

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Pearce

2026 NY Slip Op 00899 · No. 2024-04438 · Decided February 18, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order construing the decedent's will to include an adjacent lot as part of her "primary residence," which was bequeathed to the petitioner. The court held that the phrase presented a latent ambiguity and that extrinsic evidence showed the decedent treated the brownstone and lot as one property. The court also upheld an award of attorneys' fees payable from the residuary estate.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Linda Christopher, J.; Lillian Wan, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 18, 2026
DOCKET	2024-04438
DISPOSITION	affirmed
PROCEDURAL POSTURE	Objectant Michael Pearce appealed from an order of the Surrogate's Court, Kings County, that granted petitioner Holly Pearce summary judgment construing the decedent's will to devise a Brooklyn lot to Holly, awarded attorney's fees payable from the residuary estate, and denied Michael's cross-motion for summary judgment.
STANDARD OF REVIEW	De novo review of the summary-judgment determination and review for improvident exercise of discretion regarding the award of attorney's fees.
PRECEDENTIAL VALUE	Published New York intermediate appellate opinion
PARTIES	Michael Pearce v. Holly Pearce

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QUESTIONS PRESENTED

1. Whether the phrase "primary residence" in Article SECOND of the decedent's will included the contiguous lot at 95 Park Place.
2. Whether extrinsic evidence was admissible to determine the meaning of "primary residence" because the phrase presented a latent ambiguity in the circumstances of the devise.
3. Whether the award of attorney's fees to Holly, payable from the decedent's residuary estate, was proper.

HOLDINGS

1. The lot at 95 Park Place was included within the decedent's "primary residence" and was therefore bequeathed to Holly under Article SECOND.
2. Extrinsic evidence was properly considered because the phrase "primary residence" was latently ambiguous in light of the properties' physical relationship and separate legal descriptions.
3. The Surrogate's Court properly awarded Holly reasonable attorney's fees payable from the decedent's residuary estate.

KEY QUOTATIONS

"The cardinal rule of construction of a will is to carry out the intent of the testator" ([*2])

"the best indicator of the testator's intent is found in the clear and unambiguous language of the will itself and, thus, where no ambiguity exists, [e]xtrinsic evidence is inadmissible to vary the terms of a will" ([*2])

"If, on the other hand, a provision of the will is ambiguous, extrinsic evidence is properly considered in discerning the testator's true intent" ([*2])

FACTUAL BACKGROUND

Claire Pearce died in 2019 owning two contiguous Brooklyn parcels: 107 6th Avenue, where a two-family brownstone stood, and 95 Park Place, an adjacent lot containing a backyard, garden, walking path, and parking pad. Article SECOND of her will devised her "primary residence at the time of [her] death" to Holly Pearce, while Article THIRD divided the residuary estate equally between Holly and Michael. Holly treated the brownstone and lot as one property, but Michael argued that the lot was legally separate because it had a separate lot number for tax purposes.

PROCEDURAL HISTORY

The decedent's will was admitted to probate pursuant to a stipulation in February 2020, with the parties reserving their rights to litigate ownership of the lot at 95 Park Place. Holly commenced a will-construction proceeding in

November 2020. The Surrogate's Court granted Holly's summary-judgment motion and denied Michael's cross-motion in an order dated March 14, 2024. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Guide, 302 AD2d 387, 388
- Matter of Sochurek, 174 AD3d 908, 910
- Matter of Levine, 136 AD3d 920, 921
- Matter of Phillips, 101 AD3d 1706, 1708
- Matter of Cord, 58 NY2d 539, 544
- Matter of Peters, 230 AD3d 1540, 1542
- Lerner v Lerner, 120 AD2d 243, 247
- Teig v Suffolk Oral Surgery Assoc., 2 AD3d 836, 837
- Matter of Greatsinger, 67 NY2d 177, 182, 184-185