

Matter of Meade

2013 NY Slip Op 30720(U)

March 21, 2013

Surrogate's Court, Nassau County

Docket Number: 2012-371197

Judge: III., Edward W. McCarty

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SURROGATE'S COURT OF THE STATE OF NEW YORK
 COUNTY OF NASSAU

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 Administration Proceeding, Estate of

File No. 2012-371197

JOHN J. MEADE JR.,
 a/k/a JOHN MEADE,
 a/k/a JOHN J. MEADE,
 a/k/a JOHN JOYCE MEADE, JR.

Dec. No. 28391

Deceased.

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In connection with the administration of the estate of John J. Meade, Jr., decedent's brother, Donald Meade, filed the present motion in which he asks the court to: (i) revoke the letters of administration and decree granting administration with limitations, issued by this court on August 20, 2012, to decedent's surviving spouse, Andreia Soares Meade; (ii) disqualify Andreia Soares Meade as the surviving spouse of John J. Meade, Jr., pursuant to EPTL 5-1.2 (a) (5) and (6); and (iii) appoint Donald Meade as the administrator of the estate of John J. Meade, Jr. In the alternative, movant asks the court to appoint Andreia Soares Meade and Donald Meade as co-administrators of the estate of John J. Meade, Jr.

Prior to filing the motion, Donald Meade (hereinafter, "Donald") filed an order to show cause with this court which was signed on August 21, 2012. The order enjoined and restrained Andreia Soares Meade (hereinafter, "Andreia"), from receiving, dealing with, selling transferring, giving away, conveying, removing, disposing of, or encumbering, any and all accounts, holdings, property, autos, personal and business bank accounts, pension accounts and any other investments in the decedent's name, whether individually or jointly.

The parties entered into a stipulation on December 5, 2012 which provided that: (1) the restraining order signed by the court would continue in force until the determination of the

present motion; (2) the parties would go to the decedent's apartment to take inventory, terminate the lease as quickly as possible, and try to agree on the division of property; (3) the parties would agree on the price and sale of decedent's Toyota automobile, and deposit the proceeds into an estate account; (4) Andreia would convert the MetLife securities account to an estate account or would sell the securities and place the proceeds in an estate account; (5) the parties are equal beneficiaries of the decedent's Aetna Life insurance policy on decedent, and would take necessary action to obtain each party's respective share of the insurance proceeds; (6) Andreia may pay debts of the decedent to which Donald agrees or for which she obtains court approval; and (7) the transfer of the Vanguard 401K account into Andreia's name would be investigated, and a new account would be set up.

BACKGROUND

John J. Meade died intestate on July 3, 2012, survived by his wife, Andreia. Decedent had no children and he was predeceased by his parents, but he had one brother, Donald. This court issued letters of administration with limitations to Andreia on August 20, 2012. The court restricted Andreia from selling, mortgaging, leasing or otherwise encumbering the decedent's real property, or from collecting personal assets valued in excess of \$100,000.00, without applying to the court for the fixing and filing of a bond.

In support of his motion to disqualify Andreia as the surviving spouse and have her letters revoked, Donald claims that Andreia and the decedent were married in May of 2005, but that in September of 2009, Andreia abandoned decedent, three years prior to his death, and that she is therefore disqualified as a surviving spouse entitled to inherit from decedent, under EPTL 5-1.2 (a). Donald claims that after Andreia left the decedent's home, the decedent

repeatedly attempted to reconcile with Andreia, but she refused. Donald asserts that his brother's commencement of divorce proceedings was delayed by his desire to ensure that Andreia continued to have medical coverage, but that the parties were actively discussing divorce at the time of the decedent's death.

Donald further asserts that Andreia's petition to the court included misrepresentations and lies, such as: (1) claiming that she is a United States citizen, when she is a Brazilian citizen; (2) listing the estate's total assets as \$93,500.00, when they are in excess of \$300,000.00; and (3) denying that the estate has debts, when the estate's debts exceed \$8,000.00 and there are funeral costs and expenses in excess of \$14,000.00 which must be reimbursed to Donald.

In response, Andreia concedes that she left the decedent but claims that it was justified by decedent's physical abuse of her. The file includes a photocopy of a domestic incident report, dated December 21, 2008, in which it was noted that "[c]omplainant Andreia Meade reports that she was having a verbal argument with her husband John Meade. The argument escalated and John Meade began to push and slap complainant Andreia Meade ... Complainant Andreia Meade received no injuries and requests no further Police Action." On the basis of this police report, and her own affidavit, as well as her attorney's affirmation, it is Andreia's position that she is not disqualified as a surviving spouse on the basis of abandonment. Andreia also refutes the charges made by Donald that she lied in her petition for letters of administration, noting that the value of the property she included in her petition was limited to property that would pass by intestacy. She asserts that she had no knowledge of decedent's outstanding debts, and that Donald and the funeral director both refused to provide her or her attorney with the amount of the funeral expenses.

ABANDONMENT

When a surviving spouse is found to have abandoned the decedent during his or her lifetime, and the abandonment continued until the decedent's death, the surviving spouse is disqualified from receiving his/her intestate share of the decedent's estate (EPTL 5-1.2). The sections relied upon in the present motion read as follows:

“ § 5-1.2 Disqualification as surviving spouse

(a) A husband or wife is a surviving spouse within the meaning, and for the purposes of 4-1.1 [descent and distribution of a decedent's estate] ... unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that: ...

(5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.

(6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support.”

To constitute abandonment under EPTL 5-1.2 (a) (5), there must have been a departure, without the consent of the other spouse, that was not justified (*Matter of Riefberg*, 58 NY2d 134 [1983]). Something more is necessary than just a departure from the marital residence or living apart. “To amount to an abandonment the departure must be unjustified without the consent of the other spouse and evidence an obstinate and hardened refusal to return” (*Matter of Zilite*, NYLJ, Aug. 21, 1996, at 24, col 4 [Sur Ct, Nassau County][internal citations omitted]).

Abandonment under EPTL 5-1.2 (a) (6) is based upon one spouse's failure to support the other. The person who charges a surviving spouse with abandonment on this basis must prove not only a failure to support, but also, that the decedent asked for or expected support and that the surviving spouse refused to provide it (*Matter of Pollack*, NYLJ, Apr. 20, 2000, at 25, col 6 [Sur Ct, Bronx County]).

BURDEN OF PROOF

The burden of proof of establishing an abandonment is on the party who alleges it (*Matter of Reifberg*, 58 NY2d 134 [1983]; *Matter of Morris*, 69 AD3d 635 [2d Dept 2010]). The mere showing that the petitioner and decedent lived separate and apart does not prove abandonment (*Matter of Peist*, 135 NYS2d 686 [Sur Ct, New York County 1954]).

ANALYSIS AND CONCLUSION

The burden of proof rests with Donald, who alleges that Andreia abandoned the decedent within the meaning of EPTL 5-1.2 (a) (5) and (6). The motion and supporting papers filed by Donald are inadequate to meet this burden of proof, although a question of fact has been raised. “[A] determination [of abandonment] almost always involves a question of fact” (*Matter of Arrathoon*, NYLJ, Aug 30, 2006, at 28, col 3 [Sur Ct, New York County]). Accordingly, a hearing will be required in order for the court to determine whether Andreia is disqualified as the surviving spouse of the decedent. Counsel for the parties are directed to appear at a scheduling conference on April 9, 2013 at 3:00 p.m.

The terms of the stipulation entered into by the parties, including the continuation of the restraining order, will remain in force pending a further order of the court.

This constitutes the decision and order of the court.

Dated: March 21, 2013

EDWARD W. McCARTY III
Judge of the
Surrogate’s Court