

<b>Matter of Centner</b>
2018 NY Slip Op 32664(U)
August 31, 2018
Surrogate's Court, Richmond County
Docket Number: 2017-1042
Judge: Robert J. Gigante
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SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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In the Matter of the Estate of

**SHARON CENTNER**  
**a/k/a SHARON VENOSA**

**File No. 2017-1042**

Deceased.  
-----X

Sharon Centner a/k/a Sharon Venosa (hereinafter "Decedent") died intestate on October 9<sup>th</sup>, 2017. Decedent's daughter, Dena O'Connell (hereinafter "Petitioner"), applied for Full Letters of Administration and Temporary Letters of Administration on October 24<sup>th</sup>, 2017. Petitioner was granted Temporary Letters of Administration on October 31<sup>st</sup>, 2017. Letters were limited to the authority to continue to prosecute a cause of action for equitable distribution on behalf of the Estate of Sharon Centner in a Supreme Court action. Petitioner's Temporary Letters of Administration expired on April 30<sup>th</sup>, 2018, and the Petitioner wishes to renew said application. Thereafter Decedent's husband, Joseph Centner III (hereinafter "Respondent"), applied for Full Letters of Administration on March 9<sup>th</sup>, 2018. Both the Petitioner and the Respondent object to one another's application for Letters of Administration.

FACTS

The Petitioner did not note a surviving spouse, nor was a surviving spouse noted on the original death certificate filed with the Court when the Petitioner applied for Letters of Administration. At the time of her death, Decedent was involved in an acrimonious divorce proceeding with the Respondent. It is now not disputed that the Respondent is the surviving spouse of the Decedent.

Temporary Letters of Administration were originally granted to the Petitioner to continue a partition action commenced in Supreme Court for property located at 201 City Boulevard, Staten Island, NY 10301, owned jointly by the Decedent and the Respondent. That issue has been concluded.

On March 9<sup>th</sup>, 2018, Respondent filed a cross-petition for Letters of Administration. On April 5<sup>th</sup>, 2018 Petitioner filed an Amended Petition for Letters of Administration, which listed the Respondent as the surviving spouse. On May 29<sup>th</sup>, 2018, Petitioner signed and submitted an "Affidavit to Extend Letters of Temporary Administration." In support of said affidavit, on June 6<sup>th</sup>, 2018, Petitioner submitted an "Affidavit in Support of Amended Petition to Disqualify Joseph Centner III as Surviving Spouse & Fiduciary." Respondent then filed with this Court an "Objections to Amended Petition for Letters of Administration" on June 21<sup>st</sup>, 2018.

In the "Affidavit in Support of Amended Petition to Disqualify Joseph Centner III as Surviving Spouse and Fiduciary," Petitioner argues that the Court should disqualify Respondent as surviving spouse pursuant to EPTL §5-1.2(6), or in the alternative pursuant to SCPA §707(1)(e) because he is ineligible to receive letters. Respondent filed "Objections to Amended Petition for Letters of Administration" on June 21<sup>st</sup>, 2018.

#### DISCUSSION

The surviving spouse has priority of right to serve as fiduciary unless determined ineligible under SCPA §707. Both the Petitioner and the Respondent herein are attempting to disqualify one another under SCPA §707.

Petitioner's first argument is specific to EPTL §5-1.2(6). Pursuant to EPTL §5-1.2(6) "a surviving spouse loses the ability to inherit from his deceased spouse when he had the duty to support the other spouse and failed to do so when he had the means and ability to do so." Petitioner submitted documentation in an effort to justify this disqualification whereas



Respondent vehemently opposes the submission of this documentation. The provided documentation by both the Petitioner and Respondent has not displayed significant proof that the Respondent has failed to support the Decedent when he had the means and ability to do so. In re Estate of Rottenberg 19 Misc2d 202. Since issues of fact exist, the Court will conduct a hearing under EPTL §5-1.2(6) in order to make a determination on the facts.

Petitioner further argues that the Respondent is ineligible to serve based on SCPA §707(1)(e). SCPA §707(1)(e) states "Letters may issue to a natural person or to a person authorized by law to be a fiduciary except as follows: Persons ineligible ... One who does not possess the qualifications required by a fiduciary by reason of substance, abuse, dishonesty, improvidence, want of understanding, or who is otherwise unfit for the execution of the office." Petitioner has provided transcripts of the divorce proceedings, and statements from the Respondent in an effort to demonstrate the "dishonesty" that Respondent has shown. Petitioner alleges that Respondent stole an excessive amount of funds from the marital joint account while Decedent was suffering from cancer. Furthermore, Petitioner argues that Respondent delayed the divorce proceeding in order to ensure that the Decedent would die as his wife, which would result in her estate passing to the Respondent. Respondent objected to the inclusion of such evidence, and argues that all allegations of dishonesty are based upon purported excerpts of uncertified transcripts from the divorce proceeding. Respondent heavily objects to the introduction of any of the material or documents from the divorce proceeding because the Petitioner has no legal right to access the contents of the sealed file.

Respondent brings a cross-petition to disqualify the Petitioner from acting as fiduciary pursuant to SCPA 707(1)(e), also on the ground of dishonesty. Respondent's argument is based upon Petitioner's prior sworn petition with this Court along with photographic evidence of the Petitioner and her siblings removing Decedent's personal property from the marital home.

"The dishonesty contemplated by the statute must be taken to mean dishonesty in money matters from which reasonable apprehension may be entertained that the funds of the estate would not be safe in the hands of the executor." Matter of Latham's Will 145 App Div. 849. A mere isolated act of wrongdoing is not enough to disqualify a fiduciary for dishonesty. The documentation currently before the Court, presented by both sides, is not enough to make a determination on the matter without first going through the formal channels of conducting a hearing. Estate of Marie Starace Knee, 2015 NYLJ Lexis 3597.

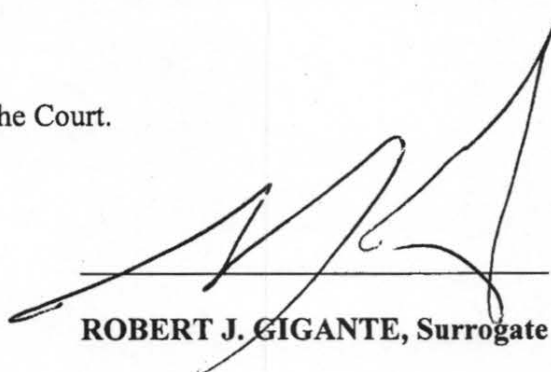
Petitioner's application for an Extension of Temporary Letters of Administration is hereby denied, in as much as the original purpose for the Temporary Letters of Administration no longer exists and no pressing issues have been presented to warrant the issuance of Temporary Letters of Administration to either party.

This matter is hereby scheduled for October 3<sup>rd</sup>, 2018 for the parties to set up a discovery schedule on the both the EPTL §5-1.2(6) and SCPA §707 hearings.

Finally, the Court wishes to express its appreciation to GinaMarie Dieckmann, a third-year law student at New York Law School, for her assistance in the researching and drafting of this opinion.

This decision constitutes the order of the Court.

Dated: August 31, 2018



ROBERT J. GIGANTE, Surrogate