

**In Re Estate of Frank Prignole**

No. 2002-288

*Decedent Estate*

**DECISION**

This matter is before the Probate Court on the Statement of Claims of Mary E. DiIorio and Gino J. Di Orio, the sister and brother-in-law of the decedent (“Mary” and “Gino”, respectively), against the estate of Frank Prignole (“Estate”). The Administrator c.t.a. of the Estate, Richard J. Siravo, has denied the claims and the parties requested that the Probate Court conduct a hearing on these claims<sup>1</sup>. A hearing was held in the Probate Court on April 10, 2003 at which time Mary and Gino each testified regarding their respective claims. Briefs in support of their positions were submitted.

**Travel and Pertinent Facts**

Frank Prignole died on July 2<sup>nd</sup>, 2002, some four (4) days after his wife Frances. No children were born during their marriage to each other nor did either have any children; he is survived by his sister Mary and brother Donato Prignole. A petition for Administration of his estate, with waivers of notice executed by his two (2) heirs at law included, was filed with this court on July 11<sup>th</sup>, 2002 by Denise DiIorio Javery, Frank’s niece and the daughter of the two (2) claimant’s herein as petitioner. It was granted on the same day<sup>2</sup>; the petitioner was appointed Administratrix and Appraiser. Bond was set at \$350,000 without surety; Ms Javery qualified as such the next day by filing her bond in court.

Subsequently, on July 22, 2002, three (3) of the nephews and a niece of Frances Prignole<sup>3</sup>, Frank’s late wife, (“Objectors”) filed a petition for the appointment of a custodian and Removal of Administratrix on the grounds that there was a will somewhere in the decedent’s home which provided for a different disposition of his estate, other than by intestate succession. They alleged that, in addition to themselves, other nieces and nephews of both Frank and Frances

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<sup>1</sup> RIGL § 33-11-16

<sup>2</sup> RIGL § 33-22-15

<sup>3</sup> This court granted standing to them based on this representations and their presentation of an unsigned document purporting to be the Last Will of Frank Prignole.

would share in his estate<sup>4</sup>. This court entered a discovery order on August 22, 2002, compelling Attorney Hugo L. Ricci's appearance and authorizing limited discovery to the Objectors. A hearing was held in Probate Court in September, 2002 at which time Attorney Ricci indicated that his late father had prepared identical, reciprocal wills for Frank and Frances Prignole, providing for the same disposition of their estate, should one predecease the other. He stated that the originals were not in his office. This court then authorized the Objectors and Administratrix to undertake a due and diligent search for the will at the decedent's residence.

Eureka !! On September 22, 2002, the aforesaid original wills were found in the basement of the home; on October 3, 2002, a petition to allow Frank's will was filed by Richard J. Siravo, Frances's nephew. It asked that he be named Administrator c.t.a. On the same day, Mary and Richard filed their claims herein in the amount of \$7,211.55 and \$14,751.92, respectively. Subsequently, after acceptance of the Administratrix's final account, the will was allowed and Mr. Siravo was appointed Administrator c.t.a. He timely denied the claims of Mary and Gino.

Gino testified at the probate hearing that he transported Frank every Saturday and Sunday from August 24<sup>th</sup>, 1996 through June 29<sup>th</sup>, 2002 on various errands for shopping, medicine, takeout food, church, barbershop, bakery, etc. In support of his service, he submitted an invoice that he admitted on cross-examination was prepared in anticipation of the probate court hearing<sup>5</sup>. No backup records, calendars or diaries were presented or referred to by Gino. He stated he relied on his memory and used an alleged IRS figure of \$ 00 .37 per mile for the mileage portion of his claim<sup>6</sup>; Gino also alleged that \$6.00 an hour was, in his mind, a fair hourly rate, although no basis for this rate was provided. He testified that, although Frank was frail, partially blind, could not drive during this period, and had difficulty walking,<sup>7</sup> he maintained his mental capacities up to his demise. He was vague on the question of vacations and holidays, but testified that he would drive Frank on other days of the week if he was unavailable on weekends. During this time period, Gino testified that his wife Mary drove Frank to visit his wife Frances in the hospital and at various nursing homes where she resided after her knee operation and her stroke as well as sitting with her at her home after she was discharged from the nursing home(s) while he

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<sup>4</sup> The will left his estate to his wife provided she survive; otherwise all his personal property and the proceeds from the sale of his residence would pass in equal shares to his and his wife's nephews and nieces; (9) shares.

<sup>5</sup> Claimants Exhibit 1

<sup>6</sup> No evidence from IRS regulations was presented in support of this figure.

<sup>7</sup> There was testimony that Frank had a stroke in 1988 that may have impaired him physically.

took Frank on these errands etc. Gino testified that sometime during this period, Frank said he would “take care of him in the will”. There was no written agreement between the two of them concerning this nor were any amounts of payment discussed. He stated that he (Gino) expected to be left a gift in Frank’s will.

Mary testified that during the same period referred to by Gino, she also performed services for Frank that included driving him around to visit his wife Frances while she was in a nursing home and sitting with her when she returned home and Frank was out on errands with Gino.<sup>8</sup> She used a mileage figure of \$ 0.31 per mile and testified that this was the IRS rate. (See footnote 6 and Claimants Exhibit 1). As in her husband Gino’s case, she had no backup, calendar or diaries to support her figures. She estimated that she performed these services for 367 days and that \$15.00 per day was a fair figure to use in the calculation; as in Gino’s case, no supporting evidence was provided. She testified that Frank said he would pay her; no amounts were ever discussed. She suggested that Frank wanted to change his will, but the lawyer’s office stopped him. She did not remember any specifics as to when he told her he would pay her, and was not able to substantiate the dates or mileage expended. She candidly admitted that she did not believe that his will would be found and once discovered and she was in effect cut out<sup>9</sup>, both these claims were submitted.

The Administrator c.t.a. did not testify, nor did he present any witnesses.

### **Discussion and Findings**

In order for claimants Gino and Mary to prevail against the estate herein, they must prove by a preponderance of the evidence<sup>10</sup> either an expressed promise on the part of the decedent to pay for the services allegedly provided or circumstances affording grounds for a reasonable expectation on the part of claimants that compensation would be paid to them. Newell v. Lawton 20 R.I. 307. The trier of facts (probate judge) must decide from the evidence submitted whether:

1. There existed a proper and reasonable expectation on the part of the claimants and deceased that compensation was to be paid to the claimants (question of fact) and
2. If the answer to this question is in the affirmative, what is the reasonable value of the claim? White v. Almy 34 R.I. 29.

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<sup>8</sup> Claimants Exhibit 2

<sup>9</sup> Under RIGL 33-1-1,1-10, she would have received 50% of his estate had Frank died intestate.

<sup>10</sup> Hobin v Hobin 33 R.I. 257 @ 262

The evidence in this case does not suggest or support the existence of any expressed contract between the decedent and either Mary or Gino, and I find that none existed.

Mary and Gino allege that the services rendered to Frank Prignole were not performed voluntarily or gratuitously and that he never understood that they were so provided. Messier v. Messier 34 R.I. 233 at pages 242, 243. The claimant(s) and the decedent must, at the time the services are rendered, have the reasonable and proper expectation that claimant(s) would be compensated for their services. Morris v. Zuckerman 680 A.2d 937 , Traverso v. Smith 437 A.2d. 1358.

Neither Gino or Mary filed claims against the estate until Frank's will was discovered and filed in Probate on October 3, 2002. Mary was then faced with the reality of having been entitled to receive fifty (50%) percent of Frank's estate had he died without a will, to receiving nothing under his will. Their inaction prior to the discovery of the will, especially by Mary's husband Gino, is telling to the court. If, as he testified, he and Frank both expected that he would be compensated, why wait until the will is presented for allowance ? His testimony was rehearsed, not natural and less than persuasive. I find it incredulous that he had no backup information or source data for his Exhibit. He never presented any corroboration to his claim nor could he with any reasonable assuredness recall when Frank had told him he would pay him. For these reasons, I find that his testimony was not credible, though uncontradicted. Laganiere v. Bonte Spinning Co. 236 A.2d 256 and Paradis v. Heritage Loan 701 A.2d 812.

Mary likewise presented a less than credible rendition of how she arrived at her claim as summarized in Claimant's Exhibit 2. What I do believe from her testimony was her statement that as soon as that will was found we (she and Gino) put the claims in because we felt we deserved something, or words to that effect. I find that there was no understanding by Frank that he would have to pay for any alleged services provided by either Gino or Mary. They were motivated to file claims by the discovery of Frank's will which effectively cut out Mary from any benefit and perhaps vicariously inspired Gino to file his claim.

There is ample testimony that Frank was competent during the time that the alleged services were provided and he could have easily modified or added to his will. He chose not to.

**Conclusion**

Based on my finding of fact and lack of proof of the existence of an implied understanding for payment by the decedent, even if arguendo, I accept the hours and concepts put forth by the claimant(s) on their respective Exhibits herein, I deny the claims and affirm the action of the Administrator c.t.a. in denying same.

ENTER: \_\_\_\_\_

BY ORDER: \_\_\_\_\_