

Hearing for Summary Judgment Motion

Transcript

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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IN THE MATTER OF:

File No.:
2016-4419/A

ESTATE OF RUTHIE MAE FOWLER
a/k/a RUTHIE FOWLER,

Deceased.

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DATE: February 15, 2018

HELD: 88-11 Sutphin Boulevard
Jamaica, N.Y. 11435
Purpose of Proceeding: Hearing

BEFORE: HON. PETER J. KELLY, SURROGATE

APPEARANCES: CHERYL L. ERATO, ESQ.
-Appearing for Petitioner/Movant

ALSO PRESENT: Elizabeth Fowler - Objectant/Beneficiary
Jonathan Fowler - Beneficiary

1 COURT OFFICER: The Surrogate's Court in and for
2 the County of Queens is now in session. The Honorable
3 Peter J. Kelly presiding.

4 THE COURT: Good morning.

5 COURT OFFICER: When you hear your case called,
6 please step up to the microphones, Petitioners and Movants
7 to the left, Respondents and Objectants to the right.
8 Please speak loudly and clearly.

9 Attorneys, give just your name and who you
10 represent. We do not need your address. Pro Se's, those
11 parties who do not have an attorney, please give us your
12 full name and full address.

13 This is the call of the calendar for Thursday,
14 February 15, 2018. Numbers 11 and 12, Ruthie Mae Fowler.

15 MS. ERATO: Good morning Your Honor --

16 THE COURT: Good morning.

17 MS. ERATO: -- Cheryl L Erato, Salem, Shor &
18 Saperstein, attorney for Petitioner/Movant.

19 MS. FOWLER: Good morning, Elizabeth Fowler,
20 115-50 166th Street, Jamaica.

21 THE COURT: Okay.

22 MS. ERATO: Your Honor, I received word from
23 Jonathan Fowler that he was making an appearance today.

24 THE COURT: Alright. I'll mark both of these
25 second call.

1 COURT OFFICER: And a reply has been filed on
2 number 11.

3 THE COURT: Okay, very good.

4 MS. ERATO: Thank you, Your Honor.

5 (Second Call)

6 COURT OFFICER: Second call of the calendar,
7 numbers 11 and 12, Ruthie Fowler.

8 MS. ERATO: Good morning Your Honor, Cheryl L
9 Erato, Salem, Shor & Saperstein, attorney for
10 Petitioner/Movant.

11 THE COURT: Okay.

12 MS. FOWLER: Good morning, Elizabeth Fowler,
13 115-50 166th Street, Jamaica.

14 MR. FOWLER: Jonathan Fowler, 554 Rosings Drive,
15 Summerville, South Carolina.

16 THE COURT: Okay, are we ready on all of this?

17 MS. ERATO: Yes, Your Honor.

18 THE COURT: Okay, Ms. Lakides speak with them
19 please.

20 (Third Call)

21 COURT OFFICER: Numbers 11 and 12, Ruthie
22 Fowler.

23 THE COURT: Counsel, your appearances for the
24 record please.

25 MS. ERATO: Cheryl Erato, Salem, Shor &

1 Saperstein, attorney for Movant/Petitioner.

2 MS. FOWLER: Elizabeth --

3 THE COURT: Ma'am, just raise your right hand --
4 both of you. Do you solemnly swear or affirm the
5 testimony you're about to give will be the truth and
6 nothing but the truth?

7 MS. FOWLER: I do.

8 MR. FOWLER: I do.

9 THE COURT: Okay, your name and address and then
10 sir your name and address.

11 MS. FOWLER: Elizabeth Fowler, 115-50 166th
12 Street, Jamaica.

13 MR. FOWLER: Jonathan Fowler, 554 Rosen Drive,
14 Summerville, South Carolina.

15 THE COURT: Okay. You want to be heard briefly
16 in support of the motion?

17 MS. ERATO: Yes, Your Honor. Just for
18 background I represent Emma Frazier. She is the sister
19 and the Nominated Executor under the Last Will and
20 Testament. The Decedent had five children, one who is
21 here today is the Objectant. The other is here today, he
22 is the main beneficiary under the will. The other two
23 children did not make any formal appearance in writing,
24 they did not object to the will. The last child has
25 unknown whereabouts. A Guardian Ad Litem was appointed to

1 represent his interests. We settled with the Guardian Ad
2 Litem. The Court approved the settlement. We made the
3 motion here today because the objections are baseless.
4 They were submitted pre-discovery. They are based on the
5 Objectant's opinions and her beliefs. They were pro se
6 objections, so they're a bit difficult to decipher. So, I
7 would just ask the Court today if the Objectant can
8 clarify what grounds she is objecting to the will under.
9 In the motion, I discussed --

10 THE COURT: Well, to the extent it can be
11 construed that it's as to its execution, I believe you
12 submitted what in support to show a prima facie case that
13 it's been duly executed?

14 MS. ERATO: There were three attesting witnesses
15 to the Last Will and Testament. We submitted all three
16 1406 affidavits. We also deposed two of the three
17 witnesses who all explained that the -- they witnessed the
18 Decedent sign the will, she signed properly in their
19 presence, requested them to be witnesses. They said she
20 had the capacity, she knew what she was doing. Mr.
21 Fowler, who benefits from the will, was not in the room.
22 He had nothing to do with the preparation of the will, he
23 had nothing to do with the signing of the will.

24 THE COURT: Okay. What evidence do you have
25 that the will wasn't executed properly?

1 MS. FOWLER: I don't have any evidence to that,
2 that's not my claim.

3 THE COURT: Alright. What is your claim?

4 MS. FOWLER: That the will was produced by --
5 gotten by fraud, forgery and undue influence.

6 THE COURT: Undue influence. Okay. Do you have
7 an expert opinion with respect to the forgery?

8 MS. FOWLER: No, but I do have multiple
9 handwriting samples that I submitted to the Court already.

10 THE COURT: What -- how do you find undue
11 influence?

12 MS. FOWLER: That the document was switched from
13 a Decedent's true will to the forged version, destroying
14 her ability to choose what happens to her possessions.
15 Jonathan Fowler --

16 THE COURT: What -- did she -- she had a prior
17 instrument?

18 MS. FOWLER: No. Jonathan Fowler was in
19 possession of the unstapled will immediately after its
20 execution until the time it was provided to the attorney.

21 THE COURT: Okay. And you have proof of what?

22 MS. FOWLER: That -- well, in the -- in the
23 record I had submitted proof how he's been committing
24 fraudulent acts upon the Decedent.

25 MS. ERATO: Your Honor, she submitted tax

1 returns from the 1990s claiming that there was fraud in
2 the tax returns. Her claim based on forgery is that the
3 Decedent did, in fact --

4 THE COURT: Well, she doesn't have an expert
5 affidavit. So, it doesn't --

6 MS. ERATO: I don't think she means forgery of
7 the signature. She admitted that the Decedent did sign
8 the document. She believes that Mr. Fowler switched the
9 first page of the document and then handed it to the
10 attorney's office for probate. However, in the
11 depositions the person who drafted the will testified
12 exactly to the terms of the will without looking at the
13 will in the courthouse. It matched exactly what was
14 admitted to probate.

15 THE COURT: I thought this case was settled a
16 while ago.

17 MS. ERATO: Your Honor, we attempted to settle
18 the case. We offered the Objectant equal for all
19 distributees. However, she did not want my client to be
20 fiduciary. Then, we offered equal with the public
21 administrator to be appointed. She did not want that
22 because she didn't want the house being sold at auction.
23 She wanted to purchase the house. Then, we offered her --

24 THE COURT: Are you residing in the house?

25 MS. FOWLER: Yes.

1 THE COURT: Okay. That explains a lot.

2 MS. ERATO: Then, we offered her forty percent,
3 which doubles her intestate share. She turned that down
4 because she is principled and she's speaking on behalf of
5 her brothers who have not made an appearance.

6 MS. FOWLER: My evidence of fraud was not
7 documents from the 1990s. The tax --

8 THE COURT: What's your evidence of fraud?

9 MS. FOWLER: The fraud that he was committing
10 upon the Decedent was monies that he was taking from her
11 account as power of attorney just fraudulently. I
12 submitted statements --

13 THE COURT: How's that have to do with any
14 bearing as to whether or not the will was executed or the
15 will is proper?

16 MS. FOWLER: I never disputed that the will was
17 executed fraudulently. I was saying -- I mean, wait a
18 minute --

19 THE COURT: I said that the will is proper.

20 MS. FOWLER: Not -- through execution --

21 THE COURT: The fact that he -- assuming what
22 your argument is proof, he's removing money from his
23 mother's account, what does that have to do with the will?

24 MS. FOWLER: Okay, it's just circumstantial
25 evidence to prove that he was taking advantage of her with

1 his power of attorney document.

2 THE COURT: But there's nothing you're showing
3 -- again it goes back to something that you seem to say is
4 undue influence. What's the undue influence?

5 MS. FOWLER: When he switched the document,
6 destroying her ability to choose --

7 THE COURT: But you have no proof of that. What
8 -- you have no proof that there was another document in
9 existence, do you?

10 MS. FOWLER: Okay. Alright. Alright then I
11 have no further -- then withdraw that. I do want to talk
12 about the Petitioner's reply to my opposition to
13 preliminary -- I'm sorry, to my opposition to summary
14 judgment.

15 THE COURT: Yeah.

16 MS. FOWLER: Page thirty -- okay, paragraph
17 thirty-seven she talks about her grant of preliminary
18 letters. Now, I'm pro se Petitioner in the administration
19 proceeding. The name was on the petition and show cause
20 why the Petitioner should not receive preliminary letters,
21 but I wasn't served and I didn't waive process. Now, for
22 the settled order --

23 THE COURT: Who did you serve?

24 MS. ERATO: Your Honor, we made an application
25 for preliminary letters, she filed objections. We -- she

1 had counsel at that time. I served counsel, he appeared
2 along with his client. We actually had a hearing on that
3 date where you dismissed her objections and granted the
4 application. I served the notice of settlement personally
5 with the order granting preliminary letters on her
6 counsel. I actually discussed it on the telephone with
7 him upon receipt.

8 MS. FOWLER: For the settled order for
9 preliminary letter, she settled with Jonathan with the
10 Guardian. Neither of them --

11 THE COURT: How does that again -- how does any
12 of that affect the will?

13 MS. FOWLER: No, that's how -- to show that how
14 they've been dishonest in this proceeding.

15 MS. ERATO: Your Honor, this matter is becoming
16 frivolous.

17 THE COURT: Anything -- don't worry -- anything
18 else you want me to take specific notice of?

19 MS. FOWLER: Yes. I want -- I'm asking for
20 summary judgment to have the will denied probate and I've
21 already submitted all the evidence that I have to support
22 my claim that the will is invalid.

23 THE COURT: Okay. You want to be heard? Any
24 respect about anything?

25 MR. FOWLER: (Inaudible).

1 THE COURT: Okay, we're done. (Unintelligible).

2 MS. ERATO: Thank you, Your Honor.

3 (Whereupon the matter was concluded).

4 C E R T I F I C A T E

5 I, Diane Goodwyn, certify that the foregoing
6 transcript of the proceedings held in the Surrogates Court of
7 the State of New York, County of Queens, in the matter of
8 Estate of Ruthie Mae Fowler, a/k/a Ruthie Fowler, file number
9 2016-4419/A, was prepared using the required transcription
10 equipment and is a true and accurate record of the proceedings
11 to the best of my ability.

12

13 Signature Diane Goodwyn Transcription Plus, Inc.

14

200-10 100th Avenue

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Hollis, New York 11423

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Date: June 22, 2023

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