

STATE OF RHODE ISLAND
PROVIDENCE, SC

PROBATE COURT OF THE
CITY OF PROVIDENCE

In Re Estate of: YOLANDA D'AMORE

No.:2014- 337

ORDER and DECISION

This matter is before the Court on a Petition to admit for probate the will of the above decedent brought by the designated alternate executor thereunder and party in possession thereof, Martin Malinouu, Esquire ("Petitioner") on **September 9th, 2014**. Objection to the jurisdiction of this court to act on the petition was filed by two (2) of the heirs at law of the decedent, Barbara Neri and Donald D'Amore, individually and as guardians for their ward, Ida D'Amore, through their attorney, Frank S. Lombardi (Objectors).

TRAVEL OF CASE

Subsequent to filing the will, the petitioner filed a **"SUPPLEMENT TO PETITION FOR PROBATE OF WILL"**. Petitioner also filed an **"AFFIDAVIT OF DOMICILE IN PROVIDENCE"**, prepared and attested to by him in support of this court accepting jurisdiction.

Objectors filed a **MOTION TO DISMISS** the petition for probate of will for lack of jurisdiction, **MOTION FOR CHANGE OF VENUE** and a **MOTION FOR REMOVAL OF PROPOSED EXECUTOR**.

Both parties argued their respective positions, based on their filings; at the conclusion of lengthy oral arguments, petitioner then stated that he wanted the opportunity to present witnesses, (not at the commencement of the hearing) but did not identify prospective witnesses, nor did he offer any affidavits or other evidence to the court,. He also requested, from the outset of this proceeding, that he could not hear well and wanted the court to speak in a loud voice, which request this court gladly granted.

FINDINGS OF FACT

In making its findings, this court reviewed and summarizes the following:

Death Certificate which recites decedent's residence was 125 Scituate Avenue, Cranston, RI 02921(Cedar Crest Nursing Centre) and age at 99;

Petitioner's **AFFIDAVIT OF DOMICILE IN PROVIDENCE** which states that the decedent had resided in Cranston, RI since 2009, sold her residence in 2013 but owned another parcel of real estate in Providence, as a surviving joint tenant but never lived there; petitioner avers that the decedent was a register voter in Providence and that she, according to him, "intended" to move to this other parcel. This affidavit also states

that the decedent worked at Miriam Hospital before her retirement. Petitioner also presents the alleged signature page of his Petition to the RI Supreme Court, signed by the decedent and prepared by the petitioner, purportedly alleging she is of the "City of Providence".

Petitioner's **SUPPLEMENT TO PETITION FOR PROBATE OF WILL**. It informs this court of guardian appointments of the decedent and her sister Ida D'Amore, by the Cranston Probate Court of the niece and nephew, (the objectors herein), as co-guardians for them and his appeal of those orders to the Superior Court and Supreme Court. Petitioner, in the same document, opines that "in my opinion" Ida D'Amore is not incompetent.

Objector's combined motions in **OBJECTION TO THE PETITION FOR PROBATE OF THE WILL, MOTION FOR DISMISSAL FOR LACK OF JURISDICTION, MOTION TO CHANGE VENUE and MOTION FOR REMOVAL OF PROPOSED EXECUTOR**; this court, in its review, will limit its review and summary to the issue of jurisdiction and change of venue; the objectors also aver that the decedent was a resident of the City of Cranston at her death and for approximately 5 years prior thereto; in addition, they aver that the Cranston Probate court has taken jurisdiction for both the decedent and her sister's guardianship, appointing the nephew and niece of the wards as co-guardians. Since that court is most familiar with the myriad of issues alleged by them regarding Mr. Malinou and his conduct in these proceedings, objectors argue for an order from this court to transfer the venue there.

The Petitioner argued the points contained in his filings; objectors also confirmed the residence of the decedent was sold in 2013; she had moved to the nursing home voluntarily 5 years prior to her death and did not maintain a home in Providence. They also argued the other issues in their motion which are not being acted on by this court. Subsequently, after oral arguments, Attorney Malinou made a request to present testimony from unknown parties to this court.

Based on the above reviewed documents and oral argument, this court finds:

- The decedent lived at 125 Scituate Avenue(Cedar Crest Nursing Centre), Cranston, RI 02921 at the time of her death and for 5 years prior thereto;
- The decedent's home was sold in 2013;
- The decedent owned another parcel of real estate in Providence that she did not occupy or have as her residence;
- The Cranston Probate Court has accepted jurisdiction of the guardianship cases for the decedent and her sister Ida in February of 2014, subject to the appeals filed by Mr. Malinou;
- Since the petitioner did not present witnesses at the hearing and waited until the end of the proceedings to raise this issue, the court finds he is

not, after the hearing concluded, able to obtain a continuance for presentation of witnesses;

- No findings are made concerning the other issues raised by the objectors nor is the will deemed to be valid or invalid;

APPLICATION AND CONCLUSION OF LAW

R.I. GEN. LAWS § 8-9-9 defines general probate jurisdiction for the 39 probate courts in the state of Rhode Island. The pertinent segment of that section provides: "The jurisdiction assumed in any case by the court, so far as it **depends on the place of residence of a person**, shall not be contested in any suit or proceedings except in the original case or on appeal therein or when the want of jurisdiction appears on the record."

Applying this statute to the facts at hand, the probate court is the proper initial forum to challenge jurisdiction based on the residence of the decedent; RI case law follows this statutory mandate: **George v Infantolino 446 A2d 757 (R.I 1982); Pickering v Pickering 10 A2d 721 (R.I. 1940; People's Savings Bank v Wilcox 3 A211 (1886).**

This court finds that, based on it's findings of fact made herein, the Providence Probate Court **lacks the jurisdiction to hear this matter since the decedent was not a resident of Providence, lived in Cranston for 5 years prior to her death, did not own a residence in Providence and was a resident of the City of Cranston, RI. Therefore, the Petition for Probate of will is dismissed.**

There is no specific statutory authority for this court to transfer venue forthwith to the probate court of Cranston, but for judicial expediency, it will do so upon the expiration of the twenty (20) day appeal period **from the date of entry of this decision and not the date of hearing plus 10 days**, provided an order for a stay of such action is issued by the RI Superior Court within said 30 day period.

ENTER:

J. Martinelli
Probate Judge

DATE: 9/16/2014

BY ORDER:

Paul Sabur
clerk

DATE:

9/16/14