

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH DEPARTMENT

In re Costantino

67 A.D.3d 1412 (N.Y. App. Div. 4th Dep't 2009) · Decided November 13, 2009

SUMMARY

The court affirmed an order approving the final account of the Niagara County Public Administrator and awarding attorney’s fees and disbursements to the petitioner’s attorney. Although the Surrogate’s Court improperly applied judicial estoppel, the court held that the evidence rebutted the presumption that the joint bank accounts created survivorship rights and established that they were convenience accounts. The court also upheld the setoff for expenditures benefiting the objectant and the award of compensation to counsel whose work benefited the estate.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Hurlbutt, J.P.; Centra, J.; Fahey, J.; Carni, J.; Pine, J.
JURISDICTION	New York
DECIDED	November 13, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Niagara County Surrogate's Court approving the final account of the Niagara County Public Administrator, as modified to allow attorney's fees and disbursements to petitioner's attorney.
STANDARD OF REVIEW	The award of compensation to petitioner's attorney was reviewed for abuse of discretion. The determination that the accounts were convenience accounts was reviewed under the applicable evidentiary standard governing rebuttal of the presumption under Banking Law § 675.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Objectant v. David S. Broderick, Niagara County Public Administrator, Petitioner

TOPICS

probate

estate administration

estate litigation

appellate procedure

standard of review

PRACTICE AREAS

probate

estate administration

estate litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the Surrogate properly applied judicial estoppel based on the objectant's failure to list the joint accounts as assets in an unrelated divorce proceeding.
2. Whether the evidence rebutted the presumption under Banking Law § 675 and established that the joint accounts were opened as convenience accounts rather than with rights of survivorship.
3. Whether the Surrogate properly awarded compensation to petitioner's attorney as an estate expense.
4. Whether the Surrogate imposed sanctions for the objectant's conduct in the unrelated matrimonial proceeding.

HOLDINGS

1. The Surrogate erred in applying judicial estoppel because the objectant's silence in the unrelated matrimonial proceeding did not establish that she had taken a contrary position, and the settlement of that proceeding did not constitute the prior success necessary for judicial estoppel.
2. The Surrogate properly determined that the accounts were convenience accounts because petitioner rebutted the presumption under Banking Law § 675 by establishing that the accounts had been opened in that form for convenience only.
3. The Surrogate did not abuse her discretion in awarding compensation to petitioner's attorney for services that ultimately benefited the estate.
4. The Surrogate did not impose sanctions for the objectant's purported misconduct in the unrelated matrimonial proceeding.

KEY QUOTATIONS

“Nevertheless, we conclude that the Surrogate properly determined that the accounts were convenience accounts.” (1413)

“the Surrogate did not abuse her discretion in awarding compensation to petitioner’s attorney for services he performed that ultimately benefitted the estate” (1414)

FACTUAL BACKGROUND

Anne M. Costantino and one of her daughters opened three joint bank accounts with rights of survivorship. After Costantino died, the Niagara County Public Administrator determined that the accounts were convenience accounts and that \$5,499.68 withdrawn by the daughter belonged to the estate. Following a hearing, the Surrogate found that the withdrawals benefited the daughter personally, ordered a setoff against her share of the estate, and awarded attorney's fees to another daughter whose attorney's work increased the estate.

PROCEDURAL HISTORY

The Surrogate's Court approved the fiduciary's final account, determined that three joint bank accounts were convenience accounts rather than joint-tenancy accounts with rights of survivorship, found that the objectant's withdrawals were for her personal benefit, imposed a setoff against her estate share, and awarded attorney's fees and disbursements as an estate expense. The Appellate Division had previously modified an order concerning summary judgment to require a hearing on whether a joint tenancy existed and, if not, whether the expenditures were for the estate. After the hearing, the objectant appealed, and the Appellate Division unanimously affirmed despite concluding that the Surrogate had incorrectly applied judicial estoppel.

DISPOSITION

affirmed

CASES CITED

- Matter of Costantino, 31 A.D.3d 1097, 1099 (2006)
- Mikkelson v Kessler, 50 A.D.3d 1443, 1444 (2008)
- Manhattan Ave. Dev. Corp. v Meit, 224 A.D.2d 191, 192 (1996), leave to appeal denied, 88 N.Y.2d 803 (1996)
- Bates v Long Is. R. Co., 997 F.2d 1028, 1032 (2d Cir. 1993), cert. denied, 510 U.S. 992 (1993)
- State Farm Mut. Auto. Ins. Co. v Chandler, 35 A.D.3d 588 (2006)
- Matter of Stalter, 270 A.D.2d 594, 596 (2000), leave to appeal denied, 95 N.Y.2d 760 (2000)
- Matter of Friedman, 104 A.D.2d 366, 367 (1984), aff'd, 64 N.Y.2d 743 (1984)
- Matter of Camarda, 63 A.D.2d 837, 838 (1978)
- Matter of Cohen, 52 A.D.3d 1080, 1081 (2008)
- Matter of Bellinger, 55 A.D.2d 448, 451-452 (1977)

OPINION

PER CURIAM.

Appeal from an order of the Surrogate's Court, Niagara County (Sara S. Sperrazza, S.), entered February 28, 2007. The order approved the final account of respondent David S. Broderick, Niagara County Public Administrator, as modified by the allowance of attorney's fees and disbursements to petitioner's attorney. It is hereby ordered that the order so appealed from is unanimously affirmed without costs.

Memorandum: Anne M. Costantino (decedent) and objectant, one of her daughters, opened three joint bank accounts with right of survivorship. After decedent died, respondent, as Niagara County Public Administrator and the fiduciary of decedent's estate, determined that the accounts were convenience accounts and that the sum of \$5,499.68 removed by objectant from the joint accounts rightfully belonged to the estate.

Objectant previously appealed from an order granting in part the motion of petitioner, who was also decedent's daughter, seeking summary judgment dismissing the objections filed by objectant to the petition for judicial settlement of the account of proceedings.

We modified the order "by providing that the issues to be determined at the hearing with respect to objection No. 4[, concerning the expenditures presently at issue,] are whether a joint tenancy with right of survivorship was created and, if it is determined that no such tenancy was created, whether the expenditures in question were on behalf of decedent's estate" (Matter of Costantino, 31 AD3d 1097, 1099 [2006]). ■ Following a hearing, Surrogate's Court determined that the accounts were indeed convenience accounts, that the expenditures made by objectant were for her personal benefit and that a setoff against objectant's share of the estate was appropriate.

Because the work of petitioner's attorney had increased the size of the estate to the benefit of all beneficiaries, the Surrogate also awarded attorney's fees and disbursements to petitioner's attorney as an estate expense.

We agree with objectant that the Surrogate erred in applying the doctrine of judicial estoppel in determining that the accounts were convenience accounts. Although objectant had not listed the joint accounts as assets during unrelated divorce proceedings, her "silence... is not sufficient to establish taking a position in the matrimonial action that was contrary to her current contention" (Mikkelson v Kessler, 50 AD3d 1443, 1444 [2008]).

Furthermore, objectant testified that the matrimonial proceeding ended in a settlement and, generally, "a settlement does not constitute a judicial endorsement of either party's claims or theories and thus does not provide the prior success necessary for judicial estoppel" (Manhattan Ave. Dev. Corp. v Meit, 224 AD2d 191, 192 [1996], lv denied 88 NY2d 803 [1996] [internal quotation marks omitted]; see Bates v Long Is.

R. Co., 997 F2d 1028, 1032 [1993], cert denied 510 US 992 [1993]; cf. State Farm Mut. Auto. Ins. Co. v Chandler, 35 AD3d 588 [2006]). Nevertheless, we conclude that the Surrogate properly determined that the accounts were convenience accounts. Petitioner rebutted the presumption of Banking Law § 675 by establishing " 'that the joint accounts] had been opened in that form as a matter of convenience only' " (Matter of Stalter, 270 AD2d 594, 596 [2000], lv denied 95 NY2d 760 [2000]; see Matter of Friedman, 104 AD2d 366, 367 [1984], affd 64 NY2d 743 [1984]; Matter of Camarda, 63 AD2d 837, 838 [1978]).

Contrary to the final contentions of objectant, the Surrogate did not impose any sanctions for her purported misconduct in the unrelated matrimonial proceeding (see CPLR 3126), nor did the Surrogate abuse her discretion in awarding compensation to petitioner's attorney for services he performed that ultimately benefitted the estate (see SCPA 2110 [1]; Matter of Cohen, 52 AD3d 1080, 1081 [2008]; Matter of Bellinger, 55 AD2d 448, 451-452 [1977]).

Present—Hurlbutt, J.P., Centra, Fahey, Carni and Pine, JJ.

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