

Matter of Wilson (Sims)
2020 NY Slip Op 30205(U)
January 29, 2020
Surrogate's Court, New York County
Docket Number: 2018-4834
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
DATA ENTRY DEPT.
Date: JANUARY 29, 2020

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In the Matter of the Application of Louis C. Sims for a
Declaration of Death, and the Appointment of a Temporary
Administrator for the Estate of

LOUIS SIMS WILSON,

DECISION and ORDER
File No.: 2018-4834

Alleged Deceased.

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M E L L A, S.:

Petitioner Louis C. Sims seeks from the court a declaration, pursuant to EPTL 2-1.7, that his son, Louis Sims Wilson, is deceased.¹ Petitioner represents that he seeks this declaration for the limited purpose of collecting the proceeds of an insurance policy on Mr. Wilson's life, purchased by petitioner, which names petitioner as the beneficiary.

Petitioner avers that Mr. Wilson was living in a cardboard box in the area of the World Trade Center in Manhattan "[i]n or about early 2001," and that after the attacks on the World Trade Center on September 11, 2001, Mr. Wilson was never found. Affidavits from two of Mr. Wilson's siblings – Jacqueline L. Sims and Carl Sims – who are also petitioner's children, accompany his petition, as does an affidavit of a private investigator retained to locate Mr. Wilson. The guardian ad litem (GAL) appointed to represent the interests of Mr. Wilson, upon review of the file and interview of petitioner and those siblings of Mr. Wilson, raises no opposition to the relief sought of a declaration of Mr. Wilson's death, and opines that the court

¹Petitioner also asks for the issuance of letters of temporary administration to himself, as Mr. Wilson's sole distributee, but proffers no basis for the need for letters. Petitioner states that he is unaware of any assets owned by Mr. Wilson. Petitioner further asks the court to fix and determine the date when Mr. Wilson was last seen or heard of. He does not take a position as to how the court should determine date of death – whether three years from commencement of the unexplained absence or at some earlier date upon petitioner's establishing, by clear and convincing evidence, the most probable date of death (EPTL 2-1.7[a]).

may dispense with a hearing and grant the petition on these submissions alone.

As relevant here, section 2-1.7(a) of the EPTL requires that, to invoke the statutory presumption of death, it must be established that the alleged absentee has been “absent for a continuous period of three years, during which, after diligent search, he or she has not been seen or heard of or from, and [that his or her] absence is not satisfactorily explained.” Thus, in the context of the matter at hand, petitioner must show: (1) absence of Mr. Wilson for a continuous period of three years, (2) during which absence, a diligent search for Mr. Wilson was performed, and (3) that Mr. Wilson’s absence is unexplained.

In the sworn statements of Jacqueline L. Sims and Carl Sims they each maintain that their “last known sighting” of Louis Sims Wilson was in September 2001. An additional affidavit of Jacqueline Sims states, “We have not seen Louis Wilson before September 2001.” These vague statements are insufficient to establish that Mr. Wilson has been “absent” for three years. Nor do they provide a precise last date that they saw or communicated with Mr. Wilson. From these submissions, it is unclear exactly when any one of the family members last saw Mr. Wilson and there is no indication of when they may have last “heard of or from” him. Even, however, presuming that the sworn statements of these affiants could be clarified so as to establish the requisite length absence, the proof falls short as to the other two elements.

As to any diligent search for Mr. Wilson, Ms. Sims reports to having contacted “the NYC Health, the social security office, the IRS, New York Medical Examiner’s office, New York City Morgue and the homeless shelters and could find no trace of [Mr.] Wilson.” She also states that she “contacted numerous friends and families of [Mr.] Wilson,” as well as “the NYC Health for families of victims of 911.” She does not indicate when or over what period of time, in the 17

years or more since she asserts she last saw Mr. Wilson, she conducted such search or made such inquiries.² Finally, she states that she “called every New York City police station,” but does not identify when exactly she did this, whether a missing persons report was filed, and whether the police ever conducted any investigation.

In her affidavit, the private investigator states that she performed a “social security number trace, public records searches for criminal history, past and present incarcerations, driver’s license records, active law suits, judgments, liens and bankruptcy filings.” The private investigator further states that she used the White Pages and searched various internet sites (including Facebook, Twitter, MySpace, LinkedIn and Instagram), searched voter registration records and real property ownership filings, as well as filings for business ownership, and for a driver’s license or New York State Identification in the name of Mr. Wilson. She reports an address for Mr. Wilson in Brooklyn, New York in 1995, but no additional addresses linked to him. Finally, she reports searching for a place of employment for Mr. Wilson but finding none. It is unclear when the private investigator conducted her searches.

Petitioner also asserts that the last known address from Mr. Wilson was the Brooklyn residence in or around 1995. As aforementioned, petitioner states that “[i]n or about early 2001, [Mr. Wilson] lived on a cardboard box in the area of the World Trade Center.” Petitioner does not explain whether he has personal knowledge of this or if he merely relies on statements by his son, Carl Sims, who, petitioner states, saw Mr. Wilson in New York City “as of” September

² Ms. Sims indicates that attempts to conduct a search for remains of Mr. Wilson, using a DNA sample from family, have “not met with any success.” Ms. Sims was also unsuccessful in getting information about public assistance or other benefits Mr. Wilson may have been receiving or the status or time frames of any payment of benefits to him.

2001. Carl Sims, in his affidavit, merely “acknowledge(s) that [his] last known sighting of [Mr.] Wilson was **September, 2001.**” The absence of any detail or specificity as to Mr. Wilson’s location raises more questions and fails to satisfy the court.

The efforts taken to search for and locate Mr. Wilson, as described in the affidavits in this record, are insufficient in view of the fact that Mr. Wilson was living prior to September 2001, by petitioner’s own admissions, without a permanent address and, most likely, without employment or identification. The vague and unspecific references to searching hospitals, homeless shelters, and even inquiring about the receipt of public assistance do not satisfy the court that a diligent search was performed. Nor can the unsuccessful search here lead to the conclusion that the only reasonable explanation for the failure to locate Mr. Wilson is that he has died.

Furthermore, there is nothing to suggest on this record that any family member had regular contact with Mr. Wilson prior to September 2001, such that his absence from them after that time can be considered “unexplained” (*see Matter of Layh*, 55 Misc 2d 92, 95 [Sur Ct, Nassau County 1967] [court cannot “indulge in any presumption of death from the so-called absence” of a relative, when the testimony was that petitioner has little or no contact whatsoever with that relative since childhood]).

Concerning Mr. Wilson’s absence, the facts lead as easily to the conclusion that his absence was caused by death as to the opposite conclusion – that there *is* a reasonable explanation for no longer finding Mr. Wilson near the site of the World Trade Center in the aftermath of the attacks on September 11, 2001. After all, access to the site and its vicinity following the attacks was restricted. His presence at that location and his subsequent absence,

without more, cannot provide an inference that his absence since that time leads to no other reasonable conclusion than his death. Indeed, six years elapsed between when he was alleged to be living in Brooklyn, in 1995, and the time when his family avers that he was living on the streets near the World Trade Center.

The sparse information here is in stark contrast to the facts in the cases in which death has been presumed from absence. Those cases, granting petitions for declaration of death, have identified a basis for establishing that the absence was unexplained (*e.g.*, *Matter of Sanchez*, 22 Misc 3d 1128[A] [Sur Ct, Nassau County 2009] [good relationship with spouse of many decades]; *Matter of Cirillo*, 31 Misc 3d 1230[A] [Sur Ct, Bronx County 2011] [good relationship with spouse and children and extended family and a steady job, absentee disappeared on Mother's Day, failing to appear at family event]; *Matter of Ferguson*, NYLJ, Oct. 28, 2014, at 23, col 4 [Sur Ct, Bronx County] [a close relationship with mother and a friend, neither of whom ever heard from absentee again despite regular contact and communication before disappearance]). More information is needed by the court to determine petitioner's application for a declaration of Mr. Wilson's death.

Petitioner is given an opportunity to supplement the record to address the above concerns and must do so by filing affidavits and or evidence on or before March 13, 2020, and serving a copy on the GAL (*see Matter of Sanchez, supra* [directing petitioner to file additional submissions demonstrating what efforts were made by the police and other family members to locate absentee before court could determine that diligent search for absentee was conducted]; *Matter of Bennett*, NYLJ, Apr. 25, 2006, at 27, col 3 [Sur Ct, Suffolk County]). The GAL may file a supplemental report addressing any submissions on or before April 3, 2020.

Because it appears that certain investigation has been limited by possible confidentiality concerns—for instance, inquiries into whether Mr. Wilson was receiving benefits or public assistance—the court would consider the issuance of letters of limited temporary administration to petitioner upon his filing an affidavit indicating what investigation he would conduct with such authority.

This decision constitutes the order of the court.

Clerk to notify.

Dated: January 29, 2020



SURROGATE