

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 23-00636

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, AND OGDEN, JJ.

IN THE MATTER OF THE ESTATE OF
WILLIAM A. BEARD, DECEASED.

MEMORANDUM AND ORDER

WENDY LOUGNOUT, ESQ., AS PUBLIC ADMINISTRATOR,
PETITIONER-RESPONDENT;

DIANE BEARD, OBJECTANT-APPELLANT.

CERIO LAW OFFICES, PLLC, SYRACUSE (NATHANIEL V. RILEY OF COUNSEL), FOR
OBJECTANT-APPELLANT.

COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (TERRI CONTI YORK OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Surrogate's Court, Onondaga County
(Mary Keib Smith, S.), entered April 13, 2022. The order, insofar as
appealed from, granted in part the motion of petitioner for summary
judgment dismissing the objections to an accounting.

It is hereby ORDERED that the order so appealed from is
unanimously modified on the law by denying that part of the motion
seeking to dismiss objection F and reinstating that objection, and as
modified the order is affirmed without costs.

Memorandum: In this proceeding for the judicial settlement of
the final accounting of decedent's estate, objectant appeals from an
order that granted in part petitioner's motion for summary judgment
dismissing the objections to the accounting filed by objectant.

Here, petitioner established prima facie entitlement to judgment
as a matter of law with respect to objections A, B, E, F and H by
submitting an accounting reflecting decedent's assets (*see Matter of
Crane*, 100 AD3d 626, 628 [2d Dept 2012], *lv dismissed* 21 NY3d 1000
[2013], *lv denied* 29 NY3d 906 [2017]).

We agree with objectant that, in opposition to the motion, she
raised an issue of fact with respect to objection F. In objection F,
objectant alleged that petitioner had failed to account for items
removed from decedent's estate by another beneficiary. Objectant
raised an issue of fact with respect to that objection by submitting
evidence that a beneficiary had removed items from the estate,
including pieces from a bedroom set, and that petitioner had not
applied a corresponding offset to that beneficiary's share of the
estate (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562

[1980])). We therefore modify the order by denying that part of the motion seeking to dismiss objection F and reinstating that objection.

Contrary to objectant's contention, we conclude that she failed to raise an issue of fact with respect to objections A, B, E, and H (see *Crane*, 100 AD3d at 629; *Matter of McAlpine*, 85 AD3d 1185, 1186 [2d Dept 2011]; see generally *Matter of Wilson*, 178 AD2d 996, 997 [4th Dept 1991]).

Entered: June 14, 2024

Ann Dillon Flynn
Clerk of the Court