Avenue
Franklin Square, New York 11010

Ricardo A. Baez, Esq.
Stewart, Greenblatt, Manning & Baez
6800 Jericho Turnpike, Suite 100W
Syosset, New York 11791