STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(Filed: July 27, 2012)

CAROL ANN MERCIER	:	
	:	
	:	
v.	:	**C.A. No. WP 2011-0315**
	:	
GREGORY B. MANNING, Individually and in his Capacity as Executor of the Estate of BERNARD J. MANNING	:	

DECISION

STERN, J. Before this Court is Appellant Carol Ann Mercier's ("Mercier" or "Appellant") de novo appeal pursuant to § 33-23-1, et seq., of the Rhode Island General Laws from the Probate Court of the Town of Richmond's Order dated April 12, 2011 denying Appellant's Petition to Vacate a previous probate court order submitting a will to probate. Hereunder, this Court issues the following decision made as a matter of law based on facts alleged by Appellant.

I

Facts and Travel

On February 6, 2010, Bernard Manning ("Decedent") passed away leaving behind a will dated September 2, 2005 (the "Will"), which sought to appoint Decedent's son Gregory B. Manning ("Manning" or "Appellee") as Executor. (R. at Vol. 37, Page 933, Death Certificate; R. at 934-938, Last Will and Testament of Bernard J. Manning, dated September 2, 2005.) On March 24, 2010, Manning sent a Petition for Probate of Will to the Probate Court of the Town of Richmond accompanied by the Will, naming the Decedent's surviving spouse Carol A. Mercier

and the other heirs at law, including the Appellee, Dorothy M. Manning (Decedent's daughter), and Lisa A. (Manning) Waldheger (Decedent's daughter). (R. at Vol. 37, Page 930, Petition for Probate of Will). The Petition was received on April 1, 2010. On April 2, 2010, Manning sent Mercier and the other heirs at law notice of Manning's submission of a Petition to Probate the Will and indicating the hearing date, April 13, 2010, to consider the Petition. (R. at Vol. 37, Page 946, Letter from Robert Coupe to Carol Ann Mercier, dated Apr. 2, 2010.) Notice of the hearing was also published in The Westerly Sun. (R. at Vol. 37, Page 940.) According to Mercier, Manning told Mercier that she did not have to worry about Decedent's estate, that Manning would take care of everything, and that she would be well provided for by Decedent's estate. (Appellant's Mem. in Supp. of Her Position that Constructive Fraud Eviscerates the Statutory Notice Required in Probate Proceedings ("Appellant's Constructive Fraud Mem.") at 6.) Further, although Appellant admits that Manning was not statutorily required to include a copy of the Will with the notice, Appellant avers that Manning should have known that Appellant would not be able to understand which will was going to be probated. Id. at 13. Appellant suggests that this is because the Decedent had previously executed a different will on October 26, 1999, and an additional First Codicil to that will on February 5, 2003, which contained different provisions than the Will. Id. at 5.

On April 13, 2010, the Probate Court for the Town of Richmond examined a copy of the notices issued and determined the notices to have been made in Compliance with Rhode Island General Laws §§ 33-33-3—33-22-4. (Appellee's Mem. of Law at 1.) Mercier concedes that the "minimum notice requirement, as set forth in the Rhode Island General Laws, was met 'on paper' by counsel for Gregory." (Appellant's Br. Supporting Need for Disc. on the Merits of the Appeal ("Appellant's Disc. Br.") at 14.) Additionally, on April 13, 2010, the Probate Court

certified Manning's appointment as Executor and appraiser of Decedent's estate. (R. at Vol. 37, 948, Certificate of Appointment.) Mercier did not appeal the order admitting the Will for probate. (Appellee's Mem. of Law at 2.) Thereafter, Manning began to distribute the Decedent's estate assets in accordance with the terms of the Will. Section V of the Will states that "[Decedent] give[s] the residue of [Decedent's] estate, real and personal, to [Decedent's] wife, CAROL MERCIER." (R. at 934-938, Last Will and Testament of Bernard J. Manning dated September 2, 2005.) On August 18, 2010, Manning submitted the Universal Inventory of all the real and personal property of Decedent's Estate to the Probate Clerk of the Town of Richmond, which was received on August 20, 2010. (R. at Vol. 38, Page 225-227, Universal Inventory.) Lastly, on September 16, 2010, Manning submitted payment to the Probate Clerk to pay for fees due on Decedent's estate, which payment was received by the Clerk on September 21, 2010. (R. (volume and page number omitted), Letter from Appellee to the Town Clerk for Town of Richmond, dated September 16, 2010.))

On February 24, 2011, Appellee's counsel sent a letter to Mercier indicating that the final account of the distribution of probate assets and closing of Decedent's estate would take place at a hearing on March 8, 2011. (R. at Vol. 38, Page 779, Letter from Appellee's Counsel to Appellant dated Feb. 24, 2011.) The letter contained a release to distribute to Mercier residue property from Decedent's estate including a 1999 Ford van valued at $3,000, a flat screen television valued at $2,000, and a coin collection valued at $500. (R. at Vol. 38, Page 780, General Release.) On March 4, 2011, Appellant's counsel sent an Objection to the First and Final Account and a Motion for Permission to Take Discovery with the Probate Clerk. On March 7, 2011, Appellee's counsel opposed Appellant's March 4, 2011 objections. On April 1, 2011, Mercier filed a Petition to Vacate seeking to vacate the April 13, 2010 Probate Court order

admitting the Will for probate. (R. at Vol. 38, Pages 748-66, Appellant's Pet. to Vacate Order Admitting Will to Probate and for an Order Directing New Notice of the Pet. to Admit the Last Will and Testament of Bernard J. Manning to Probate.) On April 11, 2011, Appellee opposed Appellant's Petition to Vacate. On April 12, 2011, the Probate Court denied Mercier's Petition to Vacate, stating:

> "On the petition of Carol Ann Mercier to vacate the admission of the decedent's will to probate, the court finds that proper notice was given of the hearing on admission of the will to probate, that the named Executor had no duty to inquire as to the capacity of the petitioner to comprehend the meaning of the notice, or to explain the proceedings, or to provide a copy of the will. The petition is therefore denied."

(R. at Vol. 38, Page 834, Order of the Probate Court, dated Apr. 12, 2011.) On April 25, 2011, Mercier filed a Claim of Appeal to the Superior Court in the office of the Probate Court of the Town of Richmond. (R. at Vol. 38, Appellant's Reason of Appeal.) On May 12, 2011, Mercier then appealed to this Court on the Probate Court's denial of the Appellant's Petition to Vacate.

On August 30, 2011, Appellant propounded a set of interrogatories to Appellee to which Appellee responded with answers and objections on November 4, 2011. (Appellant's Mot. for an Order Finding that Appellee's Objections are Waived and Compelling Appellee to Answer All Interrogs., Ex. A, "First Set of Interrogatories Propounded by Appellant;" Appellant's Mot. For an Order Finding that Appellee's Objections are Waived and Compelling Appellee to Answer All Interrogs., Ex. B, "Answer of Appellee.") After a hearing on Appellant's motion on January 17, 2012, this Court issued an order requesting the parties to submit additional briefs to clarify the facts and issues of the case. This Court allowed written discovery on evidence that was relevant or could lead to relevant evidence on Appellant's claims relating to notice of the petition to submit the Will to probate. Both parties filed briefs and this Court reviewed the

record of the Probate Court. After the hearings, motions, and discovery, the parties requested a decision from this Court as a matter of law.

II

Standard of Review

Section 33-23-1 of the Rhode Island General Laws provides that:

> "(a) Any person aggrieved by an order or decree of a probate court (hereinafter "appellant"), may, unless provisions be made to the contrary, appeal to the superior court for the county in which the probate court is established, by taking the following procedure:
>
> (1) Within twenty (20) days after execution of the order or decree by the probate judge, the appellant shall file in the office of the clerk of the probate court a claim of appeal to the superior court and a request for a certified copy of the claim and the record of the proceedings appealed from, and shall pay the clerk his or her fees therefor.
>
> (2) Within thirty (30) days after the entry of the order or decree, the appellant shall file in the superior court a certified copy of the claim and record and the reasons of appeal specifically stated, to which reasons the appellant shall be restricted, unless, for cause shown, and with or without terms, the superior court shall allow amendments and additions thereto." G.L. 1956 § 33-23-1.

In hearing a probate appeal, "the Superior Court is not a court of review of assigned errors of the probate judge, but is rather a court of retrial of the case de novo." In re Estate of Paroda, 845 A.2d 1012, 1017 (R.I. 2004); see § 33-23-1(d). Section 33-23-10(c) permits the assignment of a probate appeal to the formal and special cause calendar if the appeal can be decided as a matter of law. See § 33-23-10(c). After establishing a briefing schedule, the trial justice may request or permit oral argument, and is to render a decision "based upon the record and the briefs submitted." Id. Here, after the submission of briefs from both parties and two hearings, the parties have requested a decision from this Court as a matter of law.

The Court's standard of review in a non-jury trial is governed by Rule 52(a) of the Rhode Island Superior Court Rules of Civil Procedure, which provides that "the court shall find the facts specifically and state separately its conclusions of law thereon . . . ." In such matters, the "trial justice sits as the trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). The Rhode Island Supreme Court has stated that such "findings of fact by a trial justice sitting without a jury are entitled to great weight and shall not be disturbed on appeal unless the record shows that the findings are clearly wrong or unless the trial justice overlooked or misconceived material evidence on a controlling issue." In re Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006) (quoting Burke-Tarr Co. v. Ferland Corp., 724 A.2d 1014, 1018 (R.I. 1999)). Further, the Supreme Court has noted that "the trial justice need not engage in extensive analysis to comply with this requirement. Even brief findings will suffice as long as they address and resolve the controlling factual and legal issues." White v. LeClerc, 468 A.2d 289, 290 (R.I. 1983).

III

Analysis

Probate matters are largely controlled by the plain language of statute. See Trustees of House of the Angel Guardian, Boston v. Donovan, 46 A.2d 717, 718 (1946) ("in this state the probate court derives its jurisdiction wholly from the statute."). Sections 33-22-2–33-22-4 of the Rhode Island General Laws set forth the statutory notice requirements for submitting a will to probate. Appellant admits that Manning satisfied the statutory requirements for providing notice in regards to the submission of the Will to probate. Further, the Probate Court determined that the notice provided to Mercier was in compliance with the statutory requirements. Section 33-

23-1 states that, "[t]he findings of fact and/or decisions of the probate court may be given as much weight and deference as the superior court deems appropriate."

A

Petition to Vacate

The Court acknowledges, however, that when a matter originates as a petition to vacate an order approving a will for probate, §§ 9-21-6 and 33-23-1 are not necessarily entirely controlling of the matter. See Rose v. Cooper, 588 A.2d 1359, 1360 (R.I. 1991). The Rhode Island Supreme Court has noted that "if the general assembly desired that [§] 9-21-6, as amended, would be utilized in such instances [involving nondisclosure of a potential heir to the probate court], it would not have included the one-year time limitation because it is obvious that in a case where lack of notice is due to a fraudulent act, an aggrieved party might well remain ignorant of his loss for years after its occurrence." Davtian v. Barsamian, 256 A.2d 510, 513 (R.I. 1969). The Supreme Court continued, stating that:

> "[e]ven though [§] 9-21-6, as amended, is inapplicable, there is no need on our part to issue any extraordinary process, because, in our opinion, the legislature has provided another adequate remedy. Section 33-22-6, in essence, provides that a failure to list on any petition for probate or administration such pertinent information as the names and addresses of a surviving spouse or the heirs at law or the failure to give the required statutory notice shall not defeat the jurisdiction of the court, but that upon discovery of the omission, the probate court shall 'make such further orders as the circumstances may require.'" Id. at 513-14.

Yet, even in Rose, the Supreme Court, in remanding the case to the Superior Court held that "[i]f the trial justice determines that notice was received, or that the plaintiff was responsible for the erroneous address, then the plaintiff's appeal shall be denied and dismissed." 588 A.2d at 1361. Therefore, Rose is similarly unavailing to Appellant's case because Appellant concedes that actual notice was properly received. Similarly here, unlike in Davtian, there is no allegation

that the statutory notice requirements of §§ 33-22-2—33-22-4 were not satisfied. See 256 A.2d at 513-14. The Court emphasizes that Mercier admits that the "minimum notice requirement, as set forth in the Rhode Island General Laws, was met 'on paper' by counsel for Gregory." Appellant's Br. Supporting Need for Disc. on the Merits of the Appeal at 14; see also Page on Wills § 26.39 ("If notice is necessary only as required by statute, a substantial compliance with the provisions of the statute is necessary, and is usually sufficient.")

"[M]otions to vacate a judgment are 'left to the sound discretion of the motion justice and will not be disturbed on appeal unless an abuse of discretion or error of law is shown.'" Sloat v. City of Newport ex rel. Sitrin, 19 A.3d 1217, 1221 (R.I. 2011) (quoting Pleasant Management, LLC v. Carrasco, 870 A.2d 443, 445 (R.I. 2005)). "This standard likewise applies to appeals from a ruling on an independent action in equity to vacate a judgment." Sloat, 19 A.3d at 1221. Similarly here, before this Court is a de novo review of a petition to vacate an order of the Probate Court submitting the Will for probate.

B

Underlying Grievance

While this case comes before this Court on Appellant's appeal of the Probate Court's denial of a Petition to Vacate on April 12, 2011, Mercier's underlying grievance is with the original submission of the Will to Probate on April 13, 2010. Accordingly, the Court notes that an appeal to this Court under § 33-23-1 of the original order submitting the Will to probate would be untimely. "[T]he proper remedy for one who has not appealed within the statutorily prescribed period is to file a petition in the Superior Court pursuant to § 9-21-6, which permits an aggrieved party to file a petition to appeal within ninety days following entry of an order or decree if an appeal was not timely filed owing to accident, mistake, unforeseen cause, or

excusable delay." In re Estate of Speight, 739 A.2d 229, 231 (R.I. 1999). In such instances, "[t]he party filing a § 9-21-6 petition has the burden of establishing one of the acceptable grounds for delay." Kelley v. Jepson, 811 A.2d 119, 123 (R.I. 2002). The acceptable grounds for delay are set forth in § 9-21-6, which provides that:

> "When any person is aggrieved by an order, decree, decision, or judgment of the district court or of any probate court or town council from which an appeal or other review is available in the superior court and, because of accident, mistake, unforeseen cause, or excusable neglect has failed to claim his or her appeal, the superior court, if it appears that justice so requires, may, upon petition filed within ninety (90) days after the entry of the order, decree, decision, or judgment, allow an appeal to be taken and prosecuted upon such terms and conditions as the court may prescribe."

Sec. 9-21-6 (emphasis added).; see also Page on Wills § 26.47 ("The statutes which limit a time within which a will may be contested, generally contain certain exceptions in favor of infants, persons of unsound mind, and the like; and frequently in favor of causes of action which have been concealed by fraud. These exceptions exist only by force of the statute, and the statutes are to be strictly construed." (emphasis added)). Yet, even assuming, arguendo, that Appellant satisfied the burden of establishing one of the acceptable grounds for delay under § 9-21-6, Appellant's appeal from the original submission of the Will to probate would still be untimely pursuant to that statute.

The Rhode Island Supreme Court has put forth the proposition that, "silence, in the absence of a duty to speak, will not justify the invocation of an estoppel." Gross v. Glazier, 495 A.2d 672, 674 (R.I. 1985). Highlighting this principle in a case with similar facts, in Elliott v. Maryland National Bank, the court found that "[t]here [was] no requirement that a custodian [of a will] inform interested persons of the existence or contents of a will." 432 A.2d 473, 477 (Md. 1981). The controlling provision read:

> "After the death of a testator, a person having custody of his will shall deliver the instrument to the register for the county in which administration should be had pursuant to [§] 5-103. The custodian may inform an interested person of the contents of the will." Eliott, 432 A.2d at 477 (Md. 1981) (citation omitted).

The court held that after deliverance of the will to the register, the "personal representative had no further obligation to inform the caveators of the existence or contents of those documents. . . [and that since] the caveators had notice of the probate proceeding [ ] [t]hey were obligated to exercise due diligence and to inform themselves as to what had occurred in that proceeding. Id.

Likewise here, the probate statute did not compel Manning to detail to Mercier the contents of the Will, nor to explain any variations between that instrument and whatever prior testamentary dispositions there may have been. Further, the statute did not impose upon Manning, especially before Manning had been formally appointed as Executor, the duty to explain what impact, if any, such variations between the Will and prior testamentary dispositions might have upon Mercier's receipt of property in the probate proceeding.

Another case dealing with similar facts found that "[o]ne who must be held to have had actual notice of the proceedings in time to make his contest, and who fails to take advantage of the opportunity afforded of opposing the will by appearing and contesting within the time allowed by law, must, at least unless he can be held to have been prevented from so appearing and contesting by some fraud of those procuring the probate, be held concluded by the decree as to any matter concerning which he could have obtained relief by a contest." Harkness v. Harkness, 205 Cal. App. 2d 510, 513, 23 Cal. Rptr. 175, 177 (1962) (quoting Tracy v. Muir, 90 P. 832, 835 (Cal. 1907)) (emphasis added).

Here, Mercier did have actual notice of the probate proceeding and the exact will that was to be probated. Mercier was not prevented by any actual fraudulent concealment on the part of

Manning regarding the date or time of the probate proceeding or upon the will that was to be probated. Once again, Mercier concedes that the statutory notice requirements designed to ensure adequate notice to legatees, devisees, surviving spouses, and heirs at law was satisfied. Further, as Appellant's counsel acknowledged at oral argument, there is no actual fraud being alleged, but rather, only constructive fraud.[1] Appellant's general allegations of broad, nonspecific reassurances given by Manning to Mercier at some point around the time notice was given of the submission of the Will to probate are insufficient to have this Court reopen Decedent's estate on a theory of constructive fraud.

Very similar to the facts of this case, in Rush v. Rush, the Mississippi Supreme Court held that a widow lost her right to contest her husband's will which gave her only a life estate in property at the expiration of two years from the date of the will's probate, notwithstanding her contention that she was lulled into refraining from contesting it by promises from the testator's children to take care of her and let her share in the estate. 360 So.2d 1240, 1242 (Miss. 1978). Additionally, as one treatise notes:

[1] "Breach of a fiduciary duty amounts to constructive fraud." Matarese v. Calise, 305, A.2d 112, 119 (R.I. 1973). As the Rhode Island Supreme Court has stated, "[t]he familiar case of a constructive trust based on constructive fraud is found where 'One who occupies a fiduciary or confidential relation to another in respect to business or property, and who by the use of the knowledge he obtains through that relation, or by the betrayal of the confidence reposed in him under it, acquires a title or interest in the subject-matter of the transaction antagonistic to that of his correlate." Id. (quoting State Lumber Co. v. Cuddigan, 150 A. 760, 761 (R.I. 1930)). Further, "[t]here are no hard and fast rules about when a confidential relationship will be found." Simpson v. Dailey, 496 A.2d 126, 129 (R.I. 1985). Indeed, even "a family relationship, of itself, does not create a fiduciary relationship, although further facts may show one." Id. at 128 (citing Tyler v. Tyler, 172 A. 820 (R.I. 1934)). Still, "in order to give rise to a constructive trust, actual or constructive fraud must be established and the evidence must be clear and convincing (emphasis added)." Desnoyers v. Metro. Life Ins. Co., 272 A.2d 683, 690 (R.I. 1971) (citing Sterns v. Industrial National Bank, 191 A.2d 152 (R.I. 1963)).

> "The legislature has ample power to omit all disabilities as bars to the operation of the statute, if it sees fit. The courts cannot, therefore, add classes of exceptions to this statute, although such exceptions are found in corresponding statutes. If the legislature has not provided an exception where the contestant was ignorant of the facts, or where he was served only by publication, the courts cannot imply such an exception. Where the ground of contest was unknown to the heir, and was not discovered by him until after the limit for contest had elapsed, it was held that such heir could not contest the will under the statute, and that equity would grant him no relief; even where the cause of contest was fraud, and this was concealed till the statutory time for contest had elapsed." Page on Wills § 26.47 (emphasis added).

This Court acknowledges that "[t]he public policy of this state favors the prompt settlement of decedents' estates." In re Tetreault, 11 A.3d 635, 644 (R.I. 2011). Here, Appellant seeks to restart the entire probate proceeding over two years after the death of the Decedent and after the Decedent's estate has been fully distributed (in addition to the above-mentioned lapses in statutory limitation periods).

C

Constructive Fraud

Here, Appellant is relying not on actual fraud, but has alleged constructive fraud. Specifically, Appellant contends that at some point prior to the submission of the Will to probate, Manning made statements to Appellant indicating that Mercier did not have to worry about Decedent's estate, that Manning would take care of everything, and that Mercier would be well provided for by Decedent's estate. (Appellant's Mem. in Supp. of Her Position that Constructive Fraud Eviscerates the Statutory Notice Required in Probate Proceedings at 6.) It is well established that "[t]he granting of equitable relief is extraordinary relief and will not be applied unless the equities clearly must be balanced in favor of the party seeking that relief." Sloat, 19 A.3d at 1222 (quoting Ocean Road Partners v. State, 612 A.2d 1107, 1111 (R.I. 1992)). Accordingly, as set forth by the Rhode Island Supreme Court:

> "[a] party seeking relief from a judgment via an independent action in equity must satisfy all the following traditional elements: '(1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) *the absence of fault or negligence on the part of the defendant*; and (5) the absence of any adequate remedy at law.'" Id. at 1222 (quoting Allstate Insurance Co. v. Lombardi, 773 A.2d 864, 869 (R.I. 2001)).

Here, Mercier is similarly situated as a party adversely affected by a prior ruling of a court; specifically, the probate court's admission of the Will to probate. Further, the Rhode Island Supreme Court has stated that "[o]rdinarily one who seeks the cancellation of an instrument has the burden of establishing his right thereto by clear and convincing evidence." Passarelli v. Passarelli, 179 A.2d 330, 332 (R.I. 1962) (citing Beaudoin v. Beaudoin, 132 A.2d 834 (R.I. 1957)). Though not seeking a complete cancellation of the Will, Mercier is seeking to restart the entire probate proceeding which has already distributed the assets of Decedent's estate pursuant to the Will.

Here, it cannot be said that Appellant is completely free from fault or negligence. In Sloat, the Court found that a plaintiff was not entitled to a petition to vacate summary judgment against the plaintiff. 19 A.3d at 1222. The Court held that even though the defendant had submitted its answer to the plaintiff's complaint to the wrong county court, because the defendant had provided the plaintiff's counsel with a copy of the answer, the plaintiff was on notice of the defendant's contentions and therefore, was "required to exercise diligence in verifying the city's contentions." Id. at 1223; see Medeiros v. Anthem Cas. Ins. Group, 822 A.2d 175, 178-79 (R.I. 2003) (holding that "[t]he plaintiff was not entitled to a vacation of the summary judgment because she did not exercise due diligence to discover the evidence that she

[contended on appeal] would have precluded summary judgment" by neglecting to interview or depose a key witness). In Allstate Insurance Co. v. Lombardi, 773 A.2d 864, 873 (R.I. 2001), the Court found that a party who negligently failed to oppose a petition to confirm an arbitration award, in light of having received competent notice of the proceeding, was not entitled to relief in equity because the failure to oppose the petition rendered the party's hands unclean. 773 A.2d at 873. Similarly, here, Appellant's failure to oppose the submission of the Will to probate after receipt of notice in compliance with the statute works against the requirement of Appellant having clean hands.

Therefore, even if constructive fraud could in some instances eviscerate compliance with the statutory notice requirements for submitting a will to probate, here, the fact that Manning made some general comments to Mercier about not needing to worry about the handling of Decedent's estate does not eviscerate the notice that was received.[2] Thus, Mercier has not sustained her burden of establishing the specific actions of Manning that would constitute constructive fraud to justify restarting the probate proceeding. Additionally, it has been found by a court that "the imposition of a constructive trust is appropriate only where the defendant has no right whatsoever to the property he holds in violation of the plaintiff's rights." Kern v. Kern, 892 A.2d 1, 8 (Pa. Super. Ct. 2005) (emphasis added). Here, Manning was the named beneficiary in the Will of the estate property in question.

The Court recognizes that "[w]here a fiduciary relationship is involved, a constructive trust will arise if the plaintiff establishes first, that a fiduciary relationship exists between the parties and second, that a breach thereof occurred." Cahill v. Antonelli, 390 A.2d 936, 938 (R.I.

[2] While this Court is aware of other facts regarding similar comments on the part of Manning and the relationship between the two parties subsequent to the submission of the Will to probate, this Court has focused on the adequacy of the notice that Appellant received and the relevant conduct of Manning prior to the submission of the Will to probate.

1978) (citing Sladen v. Rowse, 347 A.2d 409 (R.I. 1975)); see 1 Scott, Trusts § 44.2 (3d ed. 1967). Further, the Court acknowledges that the "relationship between an executor and the legatee or beneficiary is usually considered to be that of a trustee and a cestui que trust." Estate of Wickes v. Stein, 266 A.2d 911, 914 (R.I. 1970). Without deciding the issue of whether one who submits a petition to probate a will owes a fiduciary duty to putative beneficiaries under that will, the Court notes that here, the conduct that allegedly constituted constructive fraud took place before Manning's formal appointment as Executor of Decedent's estate. Additionally, both Mercier and Manning were named beneficiaries under the Will.

IV

Conclusion

Accordingly, for the reasons outlined above, this Court denies Appellant's Petition to Vacate on Appeal.