

Matter of Gulnick (Delaney)
2022 NY Slip Op 33832(U)
October 14, 2022
Surrogate's Court, Ulster County
Docket Number: File No. 2017-118/B
Judge: Sara W. McGinty
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STATE OF NEW YORK
SURROGATE'S COURT : COUNTY OF ULSTER

In the Matter of the Accounting of Burton Gulnick, Jr.
Administrator cta in the Estate of

DECISION/ORDER

MAURA DELANEY (aka MAURA RUBENCAMP),

deceased.

File No. 2017-118/B
HON. SARA W. MCGINTY
Surrogate

Appearances:

James G. Yastion, Esq., (Law Offices of James Yastion, PLLC) attorney for Burton Gulnick, Jr.,
administrator cta/petitioner

Daniel G. Heppner, Esq. (Rusk, Wadlin, Heppner & Martuscello, LLP) attorney for John Delaney,
objectant

Andrew Delaney, pro se, objectant in his individual capacity and as voluntary administrator of
the Estate of George Delaney

McGINTY, S., J.

In this proceeding for judicial settlement of an account, objections to the administrator cta's accounting have been filed by the decedent's son, Andrew Delaney, in his individual capacity and as voluntary administrator of the estate of his post-deceased brother, George Delaney. John Delaney also filed objections, but seeks only the re-allocation of attorney's fees and carrying charges associated with decedent's former home from his interest to the estate.

The decedent's last will and testament was accepted for probate after four years of litigation. The will provided for specific bequests of \$1,000 each to Andrew Delaney and his brother Paul Delaney. The balance of the estate was divided between John Delaney and his brother, George Delaney, who died eight months after decedent. Decedent's principal asset, her home in Bearsville, New York, was specifically bequeathed to John and George as joint tenants with rights of survivorship. With George's death, title to the house was vested solely in

the surviving joint tenant, John. The balance of decedent's assets consisted of about \$210,000 in cash and three motor vehicles collectively valued at about \$10,000.

Andrew Delaney's objections are as follows:

1. The accounting did not include the contents of a safe in decedent's home, which "could have" contained up to \$60,000 in cash and silver coins.
2. The "entire Schedule C" and Schedule D are objected to the extent that the listed expenses consist of the carrying charges for decedent's home, which should be the responsibility of John, the surviving specific legatee of the premises. Andrew objects to the allocation of any of these expenses to George.
3. Schedule E does not list the car and art collection specifically devised to George and the jewelry collection specifically devised to John.

Standing is a threshold issue in any judicial proceeding (*Saratoga County Chamber of Commerce v. Pataki*, 100 NY2d 801, 812 [2003]). Standing is conferred upon a party only if their "civil, property or personal rights" are affected by the proceeding (*Society of Plastics Industry v. County of Suffolk*, 77 NY2d 761, 772 [1991]; see, also, *In re Family Trust*, 2018 NYLJ LEXIS 4152 *7 [Sur Ct Albany Cty 2018], denying standing to a party who has not "suffered an injury in fact").

The Court finds that Andrew Delaney does not have standing to object in his individual capacity because his interest under his mother's will consists of a specific bequest, which vested in him at the decedent's death. The burden of paying the expenses of administration to which Andrew vehemently objects falls solely upon the residuary legatees and thus will not be allocated to Andrew's interest (*Estate of Deluca*, 2004 NYLJ LEXIS 2477 *8 [Sur Ct Nassau Cty 2004]). Indeed, the accounting calls for payment of Andrew's full \$1,000 specific bequest without any reduction for payment of expenses of administration and thus does nothing to

reduce or impair Andrew's interest in the estate (*Estate of Corbin*, 2017 NYLF LEXIS 3076 *5 [Sur Ct NY Cty]). Conversely, any increase in value of the estate by marshalling additional assets, such as decedent's jewelry and art collection, would not inure to Andrew in his individual capacity. Since Andrew's interest is unaffected in this proceeding for good or ill, he lacks standing in his individual capacity.

In his capacity as voluntary administrator of the estate of George Delaney, Andrew Delaney's authority is limited by statute to \$50,000. The proposed distribution to George Delaney's estate consists of \$60,000 in cash and a 2004 Mercedes Benz C-class automobile, an amount that exceeds Andrew's statutory authority.¹ As a voluntary administrator, Andrew lacks the authority to bring an action or collect sums in excess of \$50,000 statutory limit on his powers (*Estate of Licari*, 2012 NYLJ LEXIS 3599 [Kings Cty 2012], a voluntary administrator lacked the authority to compel delivery of decedent's property in excess of the then-statutory limit of \$30,000; *Estate of Peng*, 2002 NYLJ LEXIS 2192, voluntary administrator lacked the authority to maintain a discovery proceeding for an asset valued in excess of the then-applicable \$20,000 statutory limit).

Andrew therefore lacks standing to object to the accounting in his capacity as voluntary administrator of George's estate and his objections are dismissed without prejudice to refile at such time as full letters of administration are issued to him, subject to the time constraints found in CPLR 205(a).

¹ Counsel to the accounting fiduciary reminded Andrew Delaney of the monetary limits to this authority, encouraging him to seek full letters of administration in Schedule J to the accounting efiled on August 8, 2022.

John Delaney, a residuary legatee, objects to the accounting in that the real estate taxes, insurance and other expenses associated with decedent's home are allocated to John and George's estate, the premises having been specifically devised to them under decedent's will. These expenses, John argues, should be assumed by the estate as expenses of administration. The Court disagrees.

As the specific legatee of the property, title vested in John and George on their mother's death, subject to the probate of his will and payment of expenses of administration (*Matter of Jewett*, 145 AD3d 1114, 1117 [3d Dept 2016]; SCPA 1902). Their personal responsibility for maintenance expenses and other carrying charges coincided with the vesting of their interests in the property (*Matter of Jewett* at 1117).² All expenses associated with the real property, such as insurance, real estate taxes and expenses of maintaining the property set forth in Schedule C, should be allocated to John and to George's estate. The amount payable by George's estate should be limited to the charges which accrued between the decedent's date of death (November 16, 2016) and George's death on June 16, 2017, which extinguished his interest in the property under the terms of the decedent's will.

It is, therefore,

ORDERED and DECREED that

1. Andrew Delaney's objections brought in his individual capacity are dismissed by reason of his lack of standing in this proceeding;
2. Andrew Delaney's objections brought in his capacity as voluntary administrator of the estate of George Delaney are dismissed by reason of his lack of standing in this proceeding, which dismissal is without prejudice, subject to the timing requirements for re-filing under CPLR 205(a);


² John was living in the house at the time of decedent's death and has resided there without interruption since then.

3. John Delaney's objection/responses are denied; and
4. Counsel for the administrator cta is hereby ordered to amend the accounting to re-allocate the expenses attributable to the decedent's real property to John Delaney and the estate of George Delaney, to be divided between them as directed herein.

This constitutes the order of the Court. All papers, including this Order, are hereby entered and filed with the Clerk of the Surrogate's Court. Counsel is not relieved from the applicable provisions of CPLR Section 2220 relating to service and notice of entry.

DATED: October 14, 2022

ENTER:



SARA W. MCGINTY, Surrogate

Documents reviewed:

1. Petition for Judicial Settlement of Account by Burton Gulnick, Jr., with accounting schedules, filed August 8, 2022
2. Affirmation amending petition for judicial settlement of account by James G. Yastion, Esq. filed on August 9, 2022
3. Notice of Objections to Executor's (sic) Accounting by Andrew Delaney, in his individual capacity and as voluntary administrator of the Estate of George Delaney filed on August 22, 2022
4. Correspondence amending objections by Andrew Delaney filed on August 26, 2022.
5. Objections and Responses to the objections of Andrew Delaney by John Delaney, with Exhibits A and B, filed on September 27, 2022.