

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

10TH CIRCUIT-PROBATE DIVISION-BRENTWOOD

ESTATE OF ARTHUR W. PERHAM

318-2016-ET-01482

OBJECTION TO MOTION TO CLARIFY OR EXTEND DEADLINE FOR ELECTION

NOW COMES the Respondent, Wendy Lee, by and through her counsels, Keri J. Marshall, Esquire and Mark R. Ryder, Esquire, and states unto the Court as follows:

1. Arthur W. Perham died testate on October 22, 2016. At the time of his death he and Karen Horsman were married.
2. Wendy Lee (the decedent's long-term step-daughter by a prior marriage) filed a will that had been previously executed by the decedent on February 6, 2014. She enjoyed a close long-standing relationship with the decedent and was unaware of the subsequently filed will.
3. The will offered by Ms Horsman was executed on August 31, 2016. Karen Horseman was appointed Administrator of the Estate of Arthur Waldo Perham Estate by this Court on December 12, 2016.
4. The appointment was following the second of two hearings wherein facts and issues surrounding the Estate were addressed, specifically, i) that the real estate located at 116 Old Beach Road, Rye, NH was the primary asset of the estate, ii) retirement accounts are secondary, and iii) that the contestant is putting forth claims of incompetency of the descendent and undue influence on the part of Horsman in attempting to void the "2014 Will and the establishment of the "2016" Will and a concurrent, revocable trust also executed in 2016. Horsman has the "...opportunity to consider and choose between the Will being probated and (entitlements under her) statutory share." See Horsman Motion to Clarify... at ¶3
5. "The waiver or release of the will and homestead right provided for in RSA 560:10 shall be made in writing and shall be filed in the probate office within six months after the appointment of an executor or administrator, and not afterwards, unless by permission of the judge of probate for good cause shown. Where real estate is involved, the waiver and release shall be recorded in the registry of deeds of the county where the real estate is situated." RSA 560:14

6. Horsman relies on a quote from Jaques, Ap't v. Chandler, 73 N.H. 376,(1905)[incorrectly cited as 73 NH 260 by Horsman]; ““For good cause shown’ means that permission should be granted whenever it would be reasonable and just to do so, This means when justice requires it, an extension should be granted.” See Horsman Motion to Clarify... at ¶4). However, that quote is nowhere to be found in that case.

7. The New Hampshire Supreme Court does state;

One good cause intended by the statute is the discovery after the year of the existence of facts which would have induced the beneficiary to waive the will if he had known within the year that they existed. If upon the facts found it appears that if he had known all of the circumstances relating to the estate and the amount and character of the property devised to him he would have waived the will within the year, good cause is established, and his right to an extension follows as a matter of law.

Id. at 376, ¶ 4.

8. The Court further opined that, “...the charge of concealment for the purpose of inducing (Petitioner) not to waive the will is not found to be proved... Whatever resentment or ill feeling arose during the year, it is found (Petitioner) as a reasonable man ought to have anticipated would result from the course pursued by him.”*Id.* at 383.

9. Clearly here Horsman can claim no concealment, other than that of her own, certainly she is on notice of ill feelings amongst the heirs.

10. In *Jaques* the Court as herein, found that the Petitioner “...had full knowledge respecting (the value of) wife’s property...” *Id.* at 383.

11. Horsman, knows or is able to readily ascertain the value of the real property. Further, she is the only one with access to the Decedent’s accounts.

12. Therefore Horsman’s claim that, “The surviving spouse cannot reasonably be asked to choose between her statutory share and a Will that is not yet and may never be controlling.” Is not dispositive. Horsman knows all the facts, including that she takes nothing under the decedent’s “2014” Will.

13. The Court and Horsman are reminded that Wendy Lee’s claim of undue influence also affects Ms Horsman’s statutory share.

14. The *Jaques* Court reasoned that the purpose of “...engrafting on the statute a time limit for exercising the right of waiver was to make an omission to waive within the year prima facie evidence, merely, that the party had elected to take under the will, which could be rebutted by "good cause shown"--that is, by throwing the burden on him to prove that he had not elected.” *Id.* at 376, ¶ 5.

15. “The legislature furnished an answer (referencing a prior version of the statute with


15. no limit) by enacting, in substance, that it would be presumed that if a party did not file a waiver within the year (now six months), he elected not to waive the will, but to take under it; and this presumption should prevail unless he showed in a judicial proceeding that he did not so elect, which would constitute a good cause for giving him further time.” *Id.* at 376, ¶ 5.
16. Lastly, the Court stated, “[T]here is no reason why the other legatees should profit by his inability to ascertain during the year the necessary facts upon which to base an intelligent election, and we think it cannot be held that such was the legislative intention.” In this case Horsman has been able to ascertain the necessary facts upon which to base an intelligent election.. If Petitioner’s Motion were to be granted she would then have had well over a year to make that election. That is not what the legislature intended.
17. Further it would be inequitable to other beneficiaries who must make their own informed and intelligent decisions regarding this matter based on the election of Horsman.


WHEREFORE the Respondent prays this Honorable Court:

- A. Deny Petitioner’s Motion to Clarify or Extend Deadline for Election of Spousal Share;
- B. Find the 2016 Will and Trust invalid;
- C. Declare the 2014 Will as valid and reinstate its Probate;
- D. Grant such other relief it deems fair and just.

Dated: February 21, 2017

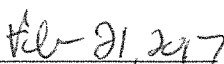
Respectfully submitted,
Wendy Lee,
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CERTIFICATION

I hereby certify that a copy of the foregoing has this day been forwarded to Ralph F. Holmes, Esquire.


Date


Mark R. Ryder, Esq