

# Hearing before the Order Appealed From

Transcript

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

-----x  
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 4, 2020

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

BEFORE: HON. PETER J. KELLY, SURROGATE

APPEARANCES: DAVID S. SHOR, ESQ.  
-Appearing for Petitioner/Movant

MASSIMO SANTOLI, ESQ.  
-Guardian Ad Litem

ALSO PRESENT: Elizabeth Fowler - Objectant/Beneficiary

1 COURT OFFICER: Good morning. This is the call  
2 of the calendar for Queens County Surrogate's Court, the  
3 Honorable Peter J. Kelly, Surrogate, presiding.

4 Tuesday, February 4, 2020. Number 1, Ruthie Mae  
5 Fowler. Good morning, your appearance please.

6 MR. SHOR: David Shor, Salem, Shor & Saperstein,  
7 for Executor, Ruthie Fowler -- for Emma Frazier.

8 MR. SANTOLI: Good morning, Massimo Santoli,  
9 Guardian Ad Litem for Robert Fowler.

10 COURT OFFICER: We have everybody?

11 MR. SHOR: There's a chance that my client, I'm  
12 not a hundred percent sure, but I don't think we need  
13 (inaudible) in order to do whatever we need to do.

14 COURT OFFICER: Okay, I'll mark it ready.

15 MR. SANTOLI: Okay.

16 COURT OFFICER: Thanks.

17 (Second Call)

18 COURT OFFICER: Second call, number 1, Ruthie  
19 Mae Fowler.

20 MR. SHOR: Good morning Your Honor, David Shor,  
21 Salem, Shor & Saperstein, for Emma Frazier, Executor.

22 MR. SANTOLI: Good morning Your Honor, Massimo  
23 Santoli, Guardian Ad Litem for Robert Fowler.

24 THE COURT: Alright, counsel is your client  
25 present today?

1 MR. SHOR: She is. I believe she just stepped  
2 out of the room for a moment. She stepped out for the  
3 restroom, but she is present.

4 THE COURT: Ms. Fowler here? Yeah, step up.  
5 Good morning, ma'am. I just need you by the microphone.  
6 Just raise your right hand, please. Do you solemnly swear  
7 or affirm the testimony you're about to give will be the  
8 truth and nothing but the truth?

9 MS. FOWLER: Yes.

10 THE COURT: And your name and address.

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

13 THE COURT: Is that the address of the subject  
14 premises?

15 MR. SHOR: I believe it is, yes.

16 THE COURT: Okay. So, just for the record  
17 there's been a probate decree that was entered here in  
18 December 2018. The real property, which is the major  
19 asset of the estate, has not been sold which means there's  
20 expenses that are increasing, the parties that are  
21 supposed to be getting distributions from the estate, have  
22 not received their distributions. The estate, and whoever  
23 takes under the will, owns the premises now. Do you have  
24 -- do you take anything under the will, ma'am?

25 MS. FOWLER: No.

1 THE COURT: Okay. But you're residing in the  
2 premises.

3 MS. FOWLER: Yes.

4 THE COURT: Okay. So, it's my understanding  
5 also that there's a landlord/tenant action that was  
6 brought seeking your eviction, correct?

7 MS. FOWLER: Yes.

8 THE COURT: Okay. And there's a warrant --  
9 there's a judgment of possession, a warrant of eviction  
10 and Judge Guthrie in a pro reason decision exercised their  
11 judicial discretion and extended the stay on the execution  
12 of a warrant 'til the 28<sup>th</sup>, correct?

13 MR. SHOR: Correct, Your Honor.

14 THE COURT: Correct?

15 MS. FOWLER: Yes.

16 THE COURT: Okay. So, you understand you have  
17 to be out by the 28<sup>th</sup>, correct?

18 MS. FOWLER: Yes, Your Honor. I would like to  
19 -- I intend to file a motion to renew my objections to  
20 probate.

21 THE COURT: Well, you -- you may or may not.  
22 It's late.

23 MS. FOWLER: Yes, I understand that. I'm not  
24 one to reargue, but I had some new information about the  
25 forgery.

1 THE COURT: You have to get out of that house.

2 MS. FOWLER: Yes, Your Honor.

3 THE COURT: You don't want to move, but you have  
4 to move. I'm directing the fiduciary list the premises  
5 for sale. I'm directing you to allow access to anybody  
6 who's coming in to look -- to review the house. Does your  
7 client have a key?

8 MR. SHOR: I don't believe so.

9 THE COURT: Okay. They need a key.

10 MS. FOWLER: Yes, Your Honor. In the interest  
11 of justice Your Honor, I ask that you do read my  
12 objections to probate because the will was admitted to  
13 probate, but it was forged. It's a forged will.

14 THE COURT: Ma'am, that case was tried two years  
15 ago. I'll read -- trust me I will read whatever you put  
16 in front of me.

17 MS. FOWLER: Okay.

18 THE COURT: But you have to understand the end  
19 of the day, you have to get out of that house and you have  
20 to be out of the house by the end of February and I don't  
21 want any further stays or anything else. This has been  
22 going on for two years. If you want me to consider  
23 something, please submit it and I will take a look at it.

24 MS. FOWLER: Okay, Your Honor. I did --

25 THE COURT: But the problem here is okay at a

1 certain point, I have a decree, I've had objections to the  
2 will filed. That was the time everybody could object to  
3 everything and they did and there were settlement  
4 proposals set forth and at the end of the day, people who  
5 settled, settled, the people who didn't, didn't and now  
6 the case is over.

7 MS. FOWLER: Okay, Your Honor --

8 THE COURT: You want to do is not to -- to  
9 object. You're looking to vacate the decree that was  
10 issued in 2018 and assert other legal arguments -- and  
11 assert other legal arguments.

12 MS. FOWLER: Well, no. There was some  
13 information about the forgery that wasn't available to me  
14 at the --

15 THE COURT: You have an expert?

16 MS. FOWLER: No.

17 THE COURT: Okay. Well, that's the only way you  
18 can prove --

19 MS. FOWLER: And --

20 THE COURT: Just -- just to let you know the  
21 only way you can prove forgery is through an expert.

22 MS. FOWLER: Yes. Also -- and also Your Honor,  
23 in the interest of justice I would ask for you to  
24 personally read my objections to probate because I don't  
25 believe you read them, Your Honor.

1 THE COURT: I did.

2 MS. FOWLER: You did?

3 THE COURT: I saw every -- if you filed them  
4 already -- have you filed them?

5 MS. FOWLER: Yeah, my objection to probate?  
6 Yes.

7 THE COURT: So, anything you filed in this  
8 estate, has been reviewed and looked at and passed upon  
9 and that's why we are where we are. In the interest of  
10 justice, I have people that have waited two and a half  
11 years to get a distribution here from this estate. I have  
12 other people that are paying expenses -- whose paying the  
13 property tax?

14 MR. FOWLER: I am, property taxes.

15 THE COURT: Well, then why are you paying -- you  
16 -- you deserve at a certain juncture here to stop paying  
17 expenses for something you don't own.

18 MS. FOWLER: Okay. Alright. Your Honor, I just  
19 -- just didn't believe that you actually read it. I  
20 believe you assigned it to somebody to read it, but I  
21 don't believe that you read those objections to probate  
22 and still admitted the will to probate. I just couldn't  
23 believe that.

24 THE COURT: Well, surprise.

25 MS. FOWLER: Because I talk about my --

1 THE COURT: If you think anything gets out of  
2 this court without me reading it, then surprise to you.  
3 I've seen -- I've seen it and discussed and reviewed, I've  
4 thought about it, redrafted the decision --

5 MS. FOWLER: The objections that I talked about  
6 on my website, EstateofRuthieFowler.com --

7 THE COURT: I don't know what -- ma'am --

8 MS. FOWLER: You read that?

9 THE COURT: -- I have no idea what's on your  
10 website.

11 MS. FOWLER: Okay.

12 THE COURT: And any -- if you think I'm worried  
13 about what's on websites --

14 MS. FOWLER: No, it's not -- it's not --

15 THE COURT: I -- I don't look at websites, I  
16 don't look -- I look at stuff that's submitted in front of  
17 me that is under oath that's satisfactory evidence.  
18 That's what I look at. I would no more than any other  
19 juror who serves in the court is told don't look on the  
20 internet, don't look here, don't look back. You make your  
21 decision based on everything under oath that comes into  
22 this court. So, if you've submitted a scrap of paper  
23 here, trust me it's been looked at and reviewed.

24 MS. FOWLER: Even if --

25 THE COURT: If you're on the internet asserting

1 whatever you want to do, God bless you. It's a free  
2 country, we have somebody in charge of the country that  
3 can't seem to keep his mind off of the internet. Okay?  
4 Anybody can do and say anything they want. I have to make  
5 my decision based on what's in front of me. Okay?

6 MS. FOWLER: But Your Honor even the witness  
7 depositions --

8 THE COURT: What about them?

9 MS. FOWLER: They talked about, you know, how  
10 the person who said she drafted the will -- I mean, it  
11 wasn't executed properly, she was talking about how they  
12 weren't even all in the same room when the will was signed  
13 --

14 THE COURT: If you thought I made a mistake  
15 ma'am, with all due respect I make thousands of decisions  
16 every day. If you thought I made a mistake, all you have  
17 to do is go to the Appellate Division --

18 MS. FOWLER: It's too late for that.

19 THE COURT: -- and have them pass on it.

20 MS. FOWLER: It's too late for that.

21 THE COURT: But that's, you know --

22 MS. FOWLER: But they're --

23 THE COURT: Nobody's perfect in this world.

24 MS. FOWLER: They're getting away with  
25 defrauding the court, Your Honor. They really are and I

1 really truly don't believe in my heart of hearts that you  
2 actually read the objection to probate. I think you, you  
3 know, you assigned it to someone else because if Your  
4 Honor had read that, this will would not be admitted to  
5 probate. There's so much --

6 THE COURT: In your opinion.

7 MS. FOWLER: -- evidence in there --

8 THE COURT: In your opinion. That's your  
9 opinion. Obviously, we have a different opinion on that.  
10 I -- there's not much I can tell you.

11 MS. FOWLER: Would you --

12 THE COURT: Again --

13 MS. FOWLER: Would you look at my objections to  
14 probate?

15 THE COURT: I looked at them once. If you want  
16 me to relook at them, I promise you I will relook at them.

17 MS. FOWLER: Okay, please.

18 THE COURT: And if I -- and if there's anything  
19 in there that I missed or I didn't see or maybe thinking  
20 about it, maybe I change my mind, then you'll get a  
21 decision within the next couple of days --

22 MS. FOWLER: Okay.

23 THE COURT: -- and I vacate the decree and do  
24 something.

25 MS. FOWLER: Please.

1 THE COURT: Okay? I'll do that.

2 MS. FOWLER: Please personally read my  
3 objections for probate.

4 THE COURT: But -- I did ma'am. Trust me I did,  
5 but I'll relook at it again.

6 MS. FOWLER: Okay.

7 THE COURT: And who knows, sometimes it's a  
8 fresh look, something will come up, but you have to  
9 understand from me okay, I've been doing this job for a  
10 long time. The last thing I want to do, and I say this  
11 truthfully, there's two bad parts of this job. One of  
12 them is having somebody thrown out of a house. Okay? I  
13 don't like doing it, but at the same time I took a job  
14 where it says if that has to happen, I have to be ready to  
15 do it and that's the stage we're in now. Okay? So, you  
16 have to understand this. This is nothing person, I'm not  
17 taking any great joy in where we're finding ourselves, but  
18 we're all where we are and at some point, I have to bring  
19 this to a conclusion. Alright, we're done.

20 MR. SHOR: Thank you, Your Honor.

21 MR. SANTOLI: Your Honor, just one quick thing.  
22 Should we establish a control date to come back after --

23 THE COURT: I don't want to continue. There's  
24 nothing to be controlled. You have letters, sell the  
25 house.

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MR. SANTOLI: Okay. Works for me.

THE COURT: Short of getting something from me that says that decree is no good anymore, sell the house.

MR. SANTOLI: Thank you, Your Honor.

(Whereupon, the matter was concluded).

C E R T I F I C A T E

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

Signature Diane Goodwyn Transcription Plus, Inc.  
200-10 100<sup>th</sup> Avenue  
Hollis, New York 11423  
Date: June 22, 2023