STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 5, 2026)

IN RE: ESTATE OF PHILIP O'DOWD	**:**	**C.A. No. PP-2024-03741**
	:	**(Appeal from Barrington Probate**
	:	**Court, Case No. 5968)**

DECISION

LANPHEAR, J. In this action William J. Lynch and Richard O'Dowd ("Co-Executors") appeal a decision by the Probate Court for the Town of Barrington entered on May 29, 2024. Before this Court is a *sua sponte* order to determine whether the Probate Court had the authority to "set aside" the sale of an estate asset. For the reasons which follow, this Court finds that the Probate Court had no such authority, and thus this Court may not exercise its jurisdiction over the appeal.

I

Facts and Travel

The Co-Executors[1] appeal from the Barrington Probate Court's decision ("Decision") to set aside the sale and transfer of an estate asset. (Claim of Appeal ¶ 1.) The following facts are gleaned from the Decision,[2] omitting facts irrelevant to this appeal. Philip O'Dowd ("Mr. O'Dowd") passed away on February 11, 2013. Mr. O'Dowd's Last Will and Testament distributed his estate to two groups of beneficiaries: his heirs at law; and the eight members of the Lynch family who were close friends with Mr. O'Dowd ("the Lynch beneficiaries"). The Will designated Richard O'Dowd and William J. Lynch as the Co-Executors of the estate.

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[1] While this Court prefers to refer to parties by their proper names, the multiplicity of parties from the same family makes that impractical.

[2] Probate Court Decision of May 29, 2024.

The central dispute in the Probate Court focused on the Co-Executors' disposition of a certain estate asset, Mr. O'Dowd's 10 percent interest in Healyn Properties, LLC, a Rhode Island limited liability company ("Healyn"). Mr. O'Dowd's 10 percent interest in Healyn was not listed in the initial estate Inventory filed on September 13, 2013. In 2018, the Co-Executors on behalf of the estate sold the interest in Healyn to one of the Lynch beneficiaries for $100. (Decision 1.)

The Co-Executors moved to close the estate on July 30, 2020. Patrick Lynch and Margaret Lynch-Gadaleta, two of the Lynch Beneficiaries, objected. Patrick and Margaret moved the Probate Court on the Petition to Set Aside Transfer, in particular to set aside the sale of Mr. O'Dowd's interest in Healyn on the grounds that the Co-Executors breached their fiduciary duty to the estate by selling the interest for far less than its fair market value.

On January 6, 2021, the Co-Executors filed an Amended Inventory that included the interest in Healyn but did not quantify the value of the asset. On May 6, 2024, the Probate Court conducted a hearing to determine the value of the interest. During the hearing, an expert witness testified to the different approaches to business valuation and how he came to an eventual value for the interest. The expert's valuation report opined that the value of the interest in Healyn at the time the Co-Executors sold it was $420,500.

On May 29, 2024, the Probate Court granted Patrick and Margaret's request to set aside the sale of the interest in Healyn. On June 28, 2024, the Co-Executors filed a Claim of Appeal to this Court challenging the Probate Court's decision. On July 1, 2024, John Lynch and Healyn Properties, LLC joined in the appeal. (Reasons for Appeal ¶ 1). On July 11, 2024, Patrick and Margaret ("Intervenors") filed a motion to intervene which this Court granted. *See* Docket. On April 29, 2026, this Court issued an Order *sua sponte* requesting the parties to submit

memoranda relative to whether the Court has jurisdiction to hear the pendent appeal. The Court received briefing from all parties and heard oral argument.

II

Analysis

Patrick Lynch and Margaret Lynch-Gadaleta, as Intervenors, allege the Probate Court acted within its statutory authority by setting aside the sale of the interest in Healyn. The Co-Executors contend the Probate Court had no such authority because no statute provides probate courts with the express power to set aside the sale or transfer of an estate asset. The Intervenors reply this Court has jurisdiction to hear the present appeal regardless of the Probate Court's authority to set the transfer aside. To determine this Court's jurisdiction over the appeal, the Court must first examine the Probate Court's jurisdiction to set aside the transfer.

A

The Authority of the Probate Court

"[P]robate courts are of special and limited jurisdiction . . . exercis[ing] . . . jurisdiction only in a manner and to the extent conferred by statute." *Carr v. Prader*, 725 A.2d 291, 293 (R.I. 1999) (quoting *Harrop v. Tillinghast*, 59 R.I. 255, 258, 195 A. 226, 228 (1937)) (quotation marks omitted). General Laws 1956 § 8-9-9 grants probate courts jurisdiction in "the accepting and allowing of bonds, inventories, and accounts of executors, administrators, and guardians[,] [and] the granting of leave to sell [estate property] at public or private sale[.]" Section 8-9-9 also gives probate courts broad authority "to do and transact all matters and things incidental to the jurisdiction and powers vested in probate courts by law."

The Intervenors rely on the latter sentence of § 8-9-9, claiming the power to set aside a sale or transfer of estate property is among the "matters and things incidental" to the probate

court's jurisdiction over the administration of estates. The Rhode Island Supreme Court has held that §§ 8-9-9 and 8-9-17 provide probate courts the authority to conduct limited discovery when necessary. *Burford v. Estate of Skelly*, 699 A.2d 854, 855-56 (R.I. 1997). The high court interpreted the statutory authority delegated to the probate courts broadly to align with the statute's intended purpose. Intervenors ask this Court to do the same here. Section 8-9-17 allows a probate court to

> "examine or cause to be examined on oath parties and witnesses, either orally or on written interrogatories or both, or may receive their affidavits and may require any writings or other evidence pertinent in such proceedings to be produced before itself or otherwise, and may issue writs of subpoena ad testificandum, and of subpoena duces tecum." Section 8-9-17.

As the Supreme Court concluded in *Burford*, the incidental power to permit limited discovery when necessary to conduct a hearing on the merits is tethered to § 8-9-17, which empowers the probate court to facilitate some discovery measures. However, the power to set aside the sale of an estate asset strays far from the probate court's statutory authority to oversee discovery when appropriate. Thus, because no statute explicitly allows a probate court to void the sale of an estate asset, nor is the power to do so incidental to any other statutory power delegated to the probate courts, the present matter is distinguishable from *Burford*.

Just months ago our Supreme Court's decision in *Fairhurst v. Fairhurst*, 356 A.3d 1005 (R.I. 2026) discussed the limits of the probate courts' authority. In that case, an executor of the decedent's estate purchased his late father's home for less than fair market value without the approval of the probate court. The remaining devisees of the Fairhurst estate objected to the sale, and the probate court declared the sale invalid because the executors failed to obtain the probate

court's approval pursuant to G.L. 1956 § 33-19-9.[3] *Fairhurst*, 356 A.3d at 1009. The Supreme Court upheld the power of the probate court to void the executor's sale of the home without court approval, reasoning that § 33-19-9 gave it clear statutory authority to take such action. *Id.* at 1013. *Fairhurst* is inapposite here because probate courts' power to approve the sale of real property belonging to the estate is an explicit responsibility of the probate court per § 33-19-9. By contrast, voiding the transfer of non-real property estate assets or attempting to set aside the questionable transfer of those assets back to the estate from third parties is not referenced or incidental to the powers enumerated in the statutes. Section 33-19-9 allows a probate court to "authorize executors . . . to sell *real estate* of a deceased or of a ward[.]" (Emphasis added.) Read plainly, § 33-19-9 does not provide the probate court with the power to draw back or set aside the completed sale of an interest in a limited liability company.

The Intervenors further suggest the power to set aside sales of estate assets is incidental to the probate courts' equitable powers promulgated in title 33 of Rhode Island's Probate Practice and Procedure Statute. They reference G.L. 1956 §§ 33-9-1 and 33-9-4, which explain the procedures for filing an estate inventory and appraising the property comprised in the inventory, respectively. The Intervenors also note G.L. 1956 § 33-18-2 gives probate courts jurisdictional authority to remove an executor if they were found to have committed waste during their administration of the estate. The Intervenors assert that the Probate Court's powers to oversee these matters justified its setting aside of the sale of the interest because "the fact that [the Co-Executors] committed waste is clear." (Intervenors' Mem. Regarding Probate Ct. Jurisdiction, 7.) Therefore, the Intervenors contend, the Probate Court was within its authority to

[3] General Laws 1956 § 33-19-9 provides probate courts with power to authorize executors to sell a decedent's real estate, and relevant to *Fairhurst v. Fairhurst*, 356 A.3d 1005 (R.I. 2026) allows the probate courts to approve such a sale to a petitioner if it is not prejudicial to the estate's interests.

intervene in the ostensible commission of waste by setting aside the sale. The Intervenors correctly state that probate courts can exercise certain statutory powers to supervise an executor's administration of an estate. While the evidence may suggest the Co-Executors sold the interest in Healyn for less than its actual value, the Co-Executors' culpability is not at issue before this Court. The present question for this Court is whether the Probate Court had authority to set aside the sale.[4]

Simply stated, no statute gives probate courts the power to set aside a sale or claw back an asset following its sale and transfer. The Rhode Island Supreme Court has noted that courts may "not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or defining the terms of the statute." *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049-50 (R.I. 2008) (quoting *State v. Santos*, 870 A.2d 1029, 1032 (R.I. 2005)).

With due respect to the dedicated judges and clerks of the probate courts, they are with limited jurisdiction. Accordingly, this Court may not read into any of the aforementioned statutes a power of the probate courts that is not contained within the statute or required to achieve the statute's intent. The Probate Court's Decision to set aside the sale and transfer of Mr. O'Dowd's interest in Healyn exceeded the limits of the Probate Court's jurisdiction.

B

Courts are Duty-Bound to Consider Their Own Jurisdiction

As the Probate Court was without jurisdiction, this Court is left to question its own jurisdiction. Our high court held:

[4] Black's Law Dictionary, 1376 (17th ed. "set aside" as "*vb.* (Of a court) to annul or vacate (a judgment, order, etc.) <the judge refused to set aside the default judgment>)."

> "This Court consistently has declared that a claim of lack of subject matter jurisdiction may be raised at any time. Because subject-matter jurisdiction is an indispensable ingredient of any judicial proceeding, it can be raised by the court *sua sponte*." *Sidell v. Sidell*, 18 A.3d 499, 504 (R.I. 2011) (internal quotation omitted).

In this action, this Court sits only as an appellate authority and hence its jurisdiction is limited by the appeal itself. It does not exercise its own general jurisdiction, as may be done in a separate action.

C

The Superior Court's Jurisdiction

A party may appeal the decision of a probate court to this Court pursuant to G.L. 1956 § 33-23-1. The Superior Court "may exercise general probate jurisdiction in all cases brought before it on appeal from probate courts, or when such jurisdiction is properly involved in suits in equity." G.L. 1956 § 8-2-17. Accordingly, this Court may then "affirm or reverse, in whole or in part, any order or decree of a probate court, and may enter such decrees as the probate court ought to have entered[.]" Section 33-23-18. However, when this Court's lack of jurisdiction is in question, "the court of its own motion should stop the proceedings." *In re Estate of Speight*, 739 A.2d 229, 231 (R.I. 1999) (quoting *David v. David*, 47 R.I. 304, 306, 132 A. 879, 880 (1926).

Because the Probate Court lacked the authority to set aside the sale, which is the purpose of the instant appeal, this Court lacks jurisdiction to consider the appeal *de novo*.

In *Estate of Speight*, the probate court ordered and later vacated a decree concerning the decedent's heirs' entitlement to a distribution of the estate. *Id*. at 230. The estate appealed the original decree entitling the heirs to a distribution, and the heirs appealed the subsequent vacating of the decree to Superior Court. The first hearing justice determined that the probate court improperly vacated the original decree. A second hearing justice then dismissed the appeal,

finding it untimely, so the Superior Court could not exercise its jurisdiction. The Rhode Island Supreme Court held the second hearing justice was correct in his jurisdictional determination and affirmed his dismissal of the appeal. *Id.* at 232. Similarly, here, the Probate Court lacked authority to set aside the sale, and this Court is unable to exercise appellate jurisdiction over this appeal as it was not properly before the Probate Court. This Court's lack of jurisdiction thus precludes it from addressing the remaining issues of the appeal on their merits. It is sufficient to vacate the extrajudicial actions below and remand the matter to allow the Probate Court to consider whether to accept the inventory, allow the accounts, and perform other matters within its statutory scope.

D

Law of the Case

At oral argument on October 30, 2026, counsel for the Intervenors asserted this Court had already considered the jurisdiction issue and was now barred from changing that ruling by the law of the case doctrine. Our high court has held:

> "The law of the case doctrine, however, is a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record." Chavers v. Fleet Bank, 844 A.2d 666, 677 (R.I. 2004) (internal citations omitted).

Over a year ago, a highly respected justice of this Court considered a motion to dismiss this very appeal as the Probate Court order was not sufficiently final. During argument, and before denying the motion, the Court stated:

> "The instant motion presents a narrow question, whether the probate order contains an element of finality as required for an appeal from the Probate Court to this Court. *See Burford*, 699 A.2d at 854. If the probate order is not sufficiently final, the Court lacks jurisdiction to hear the appeal." Hr'g Transcript in In Re Estate of Philip O'Dowd, R.I. Superior Court, (Smith, J.), at 24, June 2, 2025.

The pending issue of jurisdiction, as indicated by the Court's own order raising the pending issue of jurisdiction, was not founded on finality – it is based on whether the Probate Court had jurisdiction to order a set aside of a personal property transfer and, thereby, whether this Court has jurisdiction to consider an appeal of such a broad order. The law of the case doctrine does not apply.

III

Conclusion

For the foregoing reasons, the Decision of the Probate Court for the Town of Barrington to set aside the sale of Mr. O'Dowd's 10 percent interest in Healyn is vacated. This appeal is dismissed and the case is remanded to the Probate Court for further proceedings.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**In Re: Estate of Philip O'Dowd**
CASE NO:	**PP-2024-03741**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 5, 2026**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
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