

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

6th Circuit - Probate Division - Concord
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Concord NH 03301

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NOTICE OF DECISION

FILE COPY

Case Name: **Valerie C. Santilli, Individually and as Executrix of the Estate of John C. Chakalos, Elaine Chakalos and Charlene Gallagher, Petitioners v Nathan**
Case Number: **313-2017-EQ-00396**

On May 09, 2019, Judge David D. King issued orders relative to:

Motion to Reconsider and Redetermine Residency of John Chakalos and Motion to Dismiss Motion is GRANTED. See enclosed order.

Any Motion for Reconsideration must be filed with this court by May 19, 2019. Any appeals to the Supreme Court must be filed by June 08, 2019.

May 09, 2019

Sharon A. Richardson
Clerk of Court

C: William C. Saturley, ESQ; Rue Koester Toland, ESQ; Ralph F. Holmes, ESQ; Alexandra Saanen Cote, ESQ; David F. Anderson, ESQ; Michael J. Connolly, ESQ; James D. Rosenberg, ESQ; Cathy J. Green, ESQ; Benjamin T. Siracusa Hillman, ESQ; Andrea L. Daly, ESQ; Julianna Malogolowkin; William Michael, ESQ

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

TRUST DOCKET
6th CIRCUIT COURT
PROBATE DIVISION

VALERIE C. SANTILLI, INDIVIDUALLY AND AS EXECUTRIX
OF THE ESTATE OF JOHN C. CHAKALOS,
ELAINE CHAKALOS,
AND
CHARLENE GALLAGHER

v.

NATHAN JAMES CARMAN
AND
VALERIE C. SANTILLI, LAWRENCE SANTILLI, AND PAUL STERCZALA,
EACH AS TRUSTEE OF THE TERMINATING TRUST UNDER ARTICLE III OF
THE JOHN C. CHAKALOS REVOCABLE TRUST; ELAINE CHAKALOS, AS
TRUSTEE OF THE RITA B. CHAKALOS NEW HAMPSHIRE PERSONAL
RESIDENCE TRUST; AND LAWRENCE SANTILLI, AND PAUL STERCZALA
EACH AS TRUSTEE OF THE CHAKALOS FAMILY DYNASTY TRUST

313-2017-EQ-00396

ORDER ON MOTION TO RECONSIDER

On April 29, 2019, the Court held an evidentiary hearing, see Order dated April 22, 2019 (Index #176), on a *Motion to Reconsider and Redetermine Residency of John C. Chakalos*, filed by the Respondent, Nathan Carman (the "*Motion to Reconsider*"), see Index #164, contending that the Court lacked jurisdiction over the estate, and by extension this matter, in light of newly discovered evidence and case law decided after its initial determination that it possessed jurisdiction in May 2018. See Order dated May

30, 2018 at 2-6 (Index #63). *An Opposition to Respondent's Motion to Reconsider and Redetermine Residency of John C. Chakalos*, see Index #169, was submitted by Petitioners Valerie C. Santilli, individually and as Executrix of the Estate of John C. Chakalos (the "Estate"), Elaine Chakalos, and Charlene Gallagher (collectively the "Petitioners"), to which Mr. Carman submitted a *Reply*. See Index #174. At the hearing, the Petitioners additionally filed a *Bench Memo on the New Hampshire Domicile of John C. Chakalos*. See Index #177. Participating in the hearing were: Attorney William C. Saturley, Attorney Rue Koester Toland, and Attorney Andrea L. Daly on behalf of the Petitioners; Attorney Cathy J. Green, Attorney Benjamin Siracusa Hillman, and Attorney James D. Rosenberg on behalf of the Respondent; and Attorney Alexandra Saanen Cote on behalf of Intervenor Glenn Terk, as Trustee of the Property of Linda Carman.

After careful consideration of counsels' written and oral arguments and all of the exhibits submitted at the hearing - including significant and determinative information which had not previously been provided - and for the reasons that follow, the Court GRANTS the *Motion to Reconsider and Redetermine Residency of John C. Chakalos*. See Index #164. The Court determines that John Chakalos, although by birth originally a domiciliary of New Hampshire, established a domicile in Connecticut, and never re-established one in this state. The Court concludes that it may exercise ancillary jurisdiction over a share in real estate in Hampton, New Hampshire. That administration, however, is not sufficient for it to consider the Petitioners' *Amended Petition for Declaratory Judgment, Replevin, Restitution, and Other Equitable Relief and*

to *Impose a Constructive Trust* (the "*Amended Petition*"), see Index #37,¹ and as such, it is DISMISSED. The Clerk is DIRECTED to remove all future hearings from the Court's calendar.

In light of the Court's ruling today, it will, under separate cover, schedule a status conference in the Estate of John Chakalos, see No. 313-2014- ET-00187, as soon as the Court's calendar allows.

I. Applicable Law

As discussed below, the Court, at the request of the Petitioners, set forth in detail in its scheduling Order dated April 22, 2019, see Index #176, the standards it would apply to determine the *Motion to Reconsider and Redetermine Residency of John C. Chakalos*. In that Order, it invited the parties to challenge its recitation of the applicable law, however, no apparent objections were submitted. As such, it will restate those principles here, with some additions based upon arguments made at the hearing or in the *Bench Memorandum*. See Index #177.

It is well-established that the Petitioner bears the burden of demonstrating sufficient facts to support this Court's personal and subject matter jurisdiction.

Unlike the general rule applicable to motions to dismiss on the ground of failure to state a claim, when jurisdictional facts are challenged, plaintiffs must not only plead facts sufficient to support jurisdiction, but must also go beyond the pleadings and make affirmative proof. A *prima facie* showing of jurisdiction, however, will be sufficient to overcome a motion to dismiss.

¹ The Court observes that at the request of the parties, it deferred consideration of the *Motion to Further Amend Their Amended Petition*. See Order dated April 12, 2019 at 2 (Index #173). Having found that it lacks jurisdiction to consider the issues raised in the *Amended Petition*, this motion is now moot.

Mosier v. Kinley, 142 N.H. 415, 418 (1997)(quotations and citations omitted)(personal jurisdiction). The Petitioners brought this equity action pursuant to the Court's jurisdiction over the Estate of John Chakalos. As discussed below, resolution of the present challenge to this Court's jurisdiction over Mr. Chakalos's estate is essentially a question of whether Mr. Chakalos was domiciled in New Hampshire or Connecticut at his death. See generally, RSA 547:3 (exclusive jurisdiction over estates); RSA 567:8 (venue).

Determination of domicile is primarily a question of fact viewed in light of all the unique circumstances of the particular case. See, e.g., Bailey v. Bailey, 93 N.H. 259, 261 (1945). In its May 30, 2018 Order, see Index #63, the Court determined, as raised in the pleadings before it, that based primarily upon three facts, namely: (1) Mr. Chakalos held a valid New Hampshire driver's license; (2) he indicated in his Will that he lived in New Hampshire; and (3) that he registered to vote here, "[t]he Petitioners made a *prima facie* showing he was an 'inhabitant' under RSA 557:8." Id. at 6 (emphasis added). It indicated to the parties in its April 22, 2019 scheduling order that would not revisit that specific determination, however, it allowed the Respondent to present evidence tending to rebut the *prima facie* showing made in May 2018, and to demonstrate that Connecticut, not New Hampshire, was the domicile of John Chakalos when he died. See Order dated April 22, 2019 at 6 (Index #176). The Court also observed that since its original May 30, 2018 Order, the Supreme Court issued an opinion that, in dicta, made observations concerning the meaning of terms defined in RSA 21:6 and "domicile," see Opinion of the Justices, 171 N.H. 128 (2018), that

although not binding, is instructive on the issues at hand, and will be considered to the extent appropriate.²

RSA 547:3 grants the Probate Division jurisdiction over the “[p]robate of wills” and “granting of administration and all matters and things of probate jurisdiction relating to the composition, administration, sale, settlement, and final distribution of estates of deceased persons.” 547:8 is a venue provision that directs:

Probate of the will and granting administration on the estate of a person deceased shall belong to the judge for the county in which such person was last an inhabitant; but if such person was not an inhabitant of this state the same shall belong to the judge for any county in which such person had estate, or in which the personal representative or kin of such person has a cause of action.

RSA 547: 9 directs that “[a]ll proceedings in relation to the settlement of the estate of a person deceased shall be had in the probate court of the county in which his will was proved or administration on his estate was granted.” Although undefined in the estate statutes, the term “resident; inhabitant” is defined in the general rules of statutory construction as:

A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of

² The Opinion of the Justices was rendered in the context of changes to RSA 21:6 intended to modify this state’s voting laws, id. at 131, and not in the context of estate law that has a long history of statutory law and explanatory common law principles that must be carefully reviewed and respected. It is well-established that such opinions are not binding precedent, nor are given to answer issues involving questions of fact. See, e.g., Opinion of the Justices, 167 N.H. 539, 541-42 (2015). They can be instructive, however, in understanding general definitional statutes such as RSA 21:6, and certainly, helpful to this Court, where, as here, the principles discussed in an Opinion of the Justices is in conformity with the established common law concerning estates.

abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

RSA 21:6. Similarly, RSA 21:6-a concerning the term “residence” provides:

Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

Notably, the Legislature amended RSA 21:6 and RSA 21:6-a in 2018. See 2018 Laws 370:1. Effective July 1, 2019, those statutes will no longer include the phrase “for the indefinite future.” See id. The New Hampshire Supreme Court recently interpreted the current version of RSA 26:1 as, at the very least, equating the term “residence” or “inhabitant” with “domicile.” Opinion of the Justices, 171 N.H. at 137.³ The Supreme Court noted that “[n]otwithstanding the use of the word[] “resident” the language of the definition[] makes clear that they are intended to describe the intensity of connection to a place that, at a minimum, satisfies the traditional test of domicile,” which consists of “actual residence coupled with an intention to remain.” Id. at 137; see, e.g., Foss v.

³ It observed that traditionally,

[a] person's residence is generally understood to be the place where he or she is currently living, even if only for relatively short duration, whereas a person's domicile is the place with which the person identifies himself and all his interests and there exercises the rights and performs the duties of a citizen. Domicile is thus universally understood to connote a more significant and lasting connection with a locality than is encompassed by mere residence, supporting the conclusion that one may have more than one residence at the same time, but only one domicile.

Id. at 136 (quotations citation and ellipses omitted).

Foss, 58 N.H. 284, 284 (1878). This understanding comports with the traditional view of the "intensity of connection" required for primary jurisdiction over an estate. See Crosby v. Town of Charlestown, 78 N.H. 39, 44 (1915)(primary place of probate is the domicile of the deceased). It was long ago established that:

[a] person does not acquire a new residence by merely going to another town with the intention of making it his domicile. He must not only go there with that intention, but also with the intention of residing there for a more or less definite time and making it his home. By 'home' as that word is used in the law of domicile is intended what every one has in mind when he thinks of home; his principal residence; the place to which he always intends to return, or the one place he thinks of as home.

See, e.g. Kerby v. Town of Charlestown, 78 N.H. 301, 303 (1916)(citations omitted)(rejecting claim that New York was domicile for tax purposes because "home" was in New Hampshire); cf. McGee v. Bragg, 94 N.H. 349, 351 (1947)(in voting case, the Supreme Court observed that "the determination of one's domicile or home or voting residence involves questions of fact as to the person's intention as well as his physical presence and acts in relation thereto").

Here, the fundamental question posed by the Respondent's *Motion to Reconsider* is whether the information obtained after this Court's May 30, 2018 Order demonstrates that Mr. Chakalos only intended to make it appear, for tax purposes, that his domicile was in New Hampshire, however, his true intent was that his "principal residence," or "place he thinks of as home" or location where he had an "intensity of connection" making it his domicile for estate purposes, was in fact Connecticut. Determination of intent of the deceased is a difficult task, and must be reviewed

in the light of his declarations and other conduct and of the circumstances in which he finds himself. The evidence will often be equivocal, and the principal difficulty in domicil cases lies not so much in the rules themselves as in the evaluation of the facts, especially with respect to intention.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS §18 Requisite Intention comment d (1971 & 2019 Update); see Bailey, 93 N.H. at 261. A decedent's motive to establish domicile, for example for tax purposes, is immaterial so long as the other requirements for establishing domicile are present. Id. comment e. However,

a person's motives in going to a place do have an intimate bearing on his attitude of mind toward it. . . . The fact that the move was dictated by a desire to obtain some special advantage, as a divorce or the avoidance of taxes, may give rise to the inference that the person had no bona fide intention to change his home and that therefore no new domicil was acquired.

Id. comment f.

Both parties agree, either explicitly or implicitly, see Respondent's Reply at 3 ("the Court must determine residency by engaging in objective fact-based examination of intention as demonstrated by one's actions, rather than one's subjective intent")(Index #174); Petitioners' Bench Memo at 4 (Index #177)("[i]dentification and intent, and actions consistent therewith, are what matters most"), that intent to create or maintain a domicile must be evaluated in concert with examination of a person's acts because

[t]he primary intention required for the acquisition of a domicil of choice is an intention to make a home rather than an intention to acquire a domicil. Were it otherwise, persons could choose to be domiciled in a state of low burdens and high benefits quite irrespective of where they actually happened to live. A person's domicil of choice is in the state

to which he is most closely related rather than in the state where he wishes to be domiciled.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS §18 Requisite Intention comment g (1971 & 2019 Update). This is consistent with the Supreme Court's observation in a divorce jurisdiction matter, where "home" or "domicile" is noted as

the place in which, both in fact and intent, the home of a person is established, without any existing purpose of mind to return to a former home. It is the place which the fact and the intent, combining with one another, gravitate to and centre in as the home. To acquire a domicil, residence and the intention to make it the home must concur.

Foss, 58 N.H. at 283 (citation omitted).

As discussed more fully infra, counsels at the hearing ably presented evidence supporting their arguments that Mr. Chakalos was domiciled, alternatively, in either Connecticut or New Hampshire. The Restatement (Second) of Conflict of Laws gives guidance on how courts should evaluate a situation where a person has two "dwelling places" of possible significance. It directs:

Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicil is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, *that which is more nearly the center of his domestic, social and civil life*. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. *His statements in this connection cannot*

be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 20 Domicil of Person Having Two Dwelling Places comment (b)(2)(1971 & March 2019 Update)(emphasis added). In a rare instance a person has “an equal relationship to his two dwelling places as to make it difficult to say which is the predominant or principal one. [In that case], effect may be given to the person’s expressed desire to have his domicil at one dwelling place rather than at the other.” Id. comment c.

Of course, New Hampshire Probate Courts retain their in rem jurisdiction to preside over the ancillary administration of the property of a decedent located in this State. The New Hampshire Supreme Court, noted that where a petition for administration alleged that the decedent had a residence in New Hampshire and an “estate in the county at the time of his death[,] [t]he judge could not decline or neglect to act upon the petition without violating the duty imposed upon him by law” Knight v. Hollings, 73 N.H. 495, 498 (1906). Indeed, it also directed that given that the decedent held property having a situs in New Hampshire, a New Hampshire court properly possessed jurisdiction over the “probate of the will, even if [the decedent’s] domicile was [elsewhere].” Id. at 499; see, e.g., Robinson v. Carroll [Dana’s Estate], 87 N.H. 114, 115 (1934)(referring to RSA 547:8, “[a]dministration is thus to be granted on the estate of a decedent resident, and, as to a decedent non-resident, in any county where he ‘had estate’”). The primary place of probate jurisdiction, however, “and of everything pertaining to the settlement of estates” lies exclusively with the domiciliary state, and not

that with ancillary administration. Crosby, 78 N.H. at 44; see, e.g., Clark v. Clement, 33 N.H. 563, 567 (1856).

II. Procedural Background and Findings of Fact

The Court finds the following facts for purposes of the *Motion to Reconsider*, and incorporates by reference its findings in the Order dated April 22, 2019. See Index #176. John Chakalos was discovered dead in the bedroom of 52 Overlook Drive, Windsor, Connecticut on December 20, 2013. His death certificate lists the manner of death as a homicide and states that he died as a result of gunshot wounds to his head and torso. See P's Exh. 19. His wife of 59 years, Rita Chakalos, died of cancer a month earlier on November 21, 2013. See P's Exhs. 20 & 21. A *Petition for Estate Administration* was filed in April 2014. See Estate of John Chakalos, see No. 313-2014-ET-00187 (Index #6). Although the opening sentence of the Will states: "I, John C. Chakalos, of West Chesterfield, New Hampshire, declare this to be my Will," since the will was drafted, executed, witnessed and notarized in Connecticut, see id. (Index #7), Attorney Caroline Demirs-Calio filed an *Affidavit of Counsel As to Propriety of Foreign Will/Codicil to be Admitted Into Probate* on May 29, 2014, attesting that the Will was properly executed as self-proved under the laws of Connecticut. Id. (Index #9). The *Petition for Estate Administration* was granted in June 2014, and Petitioner Valerie Santilli ("Valerie") was appointed executrix In August 2014. See id. (Index #14). The estate remains open.

No charges have been filed in Connecticut in John Chakalos's murder. Accordingly, it is undisputed that a "slayer action" cannot yet be filed under the laws of that state. See C.G.S.A. §45a-447 (2016)(formerly C.G.S.A. §45-279); see generally,

Hotarek v. Benson, 557 A.2d 1259, 1261-62 (1989). This matter commenced on July 17, 2017, when the Petitioners filed a *Petition for Declaratory Judgment, Replevin, Restitution and Other Equitable Relief and to Impose a Constructive Trust* (“*Petition*”), see Index #1, which was later amended (“*Amended Petition*”), see Index #37, seeking a declaration that the Respondent murdered his grandfather, John Chakalos, and imposition of a constructive trust over any portion of the Estate of John Chakalos that would “flow to a trust for Linda Carman,” and because she was missing at sea, would “pass” to the Respondent. See *Amended Petition* (Index #2). Mr. Carman, in his *Answer* to the original petition, see Index #17, sought dismissal on the ground that this Court lacked jurisdiction under RSA 547:8 “over any of the decedent’s assets . . . including, but not limited to, the assets which the Petitioners seek to either place into a constructive trust or to otherwise deprive the Respondent from receiving.” Id. at 8. The basis for his jurisdictional claim was that “John C. Chakalos was not a resident of New Hampshire at the time of his death” and thus the Court did not possess jurisdiction over his estate. Id.

After granting the parties additional time for jurisdictional discovery, see Order dated December 22, 2017 (Index #24), the Court held a hearing in May 2018 on the *Motion to Dismiss*. See Order dated May 30, 2018 (Index #63). Prior to the hearing, the Petitioners submitted a *Memorandum In Support of the Petitioners’ Response to the Motion to Dismiss*. See Index #55. The Petitioners contended that: (1) “John Chakalos considered himself a resident of the State of New Hampshire”; and (2) New Hampshire was his domicile as he owned a residence here and intended to remain indefinitely. Id. Mr. Carman, who was self-represented at the time, did not file any additional pleadings

concerning the *Motion to Dismiss*, but asserted at the hearing that based upon his personal knowledge, his grandfather actually was a Connecticut resident and spent only one-day-per-week in New Hampshire, did not consider the state his home, and did not intend to return here permanently. He did not, however, offer testimony under oath to that effect, and did not offer supporting evidence of it. See Order dated May 30, 2018 (Index #63). Following that hearing, the Court determined, as raised in the pleadings before it, that based upon three facts, namely: (1) Mr. Chakalos held a valid New Hampshire driver's license; (2) he indicated in his Will that he lived in New Hampshire; and (3) that he registered to vote here, “[t]he Petitioners made a prima facie showing he was an ‘inhabitant’ under RSA 557:8.” Id. at 6 (emphasis added).

As noted in its Order dated April 22, 2019, new counsels⁴ for the Respondent filed the *Motion to Reconsider* on April 3, 2019, see Index #164, seeking an order, based upon information discovered after the Court's May 30, 2018 Order: (1) declaring that John Chakalos was an inhabitant of Connecticut at the date of his death; and (2) determining that it lacks jurisdiction over this matter as it “extends only to his one-half interest in a condominium in Hampton, New Hampshire . . . and not to any personal property.” Id. at 16. They assert that the estate was filed here because John Chakalos was a savvy businessman who did not like paying taxes, and he created the appearance of domicile to avoid millions of dollars in taxes.⁵ They also allege that the Petitioners filed their “slayer action” in New Hampshire because, absent a conviction, no

⁴ Mr. Carman has been self-represented throughout most of this litigation. After monies were released from a trust in Connecticut that was established for Mr. Carman by John Chakalos to allow for payment of attorney's fees in early 2019, current counsels filed appearances in this matter in February 2019. See Index ##143-145.

⁵ The Respondents allege that by submitting the estate filings in New Hampshire, Petitioner Santilli is committing tax fraud. See Respondent's Reply ¶3 (Index #174).

cause of action may be brought in Connecticut.⁶ The Petitioners objected, see Index #169, asserting, inter alia, the Respondent's "renewed jurisdictional argument comes too late," as it is an untimely motion to reconsider. See generally, Cir. Ct. – Prob. Div. R. 59-A.

The Court conducted a teleconference with counsel on April 18, 2019, during which it discussed with both parties the Petitioners' suggestion, over the objection of the Respondent, that an evidentiary hearing scheduled on the *Motion to Reconsider* not include live testimony. See Order dated April 22, 2019 (Index #176). During that conference, the Petitioners stated that they believed that the motion was late, and if the Court determined it was not, then whether to proceed on offers of proof or with witness testimony depended upon the "standard" under which the decision on the *Motion to Reconsider and Redetermine Residency of John C. Chakalos* would be based. Petitioners' counsel suggested that the issue of jurisdiction be considered as part of the evidence at trial. See also Index #170, ¶9. Given the expected length of trial, and associated expense, the Court was not willing to consider that option.

After the teleconference, the Court issued an order determining that the *Motion to Reconsider* was not untimely as: (1) the issue of subject matter jurisdiction may be raised at any time, see e.g., Appeal of Cole, 171 N.H. 403, 408 (2018); and (2) that there was good cause to waive any timeliness objections to submission of the *Motion to Reconsider*. See generally Cir. Ct. – Prob. Div. R. PREFACE; see Order dated April 22, 2019 (Index #176); see also Merrimack Valley Wood Prod., Inc. v. Near, 152 N.H. 192, 203–04 (2005)(courts have inherent power to review own proceedings to "correct

⁶ Indeed, after many years of investigation, the Connecticut authorities have not issued an arrest warrant for the Respondent.

error or prevent injustice”); State v. Haycock, 139 N.H. 610, 610–11 (1995)(discretionary power to correct previous pretrial ruling may be exercised at any time). As noted in the Order, because this court has no authority to decide the issues at hand if it lacks principal jurisdiction over the estate, see, e.g., In Matter of Ball, 168 N.H. 133, 140 (2015)(subject matter jurisdiction); Crosby, 78 N.H. at 44 (“It is elementary that the primary probate jurisdiction of wills, and of everything pertaining to the settlement of estates, is exclusively in the place of the domicile of the deceased”)(quotations omitted), and the issues before it are of grave concern⁷, there is good cause to waive the application of Rule 59-A so that these issues properly are considered by the court of proper jurisdiction.

In the April 22nd Order, this Court, at the request of the Petitioners, set forth the legal standards under which the decision on the *Motion to Reconsider* was to be determined. Id.⁸ Shortly before the evidentiary hearing, the parties informed the Court, via email to the Clerk’s Office, that

they have agreed to proceed during Monday’s hearing via offers of proof. They are exchanging exhibits and no evidentiary objections will be raised to those exhibits for purposes of the hearing. (The parties reserve the right to argue weight of the exhibits; the parties also reserve the right to raise evidentiary objections to these exhibits during trial.) No witness will be required in the courtroom to support the exhibits; no live witnesses will be tendered during the hearing.

⁷ Namely, the Court will be called to determine whether Mr. Carman intentionally and unlawfully caused the deaths of his grandfather and mother such that it should consider imposing a constructive trust over distributions originating from the Estate of John Chakalos. See generally, Kelly v. State, 105 N.H. 240 (1963)(the slayer rule).

⁸ The Court held that it “will consider whether it has jurisdiction over the Estate of John Chakalos at the hearing on April 29th. It will make findings of fact based upon either offers of proof or live testimony as determined by the parties and apply those facts to the principles of law discussed supra.” It invited the parties to submit any objections to the standards set forth in its order, and none were received.

See Email to Denise Pearl and Beth Kissinger dated April 26, 2019. Accordingly, the Court conducted a lengthy hearing during which both parties submitted a number of exhibits, without objection, and presented thoughtful and comprehensive argument.

It is based upon those submissions, that the Court makes the following findings of fact. At the outset, it observes that all parties agree that John Chakalos was born and raised in New Hampshire and as such, this was his original domicile. The parties also agree that his domicile changed to Connecticut where John and Rita raised their family. The parties diverge on whether John's domicile remained in Connecticut, namely, the more simple, but certainly not small, family home on 52 Overlook Drive in Windsor, Connecticut (the "Windsor House"), or the palatial home at 140 Pond Brook Road in West Chesterfield, New Hampshire he began building in 1991 that was ready for occupancy in 1994 (the "West Chesterfield House"). See P's Exh. 11.

The agreed-upon exhibits presented by the Petitioners and Respondents generally came in two forms: (1) statements either under oath or in law enforcement interviews⁹ by individuals who had regular contact with John Chakalos; and (2) other various documents pertaining to the issue of domicile. In the instances where the evidence conflicts, the Court, after careful review, has endeavored to assign appropriate weight to each exhibit offered and exercise its discretion to resolve conflicts. See, e.g., In re Guardianship of Kapitula, 153 N.H. 492, 498 (2006) (probate court has broad discretion to resolve conflicts, assign weight, measure the credibility of witnesses, and "to accept or reject, in whole or in part, whatever evidence was presented"); cf. McGee, 94 N.H. at 352 ("An assertion by a party that he regards a certain town as his home is

⁹ Under Connecticut law, being untruthful in these interviews would subject the individual to criminal liability. See C.G.S.A. § 53a-157b; 53a-180c.

entitled to great weight on the issue of his intention but it must be weighed against his actions; it is not conclusive and the presiding justice is not obliged to believe it"). Some exhibits offered were not, in the Court's view, fully assistive either way in determining the issues at hand, and therefore, while having been reviewed, will not be discussed in great detail in this order.

A.) Individual Statements

The Respondent and the Petitioners submitted statements of certain individuals that knew John Chakalos well, or at least had regular contact with him, for the Court's consideration. See P's Exhs.7; 22; R's Exhs. A-E; T; V-W.

The Court begins with statements made by Petitioner Valerie Santilli to both in a recorded interview with the Windsor Police Department on December 31, 2013 shortly after John Chakalos died, and during a deposition on November 14, 2018, after this Court's initial ruling on jurisdiction, in a related matter currently litigated in Rhode Island Federal District Court. See R's Exhs. B; W.

In the interview with police, Ms. Santilli¹⁰ discusses, in an "unfiltered manner," a variety of topics, including logistics concerning the Windsor house, the funeral, theories on possible suspects, her father's distress over the death of Rita, and family dynamics.

See R's Exh. B. Notably for the Court's purposes today, she discussed certain daily

¹⁰ The Court observes that initially, based upon the pleadings, it fully expected her to testify so the Court could assess credibility. She has never addressed the Court directly, however, as her counsel sought "clarification" that there would be no live testimony. The parties later agreed to none, as such it can only make credibility findings based upon the assented-to exhibits before it.

Notably, Mr. Carman did not appear either, although he did submit an affidavit. R's Exh. T. Normally, if a party does not appear, the Court would be entitled to take an adverse inference from that absence on the issue of jurisdiction. See, e.g., 29 Am. Jur.2d Evidence §493 Effect of Family Relationship Between Party And Witness on Presumption or Inference as to Failure to Call or Examine Witness (March 2019 Update); 75A Am. Jur. Trial §493 Failure to Call Witnesses in Civil Action, Generally, (February 2019 Update); Login v. Waisman, 82 N.H. 500, (1927); Cross v. Bell, 34 N.H. 82, 87-88 (1856). However, since the parties agreed that it should decide the matter before it premised on the exhibits presented, the Court will take no negative inference from the absence of testimony by either Ms. Santilli or Mr. Carman.

habits of Mr. Chakalos tending to show his primary residence was in Connecticut. She had questions about a frozen personal bank account and business checks that were not being honored. The accounts were located at "Webster Bank" in Connecticut. She also mentioned that her father's rolodex with contact information had been taken from the Windsor House. She stated that his medications were all at his "home" in Windsor "on the right hand side of the kitchen sink." She observed that her father "never ate at home," and on the last evening he was alive, her father went to dinner with the Respondent, "then slept home alone." Indeed, she observed that as her father was adjusting to Rita's death, she and her sibling(s) initially stayed overnight with her father at the Windsor House. She did not mention any plans to travel or stay in the West Chesterfield house.

She also discussed her understanding of John Chakalos's future plans. Notably, she did not mention residing at the West Chesterfield House. Instead, she noted that he did not intend to sell the Windsor House, but was going to keep it "to work in." When the officer asked if Mr. Chakalos was looking to move from, apparent from context, the Windsor House, Ms. Santilli responded that he was intending to "live near me and [her sibling] Elaine" in Connecticut. She offered that after Rita died, "we were planning his life." He understood that she had a spare bedroom for him at her new home in Avon Connecticut, but that he intended to get an apartment in West Hartford, and in fact "we were taking him out looking at apartments" near them in Connecticut.

Nearly five years later, Ms. Santilli was deposed in the Rhode Island matter by Attorney David F. Anderson. See R's Exh. W. When Attorney Anderson inquired about her involvement in business activities "in your father's office at his home . . . ," former

counsel for the Petitioners, Attorney Daniel Small¹¹, objected, and the following exchange occurred:

MR. SMALL: Object to the word "home." Home was in New Hampshire. Go ahead.

THE WITNESS: Well, I worked in my father's office prior to his death.

BY MR. ANDERSON:

Q Where do you consider your father's home to be?

A Oh, New Hampshire.

Q. And when was the last time prior to his death that he ever slept in New Hampshire?

.....

MR. SMALL: Objection. If you recall five years ago where someone slept.

THE WITNESS: Well, I know he was there in October.

BY MR. ANDERSON:

Q Is it your testimony that your father slept in New Hampshire in his West Chesterfield home in New Hampshire in October 2013?

A One of several times, yes.

Q When were the other times that your father in the year 2013 slept in his home in West Chesterfield?

MR. SMALL: Objection. If you recall. This is silly.

THE WITNESS: I wouldn't be able to answer that question.

¹¹ The Rhode Island litigation is between the insurer for Mr. Carman's boat, and Mr. Carman. Ms. Santilli is not a party to the lawsuit and was apparently deposed in her capacity as a fact witness. Both parties to the lawsuit had counsel; Mr. Small was at the deposition as personal counsel for Ms. Santilli.

BY MR. ANDERSON:

Q. And what was the occasion in October of 2013 that your father slept in his West Chesterfield home?

MR. SMALL: Object to form. "Occasion."

THE WITNESS: I mean, for the same reason anybody sleeps in their home, I guess.

BY MR. ANDERSON:

Q. Well, why is it you remember him sleeping in the West Chesterfield home in October of 2013?

A. Because that was the month my mother turned hospice.

Q. And why would -- why did he sleep there when your mother received hospice care, and again, I'm sorry to go into this.

THE WITNESS: Do we have to get into personal family dynamics?

MR. SMALL: No. No, this is ridiculous. What possible relevance does how -- why he was up there --

MR. ANDERSON: You brought it up. You brought it up.

MR. SMALL: I'm not a party to this case.

MR. ANDERSON: Okay. Then don't bring it up. I mean, you interjected it and you said his home was in New Hampshire.

MR. SMALL: I know, because --

MR. ANDERSON: It's not me. You brought it up.

MR. SMALL: Because you misstated the facts.

MR. ANDERSON: I'm following up. You made a statement. Let's see if it's true.

MR. SMALL: She's already testified that it's true. You're going to ask about hospice care to see if a statement is true? That's ridiculous. I'm instructing the witness not to answer. Take it to the judge, please. I beg you to take that to the judge.

BY MR. ANDERSON:

Q How long did your father – how would you describe the 52 Overlook Drive in Windsor? What do you describe that house as? I'm just asking for a name to use.

MR. SMALL: Object to the form.

The Court concludes that after viewing all of the statements by Valerie, submitted by agreement of the parties in lieu of her live testimony, they tend to support the conclusion that the Windsor House was John Chakalos's primary residence for purposes of the domicile analysis and that he intended to remain in Connecticut. In her "unfiltered" police interview, she clearly is trying to assist them in their investigation and makes statements without consideration to a later slayer action in New Hampshire. As noted above, her observations indicate that important aspects of daily life were undertaken in Connecticut, it was his "home," and that indeed, after Rita's death, he did not intend to make New Hampshire his "home," but wanted to remain in Connecticut.

The Court gives little weight to Ms. Santilli's answers in this deposition. It finds that Attorney Small was: (1) clearly "coaching" her concerning her father's "home;" and (2) interrupting as much as possible in order to avoid discussion about how often John Chakalos slept in West Chesterfield. Notably, in that deposition, she did not shed any light on the frequency of his visits to West Chesterfield that would be helpful in establishing domicile here, instead stating that she would not be able to answer inquiries about "other times" John Chakalos slept in New Hampshire. And, her attorney

rather aggressively objected to any attempt to ascertain whether or how often Mr. Chakalos slept in the New Hampshire home.

The Court also reviewed the video and transcript of a police interview of William Rabbitt on January 7, 2014, see R's Exh. A, and subsequent affidavit submitted by the Petitioners after the *Motion to Reconsider* was filed with this Court. See P's Exh. 22. Mr. Rabbitt is a Certified Financial Planner who is the co-owner of a financial advisory firm in West Hartford, Connecticut. Mr. Rabbitt told police that he was a financial advisor to John Chakalos for approximately four-to five years before John was murdered in 2013. Mr. Rabbitt worked with an accountant, Paul Sterczala, and Attorney Caroline Demirs-Calio of the Connecticut firm, Cummings & Lockwood, to assist John Chakalos with his estate and financial planning. During his interview with police, he gave detailed information about the nature of John's businesses and estate plans for passing his assets to his daughters and establishing college funds for his grandchildren. After he was hired by John, they met nearly every week at Mr. Rabbitt's office, and Mr. Rabbitt attended numerous business meeting with John. It appears from his statements to police that he had known John Chakalos very well for the past several years leading up to his death.

In addition to giving the police information on various businesses and projects, Mr. Rabbitt also discussed the family's dynamics, possible suspects and his understanding of John Chakalos's estate and his personal plans. He did note, however, that John Chakalos was not entirely forthcoming about his finances, observing: "I would tell you[,] out of all the advisors, . . . nobody really knew everything. So we needed to rely on each other." Exh. A at 51.

Mr. Rabbitt told police during this interview that for estate planning purposes, the team

didn't want [John and Rita] to live in Connecticut. We wanted them to be from New Hampshire. . . . And they have to live six months and a day, and they were skirting it big time. It was gonna be a problem. We knew it was gonna be a problem. You have to live in New Hampshire. And if you own a house in Windsor, that looks bad; right?

Id. at 51-52. With respect to domicile, Mr. Rabbitt stated that “on like the estate planning and stuff, we weren’t done. I mean, like the whole idea that they live in New Hampshire and he won’t pay any Connecticut estate tax, he’s got to pay Connecticut estate tax, because he lived in Connecticut.” Id. at 125-26. When asked if John Chakalos would want to pay Connecticut taxes, Mr. Rabbitt responded: “No. And there’s no hiding the fact that he lived in Connecticut. He lived in Connecticut. . . . It’s gonna happen. It’s gonna be millions of dollars.” Id. at 126. Notably, he observed that they had planned for that possibility and that proceeds from an insurance policy and a specific investment account would be set aside to pay that state tax obligation. Id. at 56.

Following submission of the *Motion to Reconsider*, the Petitioners submitted an affidavit partially casting doubt on the accuracy of his earlier comments to police. See P’s Exh. 22. In it, he noted that Paul Sterczala was the accountant offering “tax advice and tax filings,” and that Cummings and Lockwood provided estate planning services.¹² He stated that he spent time with John “in both Connecticut and at his home in New Hampshire, but I neither tracked nor kept records on how much time he spent in either

¹² Although presumably intended to demonstrate that Mr. Rabbitt was not the estate planning architect, the Court observes that he witnessed Rita’s execution of the document’s establishing the Rita B. Chakalos New Hampshire Personal Residence Trust Agreement dated January 20, 1999, into which title to the West Chesterfield House was transferred in 2000. See Exh. 9.

state.” Id. Finally, he stated that while trying to be helpful to police, he was upset “and may have been imprecise in my use of language in my remarks.” Id. (Emphasis added). He also observed that his “spur of the moment” comments were his own, and “lacked any analysis of the law of New Hampshire residency, of which I have no knowledge.” Id.¹³ Notably, Mr. Rabbitt did not affirmatively disavow the accuracy of his comment that there was “no hiding the fact” that John Chakalos “lived in Connecticut” or state that the information given the police was untrue.

The Court gives more weight to Mr. Rabbitt’s statements concerning John Chakalos’s relative connections to Connecticut and New Hampshire, than it does his statements relative to the legal and tax implications of not having established a legal residence in New Hampshire. It notes that Mr. Rabbitt had at least bi-weekly, if not weekly, contact with John Chakalos for many years just before he died, and thus, although he did not keep a “timesheet” of his residency, he was in a position to observe John Chakalos’s presence in Connecticut. The Court observes that the fact that John Chakalos’s estate and financial planning team were all located in Connecticut is indicative that it was his principal home. Further, although Mr. Rabbitt states that his comments to police that “there’s no hiding the fact that he lived in Connecticut. He lived in Connecticut” were not based upon a knowledge of New Hampshire law, these observations may be considered to the extent they reflect his knowledge of the fact of where John Chakalos actually lived, spent his time, and considered home.¹⁴ Finally,

¹³ Oddly, he noted that they were not authorized by John Chakalos – who was dead at the time the interview was made. He also stated that the family did not authorize his opinions. Id.

¹⁴ This Court will ultimately determine whether the facts, as applied to the law set forth in this order, mean that this Court has jurisdiction. Mr. Rabbitt’s statements on the legal effect are of no moment, still, they do reflect his understanding of how John Chakalos ordered his life.

the Court does not question the sincerity of his comments to police, and finds those statements, to the extent they mirror those made by others in the weeks following the murder, are given some weight. Namely, the Court is struck by the fact that in their statements to police in December 2013 and January 2014, by Ms. Santilli, Mr. Rabbitt, and Mr. LaPenna (as discussed below), none spoke in great, or even relative, detail about John Chakalos that would indicate that the center of his daily social, civic, and domestic life was New Hampshire.

A deposition of Dr. Gheorghita Zugravu, taken in September 2018, was also submitted by agreement for the Court's consideration in this matter. See R's Exh. E. Dr. Zugravu is a priest and the Dean of the St. George Greek Orthodox Cathedral in Hartford, Connecticut. Id. at 11-12. He met John Chakalos in September 2008 when he was assigned to St. George Cathedral, and stated that over the years he became "very, very close to him." Id. at 14. Dr. Zugravu testified that John Chakalos, often with Rita,¹⁵ came "on a regular basis to the church . . . every week, almost." Id. Because of the many conversations they had, Dr. Zugravu "loved him dearly." Id. at 22. John Chakalos was a "great benefactor" of the church.¹⁶ Id. at 14. Although Dr. Zugravu stated that John Chakalos did not attend services, he "had in his bedroom at home, probably he was referring to the house in Windsor, that he had always the Bible there, and just he was doing his prayers every morning and every night." Id. at 82. Dr. Zugravu observed that this prayer ritual was John Chakalos's "personal, intimate,

¹⁵ Rita Chakalos was a practicing Catholic. In her obituary, it noted that she was a "dedicated parishioner and [E]ucharistic minister of St. Gabriel Church in Windsor," Connecticut. P's Exh. 20.

¹⁶ John Chakalos was also a generous contributor to Saint George Greek Orthodox Church in Keene, New Hampshire, see P's Exh. 12, however, the record does not indicate that he visited it regularly (or at all), as was the case with the Hartford Cathedral. Indeed, his funeral services were held in Hartford. Id.

spiritual moment between him and God.” Id. at 83. From this testimony, the Court deduces that the center of John Chakalos’s religious (social) life was Connecticut. Although he was also a benefactor of St. George’s Greek Orthodox Church in Keene, New Hampshire, see P’s Exh. 12, there was a greater “intensity of his connection” to Dr. Zugravu, his rituals in Windsor, and St. George’s Cathedral in Connecticut.

Finally, the Court received two DVDs of interviews of Charles LaPenna with the Windsor Police Department and Connecticut State Police which took place on December 31, 2013, see R’s Exh. C, and January 13, 2014, respectively. Mr. LaPenna was the son of John Chakalos’s twin sister and stated he was very close to him. Mr. LaPenna also gave “unfiltered” interviews to police, opining on a variety of topics, including family history, John Chakalos’s daily habits, and plans following Rita’s death in November 2013. See id. Portions of a later deposition in September 2018 were also submitted. See P’s Exh. 7.

In 2011, John Chakalos hired Mr. LaPenna as a driver after losing his right to drive in Massachusetts. Mr. LaPenna stated that he “was looking for work,” and “was asked by John to go to his *home* in Windsor.” See Exh. D (emphasis added). Mr. Lapenna was paid \$5,800 per month to pick up John at the Windsor House to drive him “to business meetings and assist[] him with running personal errands approximately three-to-five times a week.” Id. He provided this service on-and-off¹⁷ up through just before the murder.

Mr. LaPenna described many of John Chakalos’s routines and daily life. He stated that he would pick John Chakalos up at the Windsor House and the first stop nearly every day was the Webster Bank in Windsor where John Chakalos kept a safe

¹⁷At times, mostly during the summer, the Respondent would provide this service to John Chakalos.

deposit box, the family bank account, and some business accounts. Otherwise, he would drive John Chakalos to doctors' appointments, the drug store in Windsor, his estate planning attorney's office and St. George's Cathedral in West Hartford. See id. All of these stops were in Connecticut. He also stated that one-to-two times per week he would drive John Chakalos to North Hampton, Massachusetts to visit a construction project. He would also drive him to Keene, New Hampshire to visit a student housing building he owned there. Mr. LaPenna would bring food to John Chakalos and leave it in the refrigerator in Windsor. On the final day that Mr. LePenna drove his uncle, they began the day with a visit to a cemetery monument store in Windsor to check on an order placed there as John Chakalos had purchased approximately 25-30 plots in Hartford, Connecticut for himself, Rita, and their family.

Mr. Lapenna also reported in his January 2014 interview that one-to-two weeks before Rita died there was a discussion about the family's future plans. He stated that John's daughters wanted to sell the West Chesterfield House, but that John was opposed to the idea. In Mr. LaPenna's then-voiced opinion, John Chakalos was against the sale because he built it "as a monument to himself." Notably, after rendering that opinion to the police, Mr. LaPenna stated that it was surprising to him that John Chakalos would "never get rid of the house in Windsor" despite the fact that the neighborhood "was going down[hill]." After the police officer observed "sometimes people have a connection," Mr. LaPenna agreed, "Yeah." See Exh. D. In his earlier statement to police in December 2014, see Exh. C., he recounted a phone conversation John Chakalos was having with a third party in which he indicated that he wanted to move out of the Windsor House since Rita was no longer there and was

looking into moving to an apartment in West Hartford. Mr. LaPenna indicated that John wanted to know if a business associate had a contact at a complex known as “Blue Back Square”¹⁸ where he wanted to live. Id.

Finally, Mr. LaPenna recounted his understanding of the history of the West Chesterfield House. He stated that John Chakalos built a large and expensive dream house in New Hampshire. He recounted that as a child, John Chakalos struggled with a learning disability and “barely graduated from high school.” His family was not financially secure. Mr. LaPenna stated that as a child, “[h]e said someday, I’m going to build me a big mansion up on a hill, you know.” He also stated, however, that despite building this giant and lavish house, that Rita and John “were hardly up there.” Although John would go to the West Chesterfield House, Rita was not enamored with it. “They were simple people and he built that place because he made money.” Id. Similar to Ms. Santilli’s statement to police, Mr. LaPenna observed that immediately after Rita died, John Chakalos did not want to stay at the Windsor “home” by himself, and for a while, his daughters stayed there with him. Notably, like Ms. Santilli, there was no mention that John Chakalos stayed overnight in New Hampshire.

In his deposition in September 2018, Mr. LaPenna was asked about “John’s relationship with New Hampshire.” See P’s Exh. 7. He recounted that when he was a child, he and his cousins, the Santilli siblings, “would go up to Keene” to “visit relatives there.” Id. at 15. He stated that John Chakalos “always considered Keene to be . . . his roots, where he came from.” He noted that “his good, long-time friends were from

¹⁸ In her statement to police in December 2013, Ms. Santilli also named “Blue Back Square” as a place her father was interested in moving. See R’s Exh. B.

Keene¹⁹ . . . [and] he was involved with --- with the Greek community up in -- -in Keene.” Id. He stated that John considered Keene to be “his hometown.” Id. at 15-16. When he was in the area, they would drive around and John Chakalos would “reminisce, you know, like his life in New Hampshire and Keene.” Id. at 191.

As to the West Chesterfield House, Mr. LaPenna stated that John Chakalos’s “dream was to build a big house up on the hill, and that – that’s what he did in Spofford.” Id. at 16. When asked if John Chakalos considered it “home,” he replied “Yeah. . . . [t]hat was his goal, that was his, you know – ‘I’m back in Keene’ and – you know, ‘its my roots.[.]” Id. He stated that the Windsor House was “basically his office,” and that after driving him to projects and places in New Hampshire and Massachusetts, John Chakalos would say “All right, let’s go back to the office, I got calls to make and things to do.’ He didn’t refer to it as ‘let’s go back home.’” Id. at 16-17. Notably, he stated that the Windsor House “was centrally located. You know, it was easy for him. I mean, his – the architects and lawyers and a lot of people that he did – dealt with was in – that area, in the Hartford area --.” Id. at 17.

The Court concludes, after review of all of Mr. LaPenna’s statements, that although they tend to show that the West Chesterfield House was John Chakalos’s “dream home,” it is not clear whether, particularly after Mr. LaPenna was hired as a driver, that he regularly, or even often, slept there or intended to spend a lot of time there. Mr. LaPenna picked John Chakalos up in Windsor three-to-five times per week and more often brought him to locations in Connecticut than New Hampshire. Although in his deposition, Mr. LaPenna states that Mr. Chakalos would ask to be brought “back

¹⁹ Notably, during his police interview, Mr. LaPenna commented on the sad reality that by the time he was John Chakalos’s driver, most of his old friends had passed away.

to the office,” it is notable that in his lengthy interviews with police, he rarely discusses West Chesterfield, and on multiple occasions refers to the Windsor House as John Chakalos’s “home.” It is apparent that while John Chakalos had a nostalgic connection to New Hampshire, he was often physically absent,²⁰ and engaged in important personal and business activities in Connecticut.

Notably missing from these statements is any indication that after his first move to Connecticut, John Chakalos spent an appreciable amount of time “living” in New Hampshire, as opposed to “visiting.” His deposition statement that it was John Chakalos’s “goal” to make West Chesterfield his “home,” is belied by his statements in the police interviews, similar to those made by Ms. Santilli around the same time, that John Chakalos, while not intending to sell the Windsor House – because of his connection to it, and being opposed to the sale of the West Chesterfield House,²¹ - was planning to move to West Hartford.

Finally, the Respondents submitted an affidavit of Nathan Carman, see Exh. T., in which he asserted that the facts he described during the May 2018 hearing, namely that he was close to John Chakalos and knew that his grandfather lived in Connecticut and only tried to make it appear, for tax purposes, that he lived in New Hampshire, and that his credit card receipts would demonstrate that he lived in Connecticut, were true and accurate. He also submitted that Rita Chakalos was bed ridden for two months before she died, but before that she rarely drove and did “not typically leave Windsor, Connecticut.” Id.

²⁰ Despite all the exhibits submitted, it has never been made clear how often, if at all, John Chakalos slept at the West Chesterfield House.

²¹ As discussed infra that house was owned by a trust benefitting the Petitioners, who controlled its disposition.

They also submitted the *Petitioners' Second Set of Interrogatories*, see R's Exh. V, completed by Mr. Carman on March 20, 2018. In that document, Mr. Carman discusses at length his trips to New Hampshire with his grandfather. In those responses, Mr. Carman discusses "day trips" from John Chakalos's "home in Windsor" to New Hampshire. He also discusses family gatherings around the holidays at the West Chesterfield House. Notably he mentions a car accident that landed his grandfather in the hospital in Keene. After John's release, Nathan brought him back to Windsor, not West Chesterfield.²² He also discusses "transfer[ring] my residency from Connecticut to New Hampshire in 2013" with the assistance of his grandfather as he was expecting to attend Keene State in the Spring of 2014. As part of this transaction, he obtained New Hampshire title and registration to his truck, a driver's license, and new auto insurance based upon an affidavit signed by John stating that Nathan lived at the West Chesterfield House. After John's death, Nathan abandoned his plans to attend Keene State, and moved back to Connecticut before returning briefly to New Hampshire, then settling in Vermont.

The Court gives *some* weight to Mr. Carman's statements. Both were executed during times when the issue of domicile was squarely before this Court. They are, however, given weight to the extent that Nathan's descriptions of his grandfather's day trips to New Hampshire mirror the statements of others presented to the Court.

²² The Court observes that these interrogatories are the only exhibits that give relative specifics of instances where John Chakalos actually slept at the West Chesterfield House, namely, around the holidays. The Court finds it surprising that in a matter involving a determination of domicile as between two houses, there is such a glaring absence of information concerning how often John Chakalos stayed overnight in New Hampshire. It is quite clear that he regularly slept at his home in Windsor. In addition, while there is ample evidence to show that he took day trips to New Hampshire – in other words "visited" – there is little or no evidence before the Court to show that he regularly spent the night there.

The Court concludes, therefore, that the statements submitted demonstrate that John Chakalos actually resided, and spent the majority of his time, in Connecticut. Their descriptions of his actions, personal connections, and daily habits show that although he regularly visited New Hampshire and felt a certain warm nostalgia for the Keene area, he had a more significant and lasting connection to Connecticut. It was uncontroverted that his daily activities of life, like eating meals, sleeping, attending meetings with his lawyers, financial planner, and accountant, most often took place in Connecticut. The center of his family and faith-based life was there as well. Even after Rita died, he did not retreat to his beautiful and palatial "farm" in West Chesterfield, rather, he stayed in Windsor, with his daughters providing company for him there while he grieved. Moreover, his daughter and nephew both indicated that his future plans included moving to West Hartford, not West Chesterfield. As such, these statements, taken as a whole, strongly indicate that although Mr. Chakalos hoped to enjoy the tax benefits of a New Hampshire domicile, he had no bona fide intent to change his home from Connecticut.

B. Other Documents

The parties also submitted documents they agreed are relevant and admissible for the determination of the *Motion to Reconsider*. The Court begins with those submitted by the Petitioners.

As discussed supra, in its Order dated May 30, 2018, see Index #63, the Court found that the Petitioners had made a *prima facie* showing that it had jurisdiction. That decision was premised on three offers made by the Petitioners: (1) that John Chakalos had a New Hampshire driver's license; (2) his voting history; and (3) a statement in his

will. See id.²³ The Petitioners again submitted these documents for the Court's consideration. John Chakalos's New Hampshire driver's license was valid when he died. See P's Ex. 4. The license bore a post office box in West Chesterfield as his address. Id.

Both John and Rita executed voter registration cards in 1995. See P's Ex. 2.²⁴ The Petitioners also submitted an affidavit of Marie M. Rienzo-Labrie, attesting that attached copies of voter checklists retrieved from the New Hampshire Division of Archives & Records Management showing that John and Rita voted in the state general elections and/or Presidential Primaries in 1996, 2000, 2002, 2004, 2006, 2008, 2010, and 2012. See P's Ex. 3. This exhibit does not show, and the parties upon questioning at the hearing could not indicate, whether Rita and John participated in yearly local elections and/or town meetings, to the extent they were held in West

²³ As discussed in its Order dated April 22, 2019, although the Petitioners submitted incomplete deeds concerning ownership of the West Chesterfield House, and it was led to believe that John Chakalos lived there by the Petitioners' counsel, the Court, in its May 2018 Order, noticed that there were certain irregularities in the presentation of that evidence, see id. at 3-4, n.5, and specifically did not rely on the deed evidence in making its decision. Id. To the extent that the order stated that it was undisputed that John Chakalos "owned a home in West Chesterfield," and Petitioners' attorneys never corrected that misunderstanding, it was not considered by the Court in its ruling. Id.

Before this hearing, the Petitioners submitted a chain of title demonstrating that the West Chesterfield property was purchased by John Chakalos in 1989; transferred to Rita in 1992; and then transferred by Rita to the Rita B. Chakalos New Hampshire Personal Residence Trust, located at 52 Overlook Drive, Windsor, Connecticut, in 2000 (the "Rita QPRT"). See P's Ex. 9. Both the 1992 Deed and the 2000 Deed state that the "WITHIN CONVEYED PREMISES ARE NOT THE HOMESTEAD PREMISES OF THE WITHIN NAMED GRANTOR." See P's Ex. 9. By the terms of the Rita QPRT, the property was transferred to the "New Hampshire Family Realty Trust under Article VII of the Rita B. Chakalos New Hampshire Personal Residence Trust (the Family Trust) benefiting John and Rita's daughters in January 2011. Id.

Late in life, on June 4, 2013, John and Rita executed a "Residential Lease," see P's Ex. 10, of the West Chesterfield House with a term from January 20, 2013 through January 20, 2014. That lease stated that since January 2011, they had been subject to an "oral lease agreement." See id. Key terms (like rent) have been redacted from the exhibit, and it is not signed by the trustee. The Court is inclined to believe that this residential lease was executed to establish a *record* of residency, but it does not reflect whether John and Rita regularly slept or ever lived there.

²⁴Both list the West Chesterfield home as their "address," but their mailing address is a post office box number.

Chesterfield, during that period of time. The Court observes that for the 2004 election, and possibly the 2000 election, there is an “A” or “AB” by their names, but it is otherwise unclear if they voted in-person or absentee.

The Petitioners again submitted copies of the first pages of: (1) John Chakalos's Will; (2) the Second Amendment and Restatement to the John C. Chakalos Revocable Trust; (3) the Chakalos Family Dynasty Trust; and (4) the Nathan Carman Family Trust, in which the documents identify John Chakalos “of West Chesterfield, New Hampshire.” See P’s Exh. 17. As noted supra, the Will was drafted and executed in Connecticut, as was the Second Amendment and Restatement and the Dynasty Trusts. See *Second Amended Petition* (Pending) Exhs. B-1 & C-1 (Index #158). Indeed, until shortly before submission of the *Petition*, see Index #1, the Revocable and Dynasty Trusts were governed by Connecticut law. See *Second Amended Petition* (Pending) Exhs. B-2 & C-2 (Index #158).

Additional documents submitted by the Petitioners include photographs of two New Hampshire vanity license plates used on autos driven by John and Rita that expired in 2011. See P’s Exh. 5. The Petitioners also submitted a “New Hampshire Safe Boating Certificate” issued in November 2006 issued to John Chakalos with his West Chesterfield address. See P’s Exh. 6. Finally, the Petitioners submitted various exhibits demonstrating that John Chakalos was a generous benefactor to a number of charitable causes in New Hampshire. See P’s Exhs. 12-16. The Court observes, however, that Mr. Chakalos also gave generously to churches and charities in Connecticut as well, and as such, they are not dispositive to determining domicile.²⁵

²⁵ Indeed, the Court observes that newspaper articles highlighting this generosity identify John Chakalos, alternatively, as a Connecticut resident who has a home in New Hampshire, see P’s Exh. 13, or as being

The Petitioners submitted John Chakalos's death certificate to demonstrate that he was a resident of New Hampshire. See P's Exh. 19. As amended "per Funeral Home request" on January 28, 2014, his listed residence was changed from the Windsor House to the West Chesterfield House, and as "corrected by the ME," the location of his death was changed from the "Decedent's Home" to "Other-Second Residence." Id. Notably, however, Ms. Santilli is listed as the "informant" of the original information provided shortly after his death. Id. As such, it would be reasonable to assume that when the original information was collected for the death certificate, Ms. Santilli, without thought to later taxation and/or jurisdictional concerns, indicated that John Chakalos was a resident of Connecticut who died at his home on 52 Overlook Drive in Windsor. Indeed, Valerie Santilli, who is a named Petitioner and current Executrix of Mr. Chakalos' estate was someone, in addition to Mr. LePenna and Mr. Carman, who had regular contact with her father and would presumably be in a position to testify as to his connection or lack of connection to New Hampshire. Her attorneys have taken affirmative steps to avoid allowing her testify to these facts, both in her deposition in connection with the Rhode Island litigation, as discussed above, and on the motion which is presently before the court. See Partially Assented-To Motion To (I) Reschedule Hearing Currently Set for April 24 and (II) Clarify That Live Testimony Will Not Be Needed At the Hearing (Index #170).

Both parties submitted the obituaries of Rita and John, that were of marginal assistance to this Court in determining domicile. See P's Exhs. 20-21; R's Exhs. M-S.

"born and raised in Keene before moving to Connecticut in the 1940s" and claiming "residency in Chesterfield, though they also live in Connecticut." See P's Exh. 14. It is notable that the West Chesterfield property was well-known for a lavish Christmas light display and fundraiser. See id. However, in article recounting the 2012 event, it appears that the property's "caretaker and her family put up the lights and decorations with the help from some workers from Connecticut." Id.

Although Rita's obituaries and two of four of those submitted for John, list them as being "of Windsor."²⁶ Rita's obituaries state she passed away "at her home," but they also state that after building in New Hampshire, John and she "began splitting their time between New Hampshire and Connecticut." See P's Exh. 20; R's Exhs. M-O. John's obituaries state both that he passed away at his "home" in Windsor, Connecticut, and that he had "resided" for twenty years in Chesterfield. See P's Exh. 21; R's Exhs. P-S.

The Court reviewed credit card statements submitted by the Respondent issued by the Bank of America and the American Express Credit Card Company between 2012-2013, for the purpose of showing that Mr. Chakalos's principal place of physical presence was Connecticut.²⁷ These statements indeed demonstrate that John Chakalos often, if not daily, ate meals in restaurants, and these restaurants were overwhelmingly located in Connecticut. In addition, review of the statements shows he most often bought gas and went to the pharmacy in Connecticut. Payments were also made for physician/dental visits, hearing care, auto repair/service, eye care, and like services in Connecticut. Although there were some purchases for food, gas, and miscellaneous services in New Hampshire, the vast majority of monthly purchases were made in Connecticut. These records tend to demonstrate, therefore, that the intensity of his daily connections to Connecticut were far greater than New Hampshire.

²⁶ Notably, the Connecticut-based information services like the Carmon Funeral Home and Hartford Courant list John as being "of Windsor," the Keene Sentinel and New Hampshire Union Leader list him as John Chakalos "of Chesterfield." See R's Exhs. P-S.

²⁷ The Court observes that in the May 2018 hearing, Mr. Carman argued that John Chakalo's credit card statements would demonstrate that he ate most of his meals and lived in Connecticut. The Court did not accept his argument at that time as he did not provide any evidence or even testify under oath. The statements were not available until after the hearing and Court's original decision, however, it now observes that Mr. Carman was correct in his argument.

Finally, at the hearing, the Court inquired about tax payments made by Mr. Chakalos. It was represented that he paid New Hampshire interest and dividends taxes, but also paid taxes in Connecticut, Massachusetts, and Rhode Island. There was no evidence that he paid estate taxes in Connecticut since the estate has been opened here, however, counsels indicated that may change after issuance of this decision. This information, although notable, was not given much weight by the Court as it did not have the benefit of tax records nor expert testimony.

III. Analysis

The Court, after careful consideration of the applicable law and its factual findings based upon the agreed-upon exhibits set forth above, determines that John Chakalos was domiciled in Connecticut, and this Court lacks jurisdiction to entertain the *Amended Petition*. Accordingly, it is **DISMISSED**.

Although the Court previously concluded that the Petitioners had made a prima facie showing that he was an inhabitant of New Hampshire, based upon the new evidence presented, it finds that the Respondent has successfully rebutted that showing by demonstrating that John Chakalos was a savvy businessman who hated paying taxes and only intended to create the appearance, for tax purposes, that he was domiciled in New Hampshire. In fact, his actual residence was in Connecticut, he had a more significant and lasting connection there, and he never intended to permanently reside outside that state.

It is true that John Chakalos was born and spent much of his childhood in New Hampshire. He had family and friends here and was generous to the greater Keene area after making his fortune. However, it is undisputed that as an adult, Connecticut

was his domicile, and the Court concludes that it remained so after construction of his “mansion on the hill,” and that building did not make New Hampshire his domicile. Although counsel creatively argued that there is an old saying that “a man’s home is his castle,” the evidence here demonstrates that John Chakalos’s castle was not his “home” as the term is used for jurisdictional purposes. See Kerby, 78 N.H. at 303. The Petitioners’ exhibits show only that John Chakalos clothed himself with the trappings of a New Hampshire resident by obtaining a New Hampshire driver’s license, voting every two years here, and declaring himself to be from New Hampshire in probate documents. However, his actions, physical presence, daily social and spiritual life, and future plans, demonstrate that New Hampshire was not his principal home. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 20 Domicil of Person Having Two Dwelling Places comment (b)(2)(1971 & March 2019 Update). Put another way, he intended to create the appearance of domicile for tax purposes, however, he had “no bona fide” intention to change his home, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §18 Requisite Intention comment f (1971 & 2019 Update), as there was no “actual residence with an intent to return,” principally to New Hampshire. Opinion of the Justices, 171 N.H at 137. Therefore New Hampshire is not his abode, home or domicile for purposes of determining where the primary place of probate of his estate lies.

Instead, when one reviews all the evidence submitted, “the fact and intent, combining with one another, gravitate to and center in” on Connecticut as his primary residence, domicile, and home. Foss, 58 N.H. at 284. The witness statements of Ms. Santilli, Mr. Rabbitt, Dr. Zugravu, and Mr. Lapenna, combined with the credit card

statements show that for John and Rita Chakalos, 52 Overlook Drive was their home.²⁸ John Chakalos, up until Rita's death, and the month following, slept virtually every night in Windsor, and ate most of his meals in Connecticut. When Mr. LaPenna brought him food, it was not placed in West Chesterfield, but placed in the refrigerator in the Windsor house. John Chakalos's bank and pharmacy were located in Windsor. His physicians were in Connecticut. He met weekly with Mr. Rabbitt in Connecticut. Although, he did not regularly attend formal religious services, he met weekly with Dr Zugravu, and to the extent he spoke of religious rituals, they occurred in his home in Windsor. As Mr. Rabbitt succinctly observed, "there's no hiding the fact that they lived in Connecticut." Keene, New Hampshire may have been his *hometown*, West Chesterfield may have been where he built his dream mansion and showered the community with generosity,²⁹ but Connecticut had the more significant and lasting connection in terms of actual residence and intent to remain that makes it his "home,"³⁰ for purposes of estate administration. See Kerby, 78 N.H. at 303.

Accordingly, the *Motion to Reconsider* is GRANTED. Because the Court lacks authority to decide the issues raised in the slayer action where it lacks primary

²⁸ Petitioners' counsel argued that the Windsor House was only John's office. However, that argument ignores the life John built with Rita, and maintained with her up until her death a mere month before John himself died. They lived in Windsor *together*, raised a family there, and led lives of grandparents centered in Windsor. Indeed, after Rita died, his plan was to first stay in Windsor with assistance from his daughters and then move closer to them. There is no indication that he sought to spend time at the West Chesterfield House after Rita died.

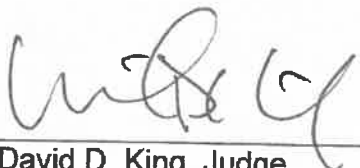
²⁹ The Petitioners valiantly attempted to equate his life in Windsor with a soldier who is absented from his domicile by duty and occupation, or a traveling businessman who engages in life's activities "on the road." This argument, however, ignores key distinctions between John Chakalos and a soldier or traveling businessman. All agree he established his life and raised his family in Connecticut such that it was his domicile at least until 1993. The evidence demonstrates that although Keene was his hometown, it does not show that he intended to return there to live out his days after his wife Rita died, or spend an appreciable amount of time there, particularly in comparison to Windsor. He lived in Windsor and visited West Chesterfield, not the other way around.

³⁰ Or residence or domicile. See Opinion of the Justices, 171 N.H at 137.

jurisdiction over the estate, see, e.g., In Matter of Ball, 168 N.H. at 140 (subject matter jurisdiction); Crosby, 78 N.H. at 44 (1915) (“It is elementary that the primary probate jurisdiction of wills, and of everything pertaining to the settlement of estates, is exclusively in the place of the domicile of the deceased”)(quotations omitted), the Court must DISMISS the Petitioners’ *Amended Petition for Declaratory Judgment, Replevin, Restitution, and Other Equitable Relief and to Impose a Constructive Trust* (the “*Amended Petition*”). See Index #37. The Clerk is DIRECTED to remove all scheduled hearing dates from the Court’s calendar.

SO ORDERED.

Dated: 5/9/2019



David D. King, Judge