

<b>Matter of Brooks</b>
2021 NY Slip Op 31755(U)
May 25, 2021
Surrogate's Court, New York County
Docket Number: 2021-708
Judge: Rita M. Mella
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SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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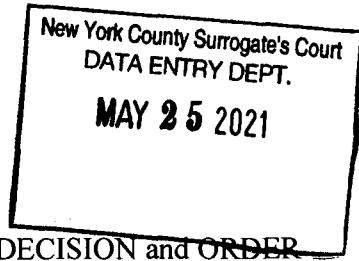
Administration Proceeding, Estate of

ANDREW BROOKS,

Deceased.

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M E L L A, S.:



DECISION and ORDER

File No.: 2021-708

2021-708/A

Decedent Andrew Brooks died intestate on January 23, 2021, survived by his third wife and three children from his two prior marriages, one of whom is an infant under the age of 14 years. Competing applications for Letters of Temporary Administration and Letters of Administration have been filed and were before the court at the call of the calendar on April 9, 2021. Petitioners in the first application are decedent’s two adult daughters from his first marriage, Lauren Brooks and Hannah Brooks, and decedent’s second ex-spouse, Melissa Brooks. The Cross-petitioner is decedent’s surviving spouse, Jil Brooks. After the calendar call, the parties were allowed to supplement the record in support of their respective positions.

Both sides agree that there is an urgent need for the appointment of a temporary administrator because decedent had debts and financial obligations, including some to the tax authorities, that need to be addressed. According to an “Affidavit of Assets and Liabilities” filed by Cross-petitioner, decedent died with “cash, bank account(s), [and] investment account(s)” worth approximately \$9 million.

At this juncture, the main question the court needs to answer is whether Jil Brooks is precluded from serving as Temporary Administrator of decedent’s estate in light of a prenuptial agreement (“the Agreement”), executed by her and decedent on June 5, 2018, in anticipation of their marriage. By the terms of the Agreement, the parties waived their rights to each other’s estates, including the right to serve as fiduciary. Specifically, the Agreement provides that each

party waives the right “to act as executor or administrator of the other Party’s estate” and that “each of the Parties hereto waives the right to Letters of Administration in each other’s estate” (Article 10[a][ii]).

Cross-petitioner argues that she is not precluded from serving as fiduciary of decedent’s estate because the Agreement is void and unenforceable. She challenges the validity of the Agreement on three grounds: (1) that it is no longer valid because it was “canceled,” decedent having represented to her orally during their marriage that the Agreement had been destroyed; (2) that it is unenforceable because decedent failed to comply with its express terms which required decedent to name Cross-petitioner as beneficiary of some of his assets; and (3) that it is unconscionable. Cross-petitioner also challenges Melissa Brooks’s eligibility to serve as administrator.

In general, “a strong public policy exists in favor of parties deciding their own interests through premarital contracts, and a duly executed prenuptial agreement is given the same presumption of legality as any other contract” (*Gottlieb v Gottlieb*, 138 AD3d 30, 36 [1st Dept 2016]; *Matter of Greiff*, 92 NY2d 341, 344 [1998]). Courts have held that “[a] surviving spouse may not be entitled to Letters of Administration if an antenuptial agreement was executed by the parties prior to marriage” (2 Warren’s Heaton on Surrogate’s Court Practice 35.03[2][e]). Further, “a prenuptial agreement is presumed to be valid and controlling unless and until the party challenging it meets his or her very high burden to set it aside” (*Gottlieb, supra* at 36; *see Anonymous v Anonymous*, 123 AD3d 581 [1st Dept 2014] [surviving spouse showed no grounds to set aside prenuptial agreement because it was negotiated over time, competent counsel represented her and document was not ambiguous]).

No argument has been made that the Agreement is invalid on its face and there is no support on the record for the conclusion that its facial validity is affected by the reasons advanced by Cross-petitioner. Concerning the argument that the Agreement was “canceled,” it should be noted that, by its terms, “any modification, amendment, or waiver of any provision of this Agreement or of any provision of any other agreement between the Parties, must be executed in writing by the Parties and acknowledged in order to be valid and enforceable” (Article 16). The authority provided by Cross-petitioner for the proposition that an oral “cancelation” of the Agreement is not covered by this provision does not lend support to her argument. Additionally, at the time of execution, both decedent and Cross-petitioner were represented by counsel and expressly acknowledged that they each had read and understood the nature and consequences of the terms of the Agreement “and [each] agree[d] that this Agreement is and shall be deemed fair and reasonable and shall not be deemed unconscionable at any time hereafter” (Article 9[d]). Accordingly, for purposes of the limited question the court now faces—which concerns the appointment of a Temporary Administrator—the validity of the Agreement, including Cross-petitioner’s waiver of her right to serve as fiduciary of decedent’s estate, is presumed.

Cross-petitioner’s challenge to the eligibility of Melissa Brooks to serve as Administrator is without basis. Melissa Brooks, the mother of decedent’s infant daughter, has been granted Letters of Guardianship of the property of her daughter by decree of this court dated May 10, 2021. She thus has standing to serve as fiduciary of decedent’s estate in her capacity as Guardian of the property, notwithstanding the divorce settlement agreement between her and decedent dated May 23, 2016, by which she waived her rights to serve as fiduciary of his estate. Her waiver under the divorce settlement agreement is limited to her individual capacity and does

not extend to her status as Guardian of the property of her infant daughter (*Matter of Porrata*, 89 Misc 2d 663 [Sur Ct, Bronx County 1977]).

Because litigation concerning the determination of the Agreement's validity will cause a delay in the grant of Letters of Administration in this estate and because of the nature of the estate assets as well as its financial obligations, the court concludes that it is in the best interests of the estate to appoint a Temporary Administrator (SCPA 901[1]) . The court further determines that the best interests of the estate would be served by the appointment of Petitioners as Co-Temporary Administrators and Letters of Temporary Co-Administration shall issue accordingly.

A conference to discuss discovery deadlines in the litigation concerning the validity of the prenuptial agreement and to discuss the referral of this contested matter to mediation will be scheduled shortly.

Dated: May 25, 2021

  
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