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OF THE COMMITTEE ON OPINIONS

IN THE MATTER OF THE ESTATE  
OF  
SALLY ROSENTHAL,  
Deceased.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: PROBATE PART  
BERGEN COUNTY  
DOCKET No. P-461-18

**OPINION**

Argued: February 8, 2019

Decided: March 6, 2019

Appearances: Russel B. Teschon, (Teschon, Riccobene & Siss, P.A., attorneys) for plaintiff

Eileen W. Siegeltuch, (Office of the Attorney General, attorneys) for defendant

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**HON. EDWARD A. JEREJIAN, P.J.Ch.**

This matter comes before the Court by way of Order to Show Cause as a summary proceeding pursuant to R.4:83-1, filed on October 18, 2018 by Teschon, Riccobene & Siss, P.A., attorneys for plaintiffs Peter Riccobene and Nancy Forman (hereinafter, "Plaintiffs"), administrators of the Estate of Sally Rosenthal. The State of New Jersey, by and through the Attorney General's office, Eileen Siegeltuch, Esq. appearing, filed opposition to said Order to Show Cause on January 9, 2019. Plaintiff filed a reply brief on January 31, 2019. With leave of court, the Attorney General's office filed a sur reply brief on February 6, 2019.

## **BACKGROUND**

Sally Rosenthal (hereinafter, “decedent”) passed away on February 16, 2015. See Affidavit of Kinship at ¶ 7. According to the Affidavit of Inquiry filed by Plaintiff’s counsel, Decedent died intestate, and was unmarried and had no children. Id. at ¶ 3.

Plaintiffs in this matter are the duly appointed, qualified and acting Administrators of Decedent’s Estate. Letters of Administration were granted by the Bergen County Surrogate on December 15, 2015, pursuant to Order of the Superior Court, Chancery Division, Probate Part, Bergen County, dated November 19, 2015. Plaintiffs previously filed their Final Account for the period of February 16, 2015 through July 31, 2018.

Subsequent to the filing of the final accounting, Dorothy Wood of International Genealogical Search, Inc. issued an Affidavit of Kinship as to the results of a genealogical search for the family members of Decedent. See Ex. A.

In her Affidavit of Kinship, Ms. Wood testified that, after three years of attempting to locate “Level II and III heirs” - which consists of parents, grandparents, and their descendants - International Genealogical Services “could not pursue the Paternal family of the Decedent given the lack of documentation due to the devastation of the locale [where such heirs were last heard from] during World Wars I and II.” See Affidavit of Kinship at ¶ 3.

The Affidavit further reveals that the only reasonable locatable surviving relatives of Decedent are second cousins and second cousins once removed that are all on the maternal side of Decedent’s family tree. Accordingly, Plaintiffs filed the instant action in order to propose that this Court compel the distribution of Decedent’s Estate assets to those second cousins and second cousins once removed who are identified in the Affidavit of Kinship.

As the State contends, it is the responsibility of the Attorney General on behalf of the State of New Jersey to review the relief requested in the role of the protector of the public interest in charitable trusts and gifts. See In Re Katz Estate, 40 N.J. Super. 103, 107 (Ch. Div. 1956); In Re Estate of Yablick, 218 N.J. Super. 91, 98-99; Passaic Nat. Bank, etc., Co. v. East Ridgelawn Cemetery, 137 N.J. Eq. 603, 608 (Ch. 1946).

As will be discussed in greater detail *supra*, the State of New Jersey cites various statutory authority and case law which indicate that Decedent's Estate assets should be delivered to the Unclaimed Property Administrator. The State of New Jersey takes this position because the individuals identified in the Administrator's search are not "heirs" of the Decedent as defined by the appropriate statutes.

#### LEGAL STANDARD

The administration of estates in New Jersey is governed by Title 3B of the New Jersey Statutes. In re Rogiers, 396 N.J. Super. 317, 325 (App. Div. 2007).

New Jersey Statute 3B:5-2 provides that "[a]ny part of the decedent's estate not effectively disposed of by his will passes by intestate succession to the decedent's heirs as prescribed in N.J.S. 3B:5-3 through N.J.S. 3B:5-14, except as modified by the decedent's will." N.J.S.A. 3B: 5-2(a). The term "heirs" is defined as "those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, *who are entitled under the statutes of intestate succession to the property of a decedent.*" N.J.S.A. 3B:1-1 (emphasis added).

New Jersey Statute 3A:4-5 was a precursor to 3B:5-4, which provided:

If there be no husband or widow, child or any legal representative of a child, nor a parent, brother or sister, nor a legal representative of any brother or sister, then the intestate's property, real and personal, *shall descend and be distributed equally to the next of kindred, in equal degree, of or unto the intestate and their legal representatives. Representatives of ancestors nearest in degree to the decedent shall*

*take to the exclusion of representatives of ancestors more remote in degree.* N.J.S.A. 3A:4-5 (emphasis added).

Like N.J.S.A. 3A:4-5, N.J.S.A. 3B:5-4 similarly provides that, when there is no surviving spouse or domestic partner, the only potential intestate heirs are surviving descendants, parents or descendants of a parent, or grandparents or descendants of a grandparent. Stated differently, and as the Court’s decision in In re Wolpert makes clear, distribution of the Decedent’s assets does not go beyond the third parentela.

The parentelic system is outlined by the chart below:

<b>First Parentela</b>	<b>Second Parentela</b>	<b>Third Parentela</b>	<b>Fourth Parentela</b>	<b>Fifth Parentela</b>
Decedent	Parents	Grandparents	Great Grandparents	Great Great Grandparents
Children	Brothers and Sisters	Uncles and Aunts	Grand Uncles and Aunts	Great Grand Uncles and Aunts
Grandchildren	Nephews and Nieces	First Cousins	First Cousins Once Removed	First Cousins Twice Removed
Great Grandchildren	Grand Nephews and Nieces	First Cousins Once Removed	Second Cousins	Second Cousins Once Removed
	Great Grand Nephews and Nieces	First Cousins Twice Removed	Second Cousins Twice Removed	Third Cousins
		First Cousins Thrice Removed	Second Cousins Twice Removed	Third Cousins Once Removed
			Second Cousins Thrice Removed	Third Cousins Twice Removed
				Third Cousins Thrice Removed

See Defendant’s Opposition Brief, p. 4.

#### **ANALYSIS**

The central issue before the Court is whether Plaintiffs have adequately demonstrated that the individuals located in the Administrator’s search and identified in the Affidavit of Kinship are heirs of Decedent’s Estate. For the reasons set forth below, this Court holds that Plaintiff has failed to do so.

As an initial matter, Plaintiff's moving papers do not attempt to argue that any of the individuals identified in the Affidavit of Kinship are in fact first cousins consistent with N.J.S.A. 3A:4-5 and 3B:5-4. In other words, the individuals identified in Plaintiff's attached Affidavit of Kinship are not "descendants of a grandparent" in common with Decedent.

However, Plaintiff does attach a certification by an individual named Bram Eisenthal who claims to be a "cousin" of Decedent, the Court is not convinced this does anything to further Plaintiff's claim that the other individuals identified possess the requisite consanguinity with Decedent to take under the intestate scheme. For instance, the Eisenthal certification is nothing more than a self-serving attempt to convince this Court that *that particular* individual is entitled to a share of Decedent's property. Ms. Eisenthal states that "notwithstanding the remoteness of our connection as cousins . . . It would be unfair if [Decedent's] estate were distributed to the State of New Jersey and not her relatives and she would be very disturbed to hear that might happen." Eisenthal Cert. at ¶ 2.

Nevertheless, the Eisenthal fails to adequately describe or identify how they are in fact cousins (i.e., there is not a scintilla of a description regarding the familial relationship of Eisenthal parents and Decedent's parents). To the contrary, it appears from the Affidavit of Kinship that Ms. Eisenthal is actually a second cousin, who for the reasons discussed, would not be entitled to an intestate share under the succession laws. Further, the Eisenthal certification does not provide any revelations aside from self-serving statements that Decedent would not want to have her property escheat to the State. This position is taken, despite the fact that Eisenthal does not even contest the notion that Decedent had never in fact met any of these individuals, or maintained any sort of relationship with them whatsoever.

In In re Wolpert's Estate, the Court held that, where neither spouse, issue, parent, brother or sister, or issue of brother or sister survive, then *descendants of grandparents take to the exclusion of descendants of great-grandparents*. Ibid. at 123 (emphasis added). The Court went on to emphasize that N.J.S.A. 3A:4-5 “rejected” the previous “per stirpes” establishment and “adopted instead” the “parentelic system.” Ibid. (emphasis added). The Court determined that the second cousin was not one of the intestate’s next of kin, and she therefore did not have standing to set aside the letters of administration. Id. at 123-24.

Plaintiff’s arguments are contrary to both the plain language of the statute at issue and long-standing case law. In their reply brief, Plaintiffs allege that N.J.S.A. 3B:5-4 “fails to provide for or deny distribution to any further degree of heirs and fails to specify that after a certain degree, assets must escheat to the state.” However, for the reasons set forth thus far, that argument is clearly without merit.

The single New Jersey case to which Plaintiffs cite, In re Loudenslager's Estate, 113 N.J. Eq. 418 (Prerog. Ct. 1933), does not stand for the proposition Plaintiffs assert, namely, that “second cousins and first cousins once removed” are entitled to a share of an intestate’s estate. Rather, in Loudenslager, the Court simply held that the Orphan’s Court Act in effect at the time provided for the allowance of counsel fees in a “litigated suit.” Id. at 423.

It is indisputable that the individuals whom Plaintiffs ask this Court to distribute the Estate assets to are direct descendants of *great-grandparents*, as opposed to grandparents. In other words, the individuals identified by Plaintiff all fall into the fourth and fifth parentelas, as opposed to the third parentela.

The New Jersey intestacy statutes adopted the Uniform Probate Code for purposes of determining heirs within the required degree of consanguinity. As described above, the Uniform

Probate Code follows the parentelic system through the third parentela and provides that, if no member of the third or nearer parentela survives the intestate, the intestate Estate escheat to the State. Restatement (Third) of Property (Wills and Donative Transfers) § 2.4, comment. I. (Am. Law. Inst. 1999).

The identified individuals are therefore not within the required degree of consanguinity that would entitle them to a share of the Estate under New Jersey's intestacy laws. Instead, the assets should escheat to the State and be administered in accordance with the New Jersey Unclaimed Property Act, N.J.S.A. 46:30B-1 to 109 because there are effectively no known heirs to the Decedent's Estate.

Contrary to Plaintiff's assertions, custodial escheat under the laws of New Jersey do not constitute a "forfeiture." Clymer v. Summit Bancorp, 171 N.J. 57, 63 (2002). Under the Unclaimed Property Act ("UPA"), title to Decedent's property will not vest in favor of New Jersey. Instead, the State will take custody of the property until any rightful owner comes forward to claim it. Ibid.

In fact, the very result of Decedent's assets being transmitted to the UPA is exactly what the statute contemplates. N.J.S.A. 3B:23-19(b) provides that, if no heirs to the intestate's property can be found - as is the case here - the property is presumed abandoned and is transferred to the UPA to be handled in accordingly.

Courts are required "to read the law as the Legislature makes it, even if it conflicts with ideas of justice that have prevailed for centuries" because the "right to inherit is the gift of the Legislature, not a natural right." In re White's Estate, 87 N.J. Eq. 607, 609 (1917). Here, the statutory scheme is clear and unambiguous on which individuals are entitled to inherit under New Jersey's intestacy laws. For the reasons set forth above, the individuals identified in Plaintiff's diligent search are *not* the individuals the legislature intended to inherit under the circumstances of this case.

Pursuant to N.J.S.A. 3B:-19, because no intestate heirs within the required degree of consanguinity can be located, the Decedent's assets escheat to the State to be administered in accordance with the New Jersey Unclaimed Property Act.

Therefore, the Court Denys the distribution sought by Plaintiffs and direct the fiduciaries to deliver the assets of Decedent's Estate to the New Jersey Unclaimed Property Administrator.

Furthermore, distribution of the estate assets to the State rather than to the heirs located through the genealogical search may alter the inheritance and estate tax and as a result the remainder of the account. Since the court has now ruled on the issue that the heirs identified in the affidavit of kinship are not entitled to receive the assets from the estate as heirs, the account can now be finalized.

For the foregoing reasons, Plaintiff's Order to Show Cause and Summary Action are hereby denied. An Order accompanies this Decision.