

**Matter of Bright**

2018 NY Slip Op 30660(U)

April 13, 2018

Surrogate's Court, New York County

Docket Number: 1999-1401

Judge: Rita M. Mella

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

New York County Surrogate's Court

Date: APRIL 13, 2018

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In the Matter of the Application of Kwame Seku for Vacatur  
of the Decree dated January 28, 2000, Declaring the Death of

WINSTON K. BRIGHT,  
Absentee,

DECISION and ORDER

File No.: 1999-1401

Pursuant to EPTL 2-1.7, and Awarding Letters of  
Administration to Leslie Bright.

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M E L L A, S. :

This case concerns issues presented by the return of an absentee after being "declared dead" by decree of the court, including how various property rights may be affected by the return of an alleged decedent.

In 1999, the wife of Winston K. Bright (the absentee) filed a petition asking this court to declare him dead pursuant to EPTL 2-1.7, and to grant her letters of administration on his estate. The petition was supported by affidavits of the absentee's two adult sisters and of his mother and father, who corroborated the wife's allegations that the absentee had disappeared without explanation and had not been seen or heard from since October 1990. The absentee was served by publication and a guardian ad litem appointed for him. After a hearing at which the petitioning wife and the parents of the absentee testified, the court found that a diligent and exhaustive search had been made for his whereabouts, which included a police investigation for over a year; inquiries of his co-workers, family members, and members of the congregation where he had been a minister; extensive posting of missing person flyers with his picture; and a search of social security, bank, and credit card records, all of which showed no activity. The court concluded that there was no explanation for his continued absence of more than nine years,

other than death (*Matter of Bright*, NYLJ, Dec. 14, 1999, at 29, col 6 [Sur Ct, NY County]). In a decree dated January 28, 2000, the court: 1) determined Winston K. Bright to be deceased as of January 1, 1994; and 2) granted letters of administration to his wife.

In 2012, an individual using the name Kwame Seku petitioned the court to vacate the 2000 decree, claiming in a conclusory fashion that he was in fact the absentee previously known as Winston K. Bright. The petition was dismissed without prejudice to renewal upon an offer of proof to substantiate his allegations (*Matter of Bright*, NYLJ, Sept. 7, 2012, at 22, col 2 [Sur Ct, NY County]).

The current petition is Mr. Seku's renewal of that application. In his pleading, petitioner claims that, at some point after October 1990, he found himself in California with no memory of who he was or how he got there. In September 1992, he obtained an ex parte order from a California state court allowing him to use the name Kwame Seku "for all purposes," based on his inability to recall his true identity. He alleges that in 2008 he was discovered in California by an aunt who then contacted other family members, although he has also testified that he was recognized by acquaintances during a visit to New York. He returned to New York after an 18-year absence, claiming he had no memory of his life before his sojourn in California. He alleges that he has now begun to regain his memory and has recognized some of his family members. According to his petition, Mr. Seku wants vacatur of the 2000 decree so that he may collect a pension from Verizon (formerly New York Telephone, where Winston K. Bright was employed at the time of his disappearance), and to "re-instate any and all rights that would accompany my legal identity as Winston K. Bright."

The court held a hearing at which the mother, two sisters, and a brother of the absentee

testified that they recognized the individual appearing under the name Kwame Seku to be Winston K. Bright, the family member with whom the sisters and brother had been raised. Based on this testimony and the testimony of Mr. Seku, the court finds that Kwame Seku has established his identity as Winston K. Bright, the former absentee.<sup>1</sup>

In accordance with this finding, Winston K. Bright is relieved from the terms of the 2000 decree to the extent that, as of the date of this decision, he is no longer presumed to be deceased. Letters of administration previously issued to Leslie Bright on the estate of Winston K. Bright are hereby revoked.

Granting this relief, however, might not yield all the results that Mr. Seku seeks. Whether petitioner will be able to “re-instate any and all rights that would accompany [his] legal identity as Winston K. Bright” is not up to this court. The 2000 decree addressed only the application then before the court and was limited to the relief permitted by New York statutory law, which only partially addresses the property rights of a returning absentee or alleged decedent.<sup>2</sup>

For instance, EPTL 2-1.7 sets forth the circumstances where a missing person shall be

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<sup>1</sup> The wife of Winston K. Bright, Leslie Bright (who was the petitioner in the original proceeding for declaration of his death), appeared on October 17, 2014, the return date of the citation in this proceeding and, upon expressing opposition to the relief sought in this petition, was given an additional four weeks to serve and file an answer. She did not do so. The court then scheduled a conference for December 22, 2014, where Ms. Bright indicated that she no longer intended to oppose Mr. Seku’s application. The court nevertheless set the hearing for a date that accommodated Ms. Bright’s schedule. Although given notice of the hearing, Ms. Bright did not attend.

<sup>2</sup> Laws governing the rights of a returning absentee or alleged decedent vary considerably among the states (*see generally* T.S.P. and J.W.D., Comment, *Property Law: The Estates of Missing Persons*, 1966 Duke LJ 745, 771-775; Robert M. Jarvis and Megan F. Cheney, “*The Living, The Dead, The Undecided*”: *An Annotated Bibliography of Law Review Articles Dealing With the Law of Absentees and Returnees*, 44 Int’l J Legal Info 178 [2015]).

“presumed” to be deceased, such presumption applying “in any action or proceeding involving any property of such person, contractual or property rights contingent upon his or her death or the administration of his or her estate . . . .” The proceeding in 1999 did not involve the determination of rights to any property other than assets that would have passed through the hands of the administrator. Any such assets would not include his pension from Verizon, which is the only property that Mr. Seku specifically states he wants to claim.<sup>3</sup>

Other statutes addressing the rights of absentees who return, SCPA 903 and 911, apply when a temporary administrator has been appointed. In such case, the temporary administrator generally has the power to manage, but not distribute, the property of the missing person, which the missing person can claim should he or she return. If a temporary administrator is appointed and it later appears that the missing person is deceased, in certain circumstances the court can determine the rights of all persons interested in his or her property, including contractual property rights contingent upon death. Such determination is made in conjunction with a formal accounting. Once a decree on that accounting is made, a returning absentee or presumed decedent cannot recover such property (SCPA 911[3]).

None of these provisions is applicable to the present case, however, because no temporary administrator was appointed, and the court made no determination of any person’s property rights, other than those implicit in the appointment of the administrator. The only statute that

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<sup>3</sup> Petitioner states that Verizon has refused to pay his pension because of the 2000 decree declaring his death. The finding here that the living petitioner is in fact the person whose death was declared in the prior decree—i.e., that he is not an imposter—may satisfy Verizon that the 2000 decree is not an impediment to eligibility for his pension. Verizon, however, is not a party to this proceeding, and any other issues that might affect petitioner’s eligibility are not before the court.

appears to apply in this case is SCPA 2226, which provides that a returning alleged decedent may recover property still in the hands of a fiduciary, provided it is not covered by an accounting decree entered before the fiduciary had knowledge that the person was living. Here, there has been no accounting, and the pension that petitioner wants to collect is not and never was in the hands of a fiduciary.<sup>4</sup>

Thus, wholesale vacatur of the 2000 decree would not necessarily afford all the relief Mr. Seku wants and might also create confusion regarding property rights that may have accrued in the interim. Numerous legal principles outside the statutory framework could, theoretically, be relevant in such circumstances, and it would not be appropriate for the court to issue a ruling that might affect the outcome of particular situations not specifically addressed in this proceeding (*see e.g. Matter of Cosentino*, NYLJ, Mar. 11, 1999, at 30, col 1 [Sur Ct, Bronx County] [acknowledging the potential equitable considerations in cases involving the return of an alleged decedent]; *Allcity Ins. Co. v. Bankers Trust Co. of Albany*, 80 Misc 2d 899 [County Ct, Albany County 1975] [discussing theories of mistake and unjust enrichment in similar circumstances]).

In summary, the court determines that, as of the date of this order, Winston K. Bright is no longer presumed to be deceased. Letters of administration previously issued to Leslie Bright are hereby revoked.

This decision constitutes the order of the court.

Clerk to notify.

Dated: April 13, 2018

  
SURROGATE

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<sup>4</sup> Ms. Bright has received pension benefits in her individual capacity, on the basis of her application to Verizon as the widow of Winston K. Bright.