

NEW YORK SURROGATE'S COURT

In re Tombo

12 Mills Surr. 285 (1914) · Decided June 15, 1914

SUMMARY

The Surrogate’s Court considers whether a father could appoint a testamentary guardian for his minor child after his marriage to the child’s mother was annulled on the ground of her insanity. The court held that the mother remained a living parent despite the annulment and denied the application for letters of guardianship under the father’s will.

CASE DETAILS

COURT	New York Surrogate's Court
WRITING FOR THE COURT	Cohalan, S.
JURISDICTION	New York
DECIDED	June 15, 1914
DISPOSITION	other
PROCEDURAL POSTURE	A petitioner applied in the Surrogate's Court for an order directing issuance of letters of testamentary guardianship under the decedent's will.
PRECEDENTIAL VALUE	Published state trial-court opinion

TOPICS

- guardianships
- probate procedure
- annulment
- statutory interpretation
- family law procedure

PRACTICE AREAS

- probate
- guardianship
- family law

QUESTIONS PRESENTED

- Whether a father may appoint a testamentary guardian for his minor child to the exclusion of the child's living mother when the parents' marriage was annulled because of the mother's lunacy at the time of marriage.
- Whether the annulment judgment, which deemed the child legitimate and awarded custody to the father, made the father the sole surviving parent for purposes of testamentary guardianship.

HOLDINGS

1. A father may not appoint a testamentary guardian for a minor child to the exclusion of the child's living mother merely because the parents' marriage was annulled on the ground that the mother was insane at the time of marriage.
2. The annulment judgment did not make Rudolph the sole surviving parent for purposes of appointing a testamentary guardian.

KEY QUOTATIONS

"There being a living parent of Marion Adelaide Tombo, the application for testamentary guardianship is denied." (287)

FACTUAL BACKGROUND

Rudolph Tombo, Jr. and Mary Adelaide Cooper married in 1901, and their daughter Marion was born in 1903. The marriage was later annulled because Mary was a lunatic and incapable of consenting at the time of marriage, although the annulment judgment deemed Marion legitimate and awarded her custody to Rudolph. Rudolph's will appointed J. Boyce Smith, Jr. as guardian of Marion, but Mary was still living when the appointment was presented for issuance of letters.

PROCEDURAL HISTORY

Rudolph Tombo, Jr.'s will was admitted to probate in the Surrogate's Court. The will nominated J. Boyce Smith, Jr. as guardian of Tombo's daughter. After Tombo's marriage had been annulled because the mother was insane at the time of marriage, the nominated guardian sought letters of guardianship; the Surrogate's Court denied the application.

DISPOSITION

other

CASES CITED

- Matter of Waring, 46 Misc. Rep. 222

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