

Matter of Coppola
2018 NY Slip Op 32290(U)
August 29, 2018
Surrogate's Court, Nassau County
Docket Number: 2011-364611/A,B,C
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Application of Allison Moretto,
as Administrator of the Goods, Chattels and Credits
which were of**

DECISION

**File No. 2011-364611/A,B,C
Dec. No. 34730**

FRANCINE COPPOLA,

Deceased,

**for leave to compromise a certain cause of action for
conscious pain and suffering of the decedent and to
render and have judicially settled an account of the
proceedings as such Administrator.**

PRESENT: HON. MARGARET C. REILLY

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

Petition with Exhibits.	1
Waivers and Consents.. . . .	2
Attorney’s Affirmation.	3
Supplemental Attorney’s Affirmation.	4
Account.. . . .	5

In this uncontested proceeding for leave to compromise causes of action for conscious pain and suffering and wrongful death of the decedent, the petition, as supplemented, seeks a decree: (1) authorizing and empowering the administrator to allocate and distribute the net settlement proceeds derived from the causes of action arising out of the conscious pain and suffering of the decedent, Francine Coppola, for the sum total \$265,000.00 (\$225,000.00 from defendant Meadowbrook Care Center, Inc. and \$40,000.00 from defendant South Nassau Communities Hospital) and to discontinue the actions for

wrongful death, gross negligence and negligence against Meadowbrook Care Center, Inc. and South Nassau Communities Hospital; (2) allocating the entire recovery of \$265,000.00 to the cause of action for the decedent's conscious pain and suffering; (3) modifying the provisions in the letters of limited administration heretofore issued to the petitioner on April 11, 2011 to permit said compromise; (4) dispensing with the filing of a bond; (5) judicially settling the account of Allison Moretto as administrator in this proceeding; (6) directing Sedgwick Claims Management Services Inc., third party administrator for Pacific Insurance Company, the insurance carrier for Meadowbrook Care Center, Inc., and self-insured South Nassau Communities Hospital to pay to the firm of Parker Waichman LLP out of the proceeds of the settlement for the claim of conscious pain and suffering, the sum of \$80,692.05, as and for attorneys' fees, with disbursements in the amount of \$19,919.84; (7) paying the New York City Human Resources Administration Department of Social Services (Medicaid) the full and final lien amount asserted against the estate of Francine Coppola, in the sum total of \$78,028.57, in full satisfaction of its claim; (8) paying the Medicare Secondary Payer Recovery Contractor (MSPRC-NGHP Medicare) the full and final amount asserted against the estate of Francine Coppola, in the sum total of \$24,457.91, in full satisfaction of its claim; (9) paying Nassau Operating Company, LLC, d/b/a Nassau Extended Care Facility, represented by Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP, the full and final amount asserted against the estate of Francine Coppola, in the sum total of \$2,162.00 in full satisfaction of its claim; (10) allowing Allison Moretto, as

administrator of the estate of Francine Coppola, statutory commissions totaling \$11,600.00; (11) reimbursing Allison Moretto as administrator/daughter of the decedent Francine Coppola for funeral expenses in the amount of \$5,791.00; (12) disbursing the balance of the settlement in the amount of \$42,348.63 to the heirs of the decedent Francine Coppola, who are the distributees herein, as follows: \$14,116.21 to Allison Moretto, the administrator and daughter of the decedent; \$14,116.21 to Joseph M. Coppola, as fiduciary of the estate of Joseph Coppola, the decedent's post-deceased son; and \$14,116.21 to Michael Coppola, the decedent's son; and (13) upon payments as hereinbefore mentioned by the said defendant Meadowbrook Care Center, Inc. or defendant's insurance company, Sedgwick Claims Management Services Inc., third party administrator for Pacific Insurance Company, and self-insured South Nassau Communities Hospital, the petitioner as administrator of the goods, chattels and credits which were of Francine Coppola, deceased, shall execute and deliver to the said defendant, Meadowbrook Care Center, Inc., or defendant's insurance company, and to self-insured South Nassau Communities Hospital, a full, final and complete release in the claim against them arising out of the aforesaid cause of action, together with any other papers necessary to effectuate said compromise.

The decedent, Francine Coppola, died intestate, a resident of Nassau County, on March 13, 2010. She was survived by her three adult children: the petitioner, Allison Moretto; Michael Coppola; and Joseph Coppola, who post-deceased the decedent. Letters of limited administration issued to the petitioner on April 11, 2011. Michael Coppola; Joseph

M. Coppola, who is the fiduciary of the estate of Joseph Coppola; and the New York State Department of Taxation and Finance, each filed a waiver and consent in this proceeding.

Petitioner, as administrator of the estate of the decedent, commenced an action against Meadowbrook Care Center, Inc. and South Nassau Communities Hospital in Supreme Court, Nassau County. The complaint in that action asserted causes of action against Meadowbrook Care Center, Inc. for: violation of Public Health Law Sections 2801-d and 2803-c; negligence; gross negligence; medical malpractice and wrongful death and asserted causes of action against South Nassau Communities Hospital for: medical malpractice and wrongful death. Prior to trial of the action, defendant Meadowbrook Care Center, Inc. offered \$225,000.00 and defendant South Nassau Communities Hospital offered \$40,000.00 in settlement of the action against them.

Petitioner seeks to allocate the \$225,000.00 settlement from Meadowbrook Care Center, Inc. for conscious pain and suffering, pursuant to the first cause of action for violation of Public Health Law Sections 2801-d and 2803-c, and to discontinue the causes of action for negligence; gross negligence; medical malpractice and wrongful death against Meadowbrook Care Center, Inc. Petitioner seeks to allocate the \$40,000.00 settlement from South Nassau Communities Hospital for conscious pain and suffering, pursuant to the cause of action for medical malpractice. Given the circumstances of the decedent's death, the requested allocation of the settlement proceeds to conscious pain and suffering is approved.

Petitioner's counsel seeks reimbursement of disbursements in the sum of \$19,919.84. The disbursements sought include \$2,557.00 paid to Francis X. Moroney for estate attorney services. While counsel's retainer agreement with the petitioner provides that expenses for the services of outside counsel for the appointment of a legal representative are the obligation of the client, contingent fees in personal injury and wrongful death actions are limited by court rule (22 NYCRR § 691.20 [e]) and generally are not to exceed one-third of the recovery. Where counsel has provided necessary legal services for the administration of the estate, a fee may be awarded for those services in addition to the contingent fee, but where those services relate to the proceeding for conscious pain and suffering and wrongful death, they are deemed to be part of the one-third retainer (*Matter of Bender*, 50 Misc 3d 1207 [A] [Sur Ct, Broome County 2015]). Here, the only asset of the estate is the settlement and the appointment of an administrator was a necessary condition to the commencement of the personal injury and wrongful death actions (EPTL §§ 5-4.1, 11-3.2 [b]). "To allow counsel fees in an amount that exceeds 33 and 1/3 percent for work done only to obtain limited letters of administration to bring the action and to seek compromise of it would circumvent [the] rule" (*Matter of Griffin*, NYLJ, Apr. 14, 2014 at 30 [Sur Ct, New York County]). Accordingly, reimbursement for outside counsel fees is disallowed and the petitioner's counsel is entitled to reimbursement for disbursements in the sum of \$17,362.45.

Pursuant to the retainer agreement signed by the petitioner, petitioner's counsel seeks attorneys' fees of 33.33% of the net sum recovered from Meadowbrook Care Center, Inc. on

the cause of action for violation of Public Health Law Sections 2801-d and 2803-c. Petitioner's counsel seeks attorneys' fees of 30% of the net sum recovered from South Nassau Communities Hospital on the medical malpractice cause of action, pursuant to Judiciary Law § 474-a. After deducting one-half of the allowable disbursements from each of the settlement amounts, the petitioner's counsel is entitled to attorneys' fees of \$72,099.05 from Meadowbrook Care Center, Inc., or its insurer, along with disbursements of \$8,681.23 and attorneys' fees of \$9,395.63 from South Nassau Communities Hospital, along with disbursements of \$8,681.22. After deducting attorneys' fees and disbursements, total net settlement proceeds of \$166,142.87 remain.

There are also a number of liens against the estate which shall be paid from the net settlement proceeds as follows: \$78,028.57 to the NYC Department of Social Services/HRA for public assistance rendered to the decedent in the form of Medicaid; \$24,457.91 to CMS (Center for Medicare & Medicaid Services) to repay the Medicare program for the cost of medical care provided to the decedent; and \$2,162.00 to Nassau Operating Company, LLC, d/b/a Nassau Extended Care Facility for nursing care services furnished to the decedent.

There are no other known liens or claims against the decedent's estate. The decedent's funeral expenses in the sum of \$5,791.00 have been paid in full by the petitioner and her request for reimbursement of same is hereby approved. Petitioner also seeks her statutory commissions in the amount of \$11,600.00 and her request is approved, pursuant to SCPA § 2307.

After payment of the attorneys' fees; disbursements; liens; funeral expenses; and commissions, the net recovery of \$44,103.39 shall be distributed as follows: \$14,701.13 to Allison Moretto, the decedent's daughter; \$14,701.13 to Michael Coppola, the decedent's son; and \$14,701.13 to Joseph M. Coppola as fiduciary of the estate of Joseph Coppola, the decedent's post-deceased son.

The petitioner is not required to file a bond herein. The account of the petitioner is judicially settled. Any restrictions on the letters of administration previously issued to petitioner shall be removed to allow her to effectuate the settlement.

Submit decree.

Dated: August 29, 2018
Mineola, New York

E N T E R:

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

cc: James Kapralos, Esq.
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