

Estate of Robert Michael Mayer, Deceased

be granted. His allowance for services rendered will be set in the decree to be entered herein.

Relevant Law

For a person to be presumed dead after being absent for a continuous period of time, there must have been a diligent search (EPTL § 2-1.7(a)). The burden of proof is on the party seeking such determination (see, *Butler v. Mutual Life Insurance Company of NY*, 225 NY 197 and *Matter of Klein*, NYLJ Jan 22, 2015, at 33, col 1). A presumption of death from an absence for the statutory period will not be established unless petitioner demonstrates satisfactorily that a thorough and exhaustive search for the absentee was made as soon as his absence became known in the places and among the individuals from whom a party in search of the truth would be likely to inquire (see, *McCartee v. Camel*, 1 Barb. Ch. 455; *Klein, supra*). Such search should include the locations and places from which the last information of the absentee came, as well as those places he may be inclined to visit or go based upon his habits, friends, and associations (see, *Dunn v. Travis*, 56 AD 317; *Klein, supra*). The proximity of the search in relation to the time of the absence is an important factor in determining its diligence and sufficiency (see, *In re Katz's Estate*, 135 Misc 861).

Here, the testimony adduced at the hearing credibly established that an immediate, diligent, and exhaustive search was undertaken to determine Mayer's whereabouts.

The Hearing

Mayer was married to Ida and together they had two children, petitioner, who is twenty-three, and Ariana, who is nineteen. The last time anyone saw Mayer alive was on June 14, 2013.

Petitioner testified first; he and Ariana each testified that the last saw their father on June 13, 2013. Petitioner was fifteen at the time of his father's disappearance, had a close relationship with him, and was last with his father on the night before his disappearance, watching television. Petitioner testified that he has had no interaction, via any means, with his father since that date.

Petitioner testified that he participated in searches for his father, approximately twice a week, during the first year following his disappearance. These searches included family, friends,

Estate of Robert Michael Mayer, Deceased

volunteers, park rangers, and police. Petitioner testified that these searches never stopped, but that the frequency of such searches decreased after the first year. He further testified that his mother, Ida, has never stopped searching for Mayer, and continues her search for Mayer locally and online. When asked whether there were any avenues the family has not pursued, petitioner stated that he believes his family has done all they can to locate Mayer.

Ariana testified next. She also has not had any communication of any kind with her father since June 13, 2013. Ariana testified that she participated in some of the searches and continues reviewing posts on the Facebook group created as a forum to assist in locating Mayer. Ariana stated that, as she was only eleven at the time of her father's disappearance, she was much less involved in the searches.

As did her brother, Ariana testified that the searches were conducted daily immediately following her father's disappearance. She said that, prior to his disappearance, she saw her father daily other than while on a separate vacation with her mother. She described a close, loving relationship with her father.

Petitioner's next witness was his mother, Ida. It is helpful, however, to summarize the testimony of petitioner's final witness, Mark Pucci, here, as it helps to put much of Ida's testimony in context.

Mr. Pucci is a private investigator, who has owned his own agency, New York Private Detective Services, since 2017. Prior to that, Mr. Pucci was a detective with the New York Police Department and then an executive vice president at Beau Dietl & Associates, an international investigative firm. Mr. Pucci was retained, on a *pro bono* basis, by Ida to search for Mayer.

Mr. Pucci testified that he performed a traditional, "boots on the ground" interview-type investigation. He researched Mayer's activities just prior to his disappearance, and worked through in-person interviews. As a result of his investigation, Mr. Pucci described Mayer as "living a double life." He said that Mayer was a good provider at home, but that Mayer also had an "extreme addiction" to oxycodone and used heroin.

Mayer was a union electrician who worked throughout the five boroughs. To keep his drug use secret, Mayer collected scrap

Estate of Robert Michael Mayer, Deceased

copper and aluminum from work sites which he then sold for cash at a scrap yard. Mr. Pucci also learned that Mayer was stealing wire, which would not be considered scrap, from his jobs, and that Mayer's co-workers believed he was stealing hand tools from his employer.

Mr. Pucci testified that he had no information on Mayer's current whereabouts. He testified that there has been no use of Mayer's Social Security Number or bank accounts since shortly after his disappearance.

Ida testified that the last time she saw Mayer was June 14, 2013, when Mayer left the marital residence to leave for work in Brooklyn. During that day, Ida said she spoke to Mayer by telephone to discuss upcoming plans for Father's Day (Mayer disappeared the Friday immediately prior to Father's Day), as well as plans for an upcoming, much anticipated trip to Italy. Ida testified that she has had no communication of any kind with Mayer since that date. Ida then described her efforts, which were extensive and are ongoing, to locate her husband or otherwise determine his fate.

Ida stated that Mayer was expected home early on the day of his disappearance, to complete preparations for Father's Day. When Mayer was not home by five, which was two or three hours after his anticipated arrival home, Ida became worried. She testified that she contacted friends and family, including a neighbor who is a police officer, in an attempt to locate Mayer. Ida had a cousin in Astoria, Queens, look for Mayer on the "roof in Brooklyn, where he was working." Ida also called a cousin who is a police lieutenant, and an Amber Alert was put in place.

Ida looked in the garage, found a sweatshirt with the name of the scrap yard he frequented, Arrow Scrap Corporation ("Arrow"). The following day, she called the SCPD to report a missing person. Ida created and then posted flyers, starting the day after his disappearance. Friends went to all of the scrap yards along Long Island Avenue (in Deer Park) to inquire whether Mayer had been there on Friday, June 14, 2013. During these searches, Mayer's car¹, a red Pontiac GTO, was found at the Deer Park Long Island Railroad station. Ida testified that Mayer drove to work every day, and that he would never leave his car at the train station.

¹ Actually titled in Ida's name, but used by Mayer.

Estate of Robert Michael Mayer, Deceased

Ida described searches of local railroad and wooded areas near home and the train station at which the automobile was found. Ida testified that searches were done everywhere local that a body could be disposed of. Ida testified that the searches were initially conducted daily; she became very involved in the "missing persons" community, making others aware of Mayer's disappearance. Mayer is listed on NamUs (National Missing and Unidentified Persons System), as are all of his identifying details, including DNA information.

Ida described the numerous publications reporting on Mayer's disappearance, the flyers and banners posted near her home and the railroad station where his car was found. Ida also started, and updates at least weekly, a facebook missing person page for Mayer. She testified that there is "national awareness" of Mayer through various missing persons organizations.

Ida was then questioned, first by petitioner's counsel and then by the guardian ad litem, about the assets she and her children are likely to inherit if Mayer is declared dead. The significant assets include the family home, which Ida estimated is worth between \$750,000 and \$800,000, and is in Mayer's name alone. The house is encumbered by a first mortgage and a home equity line of credit in the aggregate amount of \$345,000, leaving equity in excess of \$400,000. Ida testified that she is the named beneficiary of two insurance policies on Mayer's life, each in the amount of \$250,000.00. There are other assets, the beneficiaries of which Ida was unsure, including a union death benefit of about \$50,000 and a pension and 401(k) plan which, in the aggregate, are worth approximately \$350,000 to \$400,000. Thus, if Mayer is declared dead, Ida will stand to receive approximately \$500,000 outright in life insurance, and possibly more if she is the named beneficiary of other assets. Ida will also receive her intestate share in the remaining estate assets, which appear to be in excess of \$800,000.

Ida was questioned about her income, which, as a piano instructor, appears to be minimal. Ida testified that she was an attorney licensed to practice in New York, having been admitted in 1992. She had to forgo her license in 2007 following a guilty plea to falsifying a business record in the first degree.

Upon the inquiry of the guardian ad litem, Ida testified that Mayer had substance abuse issues, as he was addicted to pain medication, both oxycodone and percocet. Ida was aware that Mayer stole jewelry from family members, including Robert (petitioner),

Estate of Robert Michael Mayer, Deceased

Ida, and Ida's parents. Ida testified that these thefts occurred about a year prior to Mayer's disappearance. After his disappearance, Ida learned of additional thefts.

Petitioner's next witness was Detective Jason Puglino of the SCPD. Det. Puglino described the SCPD searches done for Mayer, which included computer forensic examinations of Mayer's computers (desktop and laptop) and cell phone; aerial searches of Pilgrim State Psychiatric Center (a wooded area near the Deer Park LIRR station) and near the Mayers' residence; a review of a DVR from Arrow; and canine searches. Det. Puglino stated that he was present for most of these searches, conducted in a "grid" pattern, and that private searches were also performed. Det. Puglino testified that this is still an "active" missing person's case, although there has been no recent activity. He stated that Ida has been "extremely active" in the searches, and that they worked together in an attempt to locate Mayer.

Finally, Det. Puglino described the search of Mayer's car. It was transported to the SCPD, where DNA searches of the interior and exterior of the car were conducted. He testified that the trunk lock was damaged, and that the seat was pushed too far forward for someone of Mayer's stature. The guardian ad litem asked if there was any evidence that Mayer left voluntarily; Det. Puglino testified that there was no such evidence. When asked if there was anything the SCPD could have done that it did not do, he testified in the negative, and that the SCPD followed up on every lead.

Analysis

Despite the diligent searches by the police, the entire Mayer family, friends, volunteers, and Mr. Pucci, the absentee has not been found nor has any information whatsoever been obtained to indicate his whereabouts. The testimony adduced at the hearing credibly established that a diligent and exhaustive search was undertaken to determine Mayer's whereabouts.

Various documents were admitted into evidence during the hearing, supported by the testimony of the witnesses: the Suffolk County Police Department Report (Exhibit 5); various publications and media releases (Exhibit 3); the missing person report filed by Ida Mayer (Exhibit 4); and the Experian credit report (Exhibit 6).

As noted by the guardian ad litem in his report, "the uncontroverted proof demonstrates that Mr. Mayer had loving

Estate of Robert Michael Mayer, Deceased

relationships with Ms. Mayer, Petitioner, and Ariana. . . . it is difficult to believe that Mr. Mayer would voluntarily fail in the eight years since 2013 to contact his wife and/or children." The guardian ad litem also notes the significant equity in the home owned by Mayer and the value of his pension. The guardian ad litem states that petitioner has carried his burden of proof in establishing that Mayer's absence is unexplained. He therefore recommends that, pursuant to EPTL § 2-1.7(a), the court determine that Mayer be declared deceased as of June 14, 2016 and grant letters of administration to petitioner.

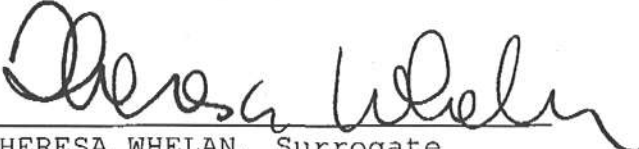
Conclusion

EPTL § 2-1.7(a) creates a presumption that a person who is absent for a continuous period of three years, during which, after diligent search, he has not been seen or heard from, and whose absence is not satisfactorily explained shall be presumed to have died three years after the date such unexplained absence commenced.

After due consideration of the proof adduced at the hearing, the court finds that petitioner has met his burden of establishing that the statutory requisites of EPTL § 2-1.7 have been satisfied. Based upon the foregoing, the court finds that Robert Michael Mayer was last seen or heard from on June 14, 2013 and that it is herewith declared that he died on June 14, 2016.

Letters of administration shall issue to petitioner, Michael Mayer, upon qualification and, in light of the nominal value of personal property, without the posting of a bond (SCPA § 801[1](d), (e)). Within thirty days of the closing of the sale of any real property, the administrator shall post a bond in an amount based upon the net proceeds of the sale and sufficient to protect the interests of any persons, including creditors, who have not consented to the administrator acting without a bond, with a copy of the closing statement from the sale as evidence of the net proceeds from same.

Decree signed.



THERESA WHELAN, Surrogate

Estate of Robert Michael Mayer, Deceased

Lewis Johs et al., LLP
Attorneys for Petitioner
One CA Plaza, Suite 225
Islandia, New York 11749

Robert M. Harper, Esq.
Guardian ad Litem for Absentee
400 RXR Plaza
Uniondale, New York 11556