

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 1, 2024

535199

In the Matter of the FRANK A.
CLEMENTE TWO-YEAR
GRANTOR RETAINED
ANNUITY TRUST.

FRANK CLEMENTE JR., as Successor
Trustee of the FRANK A.
CLEMENTE TWO-YEAR
GRANTOR RETAINED
ANNUITY TRUST,

MEMORANDUM AND ORDER

Respondent;

GERI LEE IDE et al.,

Respondents,

and

PAUL CLEMENTE,

Appellant.

Calendar Date: December 14, 2023

Before: Egan Jr., J.P., Pritzker, Ceresia, Fisher and Powers, JJ.

Mandel Clemente, PC, East Greenbush (*Linda A. Mandel Clemente* of counsel),
for appellant.

Tabner, Ryan & Keniry, LLP, Albany (*Eric N. Dratler* of counsel), for Geri Lee
Ide, respondent.

Hinman Straub PC, Albany (*David B. Morgen* of counsel), for Robert Clemente,
respondent.

Ceresia, J.

Appeal from an order of the Surrogate's Court of Rensselaer County (Paul V. Morgan Jr., S.), entered March 7, 2022, which denied respondent Geri Lee Ide's motion to dismiss a citation.

In 2016, Frank A. Clemente died, leaving assets in several trusts, including the trust at issue in this case. The beneficiaries of this trust were Frank A. Clemente's five adult children, including the trustee, David P. Clemente (hereinafter the trustee). After the trustee filed a petition for judicial settlement of his final accounting of the trust, two beneficiaries, Paul Clemente and Robert Clemente, filed objections and sought, among other things, surcharges against the trustee as well as his removal. The matter was eventually scheduled for trial on several unresolved factual issues but, shortly before trial, the trustee died. Surrogate's Court then, in an effort to ensure that it had jurisdiction over all interested persons, ordered Paul Clemente to provide information necessary for the court to issue citations to the trustee's estate or, if none, to the trustee's presumptive distributees. Paul Clemente submitted a proposed citation for Geri Lee Ide, the trustee's widow and presumptive distributee, and the court issued it via first-class mail. Ide's counsel then filed a verified answer with objections to the court's jurisdiction over Ide and to the continuance of the proceedings without substitution of a proper party for the trustee. At a subsequent court appearance, the court treated the objections as a motion to dismiss the petition and denied it in its entirety. Paul Clemente appeals.

The right to appeal from an interlocutory order – such as the one sought to be reviewed herein – terminates upon entry of a final judgment (*see Matter of Aho*, 39 NY2d 241, 248 [1976]; *Matter of Cotazino v New York State Adirondack Park Agency*, 214 AD3d 1137, 1140 [3d Dept 2023]). During the pendency of this appeal, the parties entered into a stipulation of settlement on the record in open court. Surrogate's Court thereafter issued a final decree of judicial settlement of the trustee's accounting, attached to which was a transcript of the parties' stipulation. Accordingly, this appeal must be dismissed.¹

¹ It is noted that Paul Clemente has filed a notice of appeal from the final decree, which has not yet been perfected. The appeal from that final decree will bring up for review "any non-final judgment or order which necessarily affects the final judgment" (CPLR 5501 [a] [1]), including a ruling on jurisdictional matters (*see e.g. Federal Natl. Mtge. Assn. v Smith*, 219 AD3d 938, 940 [2d Dept 2023]; *Matter of Joseph II. v Brandy JJ.*, 210 AD3d 1315, 1317 n 2 [3d Dept 2022]; *Matter of Gesmer v Administrative Bd. of*

Egan Jr., J.P., Pritzker, Fisher and Powers, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court