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Summarizing recent significant
New York appellate cases

If an administrator of an estate makes a transfer of property in violation of the express bequests in the will, is that transfer void from its inception or merely voidable? The Second Department tackled that thorny question recently. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

SECOND DEPARTMENT

TRUSTS AND ESTATES

Rhiney v Rhiney, 2026 NY Slip Op 02428 (2d Dept Apr. 22, 2026)

Issue: **Is a transfer of property by an administrator c.t.a. in a manner that is inconsistent with a specific bequest in a will voidable or void ab initio?**

Facts: "Prior to her death, the decedent owned real property located in Brooklyn . . . In her will, the decedent bequeathed her entire estate, including the subject property, to the plaintiff, who was the decedent's grandniece, and two other family members who had apparently predeceased the decedent. Because the will further provided that, 'if any of the named heirs do not survive the decedent, then his or her share shall be divided equally among the survivors, and if there is only one survivor, said survivor shall take the whole estate,' the plaintiff was the sole surviving beneficiary of the decedent's estate at the time of the decedent's death."

Following decedent's death, defendant, the plaintiff's mother, was appointed the administrator c.t.a. of decedent's estate, and her will was admitted to probate. "In her undisputed capacity as administrator c.t.a. of the decedent's estate, the defendant transferred the subject property to herself and the plaintiff as joint tenants with the right of survivorship by deed dated May 14, 2004. According to the defendant, the conveyance of the subject property was made at the plaintiff's request because the plaintiff was a college student and did not want to manage the subject property on her own." Plaintiff testified, however, that she was unaware of the will's bequest to her until she first saw the will in 2020, and before that believed defendant's statement that the property had been left to both of them.

Plaintiff then commenced this RPAPL Article 15 action to quiet title to the property, alleging that "defendant created a scheme to defraud her for the purpose of obtaining an interest in the subject property that the defendant was not entitled to. The plaintiff also sought a judgment declaring that she is the sole owner of the subject property and that the deed was void ab initio. According to the plaintiff, the deed was void ab initio because the defendant lacked authority to convey the subject property to herself and the plaintiff as joint tenants since the decedent's will stated that the subject property was devised to the plaintiff only."

Supreme Court granted the plaintiff's subsequent cross motion for summary judgment, declared the deed void ab initio, and directed the defendant to issue a new deed solely in plaintiff's name.

Holding: The Second Department reversed, holding that the deed was not void ab initio, but rather voidable. The court reasoned, "there is a critical distinction between that which is void and that which is voidable. A void real estate transaction is one where the law deems that no transfer actually occurred, such as where the transaction was based upon a forgery or false pretenses. In contrast, a voidable real estate transaction is one where a transfer is deemed to have occurred, but can be revoked, such as where a signature or the authority to convey was acquired by fraud, mistake or misplaced confidence. In other words, a forged deed that contains a fraudulent signature is distinguished from a deed where the signature and authority for conveyance are acquired by fraudulent means. Unlike a forged deed, which is void initially, a voidable deed, until set aside, has the effect of transferring the title to the fraudulent grantee, and being thus clothed with all the evidences of good title, may incumber the property to a party who becomes a purchaser in good faith."

Here, the court held, there was "no dispute that the decedent's will did not direct that the subject property was to be transferred to the defendant and the plaintiff jointly. Notwithstanding, it cannot be said that the deed transferring the subject property was void ab initio because, as is explained below, the plaintiff failed to establish that the transaction was based on forgery or false pretenses." Indeed, Appellate Division precedent has held that "any purported lack of authority by an administrator c.t.a. of a will to transfer property renders a deed voidable, rather than void ab initio, in that the administrator c.t.a. is cloaked with apparent authority to make the transfer by virtue of the appointment by the Surrogate's Court . . . [T]he plaintiff here contends that the will did not grant the defendant the authority to transfer the subject property to herself and the plaintiff as joint tenants, and that purported lack of authority renders the deed void ab initio. However, the defendant was cloaked with the apparent authority to make the transfer because it is undisputed that she had been appointed as administrator c.t.a. by the Surrogate's Court. This apparent authority is all that is required to render the deed voidable, rather than void ab initio."

The court explained, "[l]etters of administration empower a party possessing them to distribute the estate property, even in circumstances where the intentions of the decedent are not realized. Although the parties, depending on their status, may seek to avoid the consequences of the fiduciary's actions (the voidable aspect of the distribution), the letters nonetheless grant apparent authority to the administrator. Reliance on the letters is reasonable and favored. Otherwise, the authority of the administrator pursuant to the letters would be unreliable. The purpose of the proceedings seeking letters of administration in the Surrogate's Court is to permit those relying on the letters to trust in their authority . . . To hold otherwise could have a chilling effect on the ability of the parties to settle the estate in a reasonable and timely manner."

FOURTH DEPARTMENT

FAMILY LAW, SURROGACY AGREEMENTS, PARENTAGE

***Matter of Baby A. (Mary B.L.--Robert A.L.)*, 2026 NY Slip Op 02759 (4th Dept May 1, 2026)**

Issue: **Must Family Court consider the best interests of the child when making an initial determination of parentage, after a surrogacy agreement is found unenforceable?**

Facts: In February 2023, petitioners Mary and Robert purportedly executed a surrogacy agreement with respondent Isabella F. (the "Surrogate") to carry to term two embryos, Baby A and Baby B, with an expected birth in November 2023. "In August 2023, petitioners petitioned for a judgment of parentage pursuant to article 5-C of the Family Court Act." Family Court found that the petition and accompanying documents, including the surrogacy agreement, met the requirements of Family Court Act § 581-203, and issued a judgment of parentage declaring that upon the babies' birth, petitioners would be the only legal parents of the children.

After petitioners' attorney learned that Robert had never signed the surrogacy agreement, and "altogether unaware of the existence of the surrogacy agreement and the parentage proceeding," Family Court, sua sponte, rescinded the judgment of parentage and "directed that custody of Baby A and Baby B not be transferred to petitioners upon their birth." Mary, Robert, and the Surrogate thereafter signed a new surrogacy agreement, and the babies were born shortly thereafter. Upon their birth, the babies were placed into DSS's care and with a foster family for two years.

Robert moved to vacate the rescission order, and although Family Court did vacate that order, it determined that doing so did not resolve all issues regarding the babies' parentage. The AFC, who had been appointed to represent the babies in these proceedings, then moved to vacate the 2023 judgment of parentage, which had been, in effect, reinstated by vacatur of the rescission order, and "and to dismiss the parentage petition on the ground that the documentary evidence established as a matter of law that the statutory requirements of Family Court Act article 5-C were not met."

Family Court denied the AFC summary judgment, but scheduled a hearing on the ultimate request for vacatur of the 2023 judgment of parentage. The court, over the AFC's objection, agreed to accept affidavits in lieu of a hearing. "Upon its consideration of the issues raised by the parties and the AFC in their affidavits, the court held that, because the intentions of the parties to the surrogacy agreement were not in dispute, the best interests of the children did not need to be considered. As relevant here, the court thus vacated the 2023 judgment of parentage and ordered that a new order and judgment of parentage be issued declaring petitioners to be the legal parents of Baby A and Baby B."

Holding: The Fourth Department reversed, holding that Family Court "erred in refusing to hold a hearing and in failing to consider the best interests of the children in making its parentage determination." The court explained, "Family Court Act § 581-407 provides that if the surrogacy agreement does not meet the material requirements of article 5-C, the agreement is not enforceable and the court shall determine parentage based on the intent of the parties, taking into account the best interests of the child. Here, there is no real dispute that neither surrogacy agreement meets the material requirements of Family Court Act article 5-C. The original surrogacy agreement is unenforceable because it was not signed by Robert. The second agreement is unenforceable because it was not executed prior to the commencement of medical procedures in furtherance of embryo transfer. Thus, the court was required to determine parentage based on the intent of the parties, taking into account the best interests of the children."

Although the intent of the parties was clear that Robert and Mary were to be the parents of the babies, the court held, Family Court was still required to determine whether such a parentage determination was in the children's best interests. Because it failed to do so, the court remanded the matter for a hearing to determine the children's best interests.

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