

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

HILLSBOROUGH COUNTY

9TH CIRCUIT – PROBATE DIVISION –NASHUA

In re: Estate of Kathleen Mullin
Case No. 316-2015-ET-00177

ORDER

This matter came before the court for a hearing on January 7, 2016 on a Motion for Declaratory Judgment Regarding this Court's Jurisdiction to Determine Title to the Assets Listed on the Inventory and for Other Relief filed by the estate administrator. Index #30. Appearing at the hearing were Pamela Newkirk, Esq., attorney for the administrator, and Ralph Holmes, Esq., attorney for the trustee of the Kathleen Mullin Trust. Neither the administrator, Patricia M. Jakle, nor the trustee, Laura Bushley, appeared at the hearing.

This matter concerns the estate of Kathleen Mullin, late of Hancock, New Hampshire. A Petition for Estate Administration was filed by Laura Bushley on January 29, 2015. The petition was granted after the filing of a corporate surety bond in the amount of \$376,000. Laura Bushley is a resident of Los Angeles, California. In May 2015, Laura Bushley filed a Resignation of Fiduciary that was later accepted by the court. A Petition for Successor Administrator was filed by Patricia Jakle, the sister of the decedent, Kathleen Mullin.

This is an intestate estate. The heirs at law listed on form NHJB 2151 are the three siblings of the decedent, Michael Mullin of Newport Beach, California, Patricia Jakle of Santa Monica, California, and J. Stanley Mullin, Jr. of Irvine, California.

The decedent was a resident of Hancock, New Hampshire since 2008 and owned real property there valued at \$235,000. She owned additional real property in Santa Monica, California. The inventory filed by the administrator states that the decedent had personal property valued at \$2,531,164 at the time of her death.

In 2012, while in California, Kathleen Mullin executed a trust that purported to transfer all of her real property and some of her personal property to her trust. Kathleen Mullin Trust, dated March 5, 2012.¹ (the Trust). During her lifetime time, Kathleen Mullin was the beneficiary and could receive or direct distributions from the Trust. (Trust, p. 2) After Kathleen Mullin's death, the Trust provided for distribution to several charitable organizations and certain amounts to individuals. Approximately 88 percent of the trust estate was to be distributed to charitable organizations. There was no will executed by the decedent transferring her estate assets to the trust.

The parties in this matter disagree about whether the decedent's New Hampshire real estate and certain personal property are assets of the estate or the *inter vivos* trust of Kathleen Mullin. The trustee has filed an action in the California Superior Court for the County of Los Angeles titled a Petition for Order Transferring Title to Real and Personal Property to Living Trust. (See Index #29, Exhibit A; Index #30, Tab A; Index #35.) Specifically, the trustee is seeking an order from the California court that the trust holds title to the New Hampshire real property as well as stocks, bonds, bank accounts, and annuities. The trustee is claiming that all assets listed on the inventory are trust assets.

In the motion currently at issue, the administrator is requesting that this court:

¹ The trust document is found in the court file at Index #29, Exhibit A; Index #30, Tab A; and Index #35. When citing to specific pages, the court is referring to page numbers of the trust.

- Declare that this court has exclusive jurisdiction to determine all claims of title to property listed in the inventory;
- Declare that the situs of the property listed on the inventory is New Hampshire.
- Declare that both legal and equitable title to the property listed on the inventory was held by Kathleen Mullin at the time of her death;
- Order the trustee to pay the estate's legal fees and expenses occurred in bringing this motion.

The trustee objects to this motion arguing that the request for declaratory relief is not properly before the court because a declaratory judgment action may only be determined after the filing of an equity petition and appropriate discovery and presentation of evidence. Further, the trustee argues that the validity of the transfer of the decedent's property from her individually to her trust is a question for the courts of California to be determined by California law and there is already a pending case.

Pursuant to NH statutes, the probate court has authority to decide controversies about whether property is in an estate as follows:

- The probate court shall have exclusive jurisdiction over . . . (t)he granting of administration and all matters and things of probate jurisdiction relating to the composition, administration, sale, settlement, and final distribution of estates of deceased persons. RSA 547:3, I (b).
- Any person claiming a present legal or equitable right or title to real or personal property in the estate of deceased persons . . . may maintain a petition against the estate . . . to determine the question as between the parties, and the probate

court's judgment or decree thereon shall be conclusive. RSA 547:11-b

Declaratory Judgments.

- If any person claims a present legal or equitable right of title to real or personal property in the estate of the decedent, the administrator may petition the probate court pursuant to RSA 547:11-b to determine the question as between the parties. RSA 554:1, III Inventory.

Procedural Issues

Pursuant to RSA 547 and 554, either the administrator or a person claiming interest in the decedent's property may petition the probate court to determine ownership. Whether a separate equity action is necessary to determine the issue is not entirely clear within the statutory scheme. A separate action would certainly be required in those situations when the person claiming interest in estate property was not a party to the estate administration. However, under RSA 547:3, I (b), the probate court has exclusive jurisdiction to determine the ". . . composition, sale, settlement and final distribution of estates. . ." This statute does not specifically require that a separate petition be filed for the court to decide whether property is within an estate or who has ownership interest in the property (composition or settlement). It is not uncommon for the probate court to rule on such disputes between the administrator and heirs within the administration of the estate.

In this matter, the trustee, Laura Bushley, was initially appointed administrator, has remained involved in the case throughout and is represented by counsel. She has received all pleadings and court notices. The trust is not an heir to the estate, but as trustee, Laura Bushley has the duty to enforce and defend claims of the trust. RSA 564-B:8-811.

The trustee has argued that if she is required to litigate these issues in this forum, she needs sufficient time to conduct discovery and present evidence. The court concurs. The court is unable to make a ruling on the requests of the administrator regarding the legal and equitable title to the property or to declare that the situs of the property listed on the inventory is New Hampshire without appropriate testimony and evidence.

The administrator requests that the probate court rule that it has exclusive jurisdiction to decide the composition of the estate, i.e. the assets within the estate. The court notes that this jurisdiction, although purported to be exclusive, appears not to be so. As an example, and not intending to be all inclusive, the court notes that if a petition to partition were filed by an administrator, the respondent may request a jury trial and as such, the matter will be transferred to the Superior Court. RSA 547-C:2.

After consideration of the pleadings and arguments, the court determines that, in this case, the administrator might be permitted to request a ruling on whether the estate owns certain assets without filing a separate action. However, the court could not rule on the requests for relief without an evidentiary hearing. Further, based on its analysis below, the court declines to rule.

Forum

At issue in this matter is whether Kathleen Mullin effectively transferred assets into the Trust during her lifetime. According to the trust instrument, the trust estate includes property listed on Schedule A attached to the trust and other property held in the name of the trust. (Trust, p. 1, ¶ 3.) Schedule A listed real property in Hancock, NH, real property in Santa Monica, California and "(a)ll bank accounts, certificates of deposit, mutual and money market funds,...securities,...real estate wherever located...and any and all other assets

wherever located and which are identified as property of Trustor (except for qualified retirement plans, annuities and other assets with named beneficiaries). Kathleen Mullin also executed an Assignment of Property to Trust on March 5, 2012 purporting to transfer personal and household effects, motor vehicles, bank accounts and other property to the Trust.

It is undisputed that Kathleen Mullin held real and personal property in her individual name at the time of her death.

The trustee argues that under California law, the declarations by Kathleen Mullin in Schedule A and the Assignment of Property that she transferred property into the Trust is sufficient for the Trust hold title to the property by operation of California law. See *In re Estate of Heggstad*, Cal. App. 4th 943 (1993).

The administrator argues that Kathleen Mullin was a resident of New Hampshire and the New Hampshire court should exert exclusive jurisdiction over her estate assets and rule that the property held her individual name at her death is part of her estate.

The Trust provides for a choice of law as follows:

The laws of the State of California in force from time to time shall govern the validity, construction, and administration of this trust, except that all matters relating to real property shall be governed by the laws of the situs of that real property. This article shall apply regardless of any change of residence of the trustee or any beneficiary, or the appointment or substitution of a trustee residing or doing business in another state. (Trust, p. 19, ¶9.4)

Thus, it is California law that must be applied to decide the issue of whether the decedent's assets are in her Trust or in her estate, regardless if the California court or the New Hampshire court hears the case.

After consideration of the pleadings and arguments, the court finds and rules that the California Superior Court is in a better position to determine the validity, construction, and

administration of the decedent's trust. Jurisdiction over the trust of Kathleen Mullin is properly before that court. The issues of the trust are not currently before this court.

The California court is a more convenient forum to hear this matter. Evidence and witnesses would more easily be available. The decedent lived in California for many years and utilized services of a California attorney and California financial advisor. The trust was drafted in California. The trustee and all three heirs-at-law, including the administrator, are residents of California.

The court notes, however, that the trust specifically excludes the real estate from the choice of law determination, and, as such, the transfer of the Hancock, NH real estate to the trust shall be governed by New Hampshire law.

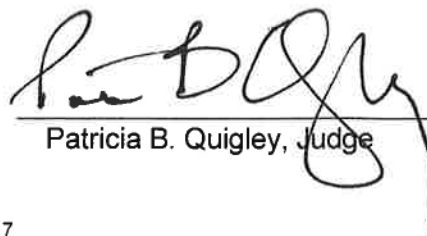
The court notes that pursuant to New Hampshire law, the transfer of real estate from an individual to his or her trust cannot be accomplished by a schedule attached to a trust. With few exceptions, New Hampshire law requires that the transfer of real estate be evidenced by a deed in writing. See RSA 477. As such, the transfer of New Hampshire real estate into the trust appears to fail pursuant to New Hampshire law.

After consideration of the pleadings of the parties as well as the arguments presented at the hearing, the Court makes the following specific orders:

1. The Motion for Declaratory Judgment Regarding the Court's Jurisdiction and Determining Title to the Assets is DENIED.
2. The request for the trustee to pay estate's legal fees and expenses incurred in bringing the motion is DENIED.

SO ORDERED.

March 1, 2016
Date



Patricia B. Quigley, Judge