

## TRUSTS AND ESTATES LAW

## Expert Analysis

# Subject Matter Jurisdiction In the Surrogate's Court

The limited nature of subject matter jurisdiction in the New York State's Surrogate's Court can sometimes cause confusion, especially when trying to assess the outer limits of the court's power. The Surrogate's Court Procedure Act (SCPA) §§201 and 202 seek to statutorily define the jurisdiction of the Surrogate's Court; however, in practice, the actual extension of the court's jurisdiction may be much more fact-specific. This article explores the jurisdiction of the Surrogate's Court and its historical roots.<sup>1</sup>

### Historical Background

Originally, the Surrogate's jurisdiction was very limited. Questions often arose as to whether particular matters were within the Surrogate's jurisdiction to decide. Due to this uncertainty, Surrogates were extremely careful about the jurisdiction they assumed and would generally err on the side of caution. For example, in discovery proceedings, the predecessor to what is now SCPA 2103 (a proceeding by a fiduciary to discover property withheld or to obtain information), envisioned a replevy action, and the Surrogate would usually not take jurisdiction over a fiduciary's attempts to discover real property, insurance proceeds, or contract actions. There was also a long-standing decision by the Legislature to exclude jurisdiction over inter-vivos trusts. Indeed, inter-vivos continued to be excluded when the SCPA was originally enacted in 1966.<sup>2</sup>

In or about the late 1950s, the Legislature conducted several studies to determine whether to consolidate the Surrogate's Court with a common law forum. After the studies were completed, the Legislature decided to instead expand the



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Surrogate's jurisdiction in lieu of such a merger. An amendment to the New York Constitution effective Sept. 1, 1962, signified the commencement of this expansion by conferring jurisdiction to the Surrogate's Court over:

all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto, guardianship of the property of minors, and such other actions or proceedings, not within the exclusive jurisdiction of the Supreme Court, as may be governed by law. N.Y. Const. Art. VI. §12(d)

Beyond specific statutory direction, the Surrogate's Court has broad power to hear many different sorts of issues.

With the new constitutional provisions in place, Surrogates entertained proceedings that they had previously declined because the matters were found to involve the affairs of a decedent. In addition, over time, the Legislature continually exercised its power, as granted by the 1962 constitutional amendment, to expand the Surrogate's subject matter jurisdiction. The Legislature has given the Surrogate's Court jurisdiction over ownership disputes between living persons in discovery proceedings, and now also grants jurisdiction over all inter-vivos trusts—not just those

dealing with the affairs of a decedent. Both of these powers run concurrent with the Supreme Court. The Legislature also gave the Surrogate's Court jurisdiction over guardianship of mentally retarded persons, developmentally disabled persons, incapacitated persons, and adoption proceedings. Jurisdiction in these matters is held concurrently in some instances with the Family Courts. The Legislature also conferred jurisdiction to the Surrogate's Court over guardianships of the persons of infants as well as property, which is a power held concurrently with both the Supreme Court and the Family Court.

Beyond specific statutory direction, the Surrogate's Court has broad power to hear many different sorts of issues. While the statutes do not specifically expand the Surrogate's Court jurisdiction, there are indications that a Surrogate should be looked at in the same light as a Supreme Court justice. For example, SCPA §202 provides that the proceedings outlined within the SCPA are not the sole proceedings that can be commenced in Surrogate's Court, and that "the proceedings enumerated in this act shall not be deemed exclusive."<sup>3</sup> SCPA §202 creates further flexibility for the Surrogate's Court by allowing the Surrogate to convert a proceeding brought by an attorney under the wrong section of the SCPA to the correct proceeding, as long as there is subject matter jurisdiction and personal jurisdiction over the parties.

Further evidence of the power of the Surrogate's Court exists in constitutional and statutory authorization for the Supreme Court to transfer proceedings to the Surrogate's Court. Upon the transfer of such an action, the Surrogate obtains jurisdiction. Also, if a Surrogate is ever unsure about whether he has jurisdiction over a particular matter, he or she has the option (in certain instances where he or she is assigned as an acting Supreme Court justice) of transferring the matter and designating himself or herself as an acting Supreme Court justice to handle the matter.

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## Outer Limits of Jurisdiction

As the jurisdiction of the Surrogate's Court expanded, questions concerning the outer limits of the Surrogate's Court's jurisdiction remained. How closely must an issue relate "to the affairs of decedents"<sup>4</sup> for the Surrogate to be able to entertain the proceeding? In 1982, the New York Court of Appeals mostly answered this question in *Matter of Piccione*,<sup>5</sup> putting forth a somewhat definitive statement on the limits of the jurisdiction of the Surrogate's Court.

In *Piccione*, executors of an estate needed to sell real property of the decedent to avoid foreclosure and otherwise pay expenses and taxes; however, in order to do so, a hold-over tenant needed to vacate the premises. With this goal in mind, the executors commenced a proceeding in Surrogate's Court to evict the tenant after the executors were unsuccessful in another court. The tenant objected on jurisdictional grounds arguing that the Surrogate's Court wasn't enumerated within the Real Property Actions and Proceedings Law (RPAPL) as a court with jurisdiction over landlord/tenant proceedings. The Court of Appeals approved the Surrogate's exercise of jurisdiction in both the eviction proceeding, and in a separate discovery proceeding also brought by the landlord against the tenant in the Supreme Court, but found that the Surrogate did not have jurisdiction over a tort action the tenant brought against the executor.

In reviewing the eviction and related proceedings, the Court of Appeals in *Piccione* found that such a proceeding, brought by the executors in the process of attempting to wind up the administration of the estate, is cognizable in the Surrogate's Court because (i) it was undisputed that the tenants were to be evicted so that the premises could be sold; (ii) it was not denied that the proceeds of the sale were to go to the estate; and (iii) there was no doubt the Surrogate's Court would ultimately decide how these proceeds would be distributed. For these reasons, the Court of Appeals found it could "hardly be said that this controversy 'in no way affects the affairs of the decedent or the administration of the estate'."<sup>6</sup>

Post-*Piccione*, it is seemingly well-settled that the Surrogate's Court has jurisdiction over matters that relate to the affairs of a decedent or the administration of an estate. However, if the proceedings are merely ancillary, rather than original, the Surrogate's role is supplemental to that of another court. Also, as stated in *Piccione*, the Surrogate also lacks jurisdiction in a dispute between two living persons. This rule also applies to third-party practice. Whether or not the

Surrogate has been specifically given jurisdiction over a particular third-party practice situation (as it sometimes is in the SCPA), the impleading of third parties is liberally allowed just like in Supreme Court,<sup>7</sup> as long as the proceeding is not merely between two living persons and it sufficiently relates to the affairs of a decedent or the administration of an estate.

## Venue

Contrasting with jurisdiction, proper venue in the Surrogate's Court is much more clear-cut and unlike other practice is very strictly enforced. While every Surrogate in New York has subject matter jurisdiction over the estate of any New York domiciliary, only the particular county of domicile of the decedent is the proper venue. SCPA 205 states that when a proceeding relating to an estate of a New York domiciliary is brought in the wrong county, a surrogate "shall" (which means must) "transfer any [such] proceeding to the surrogate's court of the proper county *either on his own motion or on the motion of any party*."<sup>8</sup>

A person can have only one domicile. When a decedent has multiple homes, the location of his or her domicile is a mixed question of law and fact to be carefully decided on the unique circumstances of each case. The court must consider how the decedent conducted themselves in life, including but not limited to (i) the location of any residences; (ii) the state that issued their driver's license; (iii) where the decedent was registered to vote; (iv) where the decedent filed taxes; and (v) the concentration of his financial operations, bank accounts and business dealings.<sup>9</sup> The court does not rely upon a decedent's own assertion as to his or her own domicile. The only exception to these strict venue guidelines for New York domiciliaries is that "the surrogate's court of any county... is a proper venue for...the proceedings of any decedent who was a domiciliary of the state at the time of his or her death and who died as a result of...the terrorist attacks on [9/11]."<sup>10</sup>

For estates in which the decedent was a non-domiciliary who left property in New York, all of the Surrogate's Courts in New York have subject matter jurisdiction concerning any ancillary proceedings. The proper venue is either the county in which the decedent left property, or the county into which his or her personal property has been brought. The Surrogate's Courts also have subject matter jurisdiction over non-domiciliaries with a cause of action for wrongful death against a domiciliary of the state. In that scenario, proper venue would be the domicile of the person against whom the decedent had, at death, a cause of action for personal injuries or wrongful death.

Under SCPA §207, the proper venue

for proceedings relating to lifetime trusts can be one of three places: (i) the county where the assets are; (ii) the county where the grantor was domiciled at the time the proceeding is commenced;<sup>11</sup> or (iii) the county where the trustee is. If more than one place is appropriate, the first court to exercise its jurisdiction by entertaining a proceeding becomes the proper venue, and the Surrogate's Courts of other counties must transfer to that court any proceedings relating to the trust.

Guidelines for testamentary trusts regarding venue are sometimes unclear, primarily due to the substantial overlap of SCPA Article 2 and SCPA Article 15. One concrete rule that can be extrapolated is that if only one Surrogate has subject matter jurisdiction over the testamentary trust, that Surrogate's Court is the proper venue.

## Conclusion

Although SCPA provides a somewhat detailed framework of the jurisdiction of the Surrogate's Court, it is important for all attorneys, no matter what their main practice area may be, to have a detailed understanding of the court's jurisdiction and powers.

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1. A research paper by Alexander Bader, a student at St. John's University School of Law, was the basis for this article.

2. SCPA 209(4), enacted by 1966 N.Y. Laws 953.

3. SCPA 202.

4. N.Y. Const. Art. VI. §12(d).

5. *Matter of Piccione*, 57 N.Y.2d 278 (1982).

6. *Piccione*, 57 N.Y.2d at 290.

7. CPLR 1007.

8. SCPA 205(2) (emphasis added).

9. *Matter of Gadway*, 123 AD2d 83 (3d 1987).

10. SCPA 205(3).

11. Query: once the grantor dies, would the Surrogate of his or her domicile have jurisdiction since it involved the affairs of that decedent?