

Matter of Singh

2022 NY Slip Op 30370(U)

February 14, 2022

Surrogate's Court, New York County

Docket Number: Index No. 2006-2725/A

Judge: Nora S. Anderson

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New York County Surrogate's Court
DATA ENTRY
Date: February 14th 2022

SURROGATE'S COURT : NEW YORK COUNTY

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Proceeding to Withdraw Funds Deposited
with the Commissioner of Finance in the Estate of File No. 2006-2725/A

PYARA SINGH,

Deceased.

-----X

A N D E R S O N , S.

In this contested proceeding in the estate of Pyara Singh to withdraw funds on deposit, petitioner, decedent's sister Bachan Kaur, ("petitioner") moves for sanctions against objectant Marina Jayne Squires ("Squires" or "objectant") for failure to provide document discovery. Specifically, petitioner seeks an order deeming that objectant was not married to decedent at the time of his death; prohibiting her from supporting her contention that she is decedent's surviving spouse; and striking her answer/objection in which she makes this contention (CPLR 3126 [1],[2] and [3]).

Pyara Singh, a New York domiciliary, died intestate on April 10, 2006. Letters of Administration issued to the Public Administrator of New York County, who upon completing the administration of the estate filed her account and asked the court to determine decedent's distributees. As no one appeared to present evidence of kinship, the court ordered that the proceeds of the estate, approximately \$708,000, be deposited with the New York City Department of Finance for the benefit of decedent's unknown distributees.

Petitioner filed this proceeding in 2011 seeking to withdraw the funds on deposit, alleging that she was decedent's sole distributee. Objectant did not make herself known to the court until five years later when she filed a petition seeking revocation of the letters of the Public Administrator and issuance of letters to herself. She identified herself as decedent's widow and sole distributee, and alleged that she was not previously aware of the existence of the estate of the decedent. Objectant ultimately did not pursue the administration petition.

Petitioner thereupon amended the withdrawal petition to name objectant as a necessary party. Objectant then appeared by counsel and filed objections seeking dismissal of the petition on the ground that she is decedent's surviving spouse.

Prior to objectant's appearance, the court heard the expert testimony of a genealogist engaged by petitioner describing investigations which she took in the United States and in India to identify decedent's distributees. The genealogist testified that she located an employment document dated shortly after decedent arrived in the United States in which decedent was described as having a wife and a two year old son in India. In later documents from the same employer, decedent's marital status appeared as "single" based on information provided by decedent himself. The genealogist testified that she investigated whether

decedent was survived by a wife and/or children by engaging a private investigator who interviewed objectant on two occasions in 2014 at objectant's then-residence in Abohar, India.

According to the investigator's report, objectant told the investigator that she had been married to decedent in an arranged, unregistered social marriage in India shortly before he emigrated to the United States in 1971; that the marriage lasted only a short time and ended in a divorce; that she received divorce papers in 1979 or 1980; that during the marriage she became pregnant by decedent on two occasions and terminated both pregnancies; that she later settled in Canada and married her second husband, Inder Singh (also known as Inder Singh Dhillon); that she and Inder Singh had a son William, now about forty years old; and that she later separated from her second husband. She told the investigator that she was formerly known as Kuldip Kaur and Baldeer Kaur Ramen, and later legally changed her name to Marina Jane Squires. (In papers filed with this court, objectant identifies herself as Marina Jayne Squires a/k/a Kuldip Kaur a/k/a Kuldip Kaur Bajwa a/k/a Kuldip Kaur Gill.) She showed the investigator her Indian and two Canadian passports, one issued to "Kuldip Kaur Dhillon (nee Gill)" and the second to Marina Jane Squires. She also showed the investigator a Canadian citizenship document issued to Marina Jayne Squires; pictures of herself and her son; and a list of her addresses since 1948. Photographs of

these documents are attached to the investigator's report.

In addition, the investigator obtained a copy of a 1980 affidavit from Jangir Kaur Gill, in which Gill identified herself as the mother of Kuldip Kaur Gill (*i.e.*, objectant) and affirmed that her daughter and decedent (referred to as Pyara Singh Bajwa) were married in an arranged Sikh marriage in December 1970; that they were incompatible; and that the marriage was terminated by the couple and their families in June 1971 in a traditional ceremonial manner, thus freeing objectant to remarry, which she did upon emigrating from India to Canada.

In deposition testimony taken on December 6, 2017, objectant completely contradicted her earlier statements to the investigator. She denied that her marriage to decedent had terminated, and denied that she had ever remarried. She stated that after she immigrated to Canada in 1973 or 1974, she and decedent, who was then living in New York, maintained a long distance marriage. She testified further that her son, Bhalinder ("Billy") Singh, was not a child of either decedent or Inder Singh Dhillon, but was the product of artificial insemination from an unknown donor. She added that she underwent the procedure at the request of her aunt and uncle, and that she and decedent had "adopted" him, although not legally. She claimed they "adopted" a second son later, but that decedent is not named in the adoption papers.

Even after being confronted during the deposition with a certified copy of court documents from a 1980 Ontario divorce proceeding brought by objectant (under the name Kuldip Kaur Dhillon, nee Gill) against Inder Singh Dhillon, which identified Bhalinder Singh Dhillon as the child of the marriage, Squires flatly denied that she was the petitioner in that proceeding or that she had ever been married to Inder Singh Dhillon (although she admitted knowing him and having lived in his house). She also denied having ever used the name "Dhillon," despite the fact that she had earlier presented a Canadian government certificate which reflected her name change from "Kuldip Kaur Dhillon" to "Marina Jayne Squires." She denied having been interviewed by the investigator, despite having acknowledged their meetings in emails. She even denied that Jangir Kaur Gill was her mother despite her own use of the surname Gill, and even though she later provided Gill's death certificate in response to a request for information about her mother's whereabouts.

In view of objectant's contradictory and highly suspect testimony, her deposition was adjourned pending receipt of further documents requested of her.

Before the deposition session described above, petitioner had served objectant with a First Notice for Discovery and Inspection. In her response, objectant claimed that she had no documents with regard to divorce or annulment of her marriage to

decedent, her marriage to and divorce from any other person, including Inder Singh Dhillon, her own birth certificate showing the identity of her parents, her visas or visa applications, and the identity of persons with whom she is currently residing. She objected to providing documents concerning the birth or adoption of her two children, her former residences, photographs of her spouses, her children and her parents, or her mother's whereabouts, all on the ground of irrelevance. As to other demands her response was scanty at best, and did not include even some of the documents she had provided or mentioned to the investigator in 2014.

Following the deposition, petitioner served a Second Notice for Discovery and Inspection which sought documents to which objectant had testified (i.e. correspondence between her family and decedent; and any documents regarding her marital status, alleged artificial insemination, the adoption of her children, her claim that she took a New York State nursing examination, and her use of various names, and handwriting exemplars of those names). Petitioner also served a Demand for Authorizations to allow petitioner's attorney to obtain certified records from the Canadian government of objectant's marriages, the birth of any children, and any changes of her name. These demands were unanswered.

Petitioner then moved to compel discovery of all three

demands. No answering papers were filed, and objectant's attorneys moved to be relieved on the ground that she had refused to provide them with documents and information, refused to follow their advice, and asked them to take actions contrary to the court's directives. The court granted counsel's motion and stayed the proceedings for thirty days to allow objectant time to obtain new counsel. To date, no new counsel has appeared and the motion to compel remained unopposed. The court directed objectant to provide the documents in both demands and to provide authorizations within 30 days after service of a copy of the order with notice of entry upon her (Decision and Order, December 11, 2018).

Four months later, having received no further documents from objectant, petitioner brought this motion for sanctions. Shortly before its return date, objectant produced a package of documents allegedly responsive to the court's order. Only two of the documents (her Indian passport and her mother's death certificate) are in fact responsive to petitioner's discovery demands. The remaining papers she produced are either copies of documents provided to objectant by petitioner or are unresponsive to petitioner's demands. She failed to provide the requested authorizations. Objectant's late submission of documents was both evasive and grossly inadequate.

CPLR 3126, the "enforcement arm of the disclosure article"

(Siegel, NY Prac § 367 at 696 [6th ed 2018]) allows a court to impose sanctions on a litigant who wilfully fails to provide discovery in response to legitimate, relevant and appropriately tailored demands, whether or not in response to a court order. The statute provides, in relevant part, that where a party

"refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal which are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony ...; or

3. an order striking out pleadings or parts thereof...."

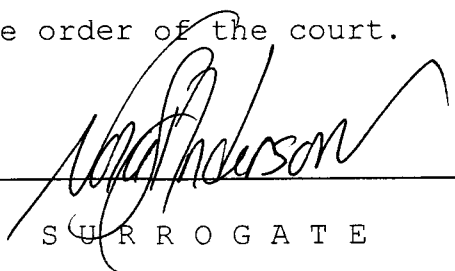
Compliance with disclosure "requires both a timely response and one that evinces a good-faith effort to address the requests meaningfully" (*Kihl v Pfeffer*, 94 NY2 118, 123 [1999]). Where a litigant has wilfully failed to provide discovery, ignoring legitimate demands and court orders or responding with dissimulation rather than compliance, sanctions including preclusion or dismissal are appropriate (*Zletz v Wetanson*, 67 NY2 711 [1986]; *Santini v Alexander Grant & Co.*, 245 AD2 30 [1st Dept 1997]). The nature and degree of the sanction is left to the broad discretion of the court (*Zletz v Wetanson*, *supra*; *Kingsley*

v Kantor, 265 AD2 529 [2d Dept 1999]; *Martin v Brooks*, 270 AD2 538 [3d Dept 2000]). The court has reviewed objectant's minimal responses to petitioner's legitimate discovery demands and finds her responses to be inadequate, incomplete, and evasive. Objectant has done nothing to clarify the internal inconsistencies in her statements or the conflict between those statements and the documentary evidence in the record, including the documents she herself provided. Her former attorneys found themselves unable to continue to represent her because of her refusal to provide them with documents or to obey legitimate court directives. All of the documents demanded are relevant - indeed central - to the issues in this proceeding, *i.e.*, the identity and relationship of decedent's distributees and the validity of objectant's claim to be decedent's surviving spouse and sole distributee. Such documents are readily obtainable to her. The court thus finds objectant has wilfully and contumaciously withheld relevant documents to which petitioner is entitled, and that she has refused to obey the court's order to produce them.

The purpose of the discovery process is "to advance the function of the trial to ascertain truth..." (Siegel, NY Prac § 343 at 622 [6th ed 2018], quoting *Rios v Donovan*, 21 AD2d 409 [1st Dept 1964]). Objectant's deficient responses to petitioner's valid discovery requests, her disregard of the court's order, her failure to cooperate with her own counsel in providing documents, and her refusal to address glaring inconsistencies in her story demonstrates her blatant disregard for this process. In view of this egregious record, the court concludes that the sanctions requested by petitioner are fully justified (*Wexler v Malpeso*, 234 AD2 149 [1st Dept 1996]).

Accordingly, petitioner's motion for an order deeming that Squires was not married to decedent at the time of his death, and prohibiting her from supporting her contention that she is decedent's surviving spouse, and striking her Answer/Objection is granted in full.

This decision constitutes the order of the court.


SURROGATE

Dated: February 14, 2022