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TRUSTS AND ESTATES

Vacating Surrogate's Court Decrees

By Robert M. Harper

In *Matter of Blaukopf*, the Surrogate's Court, Nassau County, recently took the rare step of vacating a probate decree. The court premised its decision on the fact that it was not "satisfied as to the genuineness of" the disputed will. This article discusses the standard for vacating Surrogate's Court decrees and the court's decision in *Blaukopf*.

Absent guidance in the Surrogate's Court Procedure Act ("SCPA"), Rule 5015 of the Civil Practice Law and Rules ("CPLR") governs the vacatur of Surrogate's Court decrees.¹ Several grounds for vacating such decrees are enumerated in Rule 5015. They are excusable default; newly discovered evidence; "[f]raud, misrepresentation or other misconduct by an adverse party;" lack of jurisdiction; and "[r]eversal, modification or vacatur of a prior decree . . . upon which it is based."²

Those grounds are not, however, exclusive.³ Surrogate's Courts have discretion to vacate decrees for good cause and typically do so when the interests of justice necessitate such relief.⁴ Additionally, since the inquiry is fact-specific, "[t]here is . . . no ready template for [vacating Surrogate's Court decrees in the interests of justice]."⁵

Blaukopf is illustrative. There, the decedent died in June 2007, survived by six distributees.⁶ On September 21, 2007, her live-in caregiver, Daria Gravat ("Gravat"), petitioned the Surrogate's Court to have the decedent's 2006 will admitted to probate. The petition stated that the decedent had no distributees. It also listed Gravat as the "decedent's live-in companion[,] the beneficiary of [her] entire estate, [and] the designated executor[,]" and stated that Gravat had a confidential relationship with the decedent.

On September 25, 2007, the court issued preliminary letters testamentary to Gravat and directed that she submit a family tree. Shortly thereafter, Gravat attested to the fact that she was "not aware of any disinterested person capable of giving a Family Tree Affidavit. . . ."



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Five months later, in February 2008, the attorney for the decedent's family members ("objectants") wrote to the court, advising it of the decedent's 2001 will which named the objectants as the beneficiaries and executors of her estate. The attorney also advised the court of the objectants' intention to prove that the 2006 will was the product of fraud, undue influence, insufficient testamentary capacity, and improper execution.

In April 2008, Gravat filed an amended petition, which did not reflect her status as an interested person under the will. Instead, it listed three of the decedent's surviving family members as interested parties and stated that none of the beneficiaries under the will had a confidential relationship with the decedent.

In June 2008, the objectants' counsel filed family tree affidavits evidencing that the decedent was survived by six distributees. Although Gravat subsequently amended the petition a second time and "acknowledged the existence of the six alleged distributees[.]" her attorney did not furnish the objectants' counsel with a copy of the second amended petition or otherwise apprise him of its filing.

Gravat's attorney did contact the objectants' counsel in an effort to ascertain whether the objectants would file objections to probate, but did not succeed in that endeavor and instead served and filed a decree admitting the 2006 will to probate with notice of settlement. No objections having been filed, the Surrogate's Court admitted the will to probate by decree dated October 31, 2008, and the objectants quickly moved to vacate the court's decree. Although the objectants' counsel argued that his clients had previously advised Gravat's attorney of their intent to object and pursue SCPA section 1404 examinations, Gravat's counsel asserted that the objectants did not meet the standard for vacatur.

Noting that the objectants' counsel did not satisfy the standard for vacatur set forth in CPLR 5015, the Surrogate's Court, nevertheless, granted the objectants' motion to vacate

the decree. The court based its decision on several factors. First, there were discrepancies between Gravat's statement in the original petition that she did not know of any distributees and the family tree affidavits submitted by the objectants. Second, there were discrepancies between the original petition and the amended petitions. For example, while the original petition described Gravat as the decedent's live-in companion, the amended petitions did not. Similarly, although the original petition stated that Gravat had a confidential relationship with the decedent, the amended petitions did not reflect Gravat's confidential relationship with the decedent or status as her caregiver. Third, the 2006 and 2001 wills differed substantially and did not provide any explanation as to the decedent's intention to disinherit her family. Fourth, the 2006 will provided that, if Gravat did not survive the decedent, the decedent's estate would be distributed to Gravat's sister, not the objectants.

Based upon those factors and the inference of undue influence when a confidential relationship exists between a beneficiary under a will and a testator, the court vacated the probate decree. The court reasoned that its "paramount concern [was] to admit only valid wills to probate" and expressed its doubt as to the genuineness of the will, given Gravat's "substantive omissions and misstatements. . . ."

In sum, one must look beyond the standard set forth in CPLR 5015 in order to determine whether the vacatur of a Surrogate's Court decree is warranted. Each practitioner should consider whether vacatur is warranted for good cause shown.

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¹ S.C.P.A. § 102.

² C.P.L.R. § 5015.

³ *Estate of Culberson*, 11 A.D.3d 859, 861 (3d Dep't 2004).

⁴ *Estate of Masline*, 52 A.D.2d 739 (4th Dep't 1976); *Culberson*, 11 A.D.3d at 862.

⁵ *Estate of Ziegler*, 161 Misc.2d 203, 207 (Sur. Ct., New York County 1994).

⁶ *Matter of Blaukopf*, 2009 N.Y. Slip. Op. 50555(U) (Sur. Ct., Nassau County 2009).