SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Administration Proceeding in the Estate of

TRUONG DINH TRAN,

Deceased.

File No. 2012-1785/A

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ANDERSON, S.:

Presently before the court is a motion for summary dismissal of a petition for letters of administration in the estate of Truong Dinh Tran. The petition was filed by Sang Kim Nguyen as decedent's alleged spouse. A cross-petition for letters of administration was filed by an alleged non-marital grandson. Another cross-petition for letters was filed by the present movants, who are an alleged son from an earlier purported marriage and two alleged non-marital daughters.

Only a brief recital of facts is needed for purposes of this motion. Decedent died at the age of 80 on May 6, 2012, leaving an estate that has been estimated to be worth more than $100 million. Petitioner alleges that she was married to decedent decades ago and remained his wife until his death. More than 20 other individuals also claim to be decedent's distributees as decedent's issue through his relationships with six women, including petitioner.

A determination on the merits of petitioner's claim as surviving spouse would require not only development of various facts, but also, reference to the law of Viet Nam as to ceremonial and common law marriages, since the two alleged marriages bearing on whether petitioner was decedent's wife at his death purportedly were contracted in Viet Nam when the alleged marital parties were Vietnamese domiciliaries. Movants contend, however, that -- whatever the facts as to the alleged marriages and whatever the law of Viet Nam -- the law of New York in any event

peremptorily bars petitioner from pressing her claim to a spousal share (EPTL 4-1.1[a][1]) of decedent's massive estate. Specifically, according to movants, petitioner's claim is as a matter of New York law foreclosed because she had declared herself to be "single" in individual income tax filings for the 11 years immediately preceding decedent's death.

The principal authority on which movants rely is the decision of the New York Court of Appeals in *Mahoney-Buntzman v Buntzman*, 12 NY3d 415 (2009). In that case, involving (among other things) equitable distribution of marital assets post-divorce, the Court of Appeals affirmed the rulings below to the effect that tax filings by the ex-husband foreclosed him from taking the litigative position that certain funds were not within the marital pot. The ex-husband was barred from taking such position, the Court concluded, because his tax return for a year during the parties' marriage had reported the funds in question as earnings (rather than, as the husband contended in court, proceeds of a sale of separate property).

Movants point to *Mahoney-Buntzman* as conclusive authority for their contention that a party cannot ask a court to declare her to have been a spouse if she herself has declared "single" status in her income tax returns for the period in question. In other words, movants invoke the principle of estoppel, which, where applied, bars a litigant from claiming benefits in a litigation on the basis of a contrary position that she has assumed to her benefit in some other context, such as in tax filings.[1] If movants' position on this point is correct, petitioner's pleading must be dismissed.

At the outset of analysis, it should be noted that movants overstate their case when they

[1]It is undisputed that petitioner and decedent separately filed tax returns for the tax years in question. Petitioner does not argue that she derived no tax benefit from declaring herself "single" as opposed to "married filing separately."

argue that the *Mahoney-Buntzman* ruling is categorically fatal to petitioner's claimed marital status. This is not to ignore that the *Mahoney-Buntzman* Court struck what indeed sounded like a categorical note when it observed, "We cannot, as a matter of policy, permit parties to assert positions in legal proceedings that are contrary to declarations made under the penalty of perjury on income tax returns" (*Mahoney-Buntzman v Buntzman*, *supra*, at 422). However, it must be kept in mind that the Court's ruling did not purport to stake new analytic ground, but instead rested on long-settled estoppel principles. Accordingly, it must also be kept in mind that the hallmark of equity is its flexibility. That would explain the Court's own express recognition elsewhere in its decision that the estoppel imposed by the trial court below had been a matter of judicial "discretion" (*id.*) (*see Abramson v Bavares*, 109 AD3d 849, 851 [2d Dep't 2013]), as opposed to a per se rule.

In any event, the issue as to which an estoppel was deemed appropriate in *Mahoney-Buntzman* is distinguishable from the issue here, in significant degree if not in kind. In essence, the *Mahoney-Buntzman* issue involved a declaration as to fact, whereas the question of marital status here involves a complex mix of fact and law. Indeed, almost all of the estoppel cases have involved inconsistencies as to fact, rather than, as here, mixed questions of fact and law (*see, e.g., Peterson v Neville,* 58 AD3d 489 [1st Dep't 2009][parties bound by tax returns' reports of positive account balances]; *Meyer v Ins. Co. Of Am.,* 1998 WL 709854 [SDNY 1998][in general disability insurance litigation, the insured's tax returns showing considerable non-passive income estopped her from pressing her disability claim as someone unfit for any occupation]; *Naghavi v New York Life Ins. Co.*, 260 AD2d 252 [1st Dep't 1999][plaintiff bound by tax returns showing lower earnings than he claimed in litigation]; *Zemel v Horowitz*, 11 Misc 3d 1058[A],

[Sup Ct, NY County 2006][plaintiffs bound by their representation in tax returns that securities were short-sold]); *Northwest 5th & 45th Realty Corp. v Mitchell, Maxwell & Jackson, Inc.*, 2013 N.Y. Slip Op 31734[U][Sup Ct, NY County, 2013][litigants barred from claiming accounts receivable as assets when tax filings did not list them]).

This is not to ignore the few rulings that arguably have imposed estoppel on the basis of inconsistent positions as to issues of mixed fact and law (*see U.S. v West Productions, Ltd.*, 168 F. Supp. 2d 84 [SDNY 2001][party estopped in one litigation from denying "partnership" status asserted in prior litigation]; *Cohen v Cohen*, 2010 NY Slip Op 30838[U][Sup Ct, Suffolk County 2010] [defendant estopped from denying plaintiff's "partnership" status on the basis of his treatment of her as a partner in his tax returns]). But the courts' exercises of discretion in those two cases appear to have been prompted by the circumstance that the parties whom the court estopped had been sophisticated taxpayers and had been guided in their prior inconsistent positions by the aid of lawyers. Moreover, in the *West* case, the court was further influenced by its aim to avoid inconsistent judicial results (a factor not present here).

Ordinarily, however, as the Appellate Term has noted, the principle of estoppel applied in *Mahone-Buntzman* may "[]not fairly be imported" into a litigation where "no single factor" is determinative of the question as to which there has been inconsistent positions (*Ansonia Associates Limited Partnership v Unwin*, 2014 NY Slip Op 24094 [2014][estoppel on the basis of inconsistent tax declarations not appropriate where the issue was "primary residency" under the rent stabilization laws]. As well illustrated by the present case, the no-single-factor standard certainly can be applicable to the question of marital status. Hence the decisions in which, for example, claims to common law marriage vel non were not deemed to be automatically

concluded by the lone fact that during the putative marriages the claimants had declared themselves to be single for tax purposes (*see, e.g., Lancaster v 46 NYL Partners,* 228 AD2d 133 (1st Dept. 1996); *Grossman v Gangel,* 192 AD2d 396 (1st Dept, 1993); *Persad v Balram*, 187 Misc 2d 711 [Sup Ct, Queens County 2001]; *Matter of Tarazi*, NYLJ, Oct. 29, 2001, at 23, col 1 [Sur Ct, Westchester County]; *Matter of Landolfi*, NYLJ, Mar. 10, 2000, at 31, col 3 [Sur Ct, Kings County]. Although such decisions predated *Mahoney-Buntzman*, at the time those decisions issued the principle of estoppel animating the Court of Appeals' decision in *Mahoney* was no less vital.

This is not to suggest that the inconsistency between petitioner's declarations in her tax returns, on the one hand, and her spousal claim here, on the other hand, is irrelevant in this litigation. It is only to rule that such inconsistency is not per se fatal to her petition. Accordingly, there is no need to address petitioner's contention that the estoppel for which movants have argued would offend public policy by foreclosing rights under a marriage that might prove valid.

For the foregoing reasons, cross-petitioners' motion for summary judgment against petition is denied.

This decision constitutes the order of the court.

Dated: May 22, 2014

Nora Anderson

SURROGATE