

McNeil v McNeil

2020 NY Slip Op 34796(U)

December 7, 2020

Supreme Court, Tompkins County

Docket Number: Index No. EF2020-0036

Judge: Joseph A. McBride

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JOSEPH A. MCBRIDE, J.S.C.

The case before the Court follows Petition for a special proceeding pursuant CPLR Article 4 and General Obligations Law §5-1510(2)(e) and §5-1505(2) filed by Michael J. McNeil ("Petitioner") against Susan B. McNeil ("Respondent"). There are currently two motions before the Court. First, Respondent filed a motion for an Order transferring this Special Proceeding to the Surrogate's Court of Tompkins County. Subsequently, Petitioner filed a cross-motion for partial summary judgment pursuant CPLR §3212.¹ The case was heard at oral argument via Microsoft Teams at a Special Motion Term on November 17, 2020. Court received and reviewed said motions and decided; as discussed below.²

BACKGROUND FACTS

Petitioner and Respondent are siblings, and son and daughter, respectively, to Richard J. McNeil, deceased. Decedent passed away on or about Septmeber 25th 2018, at Cayuga Medical Center, following a stroke. Respondent held Power of Attorney for decedent prior to his death. Decedent left a last will and testament dated March 11, 2011, which was filed with the Surrogate's Court, County of Tompkins, on or about October 5, 2018, at which time preliminary letters testamentary were duly issued to Respondent. Petitioner has alleged that Respondent engaged in self-dealing in violation of her role as fiduciary for the decedent. In May 2019, Petitioner applied to the Surrogate's Court for an order requiring Respondent to provide accurate financial information of the decedent. Without an evidentiary hearing, the Surrogate denied Petitioner's application and issued Letters Testamentary to Respondent to probate decedent's estate. After reviewing the decedent's bank records, Petitioner alleges that in the two years leading up to decedent's death, Respondent, through her use of the power of attorney, engaged in numerous financial transactions resulting in the gratuitous transfer of thousands of dollars from the decedent to herself and to Phillip McNeil (the parties' sibling). On January 15, 2020, Petitioner commenced this current action before this Court pursuant CPLR Article 4 and General

¹ Petitioner's Motion for Summary Judgment was denied from the bench at Oral Argument, however the Court indicated they would write a formal Decision and Order, contained herein.

² All the papers filed in connection with this motion are included in the electronic file maintained by the County Clerk and have been considered by the Court.

