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THE STATE OF NEW HAMPSHIRE

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6TH CIRCUIT – PROBATE DIVISION
MERRIMACK COUNTY
PROBATE COURT
CONCORD

Docket No.: 313-2017-EQ-00396

**Valerie Santilli, individually and as Executrix of the Estate of John C. Chakalos,
Elaine Chakalos, and Charlene Gallagher, Petitioners**

v.

Nathan Carman, Respondent

**PETITIONERS' MOTION TO RECONSIDER MAY 9, 2019 ORDER ON MOTION TO
RECONSIDER AND REDETERMINE RESIDENCE OF JOHN C. CHAKALOS**

The Petitioners, by and through their undersigned counsel, hereby ask the Court to reconsider its Order on Motion to Reconsider and Redetermine Residence of John C. Chakalos issued on May 9, 2019, and schedule a full evidentiary hearing with live testimony, respectfully stating as follows:

Introduction

The Court has before it a monumental decision involving an alleged double homicide and a critically important state policy underlying the slayer doctrine. That decision should not rest on a monumental misapprehension of the credibility of Nathan Carman, who, undeniably, is a liar. Mr. Carman lied to the Windsor, Connecticut police about what, by all appearances, was the murder weapon used to kill John Chakalos. Mr. Carman's lies are undisputed and indisputable. John Chakalos, whose declarations of New Hampshire domicile were rejected by this Court, never had his integrity challenged during his 87 years of life – until now, by the person accused of murdering him. This case is too important to be dismissed based on the unsupported assertions of Mr. Carman, an unscrupulous liar motivated by greed. Absent application of this State's slayer doctrine, Mr. Carman stands to inherit millions of dollars from Mr. Chakalos's estate.

By favoring the testimony of Mr. Carman, the Court misapprehended the appropriate legal test that should have been applied to determine Mr. Chakalos's domicile and afforded greater weight to imprecise statements of Mr. Chakalos's friends and family in the course of a murder investigation over Mr. Chakalos's own legal representations.

A. The Court Inappropriately Applied the Connecticut Test for Resident Income Taxes Instead of the New Hampshire Test for Domicile

1. The New Hampshire Supreme Court has drawn a clear distinction between someone's residence as "the place where he or she is currently living," and someone's domicile as, "the place with which the person identifies himself and all his interests and there exercises the rights and performs the duties of a citizen." *Opinion of the Justices*, 171 N.H. 128, 136 (2018); *see also* Restatement (Second) of Conflict of Laws § 11(1) (1971) ("Domicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance *because of the person's identification with that place.*").

2. Mr. Chakalos had two houses and it is undisputed that he spent time in both, but in determining which of these was his domicile, the Court is directed to consider to which property and community Mr. Chakalos had "a more significant and lasting connection ... than is encompassed by mere residence." *Id.* (citation and quotation marks omitted).

3. The New Hampshire inquiry recognizes that when someone has two or more homes, determining which one is the domicile requires more information than simply where that person spends the most time. Were the test otherwise, so too might the result have been in the 2018 *Opinion of the Justices*, 171 N.H. 128 (concluding that time spent in the state, alone, is insufficient to determine a college student's domicile for voting purposes).

4. Thus, where someone votes is a “weighty factor” as is where they obtain a driver’s license. *Opinion of the Justices*, 171 N.H. at 144-145. Nonetheless, the Court gave very little weight to factors other than where Mr. Chakalos appeared to spend most of his time.

5. Although not stated outright, it appears as if this Court has implicitly adopted the Connecticut standard for whether or not Mr. Chakalos would have to pay resident income taxes in Connecticut as paraphrased by Mr. Chakalos’ financial planner Bill Rabbitt in his interview with the Windsor Police Department – that he would have to spend six months and one day in New Hampshire to avoid Connecticut resident (as opposed to nonresident) income taxes.¹ This is not how domicile is determined in New Hampshire.

6. Mr. Rabbitt’s interview testimony itself is confusing on this issue, for Rabbitt conflates the tests of whether Mr. Chakalos would be subject to Connecticut resident income taxes with whether he would be subject to Connecticut *estate* taxes. Notwithstanding Mr. Rabbitt’s statements to police, the test for whether a person is a Connecticut domiciliary, and thus subject to Connecticut estate taxes, turns on the person’s intent – not the amount of time a person spends in a particular place. *See Conn. Agencies Regs. § 12-701(a)(1)-1(d)(1)* (“Domicile, in general, is the place which an individual intends to be his or her permanent home and to which such individual intends to return whenever absent.”).

¹ Not only is this purported standard completely unrelated to how New Hampshire views questions of domicile, but Connecticut specifically recognizes that there are circumstances where someone may live in Connecticut most of the year, requiring the payment of nonresident income taxes to Connecticut, while maintaining a domicile in another state. “A nonresident is anyone whose legal residence (domicile) is outside of Connecticut and who does not maintain a permanent place to live in Connecticut for the entire year at which he or she spends more than 183 days in the taxable year.” Connecticut State Department of Revenue Services, found at <https://portal.ct.gov/DRS/Individuals/Individual-Tax-Page/Nonresidents-wCT-Source-Inc>. Under this test, a person could maintain a domicile outside of Connecticut and still be subject to resident income taxes if they had a permanent place to live in Connecticut at which they spent more than 183 days of the taxable year. Petitioners offered at oral argument – and it was uncontested by the Respondent -- that Mr. Chakalos filed nonresident income tax returns in Connecticut, as well as Massachusetts and Rhode Island. He filed resident income tax (Interest and Dividends) forms in the State of New Hampshire.

7. Apparently influenced by Mr. Rabbitt's statements, the Court focused not on where Mr. Chakalos "identifie[d] himself and all his interests and there exercise[d] the rights and performs the duties of a citizen," *Opinion of the Justices*, 171 N.H. at 136, but rather where Mr. Chakalos spent the bulk of his time.

8. This misconception of what New Hampshire law considers dispositive on the issue of domicile led the Court to inappropriately weigh the evidence before it and represents a fundamental legal error.

B. The Court Did Not Give Appropriate Weight to the Evidence Before It

a. The Court gave insufficient weight to legal documents.

9. Petitioners presented at least six separate legal documents requiring affirmative representations by Mr. Chakalos that his domicile was in New Hampshire, including his driver's license, his voter registration card, his will, the second amendment and restatement of the John C. Chakalos Revocable Trust, the Chakalos Family Dynasty Trust, and the Nathan Carman Family Trust.²

10. These documents represent the only direct evidence in this case of what Mr. Chakalos himself considered his domicile. "An assertion by a party that he regards a certain town as his home is entitled to great weight on the issue of his intention" *McGee v. Bragg*, 94 N.H. 349, 352 (1947).

11. Furthermore, to obtain both his driver's license and his voting card, Mr. Chakalos was required to show proof of his domicile, proof that was accepted by the state agencies charged with issuing these documents. Indeed, as a non-resident establishing residence in New Hampshire,

² Only the cover pages of the later three documents were presented as exhibits at the April 29, 2019 hearing because complete copies had previously been submitted to the Court as attachments to various pleadings.

Mr. Chakalos was required to obtain a New Hampshire driver's license within 60 days of establishing his home in New Hampshire. RSA 263:35.

12. His voter registration further contained a sworn statement as to his residency in New Hampshire, made under penalty of perjury.

13. Mr. Chakalos never took any action to negate the representations concerning New Hampshire domicile in these documents.

14. Mr. Chakalos never applied for a Connecticut driver's license after obtaining one in New Hampshire.

15. Mr. Chakalos voted in New Hampshire in every state election between 2000 and 2012. Mr. Chakalos' wife Rita was similarly registered to vote, and voted, in New Hampshire. There is no evidence that either Mr. Chakalos or Rita ever attempted to vote in Connecticut after registering to vote in New Hampshire.

16. All estate documents related to Mr. Chakalos's will indicate he was domiciled in New Hampshire. Although he paid the taxes required of someone with property in and income derived from Connecticut, his income tax documents all reflect that he considered New Hampshire his home.

b. The Court gave too much credence to the assertions of a liar – Nathan Carman – over the declarations of a man whose credibility has never been challenged.

17. Respondent presented no evidence that Mr. Chakalos did not consider New Hampshire his primary home.

18. Instead, Mr. Carman baldly asserted, in essence, that his grandfather hatched an elaborate tax fraud scheme, perjuring himself and otherwise committing fraud on the State of New Hampshire to obtain the documents that evince his residency there. And the Court appears to have concluded that Mr. Chakalos committed both tax fraud and voter fraud based primarily on Mr.

Carman's unsupported allegations, which were purportedly bolstered by stray remarks by Mr. Chakalos's daughter and a financial consultant.

19. In support of this transparently self-serving claim, Mr. Carman presented his own clearly suspect testimony, and the imprecise statements of family members and friends about Mr. Chakalos's "home" in the wake of his violent murder. Significantly, when the Windsor police department questioned various individuals about Mr. Chakalos's murder, the focus of all questioning was only upon the location and other circumstances of Mr. Chakalos's death and not his relationship to New Hampshire, as he was murdered in Connecticut. Thus, it is not surprising that there was no need for precision when individuals described the house in Connecticut as Mr. Chakalos's "home".

20. As has been shown in prior pleadings submitted to the Court, Nathan Carman is a liar. Mr. Carman purchased a Sig Sauer 716 semi-automatic assault rifle from a gun store in New Hampshire shortly before Mr. Chakalos's murder. *See* [REDACTED], attached as Exhibit A to the Petitioners' Opposition to Respondent's Notice of Petitioners' Violation of Protective Order, and Motion for Finding of Contempt, D.I. #108. Within months of that purchase, Mr. Carman lied repeatedly to the police investigating Mr. Chakalos's murder, denying that he owned such a weapon. *See* Petitioners' Reply in Support of Their Notice of Respondent's Second, Third, and Fourth Violations of Protective Order and Request for an Order of Contempt, D.I. #99. Examples of Mr. Carman's lies are set forth in Exhibit A hereto.³

21. The above patent and demonstrably false statements to the police are profoundly incriminating as to Nathan Carman, since the Sig Sauer's caliber and rifling characteristics are

³ Because Exhibit A contains information that is confidential and subject to the Protective Order in this case, Exhibit A has been omitted from the "public" version of this pleading that the Petitioners have submitted to the Court concurrently with this filing.

consistent with the murder weapon. The only conceivable reason Mr. Carman would lie about an otherwise perfectly lawful purchase of a firearm in New Hampshire is that it is the weapon he used to kill John Chakalos.⁴

22. In short, the Court erred in giving greater credence to the self-serving and unsupported statements of a liar, Nathan Carman, than to Mr. Chakalos's affirmative declarations of intent to be a New Hampshire domiciliary.

c. The Court gave too much credence to the imprecise language used by Mr. Chakalos's family members and friends in the wake of a tragedy, when they were obviously not focused on the precise legal question of where Mr. Chakalos was domiciled.

23. To reach the conclusion that Mr. Chakalos actually considered his Windsor, Connecticut house his domicile despite all of his affirmative representations to the contrary, this Court relied heavily on the fact that in the wake of his murder, his daughter used the word "home" to describe his Connecticut residence and that during and following his wife Rita's longstanding illness and death, Mr. Chakalos spent more time in Connecticut where his daughters live than in New Hampshire.

24. It is indisputable that Mr. Chakalos had two houses.⁵ His daughter's use of the generic term "home" to describe the Windsor, Connecticut house does not represent an admission that Mr. Chakalos treated his Connecticut house as his domicile. Furthermore, the Windsor, Connecticut house was his daughter's childhood home so it is reasonable that the language she used to describe the home reflected *her* special connection to that property. However, neither her

⁴ Indeed, if the Sig Sauer 716 semi-automatic assault rifle Mr. Carman purchased shortly before Mr. Chakalos's murder was not the murder weapon, the easiest way for Mr. Carman to exonerate himself would have been to answer the police's questions honestly and produce the gun so that it could have been ruled out by ballistics experts as the murder weapon. Instead, Mr. Carman chose to lie and conceal the weapon from the police.

⁵ As noted during the oral argument on the Respondent's Motion, Mr. Chakalos, personally, owned neither the Windsor, CT nor the West Chesterfield, NH houses, but he certainly had access to both and resided in both at different times of the year.

relationship to that house nor the fact that her mother spent her final days there is evidence that Mr. Chakalos treated it as his domicile.

25. Furthermore, the testimony this Court relied upon occurred in the immediate aftermath of Mr. Chakalos' violent murder, which the Connecticut police were tasked with investigating. His daughter would certainly be motivated, under those circumstances, to emphasize her father's connections to that community.

26. The Court erred in affording greater weight to the statements of Mr. Chakalos's friends and family to police in the wake of a tragedy than Mr. Chakalos's own representations.

C. The Court Should Schedule a Further Evidentiary Hearing on the Issue of Mr. Chakalos's Intent

27. When the Court initially scheduled the hearing on Mr. Carman's Motion to Reconsider and Redetermine Residence of John C. Chakalos, the Court notified the parties via email late on a Friday afternoon that the hearing would take place a week and a half later. The following Tuesday, the Court accommodated the Petitioners' request to reschedule the hearing for the following week so that all counsel could attend the hearing. Because both sides contemplated calling witnesses who reside out-of-state, the Petitioners had also requested that the Court bifurcate the hearing and hear oral argument on legal issues first and then determine whether live testimony would be necessary, in order to permit counsel on all sides to make arrangements for witnesses to appear. With the parties concurrently preparing for a trial that was scheduled to start less than two months later, the Petitioners observed that preparing witnesses both for an evidentiary hearing on domicile and also for trial during that short time frame would impose a burden on the witnesses. Thus, counsel for the Petitioners and Mr. Carman worked out a compromise that would permit the expeditious resolution of the domicile issue while minimizing the burden on lay witnesses: the parties would proceed on offers of proof without live witness testimony.

28. Because the Court has cancelled the trial that was scheduled to begin on June 10, 2019, the Petitioners' logistical concern no longer exists.

29. Accordingly, the Petitioners ask that the Court schedule a further hearing on Mr. Carman's Motion to Reconsider and Redetermine Residence of John C. Chakalos. An evidentiary hearing with live testimony will allow the Court to make a better-informed credibility determination than what appears in the Court's May 9 Order.⁶

WHEREFORE, the Petitioners respectfully request that this Honorable Court:

- A. Reconsider its May 9, 2019 Orders on Motion to Reconsider and Redetermine Residence of John C. Chakalos;
- B. Schedule a further evidentiary hearing on the Motion to Reconsider and Redetermine Residence of John C. Chakalos; and
- C. Grant such other relief as may be just and appropriate under the circumstances.

Respectfully submitted,

ELAINE CHAKALOS
CHARLENE GALLAGHER, and
VALERIE C. SANTILLI, both individually and as
Executrix of the Estate

By their attorneys:
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Dated: May 17, 2019

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⁶ As the Court noted, whether it has jurisdiction or not is a subject that can be visited at any time. Mr. Carman was given a second opportunity to submit evidence on this issue. The Petitioners ask that they be allowed the same.

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