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| <b>Matter of De Vegvar</b>   |
| 2021 NY Slip Op 32869(U)   |
| December 22, 2021  |
| Surrogate's Court, Bronx County  |
| Docket Number: File No. 796P1970/A   |
| Judge: Nelida Malave-Gonzalez  |
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SURROGATE'S COURT, BRONX COUNTY

December 22, 2021

In the Matter of the Application pursuant to SCPA 1502  
of BEATRICE DE VEGVAR

for the Appointment of a Successor Trustee of the Trust under  
Article THIRD (B) of the Last Will and Testament of

EDWARD A. DE VEGVAR NEUMAN, Deceased  
File No.: 796P1970/A

In this uncontested proceeding, the decedent's daughter petitions pursuant to SCPA 1502 (1) for appointment as successor trustee of a marital trust established pursuant to Article THIRD (B) of the decedent's will dated September 16, 1960 which was admitted to probate in 1970. The three primary trustees are now deceased and the two nominated successor trustees renounced their appointment. The petitioner, who was appointed Article 81 guardian pursuant to an order of this court dated June 14, 2002 for S.N.D., one of the decedent's sons who is under a disability and resides in a facility in Rockland County, also seeks authority to place a portion of S. N. D.'s guardianship and trust assets in a pooled trust and purchase a prepaid funeral plan for his benefit. Finally she seeks court approval for reimbursement for her payments of the legal fees and disbursements

incurred on behalf of S. N. D., to be paid by deduction from his distributive share of the trust proceeds, and the services incurred to appoint a successor trustee to be paid by the trust. Jurisdiction was obtained over S. N. D., another son, Martin Neuman, Chase Bank, the Rockland County Attorney and Mental Hygiene Legal Service, Second Department, and there was no appearance on the virtual hearing date. Thereafter, Rockland County Department of Social Services consented to the application. The guardian ad litem appointed for S. N. D. also recommends its approval. The court has not received any opposition to date.

The decedent died on May 13, 1970. His will dated September 16, 1960 was admitted to probate in or about 1970. Letters of trusteeship issued to Geza de Vegvar (Geza), Ralph J. Gutman (Ralph) and Francis Neuman de Vegvar (Francis), (collectively, the Trustees), all of whom are now deceased. Under Article THIRD (B) of the instrument, one-third of the estate was bequeathed to the trustees of a trust for the benefit of the decedent's spouse, Gabrielle de Vegvar (Gabrielle) who was to be paid the trust's net income during her lifetime. Upon her death, the trustees were to divide the remaining principal into equal shares to be paid per stirpes to the decedent's children or their issue who were at least 30 years old, or be held in further trust for a trust beneficiary until the age of 30. A third son, Edward Neuman de Vegvar died in 1982 without issue.

Although the trust terminated upon Gabrielle's death on November 23, 1998, and the petitioner and the two sons who survived her

were then over the age of 30, the trust assets have not been distributed because there are no remaining trustees. The three original co-trustees did not designate a qualified banking institution as successor trustee pursuant to Article FOURTEENTH (C) of the will. The two other successor trustees nominated in the instrument, Charles Henry Neuman de Vegvar and J. P. Morgan Chase Bank, N. A. Chase Bank (successor to The Chase Manhattan Bank) ("Chase Bank"), having filed renunciations, there are no other nominated successor trustees in the instrument. As approximately \$178,000 remains in a trust checking account, the petitioner requests that the court appoint her as successor trustee pursuant to SCPA 1502 (1) to pay the remaining trust expenses and distribute the remaining assets to the three children.

As to the disposition to S. N. D., who is under a disability and resides in a psychiatric facility in Rockland County, the petitioner states that all his living and medical expenses are paid by Medicaid and other government benefits, which would terminate should he directly receive his distributive share of the trust proceeds. There are additional funds deposited in a guardianship bank account. As a predicate for filing this application, the petitioner and her attorneys secured Medicaid benefits for S. N. D. and obtained the consent of Rockland County Department of Social Services, which administers those benefits. Accordingly, the petitioner seeks reimbursement for legal services incurred specifically on behalf of S. N. D. and, after payment of a sum up to \$20,000 to a pre-paid burial plan and

retention of a modest sum below the Medicaid threshold in a guardianship account not to exceed \$15,000, placing the remaining guardianship funds and S. N. D.'s distributive share of the trust proceeds into a pooled trust administered by Labor & Industry for Education, Inc. ("LIFE").

In the absence of any opposition, the request to appoint the petitioner successor testamentary trustee pursuant to Article THIRD (B) of the decedent's will dated September 16, 1960 is granted and the letters of trusteeship that issued to Geza, Ralph and Francis are revoked.

As S. N. D. was previously determined to be a person with severe and chronic disabilities, and these disabilities are expected to, and do, give rise to a long-term need for specialized health, mental health, developmental disabilities, social or other related services, and may need to rely on government benefits or assistance (EPTL 7-1.12), the branches of the application seeking leave to ratify the pooled trust agreement with LIFE and fund a prepaid burial plan for S. N. D.'s benefit is granted (EPTL 7-1.12).

A fully executed pooled trust agreement and prepaid burial plan are to be annexed to the decree to be settled hereon. A sum up to \$15,000 may be retained in the guardianship bank account, and the guardianship funds in excess of that amount are to be paid to the pooled trust.

In support of the request for reimbursement of the fees paid to counsel for legal services incurred for the appointment of a successor trustee, counsel filed an affirmation with time sheets demonstrating that although over 74 hours were expended by counsel and support staff with

hourly rates ranging from \$315 to \$675, for a total of \$19,290.50, a discounted fee of \$11,872.72 (aggregate billing rate of \$160.44) was charged and paid by the petitioner. As for the services in securing Medicaid and other government benefits, arranging the pooled trust and prepaid burial plan for S. N. D., counsel lists 41.8 hours of services billed at hourly rates ranging from \$340 to \$700, aggregating \$15,163.00, with reduced fees of \$7,011.96 (\$199.75 per hour) billed and paid by the petitioner.

The court bears the ultimate responsibility for approving legal fees that are charged to guardianship funds and has the discretion to determine what constitutes reasonable compensation (see SCPA 2110; *Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]); *Matter of Stellis*, 216 AD2d 473 [2d Dept 1995]; *Matter of Vitiole*, 215 AD2d 765 [2<sup>nd</sup> Dept 1995]) (also see *Matter of Pekorsky v Estate of Cohen*, 259 AD2d 702 [2<sup>nd</sup> Dept 1999]; *Matter of Cook*, 41 AD2d 907 [1<sup>st</sup> Dept 1973], *affd* 33 NY2d 919 [1973]; *Matter of Verplanck*, 151 AD2d 767 [2d Dept 1989]). There is no hard-and-fast rule to determine what is reasonable compensation in a particular case, and the court is not bound by counsel's summary of the hours expended (see *Matter of Vitole*, 215 AD2d at 765). In determining reasonable compensation, the court may consider a number of factors, including the time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services and the amount of the fee sought, the professional standing of the counsel, the size of the estate, and the benefit to the estate from the services provided (see *Matter of Freeman*,

34 NY2d 1 [1974]; Matter of Potts, 213 App Div 59 [4<sup>th</sup> Dept 1925], affd 241 NY 593 [1925], Matter of Coughlin, 221 AD2d 676 [3<sup>rd</sup> Dept 1995]).

After considering the necessary factors, inter alia, the additional services rendered for obtaining the appointment of a successor trustee in order to wind down the trust, and the benefits to the trust's remaindermen, as well as the protracted negotiations with Rockland County Department of Social Services resulting in their filing a consent to the application, and the due diligence and negotiations concerning entering into a pooled trust agreement at LIFE and prepaid burial plan, and the benefits to S. N. D., weighed against the usual fee requests submitted by counsel in similar proceedings involving successor trustee appointments and Medicaid planning, the sum of \$7,011.96 is to be paid to the petitioner in reimbursement of legal services expended in securing her appointment as successor testamentary trustee in this estate, to be paid by the successor trustee from the trust funds. An additional sum of \$11,872.72 is to be paid to her in reimbursement of the services incurred in establishing and funding the pooled trust as well as the prepaid burial plan, by deduction from S. N. D.'s share of the net distributable trust proceeds. These payments and legal services charged are to be inclusive of all such services rendered and to be rendered through the entry of the decree to be settled hereon and funding the pooled trust and prepaid burial plan.

In support of an award, the guardian ad litem filed an affirmation of services with time and charges demonstrating that he spent

five and three-quarters hours analyzing the will and the impact of the proposed distributions upon his ward's government benefits, he held extensive conversations with counsel for the petitioner and drafted and served and filed his report. His hourly rate is \$300 in these matters. Accordingly, the sum of \$1,725.00 is awarded to Ronald M. Eppinger, Esq., to be paid by the successor trustee from the trust funds.

Notwithstanding the lack of any opposition, the proposed decree with the pooled trust and burial plan agreements annexed shall be settled upon Rockland County Department of Social Services and the guardian ad litem.

Settle decree and proceed accordingly.

  
HON. NELIDA MALAVE-GONZALEZ  
SURROGATE