

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: September 18, 2013]

JENNI LAURA AUCLAIR

v.

CELINA A. AUCLAIR, Executrix of
the Estate of Paul Robert Auclair, Jr.

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C.A. No. PC 2012-3714

DECISION

TAFT-CARTER, J. Before this Court is Appellant Jenni Laura Auclair’s (Appellant) appeal from a June 19, 2012 Order of the Probate Court of the Town of Cumberland (Probate Court). The Probate Court’s Order allowed Appellee Celina A. Auclair’s (Appellee) Petition to Probate the Last Will and Testament (Will) of Paul Robert Auclair, Jr., as well as Appellee’s appointment as Executrix and appraiser of the decedent’s personal property. Jurisdiction is pursuant to G.L. 1956 § 33-23-1.

I

Facts and Travel

Appellant is the widow of Paul Robert Auclair, Jr. (decedent), an active duty enlisted member of the United States Air Force who died January 28, 2011 while stationed at Joint Base Elmendorf-Richardson (Elmendorf-Richardson) in Anchorage, Alaska. Appellee is the decedent’s mother. On March 2, 2011, Appellee filed a Petition for Probate of Will in the Cumberland Probate Court. Appellant objected to the Petition, asserting that the Cumberland Probate Court lacked jurisdiction to probate the decedent’s Will because he was a domiciliary of the state of Alaska at the time of his death. See Appellee’s Ex. 3, Objection to Jurisdiction.

On June 14, 2011, the parties entered into a Consent Order. In the order, each party was permitted to conduct discovery regarding the drafting and execution of a military testamentary instrument. The order also allowed the issuance of subpoenas duces tecum for the taking of out-of-state depositions pursuant to § 33-22-19.2. See Appellee's Exs. 4, 5 Consent Order, subpoenas duces tecum. The subpoenas sought to obtain official and/or business records to determine decedent's legal residence or domicile at the time of his death. Specifically, Appellant sought to demonstrate the decedent's intent to establish legal domicile in the State of Alaska. Appellant argued that decedent's intent to establish domicile was based on his qualification for payment from the Alaska Permanent Fund Dividend Division (Fund). The Fund pays annual royalty payments to all permanent residents of the state. See Appellee's Ex. 6, 8/27/10 letter from Alaska Department of Revenue, Permanent Fund Dividend Division. Appellant further sought to obtain income tax returns and records from the Alaska Department of Revenue, motor vehicle registration data, traveling records, and Internal Revenue Service tax returns.

Decedent was born in Cumberland, Rhode Island on December 5, 1982. He enlisted in the United States Air Force on March 16, 2004. His enlistment document lists his home of record as 35 Deer Brook Way, Cumberland, Rhode Island, 02864. See Appellee's Ex. 7, Enlistment Document of the Armed Forces of the United States. After decedent completed basic training at Lakeland Air Force Base, he married Appellant at the Cumberland Town Hall on July 22, 2004. The marriage certificate names Cumberland, Rhode Island as decedent's residence. See Appellee's Ex. 8.

After the wedding, decedent was stationed at Seymour Johnson Air Force Base in Goldsboro, North Carolina. While stationed in North Carolina, he executed a military advance medical directive, a special power of attorney, and a record of emergency data. See Appellee's

Exs. 9, 10, 11. All three documents indicate that decedent resided at 35 Deer Brook Way, Cumberland, Rhode Island. Thereafter, decedent served in Kuwait, Iraq, and Korea before transferring to Elmendorf-Richardson on or about January 30, 2008. His application for shipment of his personal property from Korea to Alaska indicated that his “in transit” address remained 35 Deer Brook Way, Cumberland, Rhode Island, and he executed a Bank of America Relocation Program Request Form from Korea for account activity in Rhode Island. See Appellee’s Exs. 12, 13 Application for Shipment and/or Storage of Personal Property, Bank of America Relocation Program Request Form.

While stationed in Alaska, decedent received mail from numerous sources—including GMAC Insurance, Sears Credit Services, United States Automobile Association, and Alaska Federal Credit Union—addressed to his Cumberland, Rhode Island address. See Appellee’s Exs. 14, 15, 16, 17. In addition, decedent’s W-2 statements issued by the United States Air Force indicate that decedent paid state income taxes to the State of Rhode Island up until the time of his death. See Appellee’s Exs. 18, 19 2006 W-2 statement, 2009 W-2 statement. Decedent did not pay income taxes to the State of Alaska while stationed at Elmendorf-Richardson.

The Air Force issued a report of casualty, dated January 31, 2011, indicating the essential data surrounding the circumstances of his death. See Appellee’s Ex. 20, Report of Casualty Form. The report indicates decedent’s home of record at the time of his entry into the armed forces as Cumberland, Rhode Island. See id. The report does not indicate any amendments by the decedent to change his home of record.

Appellant commenced this probate appeal on July 18, 2012. A Justice of this Court established a briefing schedule on January 1, 2013, and the parties thereafter submitted briefs

along with the record of the Probate Court. After reviewing the briefs and the entire record below, this Court's Decision follows forthwith.

II

Standard of Review

Section 33-23-1 of the Rhode Island General Laws provides that:

“(a) Any person aggrieved by any order or decree of a probate court (hereinafter “appellant”), may, unless provisions be made to the contrary, appeal to the superior court for the county in which the probate court is established, by taking the following procedure:

(1) Within twenty (20) days after execution of the order or decree by the probate judge, the appellant shall file in the office of the clerk of the probate court a claim of appeal to the superior court and a request for a certified copy of the claim and the record of the proceedings appealed from, and shall pay the clerk his or her fees therefor,

(2) Within thirty (30) days after the entry of the order or decree, the appellant shall file in the superior court a certified copy of the claim and record and the reasons of appeal specifically stated, to which reasons the appellant shall be restricted, unless, for cause shown, and with or without terms, the superior court shall allow amendments and additions thereto.”

In hearing a probate appeal, “the Superior Court is not a court of review of assigned errors of the probate judge, but is rather a court of retrial of the case de novo.” In re Estate of Paroda, 845 A.2d 1012, 1017 (R.I. 2004) (citing Malinou v. McCarthy, 98 R.I. 189, 192, 200 A.2d 578, 579 (1964)); see § 33-23-1(d). Further, “[t]he findings of fact and/or decisions of the probate court may be given as much weight and deference as the superior court deems appropriate, however, the superior court shall not be bound by any such findings or decisions.” See id.

III

Analysis

The sole issue raised on appeal is whether the Cumberland Probate Court has jurisdiction to probate decedent's Will. Appellant argues that decedent's Will should be probated in the State of Alaska. Appellee responds that the State of Rhode Island is the appropriate jurisdiction for the decedent's probate process.

Jurisdiction for the probate of a decedent's will is the decedent's state of domicile at the time of death. Pickering v. Pickering, 64 R.I. 112, 10 A.2d 721, 723 (1940) (citing Lapham v. Olney, 5 R.I. 413 (1858)). It is well-settled that individuals have only one domicile. Restatement Second, Conflict of Laws § 11(2). “[T]he general rule is that all questions concerning the will arising in regard to personal property are referred to the law of the domicil of the testator at the time of death.” 16 Am. Jur. 2d Conflict of Laws § 50.

In general, military status does not change a person's state of domicile. 25 Am. Jur. 2d Domicil § 28; see Consford v. Consford, 271 A.D.2d 106, 111, 711 N.Y.S.2d 199 (N.Y. App. Div. 2000). Members of the military “are presumed not to acquire a new domicile when they are stationed in a place pursuant to orders; [rather,] they retain the domicile they had at the time of entry into the services.” Melendez-Garcia v. Sanchez, 629 F.3d 25, 41 (1st Cir. 2010) (quoting 13E Wright, Miller & Cooper, Federal Practice and Procedure § 3617, at 607 (3d ed. 2009)). Thus, unless an individual intends to change his or her domicile, that person “does not acquire a new domicile by entering the military and does not abandon or lose the domicile that he or she had upon entering.” 25 Am. Jur. 2d Domicil § 28; see Wamsley v. Wamsley, 333 Md. 454, 460, 635 A.2d 1322, 1325 (1994). However, “military personnel may acquire a new

domicil where stationed, if the circumstances show an intent to abandon the original domicil and adopt the new one.” 25 Am. Jur. 2d Domicil § 28.

Domicile is established by physical presence coupled with the specific intention to make it home. See Black’s Law Dictionary 558 (9th ed. 2009). It is a “true, fixed, principal, and permanent home, to which that person intends to [] remain...” Id. Thus, to change a domicile one must be physically present in the new state with the intent to remain there. The Supreme Court of Vermont stated the general rule succinctly when it explained that to change domicile, ““there must be a relocation to the new residence and continued dwelling there, coupled with an intention of remaining there indefinitely; neither physical presence alone nor intention alone is sufficient to effectuate a change of domicile.”” Conloy v. Crisafulli, 188 Vt. 11, 15, 999 A.2d 677, 680 (2010) (quoting Duval v. Duval, 149 Vt. 506, 509, 546 A.2d 1357, 1360 (1988)). Therefore, a soldier may change his or her state of domicile by demonstrating the concurrent elements of physical presence in a new state and the intent to become domiciled at the place of military service. 25 Am. Jur. 2d Domicil § 28; see Midkiff v. Midkiff, 275 Ga. 136, 137, 562 S.E.2d 177, 178 (2002) (military personnel may abandon their former domicile and establish a new domicile by meeting the same statutory requirements that apply to any other citizen). Clear and convincing proof of the change in domicile is required. Melendez-Garcia, 629 F.3d at 41 (citing 13E Wright, Miller & Cooper, Federal Practice and Procedure § 3617, at 609). The fact that a soldier purchases off-base housing does not, independently, prove the required intent to acquire a new domicile. 25 Am. Jur. 2d Domicil § 28.

Here, Appellant argues that decedent became a domiciliary of Alaska at some point after being stationed at Elmendorf-Richardson. To support her position, Appellant presents the following evidence: (1) decedent executed a Will in which he declared his status as a resident of

Alaska and that his residual estate, in the event that his mother and sister predecease him, should be distributed under the laws of intestacy of the State of Alaska; (2) decedent reregistered his vehicles with the Alaska Division of Motor Vehicles when he was first stationed in Alaska in 2008; (3) decedent applied for and received an Alaska driver's license when he returned to Alaska following a deployment to Japan in 2009; (4) decedent purchased new vehicles in 2010 and registered them in Alaska, listing his home address as 6820 Gold Kings Circle-Unit C, Anchorage, Alaska; and (5) decedent applied for Permanent Fund Eligibility with the State of Alaska Department of Revenue on March 31, 2010, also using his Alaskan residence as his home address.

Appellee argues that such evidence is insufficient to establish the decedent's intent to remain in Alaska and to make Alaska his home. Specifically, Appellee points to the following evidence to demonstrate the lack of unequivocal proof of decedent's intent to establish domicile in Alaska: (1) decedent's enlistment document lists 35 Deer Brook Way, Cumberland, Rhode Island as his home address; (2) decedent's marriage license utilizes the same Rhode Island address; (3) decedent's advance medical directive (executed while stationed in North Carolina) names the Rhode Island address as his home address; (4) decedent's special power of attorney (also executed while stationed in North Carolina) names the Rhode Island address as his home address; (5) decedent's W-2 forms from the United States Air Force for tax years 2006 and 2009 reflect taxes paid to the State of Rhode Island; (6) bank account statements and documents from Bank of America, Citibank, and Alaska Federal Credit Union indicate the Rhode Island address as his home address; (7) account statements from GMAC Insurance and Sears Credit Services indicate Rhode Island as decedent's home address; (8) the State of Alaska's denial of decedent's request for disbursements from the Permanent Fund absent a further evidentiary showing; (9) a

January 22, 2010 memorandum in which decedent states that he “intend[ed] to buy a trailer and drive to [his] next duty station” in the continental United States; and (10) report of casualty lists decedent’s home of record as Cumberland, Rhode Island.

Appellant reasons that decedent’s declaration of his Alaskan residency in his Will is primary evidence of his intent to change his domicile. This Court, however, is not convinced that decedent intended to change his state of domicile from Rhode Island to Alaska. This document alone, when compared with the evidence presented by Appellee, fails to demonstrate the decedent’s unequivocal intent to change his domicile to Alaska. While decedent’s residence in Alaska satisfies the residency prong of the two-part domicile test, his intent to have his residual estate distributed in accordance with the laws of intestacy of the State of Alaska, in the event that his mother and sister predecease him, is insufficient to demonstrate an unequivocal intent to remain permanently in Alaska. See Conloy, 188 Vt. at 15, 999 A.2d at 680 (to change domicile, party must demonstrate residency and intent to permanently remain).

Notably, decedent executed a January 22, 2010 “date expected return overseas” (DEROS) memorandum indicating his desire to leave Alaska following his deployment at Elmendorf-Richardson. See Appellee’s Ex. 22 DEROS Memorandum. Specifically, decedent stated that “I would like to extend my DEROS until June so I can complete a [temporary duty] move during a time with better weather for safer travel. I intend to buy a trailer and drive to my next duty station in the [continental United States].” Id. At a minimum, the decedent’s declaration that he intended to purchase a trailer before departing for his next duty station does not lead to the conclusion that the decedent intended to reside permanently in Alaska. See Melendez-Garcia, 629 F.3d at 41 (finding service member’s statement that his plans were to stay

in Puerto Rico with his family an unequivocal expression of his intention to remain in Puerto Rico and be a domiciliary of Puerto Rico).

Further, this Court finds that an evaluation of the remaining evidence on the issue weighs in favor of the Probate Court's conclusion that decedent remained a domiciliary of Rhode Island until the time of his death. The evidence advanced by Appellant is insufficient to overcome the presumption that decedent was a Rhode Island domiciliary throughout his service with the United States Air Force. See 25 Am. Jur. 2d Domicil § 28; Wamsley, 333 Md. at 463, 635 A.2d at 1326 (without affirmative evidence of intent to change domicile, soldier retains his or her domicile from time of enlistment); Melendez-Garcia, 629 F.3d at 41 (evidence of soldier's intent to change domicile must be clear and unequivocal). Given the aforementioned DEROS memorandum and the other evidence Appellee submitted, this Court is satisfied that decedent remained a domiciliary of Rhode Island throughout his military service. See id. Accordingly, Rhode Island is the proper jurisdiction for the probate of decedent's Will.

IV

Conclusion

After a thorough review of the record and the legal memoranda before it, this Court finds that decedent was a domiciliary of Rhode Island at the time of his death. Therefore, Rhode Island is the proper jurisdiction for the probate of decedent's Will. Appellant's probate appeal is denied and dismissed. Counsel for the prevailing party shall prepare an appropriate Order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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CASE NO: PC 12-3714

COURT: Providence County Superior Court

DATE DECISION FILED: September 18, 2013

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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