

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4493-14T4

IN THE MATTER OF THE ESTATE
OF BASABADATTA PATTANAYAK.

Telephonically argued August 18, 2016 –
Decided August 30, 2016

Before Judges Reisner and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Probate Part, Hudson
County, Docket No. 309432.

Steven Menaker argued the cause for
appellant Sandeep Srinath (Chasan Leyner &
Lamparello, P.C., attorneys; Mr. Menaker, of
counsel and on the briefs).

David M. Paris argued the cause for
respondents Sarat Chandra Pattanayak and
Sabita Pattanayak (Piro Zinna Cifelli Paris
& Genitempo, L.L.C., attorneys; Mr. Paris
and Margarita Romanova, on the brief).

PER CURIAM

Sandeep Srinath (husband) appeals from a May 8, 2015 order removing him as administrator of the estate of Basabadatta Pattanayak (decedent), requiring him to file and serve an accounting with the Hudson County Surrogate, and ordering that he is not entitled to inherit from decedent's estate as a surviving spouse. We affirm.

Husband and decedent married in April 2002. They separated in 2012, and in 2014 agreed to mediate the dissolution of the marriage and prepare a Marital Settlement Agreement (Agreement) which they executed on May 6, 2014. Under the section entitled "Equitable Distribution," the Agreement divided the parties' interests in real property, corporations, bank accounts, investments, vehicles, personal property, debt, pensions and retirement accounts, art, and tax liabilities. Each party relinquished spousal support and agreed that husband would continue to pay health coverage costs until the dissolution of the marriage. They agreed to some shared time with their dog.

Decedent died intestate on September 1, 2014. Husband was granted administration of decedent's estate by the Hudson County Surrogate. On October 23, 2014, decedent's parents filed a Verified Complaint and Order to Show Cause seeking husband's removal as administrator and an accounting. After considering the parties' arguments, Judge Marybeth Rogers ruled in favor of decedent's parents, removed husband as administrator, and ruled him legally ineligible to inherit as a surviving spouse pursuant to N.J.S.A. 3B:8-10, because the Agreement was a complete property settlement in anticipation of divorce.

We affirm for the reasons expressed in Judge Rogers' well-reasoned opinion, and add the following comments.

On appeal, husband asserts that the trial judge erred when she determined that the Agreement constituted a waiver of husband's right to inherit without a hearing and that the pleadings established a genuine factual issue whether husband's waiver was knowing and voluntary. We disagree.

N.J.S.A. 3B:8-10 indicates that unless a property settlement agreement provides to the contrary, a waiver of all rights by a spouse entering into such an agreement after or in anticipation of separation, divorce, or termination of a domestic partnership, is a waiver of all rights to an elective share by such spouse and is a renunciation of benefits which would otherwise pass to him or her by intestate succession. Judge Rogers correctly determined that in order for there to be an implicit renunciation, the court must find a full and complete property settlement agreement which the parties entered after or in contemplation of divorce. Upon her review of the Agreement, Judge Rogers determined that husband need not have made an explicit waiver of intestacy rights because the Agreement demonstrated that it was the parties' intention to settle, resolve, and fix all questions arising out of the marital relationship, including property rights and all other rights and obligations growing out of the marriage relationship. The parties agreed to relinquish all support obligations and


specifically the Agreement bound all the parties, their respective heirs, executors, administrators, legal representatives and assigns.

Judge Rogers also rejected husband's argument that the parties never intended to separate and divorce and that the term "equitable distribution" was never explained to the parties. The record established, however, that the parties lived separate and apart for two years prior to entering into the Agreement, and the Agreement itself contained language establishing the parties entered into the Agreement after separation and in anticipation of divorce. Moreover, reading the Agreement in its totality, the court determined that the parties intended to divide their property, and did not contemplate returning property to each other after each passed away. The Agreement contains explicit waivers of rights to vehicles, retirement accounts, and personal property. The court's findings are well supported by the parties' submissions and we discern no genuine factual dispute requiring a testimonial hearing. See Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (1968) ("Although a trial court may hear and decide a motion or an order to show cause exclusively upon affidavits, it should not do so when the affidavits show . . . that there is a genuine issue as to material facts.")

Husband's reliance upon In re Estate of Shinn, 394 N.J. Super. 55 (App. Div.), certif. denied, 192 N.J. 595 (2007), is misplaced. In Shinn, a wife sued her husband's estate to declare a pre-nuptial agreement unenforceable because her husband had understated his assets prior to eliciting the wife's waiver of an elective share. The trial judge determined that the husband's non-disclosure of assets supported a conclusion that under N.J.S.A. 3B:8-10 and N.J.S.A. 37:2-38,¹ the pre-nuptial agreement should not have been enforced as to the wife's waiver of her elective share, but denied her application finding her equitably estopped from asserting unenforceability. We reversed, because the record demonstrated the pre-nuptial agreement was not executed with full or fair disclosure and the husband had no right to rely upon the future enforceability of an inequitable agreement. No such circumstances have been demonstrated here.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

¹ The Uniform Pre-Marital and Pre-Civil Union Agreement Act.