

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

ORDERS

The Court held a status conference on March 15, 2019 to resolve outstanding discovery and scheduling matters, see Index #146, concerning trial on the merits of 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. Attending the hearing were: Attorney William C. Saturley, Attorney Michael J. Connolly, and Attorney Rue Koester Toland on behalf of 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"); Attorney Cathy J. Green, Attorney Benjamin Siracusa Hillman, and Attorney James D. Rosenberg on behalf of their client, Respondent, Nathan Carman; and Attorney Alexandra Saanen Cote on behalf of Intervenor Glenn Terk, as Trustee of the Property of Linda Carman.

I. Scheduling Orders

Upon agreement of the parties, the Court ENTERS the following revised scheduling ORDERS:

- A. Hearing on the Merits** – An eighteen-day (90 hours) trial on the merits will be held on the following dates and times at the **6th Circuit – Probate Division - Concord, 2 Charles Doe Drive, Concord, N.H.**:
- **June 10-14** beginning each day at 9:00 A.M.;
 - **June 17-21** beginning each day at 9:00 A.M., and on July 21 ending early at 12:00 P.M.;
 - **June 24 – 27** beginning each day at 9:00 A.M., and;
 - **July 8-12** beginning each day at 9:00 A.M. and ending on July 12 at 12:00 P.M.
- B. Discovery** – All pre-trial discovery shall be undertaken and completed by **May 17, 2019**. Expert depositions shall be completed by **May 10, 2019**.
- C. Expert Disclosure** – The Respondent shall disclose, in accordance with Circuit Court-Probate Division Rule 35(f), his expert report to the Petitioners on or before **April 15, 2019**.
- D. Amendments** – Any motion for leave to further amend the *Amended Petition for Declaratory Judgment, Replevin, Restitution, and Other Equitable Relief and to Impose a Constructive Trust*, along with the proposed further amended petition, shall be filed on or before **March 22, 2019**.
- E. Motions in Limine** – All motions *in limine* and motions concerning the admissibility of expert testimony, see generally, N.H. R. Ev. 702-705; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), must be filed with the Court on or before **May 17, 2019**.

Notwithstanding Circuit Court – Probate Division Rule 58, objections must be submitted **on or before May 24, 2019.**

- F. Deposition Transcripts** – Any party that intends to submit deposition transcripts to be used in lieu of live testimony must identify, with specificity, those portions of the transcript they intend to submit at trial, **on or before May 24, 2019.** Any objections to introduction of all or part of a deposition transcript, and/or motions to introduce the remainder of that deposition transcript, see N.H. R. Ev. 106; see generally State v. Warren, 143 N.H. 633, 732 A.2d 1017 (1999)(doctrine of completeness), must be submitted **on or before May 31, 2019.**
- G. Dispositive Motions** – Any party wishing to file a dispositive motion shall do so by **April 3, 2019.** Responsive pleadings shall be submitted by **May 3, 2019.**
- H. Witness List Exchange** – To simplify and facilitate the presentation of evidence on the merits, the parties are ordered to exchange lists identifying all witnesses whose testimony will be presented at trial, **no later than May 31, 2019.** Each list shall contain a brief summarized offer of the nature of the testimony to be elicited or evidence to be produced through each witness listed. Each witness shall be listed by name and address. In response to the witness list provided by any party, the other parties shall have the **ensuing seven (7) days** within which to submit a supplemental witness list adding to, or deleting from, their initial list of witnesses, as appropriate. Like the initial list, a summarized offer with respect to the testimony to be elicited or the evidence to be produced through an additional witness shall be appended to the supplemental list. No explanation shall be necessary for the deletion of a witness; however, the parties are cautioned to extend to each other the courtesy of written notification of any witness previously listed whose testimony will no longer be needed at trial.
- I. Exhibits Exchange** - To further simplify and expedite submission of the merits, the parties are ordered to exchange copies of all documentation any may wish to submit into evidence prior to **May 24, 2019.** Those documents that they agree may be admitted as full exhibits are to be so marked by **8:00 a.m. on June 3, 2019** in cooperation with the Clerk's office. If there be any objection by a party to the introduction of a document as a full exhibit, it shall be marked for identification purposes only and the propriety of its admission will be addressed on its presentation during the course of trial. Adherence to this procedure will help to ensure that all documentary evidence has been examined and considered by the parties in advance of trial, minimizing the time otherwise needed for any party to become familiar with it at the time of its proposed introduction. The marking of an exhibit as a full exhibit by agreement will be construed only as a waiver of any procedural objection to its admission, not as

an admission of the substantive evidentiary worth or factual veracity of its content, in the absence of an agreement to that effect.

Parties are instructed that those exhibits stipulated, as well as those that are marked for identification only, shall be presented at the commencement of trial in four sets of binders (one each for the official record, witnesses, the staff attorney, and the judge) containing organized documentation based on the nature of its content (e.g., medical reports; emails, letters, memo or other forms of correspondence; legal instruments, etc.), labeled for ease of identification and access during the course of questioning of a witness. The parties are requested, whether they file their exhibits as stipulated for admission and/or for identification purposes only, to avoid duplication such that the same exhibit is not contained in more than one set of binders.

- J. **Pretrial Conference** - A pretrial conference and, if necessary, a hearing on unresolved motions, is assigned for **June 3, 2019 at 9:00 a.m.**, at the **6th Circuit – Probate Division - Concord, 2 Charles Doe Drive, Concord, N.H.**, unless the parties sooner file, **on or before May 23, 2019**, an assented-to motion to cancel the pretrial/motions hearing on assertions that: (a) there are no open issues; (b) the case is prepared for trial; and (c) the time previously allotted for presentation of the entire case is needed, less than the time will be adequate, or more time will be needed. If less time than previously allotted will be needed, or what has been previously allotted will be insufficient, then a good faith representation shall be made with respect to how much less, or more, time will be reasonably required. In either event, pretrial statements must be filed **on or before May 30, 2019**, in accordance with Circuit Court-Probate Division Rule 62.
- K. **Record** – The Petitioners have indicated that they wish to engage a stenographer to transcribe the proceedings. The parties are reminded that the digital recording made by the Probate Division constitutes the official record of the court proceedings. Circuit Court - Probate Division Rule 78-A.
- L. **Memoranda of Law and Findings of Fact** – All memoranda of law and reasonable requests for findings of fact and rulings of law the parties wish to submit shall be filed with the Court **no later than June 10, 2019**. Failure to file the requests by that date will be deemed a waiver of the right of that party to receive written grant or denial of any requests later submitted.

II. Other Remaining Orders

In an order following the last status conference on February 14, 2019, the Court requested that the parties file motions informing it of “unavoidable scheduling conflicts.”

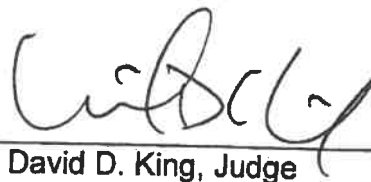
See Order dated February 14, 2019 at 2 (Index #146). All parties have complied with

that order. See Index ##148-152. After review of those requests, the Court ENTERS the following additional ORDERS:

- Glen Terk is excused from attendance at trial so long as counsel is present to represent his interests as Trustee of the Property of Linda Carman, see Index #148, and;
- All three petitioners, Valerie C. Santilli, Elaine Chakalos, and Charlene Gallagher, need not attend every day of trial provided that at least one of them is present on each day. See Index #149. The Court makes clear to them that they have been given an opportunity to participate, and that in voluntarily choosing not to attend, their interests will be completely represented by the attending party at trial, and counsel, and they will be bound by the choices and representations made in their absence. They may not later raise any objections that would have been made by them individually had they attended. They are to cooperate to make themselves available for trial, however, on any date if and when they are called to testify.

SO ORDERED.

Dated: 3/19/2019



David D. King, Judge