

Matter of Welch
2017 NY Slip Op 32607(U)
December 1, 2017
Surrogate's Court, Nassau County
Docket Number: 2017-1729
Judge: Margaret C. Reilly
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

Administration Proceeding, Estate of

DECISION & ORDER

EDWINA P. WELCH,

**File No. 2017-1729
Dec. No. 33681**

Deceased.

PRESENT: HON . MARGARET C. REILLY

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

Order to Show Cause, Motion, Memorandum of Law and Exhibits..	1
Affirmation in Opposition, Memorandum in Opposition and Exhibits	2
Memorandum of Law and Affirmation in Reply	3
Stipulation, dated September 13, 2017	4

Audwin E. Pantaleon, the brother (the “movant”) of the decedent moves by order to show cause in this administration proceeding, seeking to vacate and rescind/revoke the letters of administration issued to Nicole Y.L. Player, (the “administrator”) pursuant to SCPA §711[4] and a hearing to determine who is the appropriate party(s) to whom letters should be issued. Additionally, in the movant’s attorney’s annexed memorandum of law he requests a preliminary injunction to “stay the administrator from any further activity with any assets of the estate pending a full hearing...” The motion is opposed by the administrator who argues that the movant lacks standing because the movant is not an interested person.

BACKGROUND

The decedent died on November 12, 2016. The administrator is the designated agent of Sylvia P. Welch (“Sylvia”), who she contends is the daughter of the decedent, to act as

administrator pursuant to SCPA §1001[6].¹ The administrator's position is that Sylvia is the sole distributee who filed a waiver and consent to her appointment. The administrator petitioned for letters of administration on May 3, 2017. The movant states he learned of his sister's death from a friend and also via a call from the funeral home. The movant annexes a letter as an exhibit that was received by court on May 3, 2017, in which he asks the court to investigate the "legality of the submission." The movant never objected. A decree granting letters of administration was issued to the administrator on June 16, 2017. The movant now moves to revoke the letters issued to the administrator stating that the letters were granted based on fraudulent information pursuant to SCPA §711[4]. The movant alleges that the letters were issued based on the fraudulent claim that Sylvia P. Welch is the daughter of the decedent.

ARGUMENT

Pursuant to SCPA §209(10), the Surrogate has the power to vacate a decree. "An application to vacate a decree is addressed to the discretion of the court. The decree will only be vacated in extraordinary cases" (*Matter of Bell*, 1996 NYLJ LEXIS 1312 (Sur Ct, Westchester County 1996) [citations omitted]). While "the court has broad discretion to vacate and modify its decree if such relief is necessary to achieve an equitable result . . . a decree will not be opened in the absence of fraud, newly discovered evidence or some other cause substantial enough to outweigh the interests of finality" (*Matter of Fales*, NYLJ, Jul. 18, 2001 [Sur Ct, New York County] [citations omitted]).

The statutory grounds for relief from a judgment or order are found in CPLR 5015. These are: (1) excusable default; (2) newly discovered evidence; (3) fraud, misrepresentation,

¹ SCPA § 1001[6] states in part, "letters of administration may be granted to ... an eligible person who is not a distributee."

or other misconduct; (4) lack of jurisdiction; and (5) reversal, modification or vacatur of a prior judgment on which it is based.

SCPA §711 states in relevant part as follows:

“a person interested...may present to the court...a petition praying for a decree ... revoking ...letters .. [4] [w]here the grant of his letters was obtained by a false suggestion of a material fact.”

In the instant matter, the claim that the letters were granted based on fraudulent information is rejected. The administrator provided a birth certificate that the court has accepted as proof that Sylvia is in fact the daughter of the decedent. The movant’s sole argument to challenge the birth certificate, that it was issued in March of 2010 and it is not the original, is not convincing. The administration contends Sylvia is the adopted daughter of the decedent. Public Health Law §4138 states in part as follows:

“A new certificate of birth shall be made whenever: (c) notification is received by, or proper proof is submitted to, the commissioner from or by the clerk as aforesaid of a judgment, order or decree relating to the adoption of such person. Such judgment, order or decree shall also be sufficient authority to make a new birth certificate with conforming change in the name of such person on the birth certificate of any of such person's children under the age of eighteen years whose record of birth is on file in the state health department...”

Further, pursuant to Domestic Relations Law §117[1][c], an adoptive child “shall have all the rights... of that relation including rights of inheritance.” The court concludes that the letters of administration were not issued based on fraudulent information. The movant has not given the court any basis under SCPA, DRL or CPLR to vacate, revoke or rescind the letters of administration.

The administrator opposes, arguing that a SCPA §711 proceeding requires a petition and that the order to show cause should be rejected. The administrator further contends that the movant does not have standing to maintain a proceeding under SCPA §711[4] because he is not an interested person. This argument is accurate if Sylvia is not in fact the daughter of the decedent, as the movant would have standing under the statute if Sylvia was not the daughter of the decedent. Additionally, the administrator argues that a SCPA §711 proceeding requires a petition and that the order to show cause should be rejected.

The court finds that the letters were not issued based on fraudulent information, Sylvia is, in fact, an eligible distributee with priority, pursuant to SCPA §1001[1], and the movant is not an interested person under SCPA §711. The movant, therefore, does not have standing to bring an action by petition or order to show cause. The request for a hearing is **DENIED**. Based on all of the above, the court will not address the request for a preliminary injunction in the memorandum of law. The motion is **DENIED** in its entirety.

Finally, any stays in place pursuant to the order to show cause and the stipulation, dated September 13, 2017 are lifted. The letters of administration remain in full force and effect.

This constitutes the decision and order of the court.

Dated: December 1, 2017
Mineola, New York

E N T E R:

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

cc: Rawle Pantaleon, Esq.
Attorney for Audwin E. Pantaleon
175 Crown Street
Brooklyn, New York 11225

Salem, Shor & Sparestein, LLP
Attorneys for Nicole Y.L. Player
3000 Marcus Avenue, 1W6
Lake Success, New York 11042