

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ROSE V. HODGE,	)	PROBATE NO. ST-12-PB-129
	)	
Petitioner,	)	
	)	
In re: KIRBY O. HODGE	)	
_____	)	

MEMORANDUM OPINION

Summary

The Petitioner, Rose V. Hodge, petitions the Court to recognize that Kirby O. Hodge died when the plane he was piloting crashed off of the coast of St. Thomas on October 13, 2012. In support, the Petitioner, through testimony and DPNR reports, showed that: (1) the decedent has not contacted family members, (2) the decedent's accounts remain untouched, and (3) the plane's only survivor did not see or hear Hodge after she escaped the wreckage. Therefore, the Court will grant the Petition and find Hodge deceased.

Facts

On December 10, 2012, this Court held a hearing to determine whether the Court should establish the death of Kirby O. Hodge, the decedent. At the conclusion of the hearing, the undersigned magistrate requested that the Petitioner draft a brief to the Court summarizing the facts in the underlying matter. The Court adopts the facts as in the Petitioner's Proposed Findings of Fact. As set forth herein, however, makes its own conclusions of law.

Discussion

15 V.I.C. § 168¹ states that:

In case of the absence from the jurisdiction of any person owning property therein, for a period of ten years or more, during which time there has been no knowledge or means of knowledge of his whereabouts afforded by him or obtainable by the exercise of reasonable diligence on the part of the heirs, beneficiaries, or other parties in interest of his estate, such heir, beneficiary or other interested party may institute a proceeding for the administration of the estate of such absentee owner, on the presumption that the latter has died intestate.²

Stated another way, "a presumption of death arises where: (1) A person is absent for at least ten years, (2) those persons with whom he would likely communicate have not heard anything from

¹ During the December 10, 2012 hearing, counsel suggested to the Court that a portion of the Uniform Probate Court, specifically 15 V.I.C. § 1-107, may still apply. However, when the UPC was repealed by Act No. 7254, § 1-107 was repealed with it and replaced by the re-enacted 15 V.I.C. § 168.

² V.I. Code Ann. tit. 15 § 198.

him, and (3) a reasonably diligent search has been made without obtaining information that he is alive.”³ However, this presumption of life can be rebutted before the expiration of the ten (10) year period by a preponderance of the evidence.⁴

In order to rebut the presumption of life, the petitioner must show that the missing person has not been in contact with family, a reasonably diligent search was made, and that no other circumstances show that the person is still alive, such as activity in a bank account. While not needed, showing that the person was subjected to specific peril at time of death is indicative that the person is deceased.⁵

In this case, Hodge was piloting a plane which crashed into the ocean. His wife, with whom he spoke daily and other family members with whom he regularly and frequently communicated, have not heard from him since the plane crash. There has been no activity on any of Hodge’s financial accounts. The plane itself had been found with two other deceased passengers inside. Rescuers searched for Hodge for fifteen (15) days before the search was called off. The plane crash was a specific peril. The sole survivor of the crash, who was rescued more than a day after the airplane went down in rough seas, claimed that she was pulled out of the plane by Hodge but never saw him breach the surface. These facts, taken together, show by a preponderance of the evidence that Hodge died on or about October 13, 2012 after and as a direct result of the plane crash.

Conclusion

There is a statutory presumption of life which lasts for ten (10) years after an individual disappears. However, this presumption can be rebutted. Based on the evidence, the rebuttable presumption that Kirby O. Hodge is alive has been overcome. Therefore, the Court finds that he died on or about October 13, 2012 when the plane he was piloting crashed into the ocean.

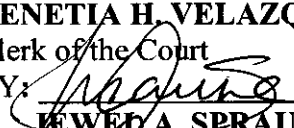
A Judgment will be issued in accordance with this Memorandum Opinion.

DATED: April 2, 2013


ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

BY: 

JEWEL A. SPRAUVE

Court Clerk Supervisor 4/2/13

³ *Rice v. Clements*, 26 V.I. 153, 156 (1991).

⁴ *Id.* at 159.

⁵ *Id.* at 157.