

# Probate & Fiduciary Litigation Newsletter - April 2019

April 23, 2019

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Welcome to the April 2019 Probate & Fiduciary Litigation Newsletter. Below are summaries of two recent notable cases.

## **A Mother's Wishes Upheld:**

*Disinherited Children Lose Challenge to Mother's Will in New York Surrogate's Court*

*Matter of Loe*, 2019 WL 657041 (N.Y. Sur. Feb. 13, 2019)

Can disinherited children challenge their mother's will based on possible mental health issues from the mother's distant past? With claims that the mother was "chronically lonely, uncomfortable in her own skin, and socially maladroit," and unbalanced as the result of the loss of her oldest child (the objectants' brother) in the Lockerbie terrorist bombing, siblings in New York attempted to do so. In *Matter of Loe*, 2019 WL 657041 (N.Y. Sur. Feb. 13, 2019), Surrogate's Court Judge Nora Anderson answered that question in the negative and granted summary judgment in favor of the executor dismissing the children's objections to probate.

The disinherited children pointed to their mother's having been a patient in mental-health facilities, and apparent use of LSD on one occasion, both in the 1970s, but Surrogate Anderson found these to be "of dubious relevancy in view of their remoteness in time" from the mother's execution of the will in 2011. Another factor the children cited was the tragic death of their brother, the oldest child, in the Lockerbie bombing and the undeniable effect that had on their mother, in several ways. The mother's estate of approximately \$4 million consisted mainly of proceeds of her claims for the wrongful death of the oldest child; and she bequeathed her entire residuary estate to Brown University, the deceased son's *alma mater*, for a permanent scholarship fund in his name.

Applying the standard for summary judgment under New York law, the Surrogate dismissed the disinherited children's objections to probate of the mother's will. After reviewing in considerable detail the children's contentions, including that the mother was deluding herself about "a loving relationship with the son who died," the Court found "it need not determine" who was right or wrong about the family issues, however painful. Citing well-established New York law, the Court stated: "None of the foregoing is to say that objectants were or are necessarily wrong to protest the familial circumstances that they describe .... It is only to recognize that where, as here, a testamentary instrument passes legal muster, a probate court cannot deny probate in the hope of easing pain that the testator may have caused outside the ambit of the will."

The case is an example of New York Surrogate's Court looking to the testamentary capacity of the person making the will rather than evaluating the familial "fairness" of the deceased's decisions.

### **A Family Vacation Compound, Divided:**

*Massachusetts Appeals Court Upholds Termination of a Nominee Trust Under the Massachusetts Uniform Trust Code*

*Matter of MacMackin Nominee Realty Tr.*, No. 17-P-1573, (Mass. App. Ct. Apr. 10, 2019)

A recent decision by the Appeals Court in *Matter of MacMackin Nominee Realty Tr.*, No. 17-P-1573, (Mass. App. Ct. Apr. 10, 2019) upheld a decree by the Probate and Family Court terminating a nominee realty trust pursuant to G.L. 203E, the Massachusetts Uniform Trust Code ("MUTC").

The case involved real property comprised of two summer cottages and six vacant lots on Martha's Vineyard held in trust for the equal benefit of two sisters and their respective families. Disputes arose between the family branches regarding the property that eventually resulted in an agreement under which one of the sisters purchased the entire interest in both cottages. Left unresolved, however, was the fate of the six vacant lots still held in a nominee realty trust.

Following the sale of the cottages, the family who sold their interest filed a petition to terminate the nominee trust because, they argued, the material purpose of maintaining a compound for the enjoyment of the entire family was no longer viable after the sale to one family branch. The petitioners also argued that they received no benefit from the vacant lots following the sale of their beneficial interest in the cottages. The family branch that purchased the interest in both cottages opposed the petition on multiple grounds, including that a material purpose of the trust was to conserve the lots in question in their natural state.

The Probate Court ruled in favor of the petitioners and entered a decree terminating the nominee trust under several provisions of the MUTC and distributing three lots to each family branch. The family opposing the petition appealed.

The Appeals Court upheld the termination of the trust under G.L. c. 203E, § 412 (a) based on its agreement with petitioners that the material purpose of maintaining a family compound was no longer viable due to changed circumstances (*i.e.*, the consolidated ownership of both cottages by one sister). The Court also held that a "critical purpose" of the trust was to provide each family equal use, enjoyment, and control of the property, and that this purpose could no longer be achieved by continuing to hold the six lots in trust. The Appeals Court noted that because it found termination proper pursuant to c. 203E, § 412 (a), it did not need to consider whether termination also was proper under §§ 411 and 414.

In addition to the facts and issues summarized above, the *MacMackin* decision touches on a number of issues that will be of interest to estate planning attorneys and probate and trust litigators alike, including among others:

- When the MUTC applies to a nominee trust and whether a nominee trust is donative in nature;
- Application of additional sections of the MUTC that deal with termination of trusts, including §§ 411 and 414;
- The use of extrinsic evidence to assist in the interpretation of a trust;

- The standard of review applied by the Appeals Court in a trust termination case; and
- The decision not to disturb an award of legal fees by the lower court in favor of the petitioner that was based, at least in part, on petitioner's offer to settle prior to trial.

*If you have a probate and fiduciary litigation question or other business concern, we invite you to reach out directly to any member of our [Probate and Fiduciary Litigation](#) group.*