

APPENDIX

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

9TH Circuit-Probate Division-Nashua Telephone 1-855-212-1234
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NOTICE OF DECISION

DALE SAWYER EISELE
90 HONEYPOT ROAD
WEST HAVEN, CT 06516

Case Name : **Dale Sawyer Eisele v The Estate of Joseph Brodie
Smith**

Case Number: **316-2019-EQ-02352**

On January 16, 2020, Judge Patricia B. Quigley issued orders

relative to:

The petition in equity requesting the disinterment of the Joseph Brodie Smith is DISMISSED.

Please see attached ORDER

Any Motion for Reconsideration must be filled with this court by January 26, 2020. Any appeals to the Supreme Court must be filed by February 15, 2020.

January 16, 2020

Sherry L. Bisson

Clerk of Court

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

**HILLSBOROUGH COUNTY 9TH CIRCUIT-PROBATE DIVISION-
NASHUA**

In re: Dale Sawyer Eisele v The Estate of Joseph

Brodie Smith

Case No: 316-2019-EQ-02352

ORDER

This matter came before the court for a hearing on December 27, 2019 on a petition filed by Dale Sawyer Eisele seeking a court order allowing the exhumation of the body of Joseph Brodie Smith. Appearing at the hearing was the petitioner, Dale Sawyer Eisele. Also attending the hearing was a family member of the petitioner.

The court has jurisdiction over the matter pursuant to RSA 290.

The petitioner did not provide contact information for any legal family member of Joseph B. Brodie, so no family member was notified.

The petitioner provided the court with extensive pleadings that show she has done a tremendous amount of research into her biological and legal family history. The court has reviewed these documents and some of the information in this order is gleaned from those many attachments to the petition.

This matter concerns Joseph Brodie Smith who was deceased on May 8, 1947.

Dale Sawyer Eisele informed the court that she wished to exhume the body of her alleged great grandfather for various reasons including to: establish a biological relationship with the decedent through his DNA, to see if there are any connected medical issues, and possibly to see whether there are any residual rights of inheritance or other rights that would inure to her based on being the biological issue of Joseph B. Smith.

The petitioner, Dale Sawyer Eisele alleges that Joseph Brodie Smith is her biological great grandfather, although he is not her legal great grandfather. Dale Sawyer Eisele understands that

her grandmother was biological child of Joseph Brodie Smith born out of wedlock to Lilla Sawyer. The baby was adopted and renamed Gladys Irene Minard (DOB Oct. 23 1903) (at her death named Gladys Irene Denoncourt). The birth certificate lists the father as "unknown."

Dale Sawyer Eisele's grandmother later reconnected with her biological mother and learned about her biological father. The grandmother conveyed this information to Dale Sawyer Eisele. Dale Sawyer Eisele believes this information to be true and wants to confirm the relationship by testing DNA of Joseph Brodie Smith.

The grandmother also informed Dale Sawyer Eisele that Joseph Brodie Smith "... had a lot of money." Under Joseph Brodie Smith's will, his surviving spouse, Charlotte Stewartson Smith, was the sole beneficiary. Joseph Brodie Smith did not have any identified children or issue listed in the estate administration.

The final account from the probate administration of the estate of Joseph Brodie Smith lists the remainder in the estate, after payment of expenses and debts (including \$31,623 in legacy and succession taxes) were a total amount of \$47.83. This amount was or should have been provided to the widow.

The petitioner argues that she may be the heir of Joseph Brodie Smith's estate because his parental rights were not terminated prior to the adoption. The court has not (and will not for a number of reasons) done research on the adoption laws of 1903. However, under current law (and adoption for any time for which this judge is aware), if the biological father (purportedly Joseph Brodie Smith) does not come forward and request a hearing on paternity PRIOR TO the birth mother (Lilla Sawyer) surrendering her parental rights (a/k/a consenting to the adoption), then the parental rights of the biological father (also referred to as the "putative father" or "alleged father") are automatically terminated by operation of law. See NH RSA 170-B:6.

Thus, Joseph Brodie Smith had no legal parental rights after the adoption of Gladys Irene and Dale Sawyer Eisele has no right of inheritance.

Additionally, the probate court would not reopen an estate administration finalized more than 70 years ago.

Furthermore, there was a total amount remaining in the estate of \$47.83, all of which would go to the surviving spouse whether the estate of Joseph Brodie Smith was testate (with a

will or intestate (without a will). If there were any children, they would not receive anything.

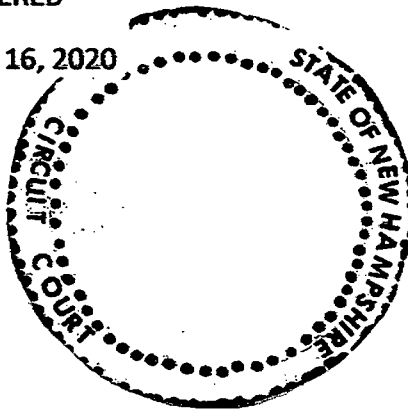
Based on the information provided at the hearing, the court finds and rules as follows: The court finds there is no legitimate reason for the request to exhume the body of Joseph Brodie Smith. The court informed the petitioner at the hearing that her great grandmother, by virtue of being adopted, no longer has a legal relationship with Joseph Brodie Smith. Joseph Brodie Smith, by not being on the birth certificate of petitioner's grandmother, had not established paternity of the child. The petitioner's curiosity about her biological kinship is not a legally sufficient reason to disinter the body of Joseph Brodie Smith.

The petition in equity requesting the disinterment of the Body of Joseph Brodie Smith is DISMISSED.

SO ORDERED

January 16, 2020

Date



"s/"

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2020-0089, Dale Sawyer Eisele v. The Estate of Joseph Brodie Smith, the court on May 18, 2020, issued the following order:

On March 30, 2020, Dale Sawyer Eisele was ordered to file her brief on or before April 29, 2020. Dale Sawyer Eisele failed to file a brief as ordered. Consequently, the appeal is dismissed. See Rule 16(12) (explaining that failure of appealing party to file brief will result in dismissal of appeal).

Appeal dismissed .

This order is entered by a single justice (Bassett, J.) See Rule 21 (7).

Timothy A. Gudas

Clerk

Distribution:

9th N. H. Circuit Court – Nashua Probate Division, 316-2019-EQ-

O2352

Honorable Patricia B. Quigley

Ms. Dale Sawyer Eisele

File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2020-0089, Dale Sawyer Eisele v The Estate of Joseph Brodie Smith, the court on September 3, 2020, issued the following order:

Supreme Court Rule 22 (2) provided that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that she claims the court has overlooked or misapprehended in the decision dismissing this appeal due to Dale Sawyer Eisele's failure to file a brief as ordered. Accordingly, upon reconsideration, we affirm the May 18, 2020 decision and deny the relief requested in the motion.

Relief requested in motion for

reconsideration denied.

Hicks, Bassett, Hantz Marconi, and Donovan, J.J., concurred.

Timothy A. Gudas

Clerk

Address and Telephone Numbers of Courts

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