

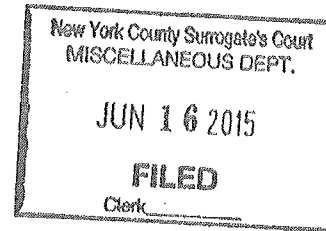
SURROGATE'S COURT: NEW YORK COUNTY

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In the Matter of the Estate of

MAURICIO LEYTON,

Deceased.

File No. 2013-4842 /A/B



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ANDERSON, S.

Before the court is the petition of decedent's mother and sister ("petitioners") to revoke Letters Testamentary issued to David Hunter ("Hunter", "the executor") and disqualify him as a beneficiary under decedent's will. The relief sought would increase petitioners' interests as beneficiaries under the will. Hunter, decedent's former romantic partner and long-time friend, moves to dismiss the petition and for sanctions and attorneys' fees, asserting that the petition was frivolous.

Decedent died on December 1, 2013, leaving a Last Will and Testament executed on January 11, 2001, admitted to probate on May 14, 2014, under which respondent was appointed executor and given substantial bequests.

Petitioners assert that because the executor and decedent, both men, entered into a commitment ceremony in New York in 2002, but thereafter separated, the executor is a former spouse who is disqualified pursuant to the provisions of EPTL 5-1.2 and 1.4 and thus cannot inherit from decedent. Petitioners contend that because the minister at the commitment ceremony observed that the executor and decedent were entering into a state of companionship that the world recognizes as marriage, they were in fact married, and therefore their subsequent separation was a divorce. They argue further that the State of New York wrongfully and unconstitutionally deprived decedent and executor of the right to marry and subsequently to divorce, and this court, as a matter of right and equity, should apply the statutory provisions defining a surviving spouse and his rights.

Respondent points out that at the time the commitment ceremony was performed, it was not cognizable in State law as formalizing a marriage, and that his subsequent break with

decedent therefore was not "separation," "abandonment, or "divorce" within the meaning of the statutes cited by petitioners. Those statutes, EPTL 5-1.2 and 5-1.4, respectively spell out circumstances under which a spouse is disqualified as a "surviving" spouse for the purposes of inheritance and other family rights and under which a disposition to or fiduciary appointment of a spouse under a will is revoked.

It is the province of the Legislature to decide questions regarding same sex marriage. (*Godfrey v Spano*, 13 N.Y. 3d 358, 367 n. 2 [2009], citing *Hernandez v Robles*, 7 NY 3d 338, 366 [2006]). It was not until 2011 that the State of New York passed the Marriage Equality Act. (*Windsor v U.S.*, 699 F 3d 169, 177 [2nd Cir 2012], *aff'd U.S. v Windsor*, 133 S. Ct. 2675 [2013]). Here, petitioners seek to have this court apply the Marriage Equality Act retroactively to the commitment ceremony, deeming that ceremony as formalizing a marriage and the subsequent separation as a divorce. Given that the Legislature did not authorize same-sex marriage until 2011, this court cannot deem the commitment ceremony to have sanctified a marriage, so decedent and the executor cannot be deemed to be divorced.

The petition to revoke Letters Testamentary issued to the executor and disqualify him as executor and beneficiary under decedent's January 11, 2001 will is denied; the executor's motion to dismiss is granted, but, in the exercise of this court's discretion, his motion for sanctions is denied. (*see*, 22 NYCRR 130-1.1).

This decision constitutes the order of the court.

Dated: June 16 2015



SURROGATE