

PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Robert D. Sebastian v. Huiping Xu, Hertzberg, J.Page 229

Attorney Fees

This dispute is primarily over the fees charged by an attorney.

Reid v. Whitehall, Hertzberg, J.Page 230

Statutory Appeal – Disability Pension

This Opinion supports the July 19, 2023 Order of Court that denied Plaintiff's Statutory Appeal, which Plaintiff has appealed to the Superior Court of Pennsylvania.

Rawlings Estate, O'Toole, A.J.Page 232

Estate

In a Judgment Order dated February 6, 2023, the Superior Court remanded this case to this Court on two issues: First, the Superior Court, sua sponte, raised the issue of whether counsel, who represents both the Decedent's children and the Executor, has a conflict of interest. Second, once that issue is resolved, this Court is directed to "address its conclusion that the Decedent's Children waived certain appellate issues or that these issues were barred by the doctrine of the law of the case." Argument was held on these issues on July 14, 2023, after which counsel filed Briefs supporting their respective positions.

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OPINIONS

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ROBERT D. SEBASTIAN vs. HUIPING XU**Attorney Fees**

This dispute is primarily over the fees charged by an attorney.

Case No.: AR 21-5318. Superior Court docket no. 952 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J.

OPINION

This dispute is primarily over the fees charged by an attorney, plaintiff Robert Sebastian, Esquire, to his client, defendant Huiping Xu. The attorney-client relationship between the parties lasted for approximately seven and a half years, from April of 2013 to November of 2020. A two page letter, dated April 11, 2013, sets forth, among other things, that fees are based on attorney time expended at a rate of \$175 per hour. During the seven and a half years of the attorney-client relationship, attorney Sebastian represented Mr. Xu in a child custody dispute with his spouse, a child support claim made by her, the arrest and detention of one of Mr. Xu's minor children and the suspension and potential expulsion from school of another one of Mr. Xu's minor children. A statement from attorney Sebastian to Mr. Xu dated June 1, 2021 describes the dates, services, time expended, payments and balance due for all services rendered. The total of charges from April 26, 2013 to November 5, 2020, including court costs of \$344, is \$3,191.62, of which Mr. Xu paid \$1,830.12, leaving a balance of \$1,361.50.

The captioned lawsuit began when Mr. Xu appealed to this court from a Magisterial District Judge's decision that he owed attorney Sebastian \$1,361.50. A compulsory arbitration hearing thereafter took place before three attorney arbitrators (see 42 Pa.C.S. §7361 and Pennsylvania Rules of Civil Procedure 1301-1307). The arbitrators awarded attorney Sebastian \$1,361.50, and Mr. Xu appealed from that award to a de novo non-jury trial that was held before me on July 11, 2023. Mr. Xu now appeals to the Superior Court of Pennsylvania from my verdict in favor of attorney Sebastian for \$1,361.50 plus interest and court costs.

Before appealing from my verdict, Mr. Xu failed to file a motion for post-trial relief. Hence, his appeal from my verdict should be quashed. See *Diamond Reo Truck Co. v. Mid-Pacific Industries, Inc.*, 2002 PA Super 272, 806 A.2d 423. In the event Mr. Xu's appeal to the Superior Court is not quashed, the balance of this opinion addresses the issues set forth in Mr. Xu's concise statement of the errors complained of on appeal. See Pennsylvania Rule of Appellate Procedure 1925(a).

Mr. Xu first contends I made an error because I did not reduce attorney Sebastian's bill for services described as "meet w/client." With no description of any topic discussed in the meetings, Mr. Xu alleges a violation of ethical rules and lack of transparency in billing. However, Pennsylvania Rule of Professional Conduct 1.5, entitled "Fees," contains no requirement that descriptions of services in bills contain the topics discussed in meetings. Rule 1.5 does prohibit a lawyer from charging a "clearly excessive fee," but I find all of attorney Sebastian's fees were very reasonable and not excessive. Also, the amount of time spent meeting with Mr. Xu was not unusual, and Mr. Xu does not claim the meetings did not take place. Even if attorney Sebastian violated a Rule of Professional Conduct, this could only be the basis for discipline and not for a fee reduction in this lawsuit. See *In re Adoption of M.M.H.*, 2009 PA Super 177, 981 A.2d 261 at 272-273. As to the allegation that lack of descriptions of topics in the meetings is a problem for transparency in billing, this may be true. However, attorney Sebastian is still entitled to be paid for the time he unquestionably expended. Also, Mr. Xu paid the bills from all of the meetings lacking topic descriptions before refusing to pay for an additional \$1,361.50 of other services rendered. See Statement of Account, June 1, 2021, exhibit 4 to complaint, which was admitted into evidence during the trial. This course of dealing of paying for billing entries lacking topic descriptions implies Mr. Xu agreed this was acceptable. See *Boyle v. Steinman*, 429 Pa. Super 1 at 16-17, 631 A.2d 1025 at 1033-1034 (1993) and *Ingrassia Const. Co., Inc. v. Walsh*, 337 Pa. Super. 58 at 66-67, 486 A.2d 478 at 482-483 (1984). Therefore, I correctly declined to reduce attorney Sebastian's bills for "meet w/client" services.

Mr. Xu next contends I made an error by not reducing attorney Sebastian's bill by the amounts of hourly rate increases. He argues rate increases from \$175 per hour in 2013 to \$185 per hour in 2018 and \$190 per hour in 2019 "without prior notice to the defendant...may breach consumer protection laws." However, I do not find that this is deceptive conduct under 73 P.S. section 201-2(4)(xxi) in the Pennsylvania Unfair Trade Practices and Consumer Protection Law. The two page April 11, 2013 letter describing fees states "at the present time" \$175 is the hourly rate, making these small increases five and six years later something Mr. Xu should have expected. See April 11, 2013 letter, exhibit 1 to complaint, which was admitted into evidence during the trial. Mr. Xu also paid the bill for services rendered on 10/11/19, which was at the \$190 hourly rate. See Statement of Account, June 1, 2021. This conduct by Mr. Xu implies his agreement to the hourly rate increases. See *Boyle v. Steinman* and *Ingrassia Const. Co., Inc. v. Walsh* above. Hence, I correctly declined to reduce the bill by the amounts of hourly rate increases.

Mr. Xu next contends I made an error by not reducing attorney Sebastian's bill for an "unauthorized representation of the defendant during a legal conference, infringing upon the defendant's rights and violating legal practice regulations." Defendant's concise statement of the errors complained of on appeal, ¶ 3. This contention is in reference to a hearing on Mr. Xu's contempt of an \$800 per month child support order that Mr. Xu was ordered to attend on January 24, 2019. See Non-Jury Transcript, July 11, 2023 (T. hereafter), pp. 52-60. When attorney Sebastian attempted to speak with Mr. Xu about attending the hearing and learned he was in China, attorney Sebastian protected Mr. Xu's interest by attending the contempt hearing and letting the Court know where he was and the circumstances. T, pp. 54-55. This may have prevented an arrest warrant being issued for Mr. Xu. The only possible infringement upon Mr. Xu's rights possible from this action by attorney Sebastian would be his right to represent himself, since he testified he communicated to the Court that he was in China "and the Court said there would be no problems...." T, p. 61. Attorney Sebastian disputed that Mr. Xu communicated his presence in China to the Court or that "the Court said it was okay" (T, p. 57), and I find Mr. Xu's hearsay testimony on this subject was not credible. Since attorney Sebastian attended a conference regarding child support in court with Mr. Xu approximately seven months earlier, attorney Sebastian would not have known Mr. Xu would want to be self-represented relative to missing the contempt hearing unless Mr. Xu told him. However, there was no evidence presented by Mr. Xu that he informed attorney Sebastian of this. Hence, there was no infringement by attorney Sebastian on Mr. Xu's right to be self-represented. As to the allegation that attorney Sebastian's attendance at the contempt hearing violated legal practice regulations, Pennsylvania Rule of Professional Conduct 1.2(a) allows a lawyer to "take such action on behalf of the client as is impliedly authorized to carry out the representation." With Mr. Xu in China and attorney Sebastian unable to communicate with him, protecting Mr. Xu's interest by attending the contempt hearing was impliedly authorized to carry out the representation. Even if attending the hearing violated this Rule, it could only serve as the basis for discipline and not for a fee

reduction in this lawsuit. See *In re Adoption of M.M.H.*, above. Therefore, I correctly declined to reduce the bill for attendance at the January 24, 2019 contempt hearing.

Mr. Xu next contends I made an error in finding against him on his counterclaim for “subjecting the defendant to verbal abuse during bill negotiations, which may breach ethical codes of conduct for attorneys and lead to disciplinary actions.” Defendant’s concise statement of the errors complained of on appeal, ¶ 4. Mr. Xu testified that when he went to attorney Sebastian’s office in July of 2021 to discuss reduction of the outstanding bill, his secretary pointed at his nose and used foul language. T, p. 62. The counterclaim does not set forth a legal theory of liability (see Defendant’s answer to Plaintiff’s complaint and proposed order, Department of Court Records document 14, ¶ 3 (ii)), but I will assume it is negligent or intentional infliction of emotional distress. However, Mr. Xu suffered no physical injury, and any emotional effect such as frustration is such an ordinary occurrence in life that it is not compensable. As to the alleged breach of ethical codes of conduct for attorneys, this could only serve as the basis for discipline and not for a counterclaim. See *In re Adoption of M.M.H.*, above. Hence I correctly found against Mr. Xu on the counterclaim for alleged verbal abuse.

Mr. Xu’s final contention is I made an error in finding against him on his counterclaim for legal malpractice. He alleges attorney Sebastian negligently reviewed a proposed marital settlement agreement resulting in financial losses by him. Mr. Xu seems to allege attorney Sebastian’s negligence consisted of not advising him he would have to refinance the mortgage on the marital residence and not asking him for a document establishing the value of his 401k pension. See Defendant’s answer to Plaintiff’s complaint and proposed order, Department of Court Records document 14, ¶3(i). The marital settlement agreement was signed on August 26, 2016 (see FD13-6914, document 18), but Mr. Xu offered an email into evidence dated August 24, 2016 in which he states, “as a part of requirements for loan application, I am required to submit the signed copy of agreement to Bank by August 31, 2016.” T, pp. 46-47. This, with his own evidence that he was already working with the Bank to refinance the mortgage, Mr. Xu completely defeated his claim of not being advised he needed to refinance the mortgage. As to asking for a document to establish the value of the 401k pension, attorney Sebastian credibly testified that MR. Xu had represented himself in negotiating the marital settlement agreement and when attorney Sebastian reviewed it attorney Sebastian did not know Mr. Xu had a 401k pension and informed Mr. Xu he could not deal with the substantive matters in the agreement. See T, pp. 50-51. Hence, any problems with the marital settlement were a result of Mr. Xu’s decision to negotiate it himself and not negligent review by attorney Sebastian. In addition, whether there was negligence in reviewing the provisions on the marital residence and the 401k pension requires an expert opinion. See *Storm v. Golden*, 371 Pa.Super 368 at 377, 538 A.2d 61 at 65 (1988). The legal malpractice counterclaim also fails since there was no expert witness opinion that attorney Sebastian was negligent interviewing the marital settlement agreement. Last, while the counterclaim demands damages in the amount of \$13,262.03 for this alleged legal malpractice, Mr. Xu offered no testimony or other evidence of damages. Therefore, the legal malpractice counterclaim also fails due to lack of proof of damages. Thus, I correctly found against Mr. Xu on his counterclaim for legal malpractice.

BY THE COURT:

/s/The Hon. Alan Hertzberg

MATTHEW REID vs. BOROUGH OF WHITEHALL

Statutory Appeal – Disability Pension

This Opinion supports the July 19, 2023 Order of Court that denied Plaintiff’s Statutory Appeal, which Plaintiff has appealed to the Superior Court of Pennsylvania.

Case No.: SA 22-330. Superior Court docket no. 974 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, A. October 5, 2023.

OPINION

This Opinion supports my July 19, 2023 Order of Court that denied Plaintiff’s Statutory Appeal, which Plaintiff has appealed to the Superior Court of Pennsylvania. Plaintiff (“Officer Reid”) is a former police officer for Defendant (“the Borough”). On May 2, 2017 Officer Reid suffered a heart attack at the Whitehall Borough Police Station after participating in weapon training that day. Officer Reid was approved for benefits under 53 P.S. §637, or the Heart and Lung Act. Eventually Officer Reid’s Heart and Lung benefits were terminated and he was compensated under the Workers Compensation Act. The Whitehall Police Pension Plan includes a disability provision. On August 23, 2019, Officer Reid applied for a disability pension. The Whitehall Plan Administrator denied Officer Reid’s application for a disability pension on September 17, 2019. Officer Reid appealed and an administrative hearing was held on July 30, 2021 before Dennis Biondo, Esq. On May 12, 2022 Mr. Biondo affirmed the Plan Administrator’s denial of Officer Reid’s application for a disability pension. Officer Reid appealed the decision to the Court of Common Pleas, appealing not only the denial of a disability pension, but also raising the issue of whether Mr. Biondo had a conflict of interest. On December 13, 2022 I held an evidentiary hearing on the question of whether Mr. Biondo had a conflict of interest to serve as the hearing officer. Following the hearing and submission of briefs on the issue, I ruled that Mr. Biondo did not have a conflict of interest and was an appropriate hearing officer for Officer Reid’s administrative hearing. On July 13, 2023, after reviewing briefs and hearing argument on the merits of Officer Reid’s statutory appeal, I denied the statutory appeal. Officer Reid appealed my decision to the Superior Court of Pennsylvania. On September 12, 2023 the appeal was transferred to the Commonwealth Court of Pennsylvania. In his Concise Statement of Errors Alleged on Appeal, Officer Reid does not allege specific errors that I made, but rather phrases legal questions and proposes his answers. I will attempt to infer how these questions allege error on my part.

Officer Reid first asks “whether Attorney Biondo was in a position of conflict in his role as hearing officer?” I interpret this question as an allegation of abuse of discretion. Officer Reid argues that Mr. Biondo has a conflict of interest or an appearance of a conflict of interest because he is the solicitor for Castle Shannon, a borough that borders Whitehall. On December 13, 2022 I held a hearing on the issue of whether a conflict exists. Mr. Biondo testified that to his knowledge he had never communicated with James Leventry, the Whitehall pension plan administrator, prior to the July 2021 hearing (Dec. 13, 2022 hearing transcript

“12/13/22 T.” p. 6). Mr. Biondo further testified that he has had no interaction with the Whitehall Borough Council, never been to a Whitehall Borough Council meeting, nor ever represented Whitehall as a co-defendant in his role as Castle Shannon solicitor. (12/13/22 T. pp. 14, 15, 21). Mr. Leventry testified that the Borough of Whitehall has “virtually no interaction with Castle Shannon.” (12/13/22 T. p. 32). Mr. Leventry further testified that he never met Mr. Biondo prior to the July, 2021 hearing and that he played no role in selecting Mr. Biondo as the hearing officer. (12/13/22 T. p. 32). The Federal Arbitration Act holds that for an arbitration award to be vacated on the basis of a conflict for the arbitrator, there must be “evident partiality.” 9 USCA §10(a)(2). A showing of “evident partiality” requires a stronger showing than the standard for showing an appearance of partiality. *Freeman v. Pittsburgh Glassworks*, 709 F.3d 240, 253 (3rd Cir. 2013). Evident partiality exists “only if a reasonable person would have to conclude that she was partial to one side.” *Id.* at 252. Importantly, “The alleged partiality must be direct, definite, and capable of demonstration.” *Id.* at 253 citing *Andersons, Inc. v. Horton Farms, Inc.*, 166 F.3d 308, 329 (6th Cir. 1998). Officer Reid did not present any evidence of Mr. Biondo’s partiality to Whitehall. The neighboring status of the borough for which Mr. Biondo serves as solicitor would not lead a reasonable person to conclude that he is not an impartial arbitrator and I committed no error.

Officer Reid next asks “whether the pension plan administrator...applied the wrong standard in assessing Officer Reid’s application for disability pension?” Mr. Biondo conducted a de novo review of Officer Reid’s application (R.R. p. 425). Therefore, the standard applied by Mr. Leventry has no bearing on Mr. Biondo’s finding and thus requires no further discussion in this Opinion.

Officer Reid next asks “whether Hearing Officer Biondo, adopting the same rationale as Mr. Leventry and finding that the psychic injury did not occur in the line of duty, applied the wrong standard in assessing Officer Reid’s application for disability pension?” As explained above, Hearing Officer Biondo conducted a de novo hearing and review of Officer Reid’s claim and reached his own conclusion, thus Mr. Leventry’s rationale is not relevant to this appeal.

Officer Reid next asks “whether the decision of Hearing Officer Biondo constitutes substantial evidence where he relied on the wrong mental disability standard and, thus, did not examine nor provide rationale why the opinions of Dr. Borrero and Dr. Naguit were not sufficient to support the disability application.” Section 1.32 of the Pension Plan defines a total and permanent disability that qualifies for a disability pension as one that is a “direct result of and occurs in the line of duty.” While Officer Reid’s question revolves around the “mental disability standard” used, the Hearing Officer’s report is clear that the question in this case does not turn on Officer Reid’s mental health diagnoses, but rather, “...the question before the Hearing Officer is whether the Appellant’s psychological condition, as described by the experts who submitted reports and testified at the hearing in this matter occurred in the line of duty.” (R.R. p. 464). Local Agency Law provides that when a full and complete record of the proceedings before the local agency was made, the reviewing court may reverse the finding of the local agency if “any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.” 2 Pa.C.S. §754(b). Substantial evidence is “evidence that a reasonable mind might accept as sufficient to support a conclusion.”

Mr. Biondo received testimony from Jeffrey Garrett, M.D., a cardiologist who testified that Officer Reid has “three vessel coronary artery disease, which clearly pre-dates the May 2017 event” and that Officer Reid “basically had preexisting coronary artery disease prior to the events of May 2017 in multiple vessels.” (RR p. 181). Dr. Garret testified that Officer Reid’s coronary artery disease was caused by “an abnormal blockage in the coronary artery caused by plaque...that has been developing for years.” (RR pp. 182-183).

Mr. Biondo also received testimony from Glen Getz, Ph.D., a licensed psychologist and board certified clinical neuropsychologist who testified that while Officer Reid did have PTSD, it was caused by his cardiac event. (RR p. 217). More plainly, Dr. Getz testified “I believe the PTSD is a result of the medical event, the cardiac arrest.” (RR p. 219).

The testimony from these two experts that Officer Reid’s PTSD was caused by his cardiac event that was a result of pre-existing coronary disease that developed over a course of years is evidence that “a reasonable mind might accept as sufficient” to support the conclusion that Officer Reid’s disability is not a “direct result of and occurred in the line of duty.” Therefore, the finding that Officer Reid does not qualify for a disability pension is supported by substantial evidence and I committed no error by upholding the Hearing Officer’s finding.

In the next two paragraphs of Officer Reid’s Concise Statement, he asks whether substantial evidence exists for the Hearing Officer’s decision because he did not “discuss the medical impressions” of Dr. Kalsmith, and because he did not “recite and analyze” the testimony of Dr. Friedel. The standard for substantial evidence does not require the fact finder to dispute testimony that does not support the hearing officer’s finding, it simply requires that there is substantial evidence supporting the finding of the Hearing Officer. As discussed above, substantial evidence exists for the Hearing Officer’s finding and I committed no error.

Officer Reid next asks whether “a decision that finds the testimony of Officer Reid and Officer Reid’s wife to be credible, but does not explain why that testimony is not sufficient to satisfy the requirements for disability pension is based upon substantial evidence.” The Hearing Officer found Officer Reid’s testimony regarding his activities on May 2, 2017 and the testimony of his wife regarding Officer Reid’s ongoing fears and anxiety to be credible. (RR p. 470). However, as described above the central question in this case is whether Officer Reid’s disabilities were “a direct result of and occurred in the line of duty.” Therefore, accepting the credibility of the Reids’ testimony regarding his condition does not conflict with the substantial evidence presented regarding the cause of his condition and I committed no error by upholding the Hearing Officer’s decision.

Finally, Officer Reid asks whether “a decision which fails to address relevant case law on the question of permanency, in conjunction with testimony which is found credible, is based upon substantial evidence.” As a factfinder, Local Agency Law does not require a Hearing Officer to conduct a full legal analysis in his decision. It only requires that substantial evidence exist to support the factual determination made by the Hearing Officer. There is substantial evidence in the record to support the Hearing Officer’s determination and I committed no error by upholding it.

BY THE COURT:
/s/The Hon. Alan Hertzberg

RAWLINGS ESTATE

Estate

In a Judgment Order dated February 6, 2023, the Superior Court remanded this case to this Court on two issues: First, the Superior Court, *sua sponte*, raised the issue of whether counsel, who represents both the Decedent's children and the Executor, has a conflict of interest. Second, once that issue is resolved, this Court is directed to "address its conclusion that the Decedent's Children waived certain appellate issues or that these issues were barred by the doctrine of the law of the case." Argument was held on these issues on July 14, 2023, after which counsel filed Briefs supporting their respective positions.

Case No.: 4373 of 2015. In the Court of Common Pleas of Allegheny County, Pennsylvania. Orphans' Court Division. O'Toole, A.J.

OPINION

Originally, this matter came before the Court on a Petition and an Amended Petition for Rule/Citation to Show Cause Why Funds Should not be Returned to the Estate filed by Mary Belle Rawlings (hereinafter, "Mrs. Rawlings"), who is the Wife of the Decedent.¹ In that Petition, Mrs. Rawlings requested that certain funds be returned to the Decedent's estate that had been distributed to the Decedent's children prior to or at the time of the Decedent's death. In a Memorandum Opinion and Order of Court dated January 25, 2018, this Court sustained Mrs. Rawling's claim against the estate in part and ordered the estate to pay the sum of \$300,000 to Mrs. Rawlings. Both parties filed appeals to the Superior Court. In a Memorandum Opinion dated July 22, 2019, the Superior Court remanded the matter to this Court on two matters.² First, at the request of the undersigned, the case was remanded to permit this Court to amend its Order and direct the adult beneficiaries (i.e., Decedent's adult children) to return the funds that were improperly distributed to them to the estate. Second, the case was remanded with an instruction that this Court "prepare an adjusted calculation" of the amount of money to be returned to the estate by the adult beneficiaries.

A hearing on the remanded issues was held on September 24, 2021. As a result of that hearing, this Court issued a Memorandum Opinion and Order of Court dated January 24, 2022 and an Opinion dated April 6, 2022. The Order and Opinions directed as follows:

- 1) Edward Rawlings, Ann Rawlings Hoover, and Amy Williams (the Decedent's three children) shall, within thirty (30) days, return to the Estate all funds that they received from the annuities and managed investment account that were distributed to them prior to, at the time of, or after the Decedent's death, along with written documentation/ verification setting forth the amount of funds received and the source or entity from which the funds were received; and
- 2) Mary Belle Rawlings and/or the Estate of May Belle Rawlings shall be entitled to the sum of \$973,000 from the Decedent's estate as compensation for her claim against the estate.

An appeal was filed by Edward D. Rawlings, individually and as Executor of the Estate of Herman Edward Rawlings, Deceased, Ann R. Hoover, and Amy R. Williams (Edward D, Ann, and Amy are the Decedent's children). In the Concise Statement filed on behalf of the Appellants, they raised the following issues, all of which are defenses to the original Petition: timeliness of the claim, the Dead Man's Act with regard to testimony, the Dead Man's Act with regard to documentary evidence, the contradictory nature of Mrs. Rawlings' testimony, Mrs. Rawlings' alleged waiver of a share of the estate, the weight of the testimony given to certain fact and expert witnesses, the lack of subject matter jurisdiction, and the lack of liability of the individual Appellants.

In a Judgment Order dated February 6, 2023, the Superior Court again remanded the case to this Court on two issues: First, the Superior Court, *sua sponte*, raised the issue of whether counsel, who represents both the Decedent's children and the Executor, has a conflict of interest. Second, once that issue is resolved, this Court is directed to "address its conclusion that the Decedent's Children waived certain appellate issues or that these issues were barred by the doctrine of the law of the case". Argument was held on these issues on July 14, 2023, after which counsel filed Briefs supporting their respective positions.

DISCUSSION³

Initially, with regard to the issue of counsel's conflict of interest, both counsel agree that Attorney Dempsey does not have a conflict of interest with regard to his representation of the Decedent's children and the Executor. (N.T. 07/14/23, pp. 4, 12-13) The Court agrees. Moreover, Mr. Dempsey's clients have executed waivers of any conflict of interest.

The second issue regarding whether the children either waived their defenses or those defenses are barred by the law of the case doctrine is more complicated due to the convoluted procedural history of this case. The Court finds that the Respondents are absolutely in privity—they have exactly the same interests. The children are protecting their own interests by raising a number of defenses. The Executor, on behalf of the Estate, of which the children are the sole beneficiaries, protects the interests of the estate by having raised precisely the same defenses. In effect, they are the same party, which is why the same attorney can represent all of them without a conflict of interest. Does that result in the Decedent's Children having waived their defenses because the estate did not raise the defenses as appellate issues in Rawlings I? While the Court believes that the answer to this question is in the affirmative, out of an abundance of caution and to, hopefully, avoid another remand, the Court will address each of the defenses, as raised in the Concise Statement filed in Rawlings II, herein as those defenses apply to the Decedent's children.⁴

First, this Court's finding that the Dead Man's Act does not apply in this case has already been affirmed by the Superior Court in Rawlings I. As the Decedent's Children are in privity with the estate and their argument would be identical to the argument raised by the estate to the Superior Court, that ruling also applies to them as the law of the case.

Second, the Decedent's Children claim, without elaboration, that Mrs. Rawlings' testimony was contradictory, and the weight of the evidence demonstrates that she did not prove her claim. As found by the Superior Court when this issue was raised in Rawlings I, the failure to point to specific portions of the testimony to support the argument causes the argument to fail. More importantly, the Court has thoroughly reviewed Mrs. Rawlings' testimony at the original hearing in light of the Amended Petition and the Court does not find the testimony to be inherently contradictory or clashing with the allegations in the Amended Petition; rather, the Court finds, again, that the weight of the evidence shows that Mrs. Rawlings has proven her claim and she is entitled to a recovery. This case turned entirely on the credibility of the witness's testimony and the Court found Mrs. Rawlings to be trustworthy. Specifically, the Court found the testimony of Mrs. Rawlings regarding the purpose for giving the Decedent a check for \$1,000,000

to be credible. She reliably stated that the funds were to be used to pay the monthly costs for the parties to reside at their retirement community and for the aides that assisted them, with any remaining funds to be returned to her upon the Decedent's death. Thus, this defense has not been shown.

Third, the Court recognizes that the Decedent and Mrs. Rawlings executed an Antenuptial Agreement prior to their marriage. It is uncontroverted that the Agreement precludes either party from seeking a share of the other's estate, which the Respondents have referred to as "an inter vivos waiver". Mrs. Rawlings is not seeking an elective share of the Decedent's estate; rather, she is seeking a return of the unused portion of the funds that the Decedent was to invest in the "Longwood Fund". Thus, this defense fails.

Fourth, there is a claim that the Court lacked subject matter jurisdiction because the Petition was filed by Mrs. Rawlings in her own name, rather than in the name of the Mary Belle Rawlings Revocable Trust, which is the entity that actually held the \$1,000,000 which was given to the Decedent by Mrs. Rawlings. As Mrs. Rawlings was the sole Trustee of this Revocable Trust and sole beneficiary of this Revocable Trust, all funds in the Trust belonged to her. Thus, the \$1,000,000 belonged to Mrs. Rawlings and it was not an error to file the action in her name. Moreover, the allegation that Mrs. Rawlings did not have standing to bring the claim in her sole name should have been raised in Preliminary Objections. Failure to have done so results in a waiver of the argument.

Finally, the Decedent's children claim that they have no liability to Mrs. Rawlings, as the funds were given to them as gifts from their Father (the Decedent) prior to his death. It is necessary to look back to where the Decedent got the funds to make these gifts to his children. It is undisputed that the money that funded the annuities and the account from which the gifts were made was the \$1,000,000 that Mrs. Rawlings gave to the Decedent to invest in the "Longwood Fund" for their care. His failure to properly invest the funds and use them for their sole purpose should not benefit his children, as the funds were never intended to be for that purpose. The Decedent had no authority to make gifts to his children from money that belonged to Mrs. Rawlings and was given to him for a specific purpose. Thus, the children have liability as the recipients of mishandled money.

In summary, the Court finds that the Petition filed by Mrs. Rawlings must be granted as against the Estate and the Decedent's children, who actually received the funds via unauthorized gifts. Not only did the Decedent give his three children a gift of \$100,000 each in 2014, which he had never done previously, he transferred the annuities and the managed investment account, which contained the \$1,000,000 received from Mrs. Rawlings to his children when he was seriously ill a few months prior to his death. The testimony of Edward Rawlings at the original hearing was unequivocal--during 2014 and early 2015, Mrs. Rawlings repeatedly requested the return of the \$1,000,000 that she had given to the Decedent for the "Longwood account". Instead of doing so, the Decedent transferred the accounts containing the money to his children. The children must now return the funds to Mrs. Rawlings.

It is uncontradicted that Mrs. Rawlings stopped contributing funds to the joint account to pay the expenses at Longwood as of December 2014. It is also uncontradicted that she usually contributed \$4,000-\$5,000/month to the joint account. Thus, for the period of January 1, 2015 through June 30, 2015, Mrs. Rawlings should have contributed between \$24,000 and \$30,000, or an average of \$27,000, for which the Court will hold her responsible. All expenses incurred for Longwood as of July 1, 2015 were Mrs. Rawlings sole responsibility, and she paid those expenses via the deduction from the refund that she received.

For the foregoing reasons, the Court issues the following Order:

ORDER OF COURT

AND NOW, to wit, this _____ day of September, 2023, it is hereby ORDERED as follows:

1) Edward Rawlings, Ann Rawlings Hoover, and Amy Williams (the Decedent's three children) shall, within thirty (30) days, return to an escrow account held in the joint names of within counsel, all funds that they received from the annuities and managed investment account that were distributed to them prior to, at the time of, or after the Decedent's death, along with written documentation/verification setting forth the amount of funds received and the source or entity from which the funds were received; and

2) Mary Belle Rawlings and/or the Estate of Mary Belle Rawlings shall be entitled to the sum of \$973,000 from said escrow account as compensation for her claim against the estate, with any balance in the escrow account thereafter paid to the Decedent's estate.

BY THE COURT:

/s/The Hon. Lawrence J. O'Toole

¹ Mrs. Rawlings has since passed away and her Estate has been replaced as the moving party.

² A subsequent Petition for Allowance of Appeal was denied.

³ The Court adopts herein the Findings of Fact set forth in its previous Opinions, as if set forth in full.

⁴ The Court must note that these issues were addressed in its Opinion dated April 10, 2018.

