

Matter of Meeks

2018 NY Slip Op 32104(U)

August 21, 2018

Supreme Court, Nassau County

Docket Number: 2017-3332/A

Judge: Margaret C. Reilly

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

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Probate Proceeding, Will of

DECISION & ORDER

PRISCILLA MEEKS,

**File No. 2017-3332/A
Dec. Nos. 34421
34422**

Deceased.

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PRESENT: HON. MARGARET C. REILLY

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

Notice of Motion for Summary Judgment and Exhibits	1
Motion (by Rene Meeks) to bar Edgar Meeks and Willard Meeks, Jr. from Representing the Estate, Affirmations and Exhibits in Support.	2
Reply Affirmation	3
Last Will and Testament	4
Objections to Probate	5

Before the court in this pending probate proceeding, is a motion brought by petitioners, Willard Meeks and Edgar Meeks, where the following relief is sought: (1) summary judgment admitting the last will and testament of Priscilla Meeks to probate and issuing a decree thereon; (2) a declaration that no citation is needed upon the filing of objections to probate pursuant to SCPA § 1410 as all of the required parties to the proceeding have either filed objections to probate or are the petitioners; (3) a declaration that Rene Meeks Stanley, Kenneth Meeks, Keith Meeks, Robert Meeks and Angela Meeks a/k/a Angela Sheila have no pecuniary interest permitting them to file objections to the last will and testament of Priscilla Meeks as their interest under the last will and testament of Priscilla Meeks is equal to their interest in intestacy; (4) that the objections be rejected as not properly

served, untimely and statutorily defective; (5) that Rene Meeks Stanley, Kenneth Meeks, Keith Meeks, Robert Meeks and Angela Meeks a/k/a Angela Sheila be required to post a bond for the payment of costs and disbursements and that if the court direct an examination pursuant to SCPA § 1404 and that the stenographic fees be paid by the objectants; (6) a declaration that Willard Meeks is the owner of 30% of the premises known as 4 Windsor Parkway, Hempstead, New York and that the estate of Priscilla Meeks is the owner of 70% of the premises; (7) dispensing with presenting to the court a petition pursuant to SCPA §1411 and service of notice of objections on the objectants and striking the objections filed as failing to state a cause of action and being factually and facially insufficient to prevent the last will and testament of Priscilla Meeks from being admitted to probate; (8) that sanctions be issued against the objectant Rene Meeks Stanley based upon the specious and frivolous allegations found in the objections to probate presented by Rene Meeks Stanley; and (9) directing that if the objections are not dismissed, that the petitioners are entitled to a trial by jury. The motion is opposed.

Also before the court is a motion by Rene Meeks, an objectant, which seeks the following relief: (1) that the court bar the petitioners Willard Meeks, Jr. and Edgar Meeks from representing the estate of Priscilla Meeks on the grounds that they do not possess the qualifications required of a fiduciary by reason of dishonesty, improvidence, want of understanding and are unfit for the execution of the office; (2) directing Willard Meeks and Edgar Meeks to pay Joel Ezra, the attorney, from their personal funds; and (3) directing

Willard Meeks and Edgar Meeks to disclose all recordings, bill and other communications involving Joel Ezra, Esq., to avoid fraudulent charges to the estate. The motion is supported by affidavits of Keith Meeks, Robert Meeks and Kenneth Meeks. An unsigned statement from Angela Meeks is also attached as an exhibit.

The decedent, Priscilla Meeks, died on December 12, 2016. She was survived by seven children: Willard Meeks a/k/a Willard Meeks, Jr. (petitioner), Edgar Meeks (petitioner), Rene Meeks a/k/a Rene Stanley(objectant), Kenneth Meeks (objectant), Robert Meeks (objectant), Keith Meeks (objectant) and Angela Meeks a/k/a Angela Sheila. The decedent's will dated April 3, 2003 was offered for probate. Pursuant to Article Second of the decedent's will, the estate is to be divided equally between her seven children. Article Third provides for the nomination of Willard Meeks, Jr. and Edgar Meeks as co-executors.

Rene Meeks, Kenneth Meeks, Robert Meeks and Keith Meeks filed objections to the probate of the decedent's will. A large part of the objections are addressed to the transfer of the decedent's real property on September 27, 2001 located at 4 Windsor Parkway, Hempstead, New York from Priscilla Meeks to Priscilla Meeks (70%) and Willard Meeks (30%) as tenants in common. The objectants allege that the interest in the real property was fraudulently transferred or the decedent was unduly influenced to transfer the 30% interest. They further object to the appointment of Willard Meeks and allege that he has multiple conflicts of interest, is incompetent to act as fiduciary, has failed to maintain the property and unduly influenced and/or coerced the decedent into transferring the property. The objectants

also object to the appointment of Edgar Meeks on the grounds that he has an inability to communicate effectively with them, lacks the ability to handle money, and is incompetent to act as executor.

SCPA § 1410 provides that “[a]ny person whose interest in property or in the estate of the testator would be adversely affected by the admission of the will to probate may file objections to the probate of the will or of any portion thereof . . .”. Where a beneficiary’s interest is the same in intestacy as under the will, his or her pecuniary interest is not adversely affected by the will and he or she has no standing to object (*Matter of Hall*, 12 AD3d 511 [2d Dept 2004]). In the instant proceeding, the objectants’ interest is exactly the same in intestacy as under the will. They therefore lack standing to object to the probate of the will.

Pursuant to SCPA § 707, letters may issue except to persons ineligible which includes an infant, an incompetent, a non-domiciliary alien, a felon or “one who does not possess the qualifications required of a fiduciary by reason of substance abuse, dishonesty, improvidence, want of understanding, or who is otherwise unfit for the execution of the office” (SCPA §707[a] through [e]). The testator “enjoys the right to determine who is most suitable among those legally qualified to settle his affairs and execute his will, and his solemn selection is not lightly to be disregarded” (*Matter of Leland*, 219 NY 387, 393 [1916]). The party alleging that the nominated fiduciary is ineligible bears the burden of proof (*Matter of Krom*, 86 AD2d 689 [3d Dept 1982]). A potential conflict of interest between a fiduciary and a person interested does not warrant the denial of letters testamentary (*Matter of Shaw*, 186

AD2d 809 [2d Dept 1992]). It is actual misconduct, not a conflict of interest, that justifies removal (*id.*). Further, conclusory allegations of improvidence and dishonesty are not enough to establish grounds for denying letters (*see e.g. Matter of Lupoli*, NYLJ, Sep. 20, 2001, at 18, col 2 [Sur Ct, Queens County]).

In the instant proceeding, the bulk of the objections concern the transfer of real property in 2001 and attorney's fees paid, which are more properly the subject of an accounting proceeding. The other allegations are conclusory at best and do not warrant the denial of letters testamentary.

For the reasons set forth herein, the motion to dismiss the objections is **GRANTED**. The decedent's last will and testament dated April 3, 2003 is admitted to probate. The request to declare Willard Meeks the owner of 30% of the real property located at 4 Windsor Parkway, Hempstead, New York is **DENIED** as a determination of the ownership of that property is not a proper subject for determination in a probate proceeding (*see Matter of Mizikov*, NYLJ, Feb. 27, 2009, at 6, col 3 [Sur Ct, Kings County]). The request for sanctions is **DENIED**. The remaining requests for relief in the petitioners' motion are rendered moot by this decision. The cross motion is **DENIED**, in its entirety.

Settle decree.

Dated: August 21, 2018
Mineola, New York

E N T E R:

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Judge of the Surrogate's Court

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