

EXHIBIT G

Report of Guardian ad Litem with Extensive Discussion of Jurisdictional Issues

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

.....x
PROBATE PROCEEDING,

A/k/a , : REPORT OF
GUARDIAN AD LITEM
:

Deceased. : File No.

.....x

, an attorney at law in
the State of New York, affirms and reports as follows:

1. An instrument dated ,
, has been offered for probate as
decedent's Will (hereinafter referred to as "decedent's
Will"), and an instrument dated : has
been offered for probate as a Codicil to decedent's Will
(hereinafter referred to as the "Codicil"). By Order of
this Court dated , I was appointed
Guardian Ad Litem for , a purported distributee
of decedent, who is an infant under the age of fourteen
(14). I duly filed my Consent to Act and Notice of
Appearance herein.

I. JURISDICTION

2. Distributees: According to the papers filed in this proceeding (which have been amended and supplemented a number of times):

(i) Spouse; Parents decedent was not survived by a spouse or parents.

(ii) Issue of Decedent: Determining whether there are issue of decedent who would be distributees is a complicated question to determine, involving the "adoption out" provisions of the New York Domestic Relations Law. As the Court of Appeals stated in Matter of Murphy (infra), "the issue is `issue'".

Article _____ of decedent's Will gives to _____, Article _____ gives _____, and Article _____ of decedent's Will gives his residuary estate to _____. In each of the dispositive paragraphs decedent refers to

."

Article Article _____ of decedent's Will gives _____ to _____

I questioned counsel for the proponent about the apparent discrepancy between the references in decedent's Will to his biological descendants, and the statements in the probate petition and the Affidavits of Due Diligence that decedent had no issue. Counsel advised me that _____ was in fact decedent's _____, but that _____. Accordingly, in the first instance,

There is a recent New York Court of Appeals case, however, which indicates that the status of _____ as an intestate distributee of decedent may have been reinstated by reason of the provisions of decedent's Will. In Matter of Murphy, 6 N.Y.3d 36, 809 N.Y.S.2d 500 (2005), the Court of Appeals decided that, because decedent made pre-residuary and residuary bequests in her Will to her "adopted out" child, he was reinstated as her issue. The "adopted out" child

predeceased decedent, the "anti-lapse" statute (EPTL 3-3.3) was triggered, and his children got his bequests.

In 1924 Mildred Murphy gave birth to a son, named Arthur. Arthur went to live with the Manning family, and in 1944, at age 19, Arthur was adopted by Mr. and Mrs. Manning. He was then known as Clair Willard Manning.

In 1998 Mildred executed a Will. Article FIFTH provided, in relevant part:

"I give, devise and bequeath to Clair W. Manning of Wellsboro, PA [certain real property and tangibles]. I further give to Clair W. Manning the sum of Eight thousand dollars (\$8,000)."

Mildred also gave Clair one-half ($\frac{1}{2}$) of her residuary estate, and gave cash bequests to two of his children.

Clair predeceased Mildred, leaving four children. After Mildred's Will was admitted to probate a construction proceeding was commenced to determine whether, under New York's anti-lapse statute,¹ Clair's children would receive his testamentary bequests.

¹ EPTL 33-3.3, which provides that when a bequest is made to the issue or siblings of a testator, and the beneficiary predeceases the testator, the gift does not lapse but instead vests in the beneficiary's surviving issue.

The Court of Appeals determined that Clair was "issue" of Mildred's, that the anti-lapse statute applied, and that Clair's children were entitled to his bequests.

The Court stated:

"In 1986, the Legislature revised subdivision (b) of EPTL 3-3.3, along with Domestic Relations Law section 117, defining "issue" - for the purpose of triggering the anti-lapse provision - to "include adopted children and their issue to the extent they would be included in a disposition to 'issue' under EPTL 2-1.3 and Domestic Relations Law section 117(2)." Domestic Relations Law section 117(2) (a) provides:

"`Except as hereinafter stated, after the making of an order of adoption, adopted children and their issue thereafter are strangers to any birth relatives for the purpose of interpretation or construction of a disposition in any instrument, whether executed before or after the order of adoption, which *does not expressly include the individual by name or by some classification not based on a parent-child or family relationship.*'

"The Manning children contend that by naming their father - the adopted out child - as a beneficiary under her will, Mildred altered his status from "stranger" to "issue" for the purposes of the anti-lapse statute with respect to the gift. Because much of Domestic Relations Law section 117(2) (a) would lose meaning if we were to rule otherwise, we agree with this contention and reverse the Appellate Division order."

The portion of the statute quoted above deals

with the construction of an instrument, and it is possible that a person could be "issue" for purposes of the anti-lapse statute, but not for purposes of intestacy.

If _____ is deemed to be issue of decedent for purposes of inheriting through intestacy, a citation should be issued to her, and it would not be necessary to cite decedent's more remote relations (including my ward, _____, as described in detail below). In any event, a citation should be issued to her as a person adversely affected by a codicil, as discussed below.

THE FOLLOWING DISCUSSION OF DECEDENT'S
INTESTATE DISTRIBUTEES IS BASED ON THE PROPOSITION THAT
WAS "ADOPTED OUT", AND IS NOT AN
INTESTATE DISTRIBUTEES OF DECEDENT.

(iii) Issue of Decedent's Parents: decedent's father and mother were married in _____ and decedent was the sole child of that marriage. His father and mother subsequently divorced. Decedent's father remarried in or about _____, to a woman named _____. There were three children of that marriage:

and

(a) _____, who is a half-brother of decedent, survived decedent, and **would be a distributee.**

(b) _____ predeceased decedent (2001), leaving two children:

. Both _____, who are a half-nephew and half-niece of decedent, respectively, survived decedent, and **would be distributees.**

(c) _____ predeceased decedent (1988), leaving two children:

(I) _____, who is a half-nephew of decedent, survived decedent, and **would be a distributee.**

(II) _____ predeceased decedent, leaving three children:

. All three children, who are half-grandnephews of decedent, survived decedent, and **would be distributees.** _____ is an infant under the age of fourteen (14), and is my ward. Under the laws of intestacy he would be entitled to 1/18th of the estate

(1/3 x 1/2 x 1/3)

3. Persons Adversely Affected By Codicil: A citation must issue to persons who are adversely affected by the Codicil to decedent's Will.

(a) Persons Directly Adversely Affected By Codicil: The Codicil revoked Sections , and of Article of decedent's Will, and the following bequests:

\$

\$

\$

I was advised by counsel for the proponent that predeceased decedent, and that in fact decedent revoked the legacy of \$ to because he was dead. In addition, court papers in the probate file indicate that died approximately five years before decedent, which would have been prior to the execution of the Codicil in . The revocation of the legacies of \$ to and \$ to was superfluous, since the legacies were automatically revoked by and predeceasing

decedent.²

(b) Person Indirectly Adversely

Affected By Codicil: The beneficiary of the residuary estate () would be adversely affected by the codicil if the codicil reduced the amount of the residuary estate passing to her.

The Codicil eliminated a bequest of \$ (in addition to the non-effective revocation of the bequests to and).

The Codicil added \$ of bequests:
\$
\$

Since the residuary estate was reduced by the net amount of \$ (new legacies of \$, less an eliminated legacy of \$), , as residuary legatee, is adversely affected by the codicil, and a citation should be issued to her for that reason (in addition to her being a potential distributee).

4. Proofs of Service of Citation: I have reviewed the proofs of service of the citation.

² EPTL 3-3.3; New York Estate Administration (2006 ed.), Turano & Radigan, Section 3.11, fn. 11, pp. 145-6.

A citation was issued on _____ to _____
" _____ "
_____ and _____ executed waivers and
consents, and it turned out that _____ was not a
necessary party because she predeceased decedent.

A supplemental citation was issued on _____
to "

_____ ³ an infant
under 14 years of age." I have reviewed the proofs of
service, and have determined that these persons were
timely served.

I conclude therefore that jurisdiction has
been obtained over all necessary parties.

II. QUALIFICATION OF EXECUTORS

5. Article _____ of decedent's Will names
_____ and _____ as his
Executors. _____ is deceased, and
and _____ are the proper petitioners in this
proceeding. I have reviewed their Oaths and
Designations, and am satisfied that they have properly

³ I believe the citation should have been issued to _____, rather than to "
_____", but assume that the citation as issued is satisfactory to the Court.

qualified as Executors.

III EXECUTION OF WILL

6. The decedent's Will was executed on _____, and was witnessed by _____,

_____ (the attorney draftsman) and _____

_____. Affidavits of all three witnesses as to the execution of the Will have been filed in Court.

The Codicil was executed on _____,

and was witnessed by _____ (the attorney draftsman) and _____.

A self-proving affidavit was attached to the Codicil.

7. I have also examined the original Will and Codicil on file in the Surrogate's Court, and they appear to be unremarkable and free of imperfections which would cause me to question their execution or genuineness.

IV. CAPACITY; NATURAL OBJECTS OF DECEDENT'S BOUNTY

8. While it appears from an overall review of decedent's testamentary pattern that he had capacity and knew the natural objects of his bounty, decedent's Will contains strange provisions which I have never seen before in thirty-six years of practice in the area of

trusts and estates.

(c) Article provides that decedent's remains be created, that half thereof be buried with his wife and mother, and that the other half "be placed at the Cemetery" (apparently whether or not he has a dog there, since he goes on to provide that if he has a dog, it is to be cremated on its death and its remains "placed" in the same cemetery).

(b) Sections , and of Article respectively give gifts of \$ to each of " , " " and " and ". I assumed, without knowing the facts, that these gifts were meant to express decedent's displeasure with these persons, but on the other hand, thought it entirely possible that these gifts were made with the best of intentions, to honor these persons by mentioning them in in the Will. I spoke with counsel for Petitioners. It was his understanding that these legatees of \$ were cousins of his wife, and he somehow believed that the legacies would have an "in terrorem" effect, and that the legatees would be prevented from contesting the Will by reason of these

legacies.

9. On the other hand decedent's testamentary pattern is very common, and does not raise any suspicions.

(a) Decedent's Will makes nominal bequests to unrelated persons (approximately \$) and nominal charitable bequests (approximately \$), makes a bequest of \$ to his , and leaves his residuary estate (the value of decedent's probate estate is estimated at \$ in the probate petition) to his .

(b) There is no indication that decedent had any kind of personal relationship with the issue of his father's second marriage. Friends of his for 30 years (l and

) have advised that he never mentioned these relatives. They were discovered by cold calls by counsel for Petitioners to 5 persons with the surname " " who had listings in New York State.

(c) Undue influence also seems improbable. Decedent's basic testamentary pattern was unchanged for at least 12 years (his Will was executed in), and his daughter, , has lived in

for approximately 20 years. It does not appear that decedent and his daughter communicated frequently and there was therefore little or no opportunity for undue influence.

IV. RECOMMENDATION

For all the reasons stated above, I respectfully suggest that process be issued to

(or that she be given the opportunity to sign a Waiver and Consent), as (i) a person adversely affected by the Codicil which has been offered for probate, and (ii) as a possible distributee (depending on a legal determination as to whether her rights to inherit in intestacy have been restored after her having been "adopted out").

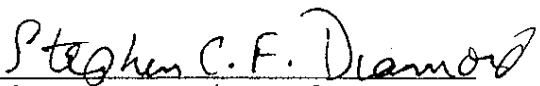
Upon jurisdiction being complete, I recommend that decedent's Will and Codicil be admitted to probate. I make this recommendation even though it does not favor my ward.

"The primary allegiance of the guardian ad litem is the ward, but he or she has a concurrent obligation as an officer of the court to make a thorough, fair and objective report." Guidelines for Guardians Ad Litem, May, 2003, revised and edited by the

Committee to Revise the Guidelines for Guardians Ad
Litem, at Page 22."

Dated: Millbrook, New York
May 9, 2006

Respectfully submitted,


Stephen C.F. Diamond
Stephen C.F. Diamond
Guardian Ad Litem

TO:

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

-----X
:
PROBATE PROCEEDING, :
:
WILL OF : AFFIDAVIT OF SERVICE
: BY MAIL
:
a/k/a 1 , :
: File No.
:
Deceased. :
:
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

, being duly sworn, says:

1. I am not a party to the action, am over 18 years of age, and reside at , , New York .

2. On , I served a true copy of the annexed Report of Guardian ad Litem, by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee as indicated be follows:

Sworn to before me this
9TH day of May, 2006
