STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 7, 2016)

AMERICANS UNITED FOR LIFE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PP-2016-1451**
	:	
ESTATE OF GABRIELLE D. MEE (a/k/a Gabrielle Malvina Mee),	:	
	:	
	:	
Defendant.	:	

DECISION

SILVERSTEIN, J. Before the Court is Defendant Estate of Gabrielle D. Mee's motion to dismiss Plaintiff Americans United for Life's amended petition to probate and to reopen estate. The Legion of Christ North America, Inc. (Legion of Christ) is the sole beneficiary of Mrs. Mee's estate. This Court has jurisdiction pursuant to G.L. 1956 § 33-23-1.

I

Facts and Travel

Mrs. Gabrielle D. Mee passed away on May 16, 2008, following a life devoted to the Catholic faith. Throughout her life, Mrs. Mee was exceptionally generous, specifically to organizations committed to advancing the moral teachings of the Catholic Church. Two of those organizations that benefited from Mrs. Mee's extraordinary good will—the Legion of Christ and Americans United for Life—are currently before this Court. In addition to the extensive donations made during her lifetime, Mrs. Mee also sought to provide for these organizations beyond her death. At different times, Americans United for Life and the Legion of Christ were named beneficiaries in the several iterations of her will.

The Legion of Christ is an order of the Catholic Church with which Mrs. Mee became familiarized at the end of the 1980s and into the 1990s.[1] Pl.'s Am. Pet. for Probate of Will, Mem. in Supp. of Am. Pet. to Probate and to Reopen Estate, at ¶¶ 4, 14. (Am. Pet.). After touring the Legion of Christ's center in Connecticut and meeting with its General Director, Father Marcial Maciel Degollado, Mrs. Mee gave a $1,000,000 gift to the order. Id. at ¶ 15. Following her first visit, Mrs. Mee grew closer to the Legion of Christ, resulting in another gift of $3,000,000 in November of 1991. Id. at ¶ 19.

Prior to that substantial gift, on October 10, 1991, Mrs. Mee executed a will (the 1991 Will), revoking all of her prior wills and codicils, as well as directing that ninety percent of her estate go to the Legion of Christ and naming Fleet National Bank as the estate's executor. Id.; see Pl.'s Ex. D at 166 "Last Will and Testament of Gabrielle D. Mee."[2] Also included in the 1991 Will was a direction that the remaining ten percent of the estate go to Americans United for Life. Am. Pet. at ¶ 19. Americans United for Life is a pro-life, educational, nonprofit organization and public interest law firm with its national headquarters in Washington, D.C. In addition to naming Americans United for Life as a beneficiary of her 1991 Will, Mrs. Mee donated upwards of $600,000 to the group from 1989 to 2002. Id. at ¶ 20.

[1] Although not wholly necessary to decide the matter at hand, a full recounting of the factual background regarding the Legion of Christ and Mrs. Gabrielle D. Mee is detailed in Dauray v. Estate of Mee, Nos. PB-10-1195, PB-11-2640, PB-11-2757, 2012 WL 4043292 (R.I. Super. Sept. 7, 2012). The Court's decision in that matter was attached to Plaintiff's Amended Petition for Probate of Will (Amended Petition). See Pl.'s Am. Pet. for Probate of Will, Mem. in Supp. of Am. Pet. to Probate and to Reopen Estate, at ¶ 8 (Am. Pet.).

[2] In Plaintiff's Amended Petition to the Smithfield Probate Court, they attached several exhibits, each marked by alphabetical letter. In their appeal, as required by § 33-23-1(a), Americans United for Life included the Amended Petition and its attached exhibits in the filing of the full probate record. This record, including the Amended Petition and the exhibits, was filed as Americans United for Life's Exhibit D. For purposes of clarity, the Court will refer to those attached exhibits as Plaintiff's Exhibit D, with specific citations to page numbers therein.

However, in 1995, Mrs. Mee executed a codicil to the 1991 Will, which removed Americans United for Life as a beneficiary of her estate. Id. at ¶ 23. This codicil also allocated one hundred percent of her assets to the Legion of Christ. Id. Thereafter, in 1999, Mrs. Mee executed a second codicil to the 1991 Will, which placed an investment restriction on the executor to ensure that her estate did not benefit entities inconsistent with Catholic doctrine. Id. at ¶ 28.

On December 14, 2000, Mrs. Mee executed a will (the 2000 Will) that revoked the 1991 Will and both of its codicils. Pl.'s Ex. D at 176, "Last Will and Testament of Gabrielle D. Mee." Aside from reaffirming Mrs. Mee's direction to give one hundred percent of her estate to the Legion of Christ, the 2000 Will replaced Fleet National Bank as executor and named Father Anthony Bannon—a member of the Legion of Christ—in its place. Id. However, Fleet National Bank remained as an alternate executor. Id. Finally, in 2002, Mrs. Mee executed a codicil to the 2000 Will that removed Fleet National Bank as an alternate executor and replaced it with Father Christopher Bracket. See Pl.'s Ex. D at 173. Six years later, in 2008, Mrs. Mee passed away.

On March 6, 2009, Father Bannon, as the named executor, petitioned the Smithfield Probate Court to probate the 2000 Will and its 2002 codicil. Over the course of the next month—in anticipation of the April 2, 2009 hearing to probate the 2000 Will—notice of the probate proceedings was published in The Providence Journal. This notice was published in the newspaper once a week for two weeks. Thereafter, in June of 2009, Mrs. Mee's niece, Mary Lou Dauray, petitioned the Smithfield Probate Court to challenge the admission of the 2000 Will to probate. However, on February 4, 2010, the Smithfield Probate Court entered a Consent Order admitting the 2000 Will to probate. Am. Pet. at ¶ 3; see Pl.'s Ex. D at 173.

Later that month, Ms. Dauray appealed to this Court claiming that the 2000 Will was the result of the Legion of Christ's undue influence over her aunt. Am. Pet. at ¶ 7. This Court dismissed Ms. Dauray's appeal for lack of standing in September 2012. Id. at ¶ 8. In its decision, this Court noted that the 1991 Will named the Legion of Christ and Americans United for Life as beneficiaries in addition to stating the gifts allocated therein. In February 2013, Ms. Dauray appealed this Court's decision to the Rhode Island Supreme Court, which subsequently affirmed the dismissal of Ms. Dauray's probate appeal in February 2015. See Dauray v. Mee, 109 A.3d 832 (R.I. 2015).

However, during the interim two years, the Plaintiff in this case, Americans United for Life, became aware of its potential interest in Mrs. Mee's estate. On December 20, 2013, while Ms. Dauray's case was still pending appeal, Ms. Dauray's attorney contacted an attorney employed by Americans United for Life.[3] Am. Pet. at ¶ 37. During that phone call, Americans United for Life learned that Mrs. Mee had named the organization as a beneficiary in her 1991 Will, but had subsequently revoked the gift in 1995. Id. Several months after this phone call, on March 14, 2014, Americans United for Life moved to intervene in Ms. Dauray's appeal to the Rhode Island Supreme Court. The Rhode Island Supreme Court denied the motion to intervene on May 21, 2014.

Nearly seven months after the Rhode Island Supreme Court's decision in Dauray and over six years since the admission to probate the 2000 Will, on August 19, 2015, Father Bannon filed an Affidavit of Complete Administration with the Smithfield Probate Court. Less than a month later, on September 3, 2015, the Smithfield Probate Court closed Mrs. Mee's estate. Id. at ¶ 10.

[3] Of note, the attorney who represented Ms. Dauray currently represents Americans United for Life in this matter.

However, on October 14, 2015, Americans United for Life petitioned the Smithfield Probate Court to probate the 1991 Will and reopen Mrs. Mee's closed estate. The Estate of Gabrielle D. Mee (the Estate), the named Defendant in the instant matter, and the Legion of Christ, as the sole beneficiary under the 2000 Will, objected and accordingly filed a motion to dismiss. Ultimately, on March 3, 2016, after hearing arguments, the Smithfield Probate Court dismissed Americans United for Life's amended petition to reopen the estate and probate the 1991 Will.[4]

Next, in compliance with the statutory time requirements, Americans United for Life appealed the probate court's decision to this Court on March 24, 2016. See § 33-23-1(a). Shortly thereafter, the Estate moved to dismiss the probate appeal, which is now before this Court. After receiving memoranda from the Estate and Americans United for Life, this Court held oral argument on the Estate's motion to dismiss on June 23, 2016.

To sum up the several iterations of the testamentary gifts at issue, the 1991 Will directed that ninety percent of the estate go to the Legion of Christ, leaving the remaining ten percent to Americans United for Life. However, in 1995, Mrs. Mee executed a codicil that revoked the ten percent gift to Americans United for Life and directed that the entire estate go to the Legion of Christ. In 2000, Mrs. Mee executed a final will—the 2000 Will—which revoked the 1991 Will and its codicils and directed that her entire estate go to the Legion of Christ.

[4] In granting the Estate's motion to dismiss, the Smithfield Probate Court concluded, in part, that Americans United for Life "had actual notice of a prior will of Mrs. Mee and their interests therein on December 20, 2013 during the period of time which the estate was in fact open and thus had actual notice and opportunity to bring the claim forward, but failed to do so . . . ." Estate of Gabrielle D. Mee, # 2009-029, # 2015-099, at 6 (Smithfield Prob. Ct. Mar. 6, 2015). The Smithfield Probate Court also determined that it (1) lacked the authority to reopen a closed estate for the purpose of revoking a will and probating a prior will and (2) the amended petition to reopen was time-barred under G.L. 1956 § 9-1-21. Id.

II

Standard of Review

Section 33-23-1(a) of the Rhode Island General Laws provides the avenue through which "[a]ny person aggrieved by an order or decree of a probate court" can appeal to the Superior Court for relief. Sitting in its capacity as an appellate court, the Superior Court reviews an order or decree of the probate court de novo. Sec. 33-23-1(b). However, "[t]he findings of fact and/or decisions of the probate court may be given as much weight and deference as the [S]uperior [C]ourt deems appropriate . . . ." Id. Still, the Superior Court is instructed—both by statute and by precedent—that it "'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) (emphasis in original) (quoting Malinou v. McCarthy, 98 R.I. 189, 192, 200 A.2d 578, 579 (1964)); see also § 33-23-1(b) (providing that "the [S]uperior [C]ourt shall not be bound by any [] findings or decisions" of the probate court).

Moreover, although "Rule 81(a)(1) of the Superior Court Rules of Civil Procedure states that the said rules 'do not apply during the process and pleading stages to . . . [p]robate appeals[,]'" "the same standard that applies to a Rule 12(b)(6) motion to dismiss will apply to a motion to dismiss a probate appeal." Mendes v. Factor, 41 A.3d 994, 1000 (R.I. 2012) (citing Pettis v. Cuddy, 828 A.2d 521, 522 (R.I. 2003) (mem.)). "A motion to dismiss [for failure to state a claim] is properly granted 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Id. (quoting Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009) (internal citation omitted)). Finally, the Court "may properly consider and refer to []

documents [attached to a complaint] in deciding a Rule 12(b)(6) motion." Bowen Court Assocs. v. Ernst & Young, LLP, 818 A.2d 721, 725-26 (R.I. 2003) (citing Super. R. Civ. P. 10(c)).

III

Discussion

The Estate and its sole beneficiary, the Legion of Christ, urge this Court to dismiss Americans United for Life's amended petition to probate the 1991 Will. In its memoranda, the Estate and the Legion of Christ argue that Americans United for Life had constructive notice of the probate of Mrs. Mee's estate and is therefore precluded from contesting the validity of the probated 2000 Will. The Estate points to the 2009 advertisements published in The Providence Journal as evidence of constructive notice of the estate's probate proceedings. The Estate argues that because Americans United for Life is a prior beneficiary of a revoked will, it was not entitled to actual notice under Rhode Island law and cannot now seek to reopen Mrs. Mee's closed estate.

Americans United for Life counters that constructive notice is insufficient in this case. As they argue, Americans United for Life was only put on notice of its status as a prior beneficiary on December 20, 2013, thereby not giving the organization enough time to enter the probate proceeding. Thus, Americans United for Life urges the Court to reopen Mrs. Mee's estate and allow it to prove that the 2000 Will was procured by the Legion of Christ's undue influence on Mrs. Mee. However, in response, the Estate and the Legion of Christ contend that even if Americans United for Life only received actual notice on December 20, 2013—notice to which they were not entitled—they still continued to sit on their rights for nearly two years before the estate was closed in September of 2015.

"It has long been settled that a probate proceeding is one in rem, and that if the statutory provisions regarding constructive service and notice are observed, it is binding upon all persons in the world." Henricksen v. Baker-Boyer Nat'l Bank, 139 F.2d 877, 881 (9th Cir. 1944) (quotation marks omitted). "The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings in rem." In re Broderick's Will, 88 U.S. 503, 519 (1874). Likewise, in Rhode Island: "The probate of a will is unlike a judgment between parties subject to the jurisdiction of the court rendering it, in this,—that being but a decree in rem, usually passed upon constructive notice only . . . ." Bowen v. Johnson, 5 R.I. 112, 118 (1858).

So long as a state statute's constructive notice requirements are complied with, "[i]n probate proceedings, 'one who lives in another state, or in a foreign country, and never in fact received any notice, is still bound if the statutory notice was given.'" Parage v. Couedel, 60 Cal. App. 4th 1037, 1042, 70 Cal. Rptr. 2d 671, 674 (Cal. Ct. App. 1997) (quoting Stevens v. Torregano, 192 Cal. App. 2d 105, 122, 13 Cal. Rptr. 604, 616 (Cal. Ct. App. 1961)); see also 80 Am. Jur. 2d Wills § 792 (observing that "[i]n probate proceedings generally, giving the notice prescribed by statute calls the entire world before the court, and the court acquires jurisdiction over all persons for purpose of determining their rights to any portion of the estate").

Under Rhode Island law, §§ 33-22-2 and 33-22-3 set forth the notice requirements necessary for the probate of a will. Specifically, §§ 33-22-2(3)(i) and (iv) require the petitioner for the probate of a will to list "[t]he names and post office addresses of the surviving spouse and heirs at law" in addition to "the names and post office addresses of the named beneficiaries entitled to take [] under [the will] to the extent that they are different than the heirs at law." In

addition, the Rhode Island Supreme Court has held that the Due Process Clause requires "known or reasonably ascertainable" creditors to receive actual notice. In re Estate of Santoro, 572 A.2d 298, 301 (R.I. 1990). Therefore, beyond those persons listed in § 33-22-2 and claimant-creditors who are reasonably ascertainable, Rhode Island law does not provide that any other parties are required to receive actual notice of probate proceedings.

However, Rhode Island law does require notice by advertisement when a petitioner seeks to probate a will. See §§ 33-22-3, 33-22-11. Section 33-22-11 provides that:

> "In all cases in which notice is required and special provision is not made for it, it shall be given by advertisement of a notice once a week for at least two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first of any hearing dates contained in such notice, in a newspaper printed in English and published or previously published in the county and presently distributed in the city or town or in a newspaper having general circulation within the county in which the matter is to be acted upon, as the probate court by general rule or special order may designate for that purpose . . . ."

Notice by advertisement—or notice by publication—serves as constructive notice to the world that probate proceedings have begun. See Parage, 60 Cal. App. 4th at 1042, 70 Cal. Rptr. 2d at 674.

Rhode Island caselaw is replete with decisions regarding claimants who complain of issues with notice yet still seek to file a claim against an estate out of time. See, e.g., In re Estate of Manchester, 66 A.3d 426 (R.I. 2013); Ims v. Audette, 40 A.3d 236 (R.I. 2012). Generally, these decisions center on a claimant's noncompliance with § 33-23-1(a)'s requirements, which provide strict timing deadlines for the filing of an appeal from a probate court's order or decree. See, e.g., Ims, 40 A.3d at 237. However, the caselaw is desolate on the unique factual scenario presented here, where a prior beneficiary of a revoked will, not entitled to actual notice, nonetheless filed a timely appeal from the closing of the estate, but did not appear in nor appeal from the probate proceedings that admitted the estate's operative will. Americans United for

Life is neither a party entitled to notice nor a claimant against the estate. Though there is no case directly on point, the Estate's motion to dismiss is resolved by the well-settled law of constructive notice for in rem proceedings.

Constructive notice, or notice by advertisement, has been held constitutional, although there is no Rhode Island precedent that directly addresses the issue of notice to a prior beneficiary of a revoked will. See Angell v. Angell, 14 R.I. 541, 545-46 (1884) (holding that notice by publication was constitutional in the context of a probate court's appointment of a guardian because such a proceeding is in rem and requires only constructive notice). Moreover, the Rhode Island Supreme Court has recognized that an heir-at-law, who was entitled to notice but did not receive it, had constructive notice because of the advertisement of the heir's uncle's probate proceedings in The Providence Journal. Jordan v. R.I. Hosp. Trust Co., 54 R.I. 352, 354-55, 173 A. 353, 354-55 (1934). There, the heir-at-law lived in a remote area of Rhode Island and argued that he had no way of getting notice of the proceedings. Id. Still, the Court denied his request to reopen the estate and explained that:

> "[H]e had for some time known of his uncle's death and should have been aware of the probate proceedings subsequent thereto, his belated action in retaining counsel can be explained only on the assumption that he was not interested in his uncle's estate until he learned some facts which suggested that a contest of the proceedings might be of advantage to him." Id. at 355, 173 A. at 355.

Another court has dealt with a somewhat similar fact pattern but in the context of its version of the Uniform Probate Code.[5] See Matter of Estate of Strozzi, 903 P.2d 852 (N.M. Ct. App. 1995). In Strozzi, the court held that a prior beneficiary under a revoked will was not entitled to notice. Id. at 858. Under New Mexico's version of the Uniform Probate Code, in addition to those parties who must receive notice in Rhode Island, there is a provision that

[5] Rhode Island has not adopted the Uniform Probate Code.

provides that "[n]otice may be given to other persons." Id. (quoting NMSA 1978, § 45–3–403). However, the court determined that the prior beneficiary did not fall within this statute's ambit and was therefore not entitled to notice of the probate proceedings. Id. Moreover, the court noted that perhaps "[n]otice requirements extend also to persons named in a will that is known to the petitioners to exist, irrespective of whether it has been probated or offered for formal or informal probate, if their position may be affected adversely by granting of the petition." Id. (citing a comment to the Uniform Probate Code). The court continued that if the prior beneficiary himself challenged the probate of the will, he could have raised a viable challenge to revoke the will. Id. But, because he was not a party to the suit, the prior beneficiary was not adversely affected; therefore, constructive notice sufficed. Id. Under the New Mexico Uniform Probate Code's protective notice provision, the prior beneficiary had no claim to receive actual notice. Id.

Turning to the facts at hand, in the absence of a statute requiring actual notice to prior beneficiaries of a revoked will or caselaw to the contrary, Americans United for Life has no claim for which the law provides relief. First, as a prior beneficiary of a revoked will, Americans United for Life was not entitled to actual notice. See § 33-22-2(3). Even in Strozzi, where the notice protections were much more protective than in Rhode Island, notice was not required for a prior beneficiary of a revoked will. See 903 P.2d at 858. Americans United for Life has not alleged any fraud in the probate proceeding with respect to notice, only that the 2000 Will was procured by undue influence. See, e.g., Davtian v. Barsamian, 106 R.I. 185, 190, 256 A.2d 510, 513 (1969) (reopening a closed estate after a group of heirs-at-law were denied notice either by fraud or inadvertence). Moreover, if, as in Jordan, the publication of an advertisement in The Providence Journal was sufficient notice to an heir-at-law, it is hard to find that the same is not

true for Americans United for Life—a party entitled to nothing more than constructive notice. See 54 R.I. at 354-55, 173 A. at 354-55.

When Father Bannon petitioned the Smithfield Probate Court to probate Mrs. Mee's 2000 Will, notice was published in The Providence Journal for the statutorily prescribed frequency of once per week for two weeks. See § 33-22-11. This advertisement, although perhaps difficult to find, put the entire world—including Americans United for Life—on notice that Mrs. Mee's estate was to be probated. See Parage, 60 Cal. App. 4th at 1042, 70 Cal. Rptr. 2d at 674. As belabored above, constructive notice for probate proceedings binds all the world to its decision to admit a will to probate. See In re Broderick's Will, 88 U.S. at 519; Henricksen, 139 F.2d at 881. When the probate court admitted the 2000 Will and thereafter closed the estate on September 3, 2015, it determined the rights of not only the Legion of Christ—who appeared before the probate court—but also those rights of all other interested parties to Mrs. Mee's estate, including the rights of Americans United for Life. Thus, when the estate closed on September 3, 2015, so too did Americans United for Life's ability to contest the validity of the 2000 Will.

Furthermore, Americans United for Life was on actual notice of Mrs. Mee's probate proceedings on December 20, 2013. Such notice put Americans United for Life in a position with actual notice over one year and eight months before the estate was in fact closed. See Mercier v. Manning, No. WP 2011-0315, 2012 WL 3142930, at *5 (R.I. Super. July 27, 2012) (noting a court of appeals explaining that "'[o]ne who must be held to have had actual notice of the proceedings in time to make his contest, and who fails to take advantage of the opportunity afforded of opposing the will by appearing and contesting within the time allowed by law, must, at least unless he can be held to have been prevented from so appearing and contesting by some fraud of those procuring the probate, be held concluded by the decree as to any matter

concerning which he could have obtained relief by a contest.'") (quoting Harkness v. Harkness, 205 Cal. App. 2d 510, 513, 23 Cal. Rptr. 175, 177 (Cal. Ct. App. 1962)). Again, with no allegation of fraud in the notifying of parties of interest to Mrs. Mee's probate proceedings, Americans United for Life missed the window to challenge the validity of the 2000 Will. See Davtian, 106 R.I. at 190, 256 A.2d at 513. Americans United for Life's actual notice, received prior to the closing of the probate proceedings, further buttresses the conclusion that Americans United for Life was foreclosed from contesting the will upon the closing of the estate on September 3, 2015.

The Rhode Island Supreme Court has repeatedly affirmed that there is a well-settled "public policy of this state [that] favors the prompt settlement of decedents' estates." In re Tetreault, 11 A.3d 635, 644 (R.I. 2011) (citing Ranalli v. Edwards, 98 R.I. 394, 399, 202 A.2d 516, 519 (1964)). This Court's decision in the matter at hand comports with such a policy. To allow freestanding claims with respect to the validity of a probated will would vitiate the public policy that favors the efficient settlement of estates. See id. Americans United for Life was on constructive notice of the probate of Mrs. Mee's estate two weeks prior to the April 2, 2009 hearing with the advertisement posted in The Providence Journal. This was the only notice to which they were entitled. See §§ 33-22-2, 33-22-3. Americans United for Life had over six years thereafter in which to act; it did not do so. On September 3, 2015, the Smithfield Probate Court closed the Estate of Gabrielle D. Mee, thereby determining the rights of all parties to the estate.

Considering Americans United for Life's Amended Petition and the exhibits attached thereto, Rhode Island law provides no relief for which its claim can be granted. See Super. R. Civ. P. 12(b)(6); Mendes, 41 A.3d at 1000; Bowen Court Assocs., 818 A.2d at 725-26.

Therefore, the Court grants the Estate's motion to dismiss the amended petition to probate and to reopen estate.

IV

Conclusion

Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Americans United for Life v. Estate of Gabrielle D. Mee**
CASE NO:	**PP-2016-1451**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 7, 2016**
JUSTICE/MAGISTRATE:	**Silverstein, J.**

ATTORNEYS:

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For Interested Party:	**Nicole J. Benjamin, Esq.**
For Intervenor:	**Steven E. Snow, Esq.**