

<b>Matter of Holman</b>
2016 NY Slip Op 32278(U)
November 10, 2016
Surrogate's Court, New York County
Docket Number: 2013-3405 B
Judge: Nora S. Anderson
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SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court

Date: November 10, 2016

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In the Matter of the Application of Demarest  
Duckworth III, as Executor of the Will of

File No. 2013-3405 B

BRIAN WILLIAM HOLMAN,

Decedent,

For Judicial Settlement of his First and Final  
Account and for Ancillary Relief.

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ANDERSON, S.

Ancillary to his final accounting, the executor of the estate of Brian William Holman ("decedent") requests a determination regarding the effect of two charitable bequests under decedent's will. The Attorney General of the State of New York has appeared and has not objected to the requested relief.

Decedent died on August 13, 2013, leaving an estate worth about \$18,000,000. Article SIX of his will provides as follows:

I give the sum of \$1,000,000 to each of the following organizations . . . : (3) "Cabrini Medical Center, for use in support of its hospice or a similar facility assisting patients who are terminally ill"; and (4) "St. Rose's Free Home, Servants of Relief for Incurable Cancer, with an address at 426 Cherry Street, New York, NY. If any organization named in this Article, other than by merger with another organization or by a name change, shall not be in existence at the time of my death, then the bequest to such organization shall lapse.

Decedent bequeathed his residuary estate to charitable organizations selected by the executor ("petitioner") that were established for the benefit of individuals who served in the United States Armed Services.

Bequest to Cabrini Medical Center

Petitioner requests a determination from this court that the bequest to Cabrini Medical

Center (“Cabrini”) lapses and passes as part of the residuary estate, pursuant to the will’s proviso that a bequest to any organization shall lapse if such organization “shall not be in existence” at decedent’s death. According to the petition, Cabrini was in the final stages of bankruptcy liquidation when decedent died in 2013. It had ceased functioning as a hospital in 2008 and filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in 2009. Its bankruptcy plan, which was approved by the bankruptcy court in 2011, specifically contemplated Cabrini’s dissolution. On September 30, 2013, about a month after decedent’s death, the bankruptcy court issued its final decree in the bankruptcy proceeding. Petitioner now asks the court to rule that the bequest to Cabrini has lapsed in light of the cessation of its charitable functions and its status in the bankruptcy proceeding.

This court granted a similar request in a proceeding concerning a non-profit hospital named as a beneficiary of a trust (*Matter of Jones*, NYLJ, Mar. 9, 2006, at 17, col 1 [Sur Ct, NY County]). There, the trustee petitioned for a determination as to whether he was required to make a distribution to the hospital, which had ceased operations and was in the process of a bankruptcy liquidation. The trust instrument provided that, if any designated charitable beneficiary “is not an organization described in Sections 170(c), 2055(a) and 2522(a) of the [Internal Revenue] Code” at the time a distribution was to be made, then the trustee was to select another charitable organization (as that term is defined in the Code) to receive such distribution in place of the designated organization. The hospital argued that it was entitled to receive a distribution because it was still a qualified charitable organization as defined in section 170(c) of the Code and its tax exempt status had not been revoked. Holding that the hospital was not eligible to receive a distribution under the trust, the court noted the “long line of cases

recognizing that donors of gifts to charitable entities invariably do not intend their gifts to be received by such entities if they cease to function as charities.”

Similarly, in *Matter of Kraetzer*, 119 Misc 2d 436 (Sur Ct, Kings County 1983), which also involved a bankrupt hospital, the court aptly observed that “the bare legal existence of a charitable corporation to which a testamentary disposition is made does not ensure entitlement to receipt of the gift in its favor; on the contrary, the cessation of its benevolent functions, whether or not accompanied by bankruptcy, has invariably been held to defeat its claim to the disposition notwithstanding continued corporate existence . . . .” (see also *Matter of Walter*, 150 Misc 512 [Sur Ct, NY County 1933]).

According to petitioner, Cabrini did not merge with another entity, and no successor organization assumed Cabrini’s functions or responsibilities. In light of prior case law and the language of decedent’s will, which clearly evinces decedent’s specific intention that the funds be distributed to Cabrini, this court concludes that the bequest to Cabrini lapses and passes as part of the residuary estate. The court therefore grants petitioner’s request with respect to decedent’s bequest to Cabrini.

#### Bequest to St Rose’s Free Home, Servants of Relief for Incurable Cancer

Servants of Relief for Incurable Cancer (“Servants of Relief”) is a charitable organization which, according to the petition, operated two facilities, one known as St. Rose’s Free Home (“St. Rose’s”), located at 426 Cherry Street, New York, NY, and the other known as Rosary Hill Home, located in Westchester County, New York. St. Rose’s, an unincorporated facility, closed in 2009, but Rosary Hill Home remains operational. Petitioner requests permission to distribute those funds bequeathed to “St. Rose’s Free Home, Servants of Relief” to Servants of Relief.

In support of its request, petitioner cites *Matter of Brown* (109 AD 2d 955 [3<sup>rd</sup> Dept 1985]). In that case, the Third Department was presented with a trust instrument which directed that, upon the death of the lifetime beneficiary, the trust remainder be paid to “the Ithaca, New York office of the Salvation Army, to be used by it for its general purposes.” The Salvation Army’s Ithaca office was an unincorporated branch of the Salvation Army, and as such, was ineligible to receive a charitable bequest (*see* EPTL § 3-1.3[b]). The court directed the trustee to pay the bequest to the Salvation Army, as the parent corporation of the Salvation Army’s Ithaca office, and to use the funds for the benefit of the Ithaca office.

Petitioner argues that Servants of Relief is the “one time parent” of St. Rose’s and, applying the court’s reasoning in *Matter of Brown*, Servants of Relief should be deemed the proper recipient of the bequest.

Petitioner also notes that St. Rose’s functions are now carried out by Rosary Hill Home. Petitioner contends that, in essence, St. Rose’s “merged into” Rosary Hill Home, and thus, pursuant to the will’s provision regarding mergers, the bequest should not lapse, but rather be directed to Servants of Relief for use in operating its Rosary Hill Home facility.

The court agrees with petitioner’s contentions and therefore grants petitioner’s request that he be permitted to distribute decedent’s bequest to Servants of Relief.

Settle decree.

  
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SURROGATE

Dated: ~~November 2016~~ November 10, 2016