

Summer Happenings

By Ilene Sherwyn Cooper

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As the summer days come to an end, and Fall fast approaches, the Appellate and Surrogate's Courts have been busy at work issuing the following decisions of interest impacting the field of trusts and estates.

Order Granting Summary Judgment Construing Decedent's Will Affirmed

In *In re Fakiris*, the Appellate Division, Second Department, affirmed a decree of the Surrogate's Court, Queens County, which, *inter alia*, granted that portion of the motion by the co-executor of the decedent's estate requesting that the court construe the decedent's will to determine that she was the sole beneficiary of his residuary estate, and thereupon, for summary judgment dismissing the amended objections to the final account of the executors.

The decedent died in 2013 survived by his spouse, who was a nominated co-executor of his estate, and his daughter, among others.

Following the admission of the decedent's will to probate, his co-executors petitioned to judicially settle their account, and objections were filed by the decedent's daughter, who took issue with the designation of the decedent's spouse

as the sole residuary beneficiary of the estate.

The decedent's spouse, as co-executor, moved for a construction of the will resulting in the entirety of the residuary estate passing

to her, and upon such determination, that the court granted summary judgment dismissing the objections to the accounting for lack of standing.

The objectant cross-moved for, *inter alia*, construction of the will resulting in her being the sole residuary beneficiary of the estate based on the doctrine of judicial estoppel.

Specifically, the objectant argued that the probate petition, which the co-executors had verified and previously submitted to the court, described the objectant's interest in the estate as residuary beneficiary.

The Surrogate's Court granted the spouse's motion and denied the cross-motion, determining that the doctrine of judicial estoppel was inapplicable and that a construction of the decedent's

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Photo: Rick Kopstein

will resulted in the entirety of the residuary estate passing to the decedent's spouse.

The court, thereafter, issued a decree dismissing the amended objections to the final account, and the objectant appealed.

The court noted that pursuant to the doctrine of judicial estoppel, a "party who assumes a certain position in a prior legal proceeding and secures a favorable judgment therein is precluded from assuming a contrary position in another action simply because his or her interests have changed."

Within this context, the court rejected the objectant's argument, finding that when the Surrogate's Court admitted the decedent's will to probate, there had been no judicial determination endorsing the co-executors' position as to the parties' interests under the propounded instrument.

Additionally, the court held that the Surrogate's Court had properly granted the motion of the decedent's spouse as to the construction of the will. In particular, the court noted that the evidence submitted in support of the motion established, *prima facie*, the decedent's intent that his spouse be the sole residuary beneficiary of his estate, and that his daughter be the alternate in the event that his spouse did not survive him.

The court found that the objectant had failed to raise a triable issue of fact on the issue, or to establish that she was the intended sole residuary beneficiary. *Matter of Fakiris*, 2025 N.Y. App. Div. LEXIS 4087 (2d Dept 2025)

Order Granting Summary Judgment Admitting Will to Probate Reversed

Before the Appellate Division, Fourth Department, in *In re Rodriguez*, was an appeal from a decree of the Surrogate's Court, Monroe County, which, *inter alia*, granted the petitioner's

motion for summary judgment dismissing the objections to probate.

Upon review of the record, the court reversed the decree finding that the proof submitted by the petitioner in support of her motion raised triable issues of fact with respect to the decedent's testamentary capacity, his testamentary intent, and whether the will was the product of fraud and undue influence, without regard to the sufficiency of the opposing papers.

More specifically, the court held that the evidence proffered by the petitioner, including sworn testimony and medical records, precluded a finding as a matter of law that the decedent possessed the requisite intent and capacity to execute the propounded instrument.

To this extent, the court found that the surrogate erred in resolving inconsistencies in the record with respect to these issues by crediting the testimony of the attorneys who prepared and supervised the execution of the will.

Additionally, the court determined that petitioner failed to satisfy her burden of establishing the absence of any material fact on the issues of fraud and undue influence, observing that petitioner could not satisfy her burden in moving for summary judgment by merely pointing to gaps in objectants' potential proof at trial.

Indeed, the court concluded that even if petitioner had satisfied her initial burden on the motion, the objectants' submissions in opposition to the motion raised triable issues of fact precluding summary judgment. *In re Rodriguez*, 2025 N.Y. App. Div. LEXIS 3511 (4th Dept 2025).

Accounting Objections Dismissed

Before the Surrogate's Court, New York County, in *In re Estate of Rockefeller*, was a contested second intermediate accounting by JP Morgan

Chase Bank, N.A., as trustee of the inter vivos trust created by John D. Rockefeller for the benefit of his granddaughter.

The terms of the subject trust directed, *inter alia*, that income be accumulated for the benefit of the granddaughter until she attained the age of twenty-one, at which time, it was to be paid to her for life, together with so much of the principal of the trust as the trustee in the exercise of its discretion determined. At its inception, the trust principal was valued at \$100,000, and consisted principally of investments in oil stocks.

The intermediate accounting, which covered the period March 9, 1962 to June 30, 2012, reflected principal growth of approximately \$2 million, income distributions to the granddaughter of over \$1.6 million, and payment of administration expenses and taxes of about \$1 million.

The granddaughter filed objections to the accounting alleging that the trustee failed to keep adequate records of its stewardship, breached its duty of investment prudence, and breached its duty of loyalty by engaging in self-dealing.

At the trial of the matter, the court found that the trustee had established the accuracy of its account by submitting its account and supporting affidavit, the trust file, which included the trustee's investment diary and transaction records from 1962 to 1998, which documented the transactions that occurred during that period and which the trustee used to prepare that portion of its accounting. It was then incumbent upon the objectant to demonstrate that the account was inaccurate and incomplete.

With respect to the record-keeping of the trustee, the court noted that the objectant's claims were two-fold: first, that the trustee did not generate or maintain accurate, contemporaneous records

explaining the sale of the oil stocks, and the subsequent purchase of companies that represented a broader pool of industries; and second, that the records produced by the trustee did not establish the accuracy of the account.

As to the first claim, the court opined that a trustee has a duty to keep records of receipts, payments and other transactions, and that if it failed to do so, all presumptions would be resolved against it.

Considered in this context, the court held that the trustee's record-keeping was not deficient by industry standards, and that the detailed documentation the objectant claimed was lacking was not required to be generated as part of the trust administration process.

Further, although the objectant claimed, and the court noted, certain inaccuracies in the trustee's records, the court concluded that the irregularities, of which there were very few over a period of many years, were minor and inconsequential, particularly in view of the fact that the trust file was maintained with documents prepared manually prior to computerization of the trustee's records. Accordingly, the court dismissed the objections related to the records maintained by the trustee.

Additionally, the court found that the objectant had failed to substantiate her claims as to the inaccuracy of the trustee's account, and the objections on this basis were also dismissed.

Turning to the objections addressed to the investment of trust assets, the objectant alleged that the sale of the oil stocks and investment of the proceeds in various companies was unjustifiable on the grounds, *inter alia*, that the oil stocks were performing well and were forecast to continue to do so, the companies were riskier

investments than the oil stocks, the sale and reinvestment resulted in an immediate decrease in income and principal, and the sales resulted in the trust incurring unnecessary capital gains tax.

Further, the objectant claimed that the sale of the oil stocks contravened the terms of the trust instrument, which allowed the trustee to retain the oil stocks and/or to distribute them in kind.

In addressing these objections, the court found that under all three of the standards governing investment practices during the 50 year accounting period, the test for assessing the trustee's conduct was prudence not performance.

The court further found that prior to the Prudent Investor Act, diversification was not mandated, but encouraged. Considering the record within this framework, the court noted that the trustee had begun to diversify the trust's holdings in 1967, and continued thereafter to do so over a period of many years, based on the trustee's assessment that diversification would mitigate the risk of loss inherent in a portfolio consisting almost entirely of two stocks in the same industry.

Although objectant's expert testified that diversification was not required, the court found the

testimony of the trustee's witnesses convincingly countered that of the objectant's expert.

In view of the testimony and documentary evidence on this issue, the court concluded that the objectant had failed to meet her burden of establishing that the trustee had invested imprudently, and therefore, dismissed the objections regarding this issue.

Finally, the court found that the objectant's allegations of self-dealing were unsupported by the evidence.

The court found nothing in the record that supported the objectant's assertion that the trustee sold the oil stocks and invested in the companies for its own commercial purposes. Rather, the court held that the record and credible testimony established that the trustee simply acted to diversify the trust assets to protect the beneficiaries.

Accordingly, the objections on the issue of self-dealing were dismissed, and the trustee was directed to settle its decree. *In re Estate of Rockefeller*, 2025 NYLJ LEXIS 2241 (Sur. Ct. New York County 2025).

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