

Matter of Friedman
2017 NY Slip Op 30455(U)
March 8, 2017
Surrogate's Court, New York County
Docket Number: 2011-2926
Judge: Nora S. Anderson
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New York County Surrogate's Court

SURROGATE'S COURT : NEW YORK COUNTY

Date: MARCH 8, 2017-----X
Probate Proceeding, Will of

PHILIP A. FRIEDMAN,

File No. 2011-2926
2011-2926/GDeceased.
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A N D E R S O N , S .

Two parties petitioned separately for the admission to probate of an instrument dated April 5, 2011, purported to be the last will and testament of Philip A. Friedman, who died on June 28, 2011. Tracy Raysor, the named executor, filed a petition for the probate of decedent's purported will. Decedent's daughter, Nicolle Leeds, initially opposed the petition, and filed detailed objections of her own attacking the bona fides of the instrument. Leeds later withdrew her objections and instead filed a cross-petition asking the court to admit the purported will to probate and to appoint her, rather than Raysor, as fiduciary.¹

As set out in greater detail in the court's decision of November 25, 2015 (*Matter of Friedman*, 2015 NYLJ LEXIS 2650), the propounded instrument is severely deficient. First and foremost it arguably fails to dispose of any testamentary

¹By order dated January 4, 2012, Raysor was removed as preliminary executor, and Leeds appointed as temporary administrator, based on uncontroverted allegations of misconduct by Raysor.

property. Second, the instrument on its face, as well as the objections withdrawn by the cross-petitioner, raise serious questions about the validity of its execution and decedent's testamentary capacity. Although the instrument indicates an April 5, 2011, execution date, it contains a reference by date and claim number to decedent's application for unclaimed funds filed on May 13, 2011, i.e., five weeks after the alleged execution date. Earlier undisputed allegations established that more than a year before the will was executed, decedent was unaware of his income and was incapable of protecting his own interests in an eviction proceeding in Civil Court. Yet, despite decedent's cognitive limitations, which were documented by an examining psychiatrist in the Civil Court proceeding, the instrument contains a detailed listing of over 30 stock holdings and accounts. In addition, decedent's name is misspelled.

Mindful of its obligation to "inquire particularly" in order to satisfy itself of the genuineness of a propounded instrument and the validity of its execution (SCPA § 1408[1]), the court scheduled a hearing concerning the validity of the document.

Petitioner was the only witness at the hearing. Petitioner testified that she was unable to secure the appearance of either of the attesting witnesses. Although the cross-petitioner's counsel and a Guardian ad Litem appointed for petitioner's

infant daughter named in the will were present, they called no witnesses nor offered other evidence.

Petitioner's testimony about the drafting and execution of the will did nothing to assuage the court's concerns regarding the validity of the document. She testified that decedent alone drafted and typed the document, and that she was unaware that a will was among other documents to be notarized when she drove him from Manhattan to a notary in Englewood, New Jersey. She further testified that, after picking up decedent, she also picked up two of her friends because they planned to go shopping after the visit to the notary. When they arrived at the notary's office, she first became aware of the will when decedent removed it from his satchel. Decedent asked petitioner to ask her friends, whom he had never met before, if they would serve as witnesses. He then signed the will and the witnesses signed it. No attorney participated in any part of the process.

Petitioner failed to provide any explanation for the internal reference in the instrument to a later-occurring event, or the misspelling of decedent's name, thus failing to overcome the court's concerns about the bona fides of the document described in the previous decision. Nor did she offer any evidence to counter the court's concerns about the decedent's mental capacity to prepare and execute the will. In addition to the discrepancies described above, petitioner's testimony that

decedent prepared the entire will himself is completely undermined by the fact that the names and home addresses of the attesting witnesses were pre-typed on the document, although petitioner testified they were unknown to decedent in advance of the will execution and were present only fortuitously. This unexplained inconsistency renders petitioner's testimony unworthy of belief.

The court also notes that, in post-hearing submissions, counsel for cross-petitioner and the Guardian ad Litem both expressed the view that the will was invalid and should be denied probate.

Based on the record as a whole, the court is not satisfied that the will is valid, and accordingly denies both the petition and the cross-petition to admit it to probate.

This decision constitutes the order of the court.

Dated: March 8, 2017

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