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

----------x

Probate Proceeding, Will of MARTHA REESE, Deceased.

File No. 2014-379792

Dec. No. 30975

----------x

In this contested probate proceeding, the court conducted a hearing on May 11, 2015.

BACKGROUND

The decedent, Martha Reese, died on September 21, 2005, leaving a purported will dated May 21, 1983, which was offered for probate on May 20, 2014 by Joseph Reese, her son. Joseph Reese filed an affidavit of delay, explaining that although there were no assets to be collected upon the death of Martha Reese other than two occupied houses, one of the houses she owned had recently been vacated and required administration. Preliminary letters testamentary issued to Joseph Reese on May 24, 2014.

The decedent was survived by six distributees: (1) decedent's son, Joseph Reese; (2) decedent's son, Isaiah Jackson, who post-deceased, survived by eight children, namely: (a) Leroy Sanders; (b) Deborah Jackson; (c) Victoria Jackson; (d) Isaiah Jackson, Jr.; (e) Caldwell L. Jackson; (f) Darren W. Jackson; (g) Sharon Jackson; and (h) Michael Sanders; (3) decedent's grandson, Mellyn E. Reese, who is the son of decedent's predeceased son, Arthur Reese, Jr.; and by the three children of Arthur Reese, Jr.'s predeceased daughter, Martha Loretta Reese-Meade, namely: (4) decedent's great-grandson, Solomon Reese, (5) decedent's great-granddaughter, Michelle Reese, and (6) decedent's great-grandson, Peter Meade, Jr..

Waivers and consents to probate were filed by three distributees: Mellyn E. Reese, Solomon Reese, Michelle Reese, and by Sharon Jackson, the daughter of decedent's post-

deceased son. Waivers and consents to probate were also filed by three legatees under the will.

On the original return date of the citation, July 2, 2014, Sharon Jackson and Victoria Jackson appeared. Following the conference, counsel for the proponent filed an affirmation dated August 7, 2014 to amend the petition for probate to include the eight children who are the heirs-at-law of Isaiah Jackson. Articles Fourth through Thirteenth of the propounded will leave gifts of personal property and real estate to named individuals. In Article Fourteenth, decedent left her residuary estate to her three sons, in equal shares, per stirpes.

OBJECTIONS

Despite having filed a waiver and consent to probate, Sharon Jackson, as a self-represented litigant, filed objections to probate on October 28, 2014. Counsel for the proponent did not raise the issue of Sharon Jackson's waiver, and a hearing was scheduled at the request of the objectant. The written objections are transcribed below in full:

"(1) The tampering of the will

(2) That is not my grandmother's handwriting

(3) There is a later will upon belief

(4) He has not been honest which questions his credibility

(5) He has not made everyone involved aware of will."

MAY 11, 2015 HEARING

At the hearing, the attorney for the proponent introduced the following documents, which were then admitted into evidence:

1. A certified copy of the death certificate of Martha Reese.

2. A copy of the application for preliminary letters filed by Joseph Reese, the proponent.

3. A family tree, which was part of the application for preliminary letters.

4. A certified copy of the propounded will.

5. Petition for probate in the estate of Jerome Matedero, who was the attorney/draftsman and who supervised the execution of the propounded will.

6. A certified copy of the death certificate of Jerome Matedero, showing that he died on September 21, 2005.

7. A copy of the administration petition in the estate of Vivian A. Skuthan, who served as a witness to the propounded will. It shows that she died on October 27, 1992.

8. Martha Reese's New York State driver's license.

9. A copy of the order to show cause that Martha Reese filed seeking conservatorship over her niece, Pauline Patterson.

Counsel for the proponent advised the court of the deaths of witness Louis Liotti, witness Vivian A. Skuthan, and attorney/draftsman James Matedero, who also served as the notary public on the self-proving affidavit annexed to the will.

The only testimony at the hearing was given by Thomas F. Liotti, an attorney who served as one of three witnesses to the execution of the propounded instrument. Thomas Liotti testified that he is an attorney and a village judge who has prepared and witnessed many wills. He was a friend and colleague of Jerome Matedero, and the witness watched Jerome Metedero prepare wills and supervise the execution of wills. The witness testified that he also knew Vivian A. Skuthan, who was a real estate salesperson in the office adjacent to the law office used by Thomas Liotti and Jerome Matedero. The witness identified his own signature on the propounded will, along with the signatures of Vivian A. Skuthan and his late father, Louis Liotti,

and the witness testified that he was familiar with their signatures. Thomas Liotti also identified the signature of Jerome Matedero as the notary public on the self-proving affidavit. The witness testified that he didn't specifically recall seeing the decedent execute her will, but that he would not have signed the document as a witness unless she was before him and of sound mind.

The objectant questioned the witness about whether the signature on the will matched the signature on decedent's driver's license, and the witness testified that the signatures on the two documents matched, although the witness stated that he is not a handwriting expert. The witness asked why the decedent's 1987 license was presented to the court, rather than the one in effect when the will was signed in 1983, but the witness did not know the answer. The witness also asked what documentation was shown by the decedent to the notary to prove her identification at the will signing, but the witness didn't recall, and noted also that the decedent had been a client of Jerome Matedero and therefore may not have been asked for identification.

The objectant asked how the witness determined whether the decedent was of sound mind when she signed her will. The witness responded that the decedent had seemed competent in every respect when she signed the will, as evidenced by the self-proving affidavit. Finally, the witness asked whether the witnesses to the will were friends of the decedent or friends of Thomas Liotti, and the response was that they were friends of Thomas Liotti and did not know the decedent prior to witnessing her will. The objectant asked whether it appeared that the will had been tampered with, and the witness stated that because he was looking at a certified copy of the will, he couldn't be sure what the appearance of the original was.

Thomas Liotti then volunteered that when Jerome Matedero supervised a will execution,

he read the will with the testator, asked the testator to read the will, interviewed the testator beforehand, and made sure the testator understood the will and was competent. Mr. Matedero would often read the entire will aloud, stopping at each page to ask if there were any questions.

The objectant also asked why Article Nineteenth of the will includes the appointment of Joseph Reese, Arthur Reese and Isaiah Reese as co-guardians of decedent's niece, Pauline Patterson, when it wasn't until one month later that the decedent was appointed as guardian of her niece, Pauline Patterson. Mr. Liotti wasn't able to offer any information on the inclusion of Article Nineteenth in the propounded will. The objectant asked why the lawyer served as a notary on the self-proving affidavit, and the witness explained that this is a common practice at will signings.

ANALYSIS

The objectant raised five objections, discussed below.

1. The objectant alleges that the will was tampered with, but offered no evidence in support of her allegation.

2. The objectant asserts that the handwriting on the will is not that of the decedent. Proponent offered proof of decedent's handwriting in the form of decedent's driver's license, which contained decedent's signature, and a copy of the order to show cause that Martha Reese filed seeking conservatorship over her niece, Pauline Patterson, which also contained decedent's signature. The witness testified that the signatures all matched. No opposing evidence or witness testimony was offered.

3. Although the objectant asserted that decedent had executed a later will, no document

or testimony to that effect was produced.

4. The witness challenged the proponent's credibility, but didn't offer supportive testimony or documents.

5. Although the objectant claims that the proponent failed to notify all of the parties about the probate proceeding, the record reflects that all of the necessary parties were given proper notice, and that jurisdiction was complete by September 3, 2014. As noted above, the original petition for probate was amended to include Isaiah Jackson's heirs-at-law, a group which included the objectant.

The proponent of a will offered for probate has the burden of proving that the instrument was properly executed. Due execution requires that the testator's signature be affixed at the end of the will in the presence of witnesses, that the testator publish to the witnesses that the instrument is his will, the attesting witnesses must know that the signature is that of the testator, and at least two of the attesting witnesses must attest to the testator's signature and sign their names and affix their residences within a thirty-day period (EPTL 3-2.1). The supervision of a will's execution by an attorney will give rise to an inference of due execution *(see, e.g. Matter of Finocchio*, 270 AD2d 418 [2d Dept 2000]; *Matter of Hedges*, 100 AD2d 586 [2d Dept 1984]). Further, as in the case at bar, if an attestation clause accompanies the instrument, that also gives rise to a presumption that the statutory requirements have been met (*Matter of Farrell*, 84 AD3d 1374 [2d Dept 2011], and cases cited therein).

Based upon the attestation clause, the self-proving affidavit and the testimony of Mr. Liotti, the proponent has proven due execution.

The proponent also has the burden of proving testamentary capacity. It is essential that a testator understand in a general way the scope and meaning of the provisions of her will, the nature and condition of her property and her relation to the persons who ordinarily would be the natural objects of her bounty (*see Matter of Kumstar*, 66 NY2d 691[1985]; *Matter of Bustanoby,* 262 AD2d 407 [2d Dept 1999]). A testator must understand the plan and effect of her will and less mental faculty is required to execute a will than any other instrument (*see Matter of Coddington*, 281 App Div 143 [3rd Dept 1952], *affd* 307 NY 181[1954]). Mere proof that the decedent suffered from old age, physical infirmity and progressive dementia is not necessarily inconsistent with testamentary capacity and does not preclude a finding thereof (*see Matter of Fiumara*, 47 NY2d 845, 847 [1979]; *Matter of Hedges*, 100 AD2d 846 [2d Dept 1984]) as the relevant inquiry is whether the decedent was lucid and rational at the time the will was made (*see Matter of Hedges*, 100 AD2d 846 [2d Dept 1984]). "When there is conflicting evidence or the possibility of drawing conflicting inferences from undisputed evidence, the issue of capacity is one for the jury" (*Matter of Kumstar*, 66 NY2d 691, 692 [1985]). "One may be able to make a valid will though afflicted with a fatal disease, or possessing an imperfect mind or memory. A will may not be rejected simply because the testator does not make it until near death, or because he is ill or weak" (3 Warren's Heaton on Surrogate's Court Practice §42.06 [1], at 42-93 [7th ed]).

Counsel for the proponent offered the self-proving affidavit annexed to the will and the testimony of the attesting witness as evidence that the decedent was of sound mind and memory on the date of the will's execution. Objectant offered no conflicting evidence or testimony. The court is satisfied that the proponent has proven testator's testamentary capacity.

Where counsel has proven that two out of three witnesses to the will have died, and their handwriting has been proven, and the testimony of the third witness established that the will is genuine, the execution was valid, and the testator was competent, the propounded will may be admitted to probate (*Matter of Blagen*, 231 NYS2d 92, 92-93 [Sur Ct, Kings County1962]).

Accordingly, the decedent's will dated May 21, 1983 shall be admitted to probate.

Settle decree.

Dated: August 18, 2015

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