STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

[FILED: October 25, 2019]

TO HAMOGELO TOY PAIDIOU a/k/a THE SMILE OF THE CHILD, ***Appellant,***	:	
v.	:	**C.A. No. NP-2017-0205**
ESTATE OF MATOULA PAPADOPOULI, ***Appellee.***	:	

DECISION

CARNES, J. Before this Court for decision is the Appellant's, To Hamogelo Toy Paidiou a/k/a The Smile of the Child (TSOTC), appeal from an April 13, 2017 Order (April 13th Order) from the Probate Court of the Town of Middletown (Probate Court). The Appellee, Cynthia A. Kendall, in her capacity as Administratrix of the Estate of Matoula Papadopouli (Administratrix), timely objected. Jurisdiction is pursuant to G.L. 1956 § 33-23-1.

I

Facts and Travel

The decedent, Matoua A. Papadopouli (Papadopouli),[1] was born in Newport, Rhode Island on January 12, 1955. (Kelemenis Aff. ¶ 4.) During Papadopouli's life, she attained her bachelor's degree from Tufts University and her master's degree in Library Sciences from the University of Rhode Island. (Appellee's Ex. 2.) Papadopouli served twenty years in the military, where she was

[1] Matoua A. Papadopouli is also known as Matoula A. Evanitsky.

stationed in Greece and Turkey. (Appellee's Ex. 1.) Once Papadopouli returned to the United States, she continued her work as a librarian. *Id*. Throughout Papadopouli's life, she had dual citizenship in the United States and Greece. (Kelemenis Aff. ¶ 4.) She also owned property in Greece and in the United States, which included property located in Rhode Island. (Revised Joint Statement of Facts ¶ 3.)[2]

On March 27, 2001, Papadopouli executed a will (2001 Will) while she was residing at RR #2 Box 2080, Lakewood, Pennsylvania 18439. (Appellee's Ex. 3.) In the 2001 Will, Papadopouli devised her residuary estate to her three first cousins: Christina Haines, Catherine Ann Michael, and Cynthia Ann Kendall—all of whom resided in Middletown, Rhode Island. *Id*. Thereafter, Papadopouli moved to 115 Rolling Hill Road, Portsmouth, Rhode Island, where she made her permanent residence. However, Papadopouli continued to visit and live on Skiathos, Greece. (Kelemenis Aff. ¶ 4.)

On October 2, 2013, Papadopouli purportedly drafted a holographic will (Holographic Will) that was drafted and executed in Skiathos, Greece. (Appellee's Ex. A.) The Holographic Will declares the following: "I Matoula Papadopouli of Alexander I inherit [sic] all my property to Hamogelo tou[3] Paidiou. (www.hamogelo.ge) Giannis[4] N. Kontomanis will have the right to stay living in my house in Skiathos, St. George, as long as he lives to take care of my animals." *Id*. The Holographic Will also bore Papadopouli's signature. *Id.* After Papadopouli allegedly executed the Holographic Will, she handed the Holographic Will to her close friend and attorney, Attorney

[2] The parties submitted to the Court a joint statement of undisputed facts in December 2017 and a revised joint statement of undisputed facts in May 2018.
[3] The Court is aware of the Holographic Will's misspelling of Hamogelo Toy Paidiou. However, for purposes of this case, we will treat their meanings as the same.
[4] *See* footnote above. For purposes of this decision, this Court treats the meanings of "Giannis N. Kontomanis" and "Ioannis N. Kontomanis" as the same.

Styliani Lilou (Attorney Lilou). (Kelemenis Aff. ¶ 5.) The Holographic Will sought to devise Papadopouli's Estate to Hamogelo Toy Paidiou, which is a voluntary, non-profit child welfare organization based in Athens, Greece. The Greek name, "To Hamogelo Toy Paidiou," translates into English as "The Smile of the Child." This organization has a stated purpose of protecting and promoting the rights of children. In addition, the Holographic Will sought to devise a life estate to Ioannis N. Kontomanis, a resident of Greece, who was living with Papadopouli at the time of her death. (Kelemenis Aff. ¶ 6.)

In November of 2014, Papadopouli was admitted to Tufts Medical Center and underwent surgery, which resulted in a pathology result that diagnosed her with Stage IV brain cancer. (Appellee's Ex. 1.)[5] On October 4, 2015, Papadopouli passed away at a medical rehabilitation center in Volos, Greece. (Revised Joint Statement of Facts ¶ 8.) At the time of her death, Papadopouli was not married, left no descendants, and her parents were predeceased. *Id*. at 9.

After Papadopouli's death, an Administration Petition was filed with the Probate Court, which sought the appointment of Cynthia Kendall as the Administratrix[6] of Papadopouli's Estate (Estate). (Revised Joint Statement of Facts ¶ 10.) On October 28, 2015, the Petition was granted, and Cynthia Kendall was appointed as the Administratrix of the Estate. *Id*. However, also after

[5] The Tufts Medical Center stated the following in pertinent part:

> "in October 2014 she had two . . . cystic mass lesions with brain edema in her left temporal lobe. The MRI also showed a moderate sized benign frontal falx meningioma . . . [s]he was admitted to Tufts Medial Center on 11/7/14 and underwent a left temporal craniotomy for resection of the two cystic mass lesions in the left temporal lobe. The pathology returned as a Gliosarcoma, World Health Organization grade IV out of IV." (Appellee's Ex. 1.)

[6] Of note, Cynthia Kendall is Papadopouli's cousin and is the descendant of Papadopouli's Uncle, Charles Michael, who was Papadopouli's next of kin at the time of her passing. (Revised Joint Statement of Facts ¶ 4.)

Papadopouli's death, Attorney Lilou proceeded with the necessary actions in Greece to publish Papadopouli's Holographic Will.[7] (Kelemenis Aff. ¶¶ 6-8.) In accordance with the Holographic Will, Attorney Lilou sought to institute TSOTC as the sole heir and devisee of the Estate, with the exception of the life estate granted to Ioannis N. Kontomanis. *Id*.

On March 21, 2016, Papadopouli's Uncle, Charles Michael (Michael), contested the Holographic Will on grounds before the Court of First Instance at Volos (Greek Litigation). (Kelemenis Aff. ¶ 8.) Michael requested the Court of First Instance to declare the Holographic Will void asserting that the Holographic Will was not drafted by Papadopouli. *Id*. ¶ 9. In support, Michael presented an Expert's Handwriting Analysis which evaluates the Holographic Will. *Id*. The expert's analysis demonstrated that the Holographic Will was written by a third-party, and Papadopouli's purported signature was written sometime after the Holographic Will was drafted. (Appellee's Ex. 4.) Specifically, Papadopouli's signature was written "when her brain disorder had already emerged, leading to the corresponding effects on her cognitive functions." *Id*.

On May 26, 2016, TSOTC filed a petition with the Probate Court requesting (1) the Administratrix to identify the assets of the Estate that are subject to administration; (2) the Administratrix to return funds that were distributed or obtained by the Estate until the final determination of the proper beneficiary; and (3) the Court to place a stay on the administration of the Estate until the disposition of the Greek Litigation. (Appellant's Ex. B.) On July 19, 2016, the Probate Court held a hearing on the petition. (Revised Joint Statement of Facts ¶ 15.) On August 30, 2016, the Probate Court entered an Order (August 30th Order), setting forth the following: (1) the Administratrix shall identify and take possession of the assets of the Estate; (2) the

[7] The record does not state the date Attorney Lilou initiated the publication of the Holographic Will with the Greek Court.

Administratrix shall identify any Estate asset that was distributed and take the appropriate steps to have those assets returned to the Estate; (3) there shall be no distribution of the Estate assets pending final disposition of the active will contest pending before the Court of First Instance at Volos, Greece, or until further order of this Court; and (4) the Administratrix and the Petitioner shall within 7 days each disclose to the other any information that may have regarding the decedent's assets, including all real and personal property, in the United States, Greece or elsewhere, following which, the Administratrix shall prepare and file the Estate inventory. (Appellant's Ex C.) After the August 30th Order was entered, the parties exchanged a list of assets. (Appellant's Ex. D.) The Estate assets included bank accounts at BankNewport, Stifel Bank, and ABN-AMRO. (Revised Joint Statement of Facts ¶ 17.) On February 1, 2017, TSOTC sent a letter to Stifel Bank, asserting that they were the sole devisee to the Estate and requested the bank to freeze all accounts held in the name of the Papadopouli. (Revised Joint Statement of Facts ¶ 20.)

On February 7, 2017, the Administratrix filed a Miscellaneous Petition with the Probate Court requesting an Order granting the Administratrix full access to all of the Estate's accounts, so that the Administratrix can pay expenses related to the pendency of the will contest. TSOTC timely objected to the Administratrix's Miscellaneous Petition. In addition, TSOTC filed a Cross-Petition requesting an accounting of the Estate's expenses, a declaration that the Administratrix cannot use the assets of the estate to contest the will, and an order disgorging and requiring the return of all expenses for legal fees related to the will contest. The Administratrix responded to TSOTC's objection and objected to the Cross-Petition. On March 15, 2017, the Probate Court held a hearing on the Administratrix's Miscellaneous Petition. On April 13, 2017, the Probate Court issued the April 13th Order that mandated the following: (1) to lift the freeze on the Stifel Bank Account; (2) to use the Estate assets to pay for the fees and costs associated with the will contest

which was an extension of administrative costs; and (3) requiring any additional payments to be approved by the Probate Court. TSOTC now appeals the Probate Court's April 13th Order. The Administratrix on behalf of the Estate objected.

II

Standard of Review

Section 33-23-1 of the Rhode Island General Laws governs probate appeals, which provides the following:

> "(a) Any person aggrieved by an 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 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 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.
>
> "(3) The appellant shall file with the probate clerk an affidavit in proof of the filing and docketing of the probate appeal pursuant to the time deadlines set forth in subdivision (a)(2)." Section 33-23-1(a).

When reviewing a probate appeal, "the [S]uperior [C]ourt is not a court of review of assigned errors of the probate judge, but is rather a court for 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 also* § 33-23-1(b). Furthermore, "the 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." Section 33-23-1(b).

III

Discussion

A

Res Judicata

First, the Administratrix asserts that TSOTC waived its right to appeal on res judicata grounds. In her memorandum, the Administratrix contends that TSOTC previously raised and then reiterated "its belief that Greek law was controlling due to the Estate's petition to the Court in Greece . . . [the] request for the return of all money to the estate by demanding disgorgement." The Administratrix further asserts in her memorandum that the August 30th Order "only required the return of assets that were distributed and prevented further distributions of the estate pending the outcome of will contest in Greece; it did not stay all proceedings or establish Greek law as controlling." The Administratrix explains that the August 30th Order, therefore, "did not require the return of funds used in the administration of the estate or that it did not establish Greek law as controlling." Thus, the Administratrix argues that because TSOTC did not appeal the August 30th Order within the allotted 20-day time frame but raises the two identical demands and arguments in a later motion that has lapsed in time, TSOTC is barred from relitigating the two issues under res judicata.

In response, TSOTC avers that the Administratrix's interpretation of TSOTC's prior petition is misplaced. TSOTC states that the petition requested that the Court prevent any distribution of Estate assets pending a final determination by the Greek court regarding enforceability of the will. Moreover, TSOTC argued that its petition and the August 30th Order did

not contain any language regarding funding the will contest through the Estate's assets, nor was it known at the time that such funds were being used for that purpose. TSOTC also contends that res judicata only applies to final adjudication and not to interlocutory orders in the same proceeding.

The doctrine of res judicata "is commonly used to refer to two preclusion doctrines: (1) collateral estoppel or issue preclusion; and (2) res judicata or claim preclusion. *Foster–Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1014 n.2 (R.I. 2004) (citing 1 Restatement (Second) of *Judgments* ch. 1, Intro. at 1, 2 (1982); *E.W. Audet & Sons, Inc. v. Firemen's Fund Insurance Company of Newark, New Jersey*, 635 A.2d 1181, 1186 (R.I. 1994)). While issue preclusion is related to res judicata, it differs in focus. *Cranston Police Retirees Action Committee v. City of Cranston, by and through Strom*, 208 A.3d 557, 584 (R.I. 2019). The Rhode Island Supreme Court has articulated that issue preclusion "bars relitigation of any factual or legal issue that was *actually* decided in previous litigation 'between the parties, whether on the same or a different claim.'" *Reynolds v. First NLC Financial Services, LLC*, 81 A.3d 1111, 1118 (R.I. 2014) (quoting *Dennis v. Rhode Island Hospital Trust National Bank*, 744 F.2d 893, 899 (1st Cir. 1984)) (emphasis in the original). However, claim preclusion, "'bars the relitigation of all issues that were tried or might have been tried in an earlier action.'" *JHRW, LLC v. Seaport Studios, LLC*, 212 A.3d 168, 177 (R.I. 2019) (quoting *Reynolds*, 81 A.3d at 1115).[8]

In order to invoke claim preclusion on *all issues* that were tried or might have been tried in an earlier action, the party asserting claim preclusion bears the burden of satisfying the following tripartite test: "(1) identity of parties, (2) identity of issues, and (3) finality of judgment in an earlier action." *E.W. Audet & Sons, Inc.*, 635 A.2d at 1186 (citing *Gaudreau v. Blasbalg*, 618 A.2d 1272, 1275 (R.I. 1993); *Providence Teachers Union, Local 958, American Federation of Teachers, AFL–CIO v. McGovern*, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974)). Under the first prong,

identity of the parties requires resolving whether the parties to the second action are identical to or in privity with the parties involved in the first action. *E.W. Audet & Sons, Inc.,* 635 A.2d at 1186. With respect to the second prong—identity of the issues—Rhode Island has adopted the broad "transactional rule." *Lennon v. Dacomed Corp.,* 901 A.2d 582, 592 (R.I. 2006). The transactional rule "precludes the relitigation of 'all or any part of the transaction, or series of connected transactions, out of which the [first] action arose.'" *Id*. (quoting *Waters v. Magee,* 877 A.2d 658, 666 (R.I. 2005)). Under the third prong—finality of judgment in an earlier action—"The burden is upon the party asserting res judicata to 'prove that the prior judgment on which it is relying was final.'" *Huntley v. State*, 63 A.3d 526, 532 (R.I. 2013) (quoting 46 Am. Jur. 2d *Judgments* § 646 (Aug. 2019 Update)).

In the case at hand, TSOTC filed two petitions: a May 26, 2016 Petition (2016 Petition) and a February 17, 2017 Petition (2017 Petition). In the 2016 Petition, TSOTC requested the following:

> "enter an order causing any funds obtained through or otherwise distributed by the Estate to be returned to the Estate or sequestered until a determination is made as to the Estate's proper beneficiary/beneficiaries . . . By exercising his right to challenge the Will in the Court of First Instance in Volos, Greece, Mr. Michael

[8] Specifically, issue preclusion is defined as "'an issue of ultimate fact that has been actually litigated and determined cannot be relitigated between the same parties or their privies in future proceedings.'" *George v. Fadiani*, 772 A.2d 1065, 1067 (R.I. 2001) (*per curiam*) (quoting *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000)). Thus, except for situations that would lead to inequitable results, the Court should apply issue preclusion when the following three factors exist: "(1) an identity of issues between the two proceedings, (2) a final judgment on the merits in the prior proceeding, and (3) the party against whom collateral estoppel is asserted must be the same as or in privity with a party in the prior action." *Lee v. Rhode Island Council 94, A.F.S.C.M.E., AFL-CIO, Local 186*, 796 A.2d 1080, 1088 (R.I. 2002) (*per curiam*) citing *Wilkinson v. State Crime Laboratory Commission*, 788 A.2d 1129, 1141 (R.I. 2002)). Here, the parties do not specify that they are invoking issue preclusion, but rather spell out the elements of claim preclusion. Therefore, the Court will proceed with an analysis related to claim preclusion.

> elected to allow the Greek Courts to determine the Estate's lawful beneficiary/beneficiaries." (Appellant's Ex. B.)

In response, the Probate Court ordered in the August 30th Order that, "[t]here shall be no distribution of the Estate assets pending final disposition of the active will contest pending before the Court of First Instance at Volos, Greece, or until further order of this Court." (Appellant's Ex. C.) Based on the foregoing 2016 Petition and August 30th Order, the Probate Court found that Michael submitted himself, jurisdictionally, to the Greek Court to determine whether the Holographic Will is valid or void. Furthermore, the Probate Court found that distribution to beneficiaries shall not be made "until a determination is made as to the Estate's proper beneficiary/beneficiaries." (Appellant's Ex. B.)

Thereafter, the Administratrix filed the Miscellaneous Petition that requested an Order authorizing the Administratrix access to the Stifel Bank Account, so the Administratrix could use the funds in order to continue her duty to defend, protect, and preserve the Estate's assets. (Appellant's Ex. D.) Furthermore, the Administratrix in the Miscellaneous Petition stated that she needed to access the Stifel Bank Account because the BankNewport account was already depleted. *Id*. In response, TSOTC objected asserting that the Administratrix's Miscellaneous Petition should be denied. First, TSOTC argued that Greek law does not allow the use of estate assets to fund a will contest. In addition, TSOTC filed a cross-petition requiring the return of money to the estate and disgorgement "[b]ecause of the use of the Estate's money for a purpose outside what is allowed by the Rhode Island statutes, without leave of court . . . should be required to provide a full accounting . . . of money attributable to Mr. Michael's Will contest can be determined." Ultimately,

the Probate Court lifted the freeze on the Stifel Bank account and found that the Administratrix can use the Estate assets for the cost of the Greek will contest. (Appellant's Ex. G.)

The Administratrix has failed to meet her burden to establish res judicata because the second factor—the identity of the issues—is lacking. *See Lennon,* 901 A.2d at 591. Specifically, the two motions are distinguishable from one another as they arise from a different series of transactions. *Id*. The August 30th Order related to halting the distribution of assets while the will contest was pending in Greece. In comparison, the Miscellaneous Petition arose from the freeze on the Stifel Bank account and a need to fund the costs of the will contest in Greece. In addition to these two separate orders arising from two different series of transactions, TSOTC's 2016 Petition was filed prior to the substantial cost of the Greek Litigation. Accordingly, this Court denies the Administratrix's claim that TSOTC waived its right to appeal on grounds of res judicata.

B

Choice-of-Law

The parties have advanced differing notions as to whether the law of Rhode Island or Greece is the applicable law for whether the Estate's asset can pay for the Administratrix's costs and fees associated with the Greek will contest. TSOTC contends in its memorandum that the Probate Court erred when it failed to apply Greek law, and instead found under Rhode Island law that the assets of the Estate were properly used to fund the will contest in Greece. Specifically, TSOTC avers that the only connection to Rhode Island regarding the will contest is fortuitous, as all the parties to the litigation are Greek, and the action is pending in Greece. In reply, the Administratrix argues that the law of the situs of real property—that of Rhode Island—is the governing law. Furthermore, the Administratrix advances that it is only after the local probate

court has been presented with a valid foreign will that the probate court may apply foreign choice of law.

When faced with a choice-of-law issue, courts must apply the interest-weighing approach "when the facts of a particular case implicate the interests of multiple states." *Oyola v. Burgos*, 864 A.2d 624, 627 (R.I. 2005) (citing *Woodward v. Stewart*, 104 R.I. 290, 299-300, 243 A.2d 917, 923 (1968) (adopting the interest-weighing approach)). Notably, an essential feature of Rhode Island's conflict of laws jurisprudence is that such questions are issue specific. *Oyola*, 864 A.2d at 628 (citing *Woodward*, 104 R.I. at 293, 243 A.2d at 919-20) ("noting that the interest-weighing approach 'dissects an action into various elements, and governs each individual element or issue by the law of the jurisdiction which has the most significant contacts relative thereto'"); *see also* Restatement (Second) of *Conflict of Laws* § 145(1) (1971).

First, the Court must determine whether a "true conflict" exists between the laws of the two states in question. *See National Refrigeration, Inc. v. Standen Contracting Company, Inc.*, 942 A.2d 968, 973-74 (R.I. 2008). If a true conflict is found, the Court must apply the interest-weighing approach. *Harodite Industries, Inc. v. Warren Electric Corp.*, 24 A.3d 514, 526 (R.I. 2011). Under the interest-weighing analysis, the court must look to the particular facts and determine "the rights and liabilities of the parties in accordance with the law of the state that bears the most significant relationship to the event and the parties." *Id*. at 534 (citing *Cribb v. Augustyn*, 696 A.2d 285, 288 (R.I. 1997)).

In making a choice-of-law determination, Rhode Island courts weigh multiple policy considerations including "(1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law." *Najarian v. National*

Amusements, Inc., 768 A.2d 1253, 1255 (R.I. 2001). A court must have a rational basis for applying its own law, as required by the full faith and credit, due process, and equal protection clauses of the Federal Constitution. *Woodward*, 104 R.I. at 296, 243 A.2d at 921.

Before the Court examines the issue of choice-of-law, it must first determine whether there is a "true conflict" between Rhode Island and Greek law. *See National Refrigeration, Inc.*, 942 A.2d at 973-74. Under Greek law,[9] fees and costs associated with a will contest are borne by the parties, and not the estate. *See* Kelemenis Aff. Conversely, under Rhode Island law, an administrator is entitled to reimbursement from the estate for reasonable expenses incurred during the litigation because the administrator has a duty to defend the will. *See, e.g.*, *McAlear v. McAlear*, 62 R.I. 158, 4 A.2d 252, 254 (1939) ("[t]hat is the proper way of reimbursing an executor or administrator, to the extent of the benefit to the estate, for expenses properly incurred by him for expert assistance in the performance of his duties"), and § 33-22-26 and § 9-14-25, discussed *infra*. Based on the foregoing, there is a true conflict between Rhode Island and Greece with respect to whether the Administrator or Estate bears the costs and fees associated with defending will contests. Specifically, Rhode Island allows the Estate's assets to bear the cost, whereas Greece requires the Administrator himself in his individual capacity to bear the burden.

Next, to determine the proper law to apply, the Court looks to the particular facts of this case to find which state bears the most significant relationship to the events and parties. *See*

[9] Rule 44.1 of the Rhode Island Rules of Civil Procedure states:

> "A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rhode Island Rules of Evidence. The court's determination shall be treated as a ruling on a question of law." R.I. Super. Ct. R. Civ. P. 44.1.

Harodite Industries, Inc., 24 A.3d at 525. First, predictability of results favors Rhode Island. *See* Restatement (Second) of *Conflict of Laws* § 6 (Oct. 2019 Update) ("Predictability and uniformity of result are of particular importance in areas where the parties are likely to give advance thought to the legal consequences of their transactions.") In the instant matter, Papadopouli's 2001 Will was admitted to probate in Rhode Island prior to the Greek Litigation. Under the 2001 Will, Papadopouli's heirs and some of her assets are located in Rhode Island. Specifically, on October 28, 2015, a Rhode Island Probate Court appointed the Administratrix to administer the Estate. The Administratrix has a duty to defend, protect, and preserve the assets of which some are located here in Rhode Island. *See Andrews v. Carr*, 2 R.I. 117, 117 (1852) ("It is the duty of an administrator to contest doubtful claims against the estate of the deceased"). Thus, predictability of result favors Rhode Island.

The next two factors, including "maintenance of interstate and international order" and "advancement of the forum's governmental interests" require the Court to identify policies underlying each state's law, and consider how each state's purpose is furthered through the application of its respective policies. *Najarian*, 768 A.2d at 1255 (citing *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1351 (R.I. 1986)); *see also La Plante v. American Honda Motor Co., Inc.*, 27 F.3d 731, 742 (1st Cir. 1994). Under Greek law, there is no law that allows for an Administratrix to use the estate assets to defend claims—*see* Kelemenis Aff.—whereas, Rhode Island, the forum state, has a strong public policy for an Administratrix to defend the Estate and preserve assets of the Estate. *Andrews*, 2 R.I. at 117; *see Hazard v. Engs*, 14 R.I. 5, 7-8 (1882). Thus, due to Rhode Island's well settled public policy as the forum state, Rhode Island law is also favored.

Additionally, this Court acknowledges that the judicial task is simplified through the application of Rhode Island law rather than Greek foreign law. *Cf. Harodite Industries, Inc.*, 24 A.3d at 527. Application of a "better rule of law" favors Rhode Island, as the Supreme Court has held since 1882 that an Administratrix has a duty to defend and protect the Estate's assets. *Hazard*, 14 R.I. at 7-8; *see also Andrews*, 2 R.I. at 117. While Greece has not elected to do the same, Rhode Island law supports the Administratrix in adequately fulfilling her duty to contest doubtful claims against the deceased's estate. *Andrews*, 2 R.I. at 117 (finding that an administrator is not liable to be removed for unreasonable delay when acting within the scope of his or her duty to interpose legal objections to doubtful claims). This Court finds that while both Greece and Rhode Island have an interest in this case, the more significant interest lies with Rhode Island. Therefore, Rhode Island law applies to this action.

C

Fees and Costs

The parties raise numerous points of contention regarding the Probate Court's ruling as to fees and costs. TSOTC advances in its memorandum that Rhode Island law does not authorize the use of the Estate's assets to fund a will contest outside Rhode Island. Further, TSOTC claims that the funding of a will contest is neither an administrative cost nor an extension thereof. TSOTC primarily relies on § 33-22-26 to support its position that only fees and costs associated with litigation in Rhode Island are subject to being paid from the Estate assets, and that the expenses were not necessary to estate administration. In addition, TSOTC argues that the Probate Court erred in allowing payment prior to the Administratrix obtaining a Court order. Finally, TSOTC requests that "[t]he Administratrix disgorge and return all fees and any other expenses, costs, etc." (Revised Joint Statement of Issues ¶ 6.)

Conversely, the Administratrix contends that litigation expenses incurred on behalf of an estate are an administrative expense of the estate. Specifically, the Administratrix argues that an administrator of an estate has an affirmative duty to protect an estate from spurious attacks. In addition, the Administratrix contests TSOTC's request for the disgorgement of legal fees paid in reliance on the Probate Court order, where an administrator acting in good faith should not be personally liable for actions done in its capacity as representative of an estate.

Section 33-22-26 states,

> "In cases contested before a probate court or on appeal from the probate court, costs and reasonable attorneys' fees in the discretion of the court may be awarded to either party to be paid by the other, or to either or both parties to be paid out of the estate which is the subject of the controversy, as justice may require." Section 33-22-26.

Attorney fees for services rendered on behalf of an estate may be properly awarded by the Probate Court that has "jurisdiction to award counsel fees for services rendered to the estate[s] of decedents." Hon. Marvin H. Homonoff, Mark Sjoberg et al., *A Practical Guide to Probate in Rhode Island* § 7.4.6 (2017) (citing *In re Estate of Lagasse*, 723 A.2d 792, 792 (Mem.) (R.I. 1998)); *see also In re Estate of Cantore*, 814 A.2d 331, 334 (R.I. 2003). The statute permits costs associated with reasonable expenses of the litigation.

Rhode Island law generally authorizes the reasonable sums of expenses and counsel fees associated with the litigation to be paid out of the estate in controversy. *Cf.* G.L. 1956 § 9-14-25.[10] Administrative costs of the estate specifically include reasonable costs of litigation in defending the estate. Restatement (Third) of *Trusts* § 88 (Oct. 2019 Update). The Superior Court is vested with jurisdiction to allow reasonable expenses as costs in civil proceedings concerning wills. *Young v. Exum*, 110 R.I. 685, 690, 296 A.2d 451, 454 (1972). Significantly, Rhode Island law reflects a tendency to provide for reimbursement of necessary expenditures for estate administrators as part of the expenses of administration to be paid from the estate. *See Di Iorio v. Cantone*, 49 R.I. 452, 452, 144 A. 148, 149 (1929); *Industrial National Bank of Providence v. Colt*, 102 R.I. 672, 686, 233 A.2d 112, 120 (1967) (finding, in comparison, that a trustee is under a duty to execute the trust in accordance with the testator's instructions and litigation affecting the management of the trust is a necessary expense of managing the trust).

With respect to the incurrence of costs and fees for an estate, such fees for a fiduciary are allowed when a fiduciary acts within the scope of their duty and provides a tangible benefit to the estate. Homonoff et al. § 7.4.5. An administrator has a duty to exercise prudence and discretion, and not to incur unreasonable or unnecessary expenses in his or her endeavors to establish a will. *Id*. § 7.4.3 (citing *Hazard*, 14 R.I. at 9). Nevertheless, the expenses of such administration are

[10] Section 9-14-25 states:

> "In any civil action or other proceeding wherein construction of a will . . . or any part thereof is asked, there may be allowed to each of the parties defendant brought in by the action or other proceeding . . . such reasonable sum for expenses and on account of counsel fees as the court in which the case is pending shall deem proper; the allowance shall . . . be paid out of the estate or fund in the hands of the complainant concerning which estate or fund the construction is asked." Section 9-14-25.

varied and may include virtually any cost incurred by the fiduciary related to the preservation, management, supervision, and distribution of the estate's assets. *Id*. § 7.4.7.

Moreover, a fiduciary is charged not only with faithfully administering the estate "but is also the agent of the probate court whose function it is to protect estates against spurious claims of persons to participate in the distribution of the proceeds thereof." *Dailey v. Connery*, 75 R.I. 274, 280, 65 A.2d 801, 804 (1949). Thereby, the administratrix is dutybound to do "what is reasonable" to establish a will and is entitled to be reimbursed from the estate for the reasonable expenses he or she incurred as a result of the litigation. *Vermette v. Cirillo*, 114 R.I. 66, 69, 328 A.2d 419, 421 (1974) (citing *Hazard*, 14 R.I. at 7). An administratrix is entitled to "just compensation" for her efforts on behalf of an estate. Homonoff et al. § 7.4.5. Although there are no standards in determining what is "just," an awarding court is instructed to determine which is fair and reasonable considering the circumstances of a case. *Id*. (citing *Kogut v. Brenner,* 113 R.I. 327, 328, 321 A.2d 103, 104 (1974); *see also Hayward v. Plant*, 119 A. 341, 343 (Conn. 1923); *Humphrey v. McClain*, 292 S.W. 794, 796 (Ky. 1927); *McMahon v. Krapf*, 80 N.E.2d 314, 317-18 (Mass. 1948); *In re Taylor's Estate*, 126 A. 809, 810 (Pa. 1924)).

Here, the Administratrix has a fiduciary duty to defend the will from potential fraudulent claims and is entitled to the fees and costs associated with this administrative duty. *See Andrews*, 2 R.I. at 117. Papadopouli was an educated woman with two graduate-level degrees.[11] In March 2001, she executed a will devising her residuary estate to her three first cousins: Christina Haines, Catherine Ann Michael, and Cynthia Ann Kendall. (Appellee's Ex. 3.) During this time,

[11] Papadopouli earned her bachelor's degree from Tufts University, and her master's degree in Library Sciences from the University of Rhode Island. (Appellee's Ex. 2.)

Papadopouli maintained her residence in the United States[12], but continued to visit and live on Skiathos, Greece. (Kelemenis Aff. ¶ 4).

When Papadopouli purportedly drafted the Holographic Will in October 2013, she had not yet been diagnosed with cancer and was in good health. (Revised Joint Statement of Facts ¶ 7.) The Holographic Will contains obvious word misuse, grammatical errors, and poor punctuation. (Appellee's Ex. A.) This Court is persuaded by the Administratrix's proposition that such blatant errors by a person of high education cast doubt on the legitimacy of the document. *See id*. This Court is further troubled by the analysis produced by the Administratrix's handwriting expert, who opined that the handwriting and signature in the Holographic Will contained numerous qualitative differences as compared to all available exemplars of Papadopouli's handwriting prior to 2013. (Appellee's Ex. 4.) Moreover, Papadopouli's alleged signature on the Holographic Will appears in an unnatural position, indicating a probable writing impairment. *Id*. Finally, Papadopouli had no relationship with TSOTC prior to her death, nor did she have any animals for which Mr. Kontomanis would need to care. (Hr'g Tr. 16, June 25, 2015.)

In cases of potential undue influence or testamentary incapacity, the proponents of a will must prove that the testator had testamentary capacity and the persons alleging that the will was procured by undue influence must prove so. *Talbot v. Bridges*, 54 R.I. 337, 173 A. 72, 74 (1934). The evidence proving these facts may be direct or circumstantial. *Id*. (citing *Hollingworth v. Kresge*, 48 R.I. 341, 137 A. 908, 909-10 (1927)). Specifically, since undue influence tends to be exerted in secret, circumstantial evidence is more often used. *Caranci v. Howard*, 708 A.2d 1321,

[12] She lived in Lakewood, Pennsylvania at the time of the 2001 Will execution, but thereafter moved to Middletown, Rhode Island.

1324 (R.I. 1998). Therefore, undue influence may be inferred from an unexplained and unnatural disposition of property combined with other relevant factors. *Id*.

In cases of possible undue influence, administrators are entitled to fees and costs associated with defending an estate from such potentially fraudulent claims. *See Andrews*, 2 R.I. at 117. This Court finds that the Administratrix has provided enough circumstantial evidence that gives rise to a permissible inference of undue influence. As the Greek Litigation remains pending concerning the validity of the Holographic Will, it is not necessary to rule on the legitimacy of the will itself. (Revised Joint Statement of Facts ¶ 13.) This Court is limited to deciding the permissibility of awarding the Administratrix the reasonable fees and costs associated with the administration of the Estate. To that end, this Court finds that the Administratrix is entitled to reasonable fees and costs associated with said administration, as she is entrusted with the fiduciary duty to defend any illegitimate action brought by third parties that might result in a loss of estate assets. *See* Restatement (Second) of *Trusts* § 177 (Oct. 2019 Update).

TSOTC requests that "The Administratrix disgorge and return all fees and any other expenses, costs, etc." (Revised Joint Stipulation of Issues ¶ 6.) TSOTC has provided no authority to support this request. An administrator shall not be held liable for the debts of a testator. *See* § 33-9-27; *see also Turano v. Artigas*, 518 A.2d 13, 13 (R.I. 1986); *Hogan v. Novartis Pharmaceuticals Corporation*, 548 F. App'x 672, 674 (2013). Fees and costs associated with litigation for the benefit of the estate are administrative costs to the estate. *See McAlear*, 62 R.I. at 158, 4 A.2d at 254. To order the Administratrix to return all fees and costs would render her personally liable. *See generally Turano*, 518 A.2d at 13. Such liability would run contrary to § 33-9-27 and against public policy. Therefore, TSOTC's request that the Administratrix disgorge all fees and costs paid in reliance on the Probate Court Order is denied.

IV

Conclusion

After its *de novo* review, the Court concludes that (1) res judicata is not applicable here because the respective motions arise from distinct issues; (2) Rhode Island law is the favorable choice of law; (3) the Probate Court did not err and the Administratrix is entitled to use the Estate's assets to fund the Greek Litigation will contest; and (4) to require the Administratrix to disgorge all fees and costs paid in reliance on the Probate Court Order would be improper.

Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

TITLE OF CASE:	To Hamogelo Toy Paidiou a/k/a The Smile of the Child v. Estate of Matoula Papadopouli
CASE NO:	NP-2017-0205
COURT:	Newport County Superior Court
DATE DECISION FILED:	October 25, 2019
JUSTICE/MAGISTRATE:	Carnes, J.
ATTORNEYS:	
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