

Matter of Singer

2023 NY Slip Op 31830(U)

May 30, 2023

Surrogate's Court, New York County

Docket Number: File No. 2019-653/A/B/C

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of MICHAEL SINGER
As Administrator of the Estate of

File no. 2019-653/A/B/C

KIMBERLY RAE GREER,
aka KIMBERLY RAE SINGER,

Deceased,

For leave to compromise certain cause of action for
wrongful death of the decedent and to render and have
judicially settled an account the proceedings as such
Administrator.

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GINGOLD, S.

Michael Singer (hereinafter, "petitioner") seeks an order, pursuant to CPLR 3124 and 3126,
directing George Greer (hereinafter, "objectant") to comply with plaintiff's August 27, 2021
demands; or, alternatively, striking his objections to the account; and further, to assess costs.

The following papers numbered 1 through 12 were read:

	<u>Papers Numbered</u>
Notice of Motion – Affirmation - Exhibits	1-3
Affidavits of Service	4
Affirmation in Opposition – Exhibits	5-6
Affidavits of Service	7
Reply Affirmation	8
Affidavits of Service	9
Petition and Summary Account	10-11
Affidavits of Service	12

Objections to Petition to Settle Account 13

Affidavits of Service 14

On June 1, 2020 the Supreme Court, New York County issued an order approving of the settlement in the underlying wrongful death action commenced by petitioner. On August 19, 2020 petitioner filed his petition and summary account seeking that his letters of administration be modified to permit distribution; that the entire recovery be allocated to the action for decedent’s wrongful death, and further, that the net recovery for wrongful death, after the payment of fees, disbursements and expenses, be allocated to him “the only distributee of the Decedent who sustained a pecuniary loss.”

Objectant, father of the decedent, claims a pecuniary loss of the “significant beneficial services” he anticipated would have been provided as he aged. Objectant repeatedly states in his papers that he is self-supporting and is not seeking monetary payment for his financial support. On this basis, objectant is refusing to provide the personal financial information demanded by petitioner in his August 27, 2021, Demand for Discovery and Inspection (hereinafter, “document demands”) as it is not relevant to objectant’s claim which is based solely on the future services of legal advice, household services, guidance and counsel that objectant alleges decedent intended to provide to him.

The legal definition of family is both inclusive and exclusive.¹ Nonetheless, no definition can express any person’s actual feeling of being “family.” Once a child marries, her family expands

¹ **family** *n.* (14c) **1.** A group of persons connected by blood, by affinity, or by law, esp. within two or three generations. **2.** A group consisting of parents and their children. **3.** By extension, a group of people who live together and usu. have a shared commitment to a domestic relationship. See *relative*. — **familial**, *adj.*
- **blended family**. (1985) The combined families of persons with children from earlier marriages or relationships.
- **extended family**. (1942) **1.** The immediate family together with the collateral relatives who make up a clan; gens. **2.** The immediate family together with collateral relatives and close family friends.

beyond that of her parents to include her spouse and in-laws. EPTL 5-4.4 allows the court to consider the actual relationships and facts of a decedent's life when allocating wrongful death proceeds among her distributees who suffered pecuniary damages from the loss. The factors to consider are the relationship between the decedent and her distributees; the situation, circumstances and condition of life of her distributees; the voluntary services provided by the decedent to her distributees; and all other evidence showing the decedent's disposition to provide assistance to her distributees (*see Estate of Mairowitz*, 90 Misc2d 854 [Sur Ct, Bronx County 1977] [awarding spouse 75% of settlement proceeds and parents 12.5% each because parents, who were living on social security and modest part-time employment earnings, could reasonably expect that decedent son, who was not gainfully employed but lived with them, would provide significant assistance in financial contributions in addition to the household chores that he performed]).

Under the law, there is no basis for recovery in a wrongful death claim for loss of companionship, comfort and assistance (*see Bumpurs v NY City Housing Authority*, 139 AD2d 438 [1st Dept 1988]; *Liff v Schildrout*, 49 NY2d 622 [1980]). However, a child or grandchild's loss of the guidance, counseling, and nurturing that was being provided by a parent or grandparent at the time they died is recoverable as a pecuniary amount (*see Gonzalez v NY City Housing Authority*, 77 NY2d 663 [1991], *Ramos v La Montana Moving & Storage*, 247 AD2d 333 [1st Dept 1998]).

- **immediate family.** (18c) **1.** A person's parents, spouse, children, and siblings. **2.** A person's parents, spouse, children, and siblings, as well as those of the person's spouse. • Stepchildren and adopted children are usu. immediate family members. For some purposes, such as taxes, a person's immediate family may also include the spouses of children and siblings.

- **intact family.** (1936) A family in which both parents live together with their children.

Black's Law Dictionary (11th ed. 2019), family.

In the instant motion petitioner seeks to compel objectant to comply with his document demands. CPLR 3101[a][1] requires a party to fully disclosure “all matter material and necessary in the prosecution or defense of an action.” The purpose of disclosure is to assist in the preparation for trial by narrowing the issues and reducing delay, it is not the right to unfettered and uncontrolled disclosure (*see Mendives v Curcio*, 174 AD3d 96 [2d Dept 2019]).

Objectant repeatedly states in his papers that he is self-supporting and is not seeking monetary payment for his financial support. Instead, objectant seeks to monetize future services of legal advice, household services, guidance, and counsel that his daughter “intended” to provide to him in the future. As evidence of decedent’s intent, objectant produces three letters written by decedent and/or petitioner. Notably, all three letters are evidence of the support, both financial and emotional, that objectant supplied to decedent and petitioner. There is no indication in any of the letters that, prior to her untimely death, decedent provided any voluntary services to objectant or intended on so doing in the future. Objectant speculates that, given his relationship with the decedent when she was tragically killed, should he eventually have had a need, the decedent would have provided legal advice, household services, guidance and counsel.

Petitioner fails to illuminate any reason that objectant’s personal finances, identified in his document demands as Nos. 4 through 28, would be relevant to the value of hypothetical future services that may have been provided to him by decedent (*see Barbato v NYS Dept of Health*, 884 NYS2d 525 [4th Dept, 2009] [value of personal assistant care based on hourly cost and number of hours performed, not based on the assets of person requiring services]). Furthermore, pursuant to CPLR 3126, objectant would be prohibited from introducing at trial any claims for monetary payments for his financial support. Since objectant acknowledges that he would never need to rely upon decedent for monetary support, that decedent had not actually provided any services to him,

and further, that there was no expectation that decedent would repay him for any of the support he provided to her, the court agrees with objectant that petitioner's motion should be denied.

Petitioner has turned over all documents demanded by objectant. Therefore, the only outstanding discovery being requested is that of objectant, who would like a deposition of himself to explain the "the nature and scope of his pecuniary loss." For obvious reasons objectant does not need to depose himself and petitioner has not requested to depose objectant.

Accordingly, based on the foregoing, it is

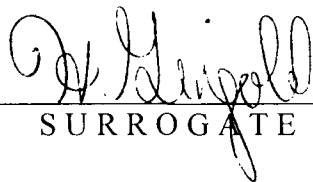
ORDERED that, petitioner's motion is denied in its entirety; and it is further

ORDERED that, petitioner shall file a note of issue on or before 30 days of the date of this order; and it is further

ORDERED that, a pretrial conference shall be held on July 26, 2023 at the New York County Surrogate's Court, located in Courtroom 509, 31 Chambers Street, New York, New York 10007.

The Clerk of the Court is directed to email a copy of this decision counsel of record listed below.

Dated: May 30, 2023



SURROGATE

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