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Extent of Surrogate's Court Jurisdiction

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A recent decision of the Appellate Division, Second Department, [Matter of O'Connell](#) (New York Law Journal, Aug. 24, 2012) once again raises the issue concerning the extent of a surrogate's subject matter jurisdiction provided either under the Constitution or statute. There is no question that the Surrogate's Court is a court of limited jurisdiction. However, the people of the State of New York granted to the Surrogate's Court jurisdiction over any and all matters dealing with the affairs of the decedent and guardianship of the property of infants under Article 6, Section 12 of the New York Constitution.

As indicated in [Matter of Piccinone](#), 57 NY2d 278, the Legislature may not take away the jurisdiction that the people of the State of New York granted to the Surrogate's Court. However, pursuant to Article 6, Section 12(d), the Legislature may grant additional jurisdiction to the Surrogate's Courts over other actions and proceedings not within the exclusive jurisdiction of the Supreme Court. There are numerous proceedings where the Legislature did just that.

Under the Domestic Relations Law, it granted concurrent jurisdiction in adoption proceedings with the Family Court. Pursuant to SCPA 209, Subdivision 5, it authorized surrogates to handle common trust fund accounts and under Subdivision 6 to determine any and all matters relating to lifetime trusts. Under Article 17 it granted guardianship of the person over infants and under Article 17(A) of Surrogate's Court Procedure Act guardianship over mentally retarded individuals and those suffering developmental disabilities. Under Article 81 of the Mental Hygiene Law the surrogates have limited jurisdiction over guardianship of incapacitated persons. Under Article 21 of SCPA regarding discovery and reverse discovery proceedings, if it be determined that an estate does not have an interest in an asset, the surrogate may nonetheless make a determination as to entitlement to assets in question even though it then involves a dispute between living individuals and not the decedent's estate (SCPA 2104(5) and SCPA 2105(3)).

There have been many instances where the subject matter jurisdiction of the Surrogate's Court has been questioned especially if the dispute involves not the estate but a dispute between living parties or where the Legislature has set forth limitations concerning the Surrogate's Court. Even though the extent of the jurisdiction of the Surrogate's Court had been questioned at the appellate level, [Piccione](#) and legislative modifications such as SCPA 2104(1) (dealing with those in action) (see jurisdiction after [Piccione](#), Radigan 56 N.Y.S.B.J. 12 (April 1984)) have put much of those doubts to rest.

Nonetheless there are still issues regarding the extent of the court's jurisdiction. For example, under SCPA 207, the Legislature sets forth jurisdiction and venue in the Surrogate's Court regarding lifetime trusts. There is no dispute that the Surrogate's Court would not have jurisdiction of lifetime trusts during the life of the grantor unless that jurisdiction was granted by the Legislature as was done with the enactment of SCPA 207 and 209. SCPA 207, Subdivision 1 provides that the surrogates have jurisdiction over lifetime trusts but the proper venue lies in the county of the surrogate where assets of the lifetime trust are located, where the grantor is a domiciliary at the time of commencement of the proceeding or where the trustee resides.

Query: What if the grantor is deceased? Does the surrogate handling the estate of the decedent still have jurisdiction over

a lifetime trust that the decedent created where venue under SCPA 207 would appear to indicate would only lie in the county where the assets of the trust exist or the trustee resided and not in the grantor's county of domicile since he or she is now deceased? Since the surrogate of the grantor in the county of the grantor's domicile is properly handling the grantor's estate and if the lifetime trust involves the affairs of the decedent, can the Legislature by the enactment of 207 prevent the surrogate of the decedent's domicile from having jurisdiction in violation of the Constitution just because the grantor is no longer alive?

It would appear that if the lifetime trust deals with the affairs of the decedent, the grantor's domicile would be a proper venue to bring proceedings concerning the lifetime trust since it has to do with the affairs of the decedent, the venue statutory limitation notwithstanding. Again, the Legislature may not take away jurisdiction vested in the Surrogate's Court that was granted by the Constitution which specifically provides that the surrogate have jurisdiction over the affairs of a decedent.

Dispute in 'O'Connell'

The *O'Connell* case once again raises the issue of jurisdiction. It concerned whether the Surrogate's Court would have jurisdiction concerning Totten Trusts if the dispute deals solely with issues between living persons and the estate is not claiming title to the Totten Trust. The issue was who should be the beneficiary of the Totten Trust. Thus, it was a dispute between living people, and the estate was not seeking assets for the estate. Would those facts oust the Surrogate's Court of jurisdiction?

While the decedent's estate was not claiming title to the property, nonetheless the decedent created the Totten Trust and it must be included in the decedent's estate for estate tax purposes. Doesn't that dispute concern the affairs of the decedent for the reasons I set forth hereinafter?

In the *O'Connell* case the decedent established the Totten Trust naming his daughter and two grandchildren as beneficiaries. He died in March of 2010. Three days prior to his death his wife withdrew the proceeds of the Totten Trust pursuant to a power of attorney. The daughter commenced a proceeding in the Surrogate's Court for a judicial determination that the bank funds were wrongfully converted by the wife and sought a direction that the wife return the funds to the rightful beneficiaries indicating she was proceeding pursuant to SCPA 207.

The daughter moved for summary judgment arguing that the wife breached her fiduciary duty under the power of attorney and was motivated by self-dealing in withdrawing the balance of the bank account for her own use. The surrogate granted the motion and directed the wife to pay the original beneficiaries. The Appellate Division reversed contending that the surrogate lacked subject matter jurisdiction.

The Second Department held that the Surrogate's Court is a court of limited jurisdiction and only possesses those powers conferred upon it by statute. One may question that statement in the appellate court's decision because the Surrogate's Court obtains the major portion of its jurisdiction through the Constitution and not by statute. The appellate court held that while the Surrogate's Court's jurisdiction was broad, where the controversy does not relate to the affairs of a decedent or proceedings pertaining to the administration of the estate, the surrogate's jurisdiction does not extend to independent matters involving a controversy between living persons. It held the matter in controversy related to the alleged wrongful conversion by the wife and whether she properly terminated the trust, and in no way affected the affairs of the decedent or the administration of the estate. It held the Totten Trust was terminated prior to the decedent's death and the petition did not assert that the decedent's estate was entitled to any portion thereof. Instead, the daughter sought the return of the money from her stepmother to the named beneficiaries and not to the decedent's estate.

The court also noted that the petitioner enumerated the wrong statutory proceeding in the pleadings, indicating SCPA 207 was the statute she was relying on. But this should not be fatal because SCPA 202 authorizes the surrogate to convert any proceeding even though commenced under a wrong section to another proceeding or be treated as one under SCPA 202 as long as the relief sought has to do with a matter over which the surrogate has jurisdiction both as to subject matter and as to the persons interested.

The appellate court decision also noted that a Totten Trust is not a lifetime trust within the provisions of SCPA 207. However, at issue was whether the matter dealt with the affairs of the decedent. Certainly the decedent was the creator of the Totten Trust, and it involved his estate plan. His estate had to report the Totten Trust in the estate tax return. Doesn't his estate have an interest in the ultimate determination regarding who ultimately is to receive the assets in a manner intended by the decedent in his estate plan?

If the controversy involves the affairs of the decedent, it is the Constitution and not a legislative statute that controls. The estate has an interest to ensure the decedent's estate plan is fulfilled and the surrogate is the decedent's guardian in that respect (see SCPA 1408 regarding wills). Plus, the ultimate determination may have a bearing as to the extent the estate

may claim a marital deduction.

Further, the Legislature may have granted the surrogate jurisdiction in this controversy not under SCPA 207 but SCPA 209, subdivision 4, which provides that the surrogate has jurisdiction to determine a decedent's interest in any property subject to estate tax or to property available for distribution under his will or intestacy or to the payment of claims and to determine the rights of any persons claiming an interest therein, as against the decedent or as between themselves.

Key Language

My research of the Bennett Commission reports and my memory of what went on then do not reveal what the legislators intended when they added "as between themselves" under SCPA. This was evidently carried over from prior SCA legislation and its origins. Unfortunate legislative intent memorandum practice was not what it is today, so our resources are limited. The Bennett Commission, formally known as the Temporary State Commission on the Modernization, Revision and Simplification of the Laws of the States, was established pursuant to Chapter 731, Section 7 of the laws of 1961 for the purposes of putting within two sets of laws the substantive and procedural laws for trusts and estates, which it ultimately recommended to be set forth under EPTL and SCPA.

I have not been able to find information concerning the derivative statutes indicating the intent of the Legislature in incorporating the language "as between themselves." However, our laws under Statutes Section 96 indicate that we must construe our statutes with an understanding that the statute must have had a purpose. Under Section 114 general words should not be limited and under Section 231 words should not be treated as meaningless. The statute must have had a purpose and there is no limitation set forth on the language employed.

The Fifth Report (page 1062) of the Bennett Commission clearly indicated its recommendations on jurisdiction were not exclusive and that previously given was to be retained. Therefore, if, as I described above, the matter had to do with the affairs of the decedent, then the surrogate would have jurisdiction as was afforded prior to the Constitution and after the Constitution where jurisdiction was given to the surrogates concerning matters dealing with the affairs of a decedent.

If the issues dealing with the Totten Trust are not to be considered as affecting the affairs of the decedent as envisioned under the Constitution, then the issue is whether the Legislature in enacting SCPA 209(4) granted to the surrogates jurisdiction over issues that are tangentially related to the affairs of the decedent so as to resolve issues between living persons in circumstances such as in *O'Connell*. I believe it did.

Since it was the Legislature that incorporated the words within the statute and there is confusion, the Legislature should consider clarifying the intent of SCPA 209(4).

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