

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
ORPHANS' COURT DIVISION**

**O.C. No. 1435 AP of 2011  
Control #145074**

**Estate of ANNA CRISCONI-GALLO, Deceased**

**MEMORANDUM OPINION**

Petitioner Anthony J. Gallo appeals the decision of the Register of Wills dated February 5, 2014 sustaining the Caveat and declaring the document dated September 11, 2011 “null and void.”

**Procedural Background**

Anna Crisconi-Gallo (hereinafter referred to as Ms. Crisconi-Gallo) died in Valmontone, Rome, Italy on March 20, 2013, at the age of 88.<sup>1</sup> She was survived by her step-sons who reside in Philadelphia and her siblings who reside in Italy.

The document dated September 11, 2011 was offered for probate by Anthony J. Gallo (hereinafter referred to as “Mr. Gallo”) on May 1, 2013. A Formal Caveat was filed by Joseph Rollo, Esquire, counsel for Ms. Crisconi-

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<sup>1</sup> Certificate of Death and certified translation by the Italian Consulate General for Anna Caporossi. Plaintiff’s Exhibit A. (The Court notes that the Appellant, Mr. Gallo’s exhibits are identified as Appellant’s Exhibits, and the Contestant, Mr. Rollo Administrator of the decedent’s Estate’s exhibits are identified as Plaintiff’s Exhibits.)



Gallo's intestate heirs, on May 9, 2013; the Formal Caveat Hearing was held on October 9, 2013 before the Register of Wills; and the Register of Wills issued its Decree dated February 5, 2014 sustaining the Caveat, and declaring the document "null and void."

Letters of Administration were thereafter issued to Joseph Rollo by the Register of Wills upon Renunciations received from Ms. Crisconi-Gallo's sisters, Maria Caporossi, Elena Caporossi and Guiliana Caporossi.<sup>2</sup>

Appeal from the Register of Wills' Decree dated February 5, 2014 and the grant of Letters of Administration to Joseph Rollo was timely filed on February 25, 2014 by Mr. Gallo along with the Petition for Citation to Show Cause Why the Appeal Should Not be Sustained. An Answer was filed by Joseph Rollo, Esquire, Administrator of the Estate of Anna Crisconi-Gallo, raising the issues of lack of testamentary capacity, adjudication of incapacity, and undue influence.

An adjudicatory hearing was held on October 28, 2014, and post-trial memoranda were submitted by the parties.

### **Facts**

Appellant Anthony J. Gallo is a step-son of the decedent, Anna Crisconi-Gallo, an attorney admitted to the practice of law, the scrivener and proponent of the document dated September 11, 2011.

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<sup>2</sup> Register of Wills File No. 51-2014-A-0641.

Ms. Crisconi-Gallo suffered a stroke in March 2011. She was admitted to Lankenau Hospital on 3/15/2011 and discharged to Saunders House on 3/26/2011.<sup>3</sup> She remained at Saunders House under the care of Dr. Bruce G. Silver, M.D. from 3/26/2011 to 11/16/2011 at which time she was discharged to travel to a receiving institution in Rome, Italy.<sup>4</sup>

At the time of Ms. Crisconi-Gallo's admission to Saunders House, her emergency contact was her only son Dominic Crisconi who was consulted by Dr. Silver for various medical decisions concerning his mother's treatment.<sup>5</sup> Dominic was killed on August 29, 2011. This information was delivered to Ms. Crisconi-Gallo by a Philadelphia Police Detective.<sup>6</sup> Shortly thereafter, Father Matthew Phelan, from the neighboring parish of Our Lady of Lourdes, visited with Ms. Crisconi-Gallo. Given that her primary language was Italian, Father Phelan contacted Sister Leonilla Puggioni, whom he knew spoke Italian, to come to Saunders House.<sup>7</sup> They returned together the following morning,<sup>8</sup> and again on Wednesday and Thursday of that week.<sup>9</sup>

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<sup>3</sup> Ms. Crisconi-Gallo is identified in the medical records from both Saunders House and Lankenau Hospital as Anna Crisconi.

<sup>4</sup> Plaintiff's Exhibit H; Decree dated 11/15/2011 adjudicating Ms. Crisconi-Gallo incapacitated and appointing guardians of her person and estate.

<sup>5</sup> Appellant's Exhibit C and Plaintiff's Exhibit H which contain the medical records from Saunders House admitted into evidence by Stipulation.

<sup>6</sup> N.T. 10/28/14 Phelan p. 117; Gallo p. 83

<sup>7</sup> N.T. 10/28/14 Phelan p. 118; Puggioni p. 9

<sup>8</sup> N.T. 10/28/14 Phelan p. 118, Puggioni p. 27

<sup>9</sup> N.T. 10/28/14 Phelan p. 119

Upon learning of Dominic's death, Mr. Gallo visited with his step-mother at Saunders House on August 31<sup>st</sup>.<sup>10</sup> At that time, he had conversations with her, with Sister Leonilla interpreting, concerning Dominic's affairs.<sup>11</sup> Specifically, he asked where she wanted to have Dominic buried, in Italy or with his Dad; whether he had a will, and if so where it would be located; and whether she had a will.<sup>12</sup> He informed her that he needed her to sign a power of attorney to give him authorization to act on Dominic's behalf.<sup>13</sup>

Mr. Gallo began preparations to bury Dominic here, "because he didn't know of any other relatives or anyone who were willing to take Dominic to Italy."<sup>14</sup>

On or about September 5, 2011, Mr. Gallo was notified by Mr. Rollo that he represented members of Ms. Crisconi-Gallo's family in Italy.<sup>15</sup> At some point, Ms. Crisconi-Gallo told Mr. Gallo that she had three sisters and a brother, mentioning Julia, Maria, and Giovanni. Mr. Gallo testified that when he asked his step-mother about leaving any property to her sisters, she said: "No, they have

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<sup>10</sup> N.T. 10/28/14 Gallo, p. 84

<sup>11</sup> N.T. 10/28/14 Gallo, p. 64

<sup>12</sup> N.T. 10/28/14 Gallo, p. 65

<sup>13</sup> N.T. 10/28/14 Gallo, p. 68

<sup>14</sup> N.T. 10/28/14 Gallo, p. 65

<sup>15</sup> N.T. 10/28/14 Gallo, p. 73, 79; Rollo, p. 128-130; Plaintiff's Exhibit I

enough.” And, she insisted that she wanted him to have this property, because that’s what his father would have wanted.<sup>16</sup>

Mr. Gallo prepared documents on September 10, 2011 and returned to Saunders House on September 11, 2011 with the documents, specifically, a will, durable power of attorney, and renunciation. Claudio Cifoni, a notary whom he contacted through the Italian Consulate, and Sister Leonilla were also present on September 11, 2011.<sup>17</sup> Mr. Gallo testified that Mr. Cifoni explained the documents line by line in English and then in Italian.<sup>18</sup> Sister Leonilla testified that she was present and saw Ms. Crisconi-Gallo pick up the pen and sign the documents.<sup>19</sup> Mr. Cifoni testified to doing a simultaneous translation of the documents, that he witnessed Ms. Crisconi-Gallo, Mr. Gallo and Sister Leonilla each sign the documents, and affixed his notary seal.<sup>20</sup>

The medical records from Saunders House contain Physician Progress Notes including Dr. Silver’s evaluation of Ms. Crisconi-Gallo on September 6, 2011, at which time, he stated that he was asked by the director of nursing to render his opinion on whether she was competent to make medical or other decisions for herself. His note states: “given her orientation and her understanding, which does

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<sup>16</sup> N.T. 10/28/14 Gallo, p. 73, 79

<sup>17</sup> N.T. 10/28/14 Gallo, p. 69-72

<sup>18</sup> N.T. 10/28/14 Gallo, p. 72

<sup>19</sup> N.T. 10/28/14 Puggioni, p. 17

<sup>20</sup> N.T. 10/28/14 Cifoni, p. 42-44

not appear to be depth {sic}, I do not think she is competent.”<sup>21</sup> He offered his opinion as a board certified internist with added qualifications in geriatric medicine, and stated he would have a psychiatric consult to reaffirm his opinion. On the same date, he ordered a “psychiatric consult with an interpreter.”<sup>22</sup> He added an Addendum to his note of that date which states that based on information from the charge nurse that Ms. Crisconi gets very agitated, he will give her Ativan “0.5 mg every 12 hours straight order in an effort to get her under control during this turbulent period of time.”<sup>23</sup>

The psychiatric consult was performed by Dr. Joel E. Streim, a geriatric psychiatrist, on September 14, 2011, through an Italian interpreter. Dr. Streim’s impression was as follows:

“Impression: Ms. Crisconi is unable to make decisions regarding her medical care, finances, or appointment of a proxy decision maker. I base this determination on the findings of today’s interview and mental status examination which reveal that she is incapable of recognizing her medical condition, is unaware of her income or assets or the location of her assets, and does not correctly identify family members. She has residual aphasia that impedes her ability to communicate coherent choices or preference.”<sup>24</sup>

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<sup>21</sup> Plaintiff’s Exhibit H, Physician Progress Notes, 9/6/11, Bruce G. Silver, M.D.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Plaintiff’s Exhibit H, Physician Progress Notes, 9/14/11, Joel E. Streim, M.D.

Ms. Crisconi-Gallo's sisters arrived from Valmontone, Rome, Italy with her niece, Marina Mattia at the end of September and stayed until returning home to Italy with Ms. Crisconi-Gallo on November 16, 2011.

Ms. Mattia testified before the Register of Wills regarding Ms. Crisconi-Gallo's family in Italy consisting of a brother, three sisters, and a large amount of nephews and nieces. She recalled her aunt coming to Rome at least once a year to visit for a month. She spoke regularly to Ms. Crisconi-Gallo prior to the March 2011 stroke, and spoke once a week with Dominic after that time. She further testified that it was always her aunt's desire to move back to Italy.<sup>25</sup>

A petition for adjudication of incapacity and appointment of guardians of the person and estate was filed on 10/11/11 by Maria Caporossi, Ms. Crisconi-Gallo's sister, represented by Joseph M. Rollo, Esquire, and assigned to the undersigned Judge. This Court appointed Jennifer Iacono, Esquire to represent the rights and interests of Ms. Crisconi-Gallo at the guardianship hearing.

Mr. Gallo, acting as agent under power of attorney for Ms. Crisconi-Gallo pursuant to the power of attorney document signed on September 11, 2011, petitioned to intervene and be appointed guardian of her estate.

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<sup>25</sup> N.T. 10/9/13 Marina Mattia, p. 102-104. The Testimony before the Register of Wills Hearing Officer was stipulated to by the parties and admitted into evidence.

The sworn Written Deposition of Dr. Bruce G. Silver, M.D., the medical director at Saunders House and Ms. Crisconi-Gallo's treating physician, dated October 27, 2011, was admitted in the guardianship proceedings and included his diagnosis:<sup>26</sup>

"Patient suffered a massive stroke that left her with right sided hemiparesis (which has improved with physical therapy, however, there is still some residual weakness), expressive aphasia and swallowing difficulties requiring the insertion of a PEG tube. Patient requires extensive assistance with all activities of daily living. She is incapable of recognizing her medical condition, is unaware of her finances or assets and does not correctly identify family members. Her aphasia impedes her ability to communicate coherent choices or preferences regarding her physical care."<sup>27</sup>

The Affidavit of Jennifer Iacono, Esquire, submitted in connection with the guardianship hearing, stated that Ms. Crisconi-Gallo wanted her sister to take care of her and to move to Italy.<sup>28</sup>

Following the guardianship hearing held on November 10, 2011, a Decree dated November 15, 2011 was issued by this Court adjudicating Ms. Crisconi-Gallo incapacitated and appointing Maria Caporossi and Joseph M. Rollo, Esquire, co-guardians of the person, and Jennifer Iacono, Esquire and Anthony James Gallo, Esquire as co-guardians of the estate.

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<sup>26</sup> Plaintiff's Exhibit C

<sup>27</sup> Id.

<sup>28</sup> Appellant's Exhibit B, Affidavit of Jennifer Iacono, Esq.

The Court further ordered that Ms. Crisconi-Gallo was “allowed to travel to Italy on November 16, 2011 with the sister co-guardian, pursuant to the medical instructions and directions issued by Dr. Bruce Silver, her treating physician, where she will be admitted in a facility which has been approved by {sic} as suitable by Dr. Silver, her treating physician.”<sup>29</sup>

### **Discussion**

The hearing before the Orphans’ Court Division on an appeal from the Register of Wills from refusal of admission of a document to probate is *de novo*. The proponent of the will, Appellant Mr. Gallo, must prove execution by testimony of two competent witnesses pursuant to 20 Pa. C.S. Sections 2504.1 and 3132.

### **Execution of documents dated September 11, 2011**

The testimony is uncontroverted that the documents titled: “Last Will and Testament of Anna Crisconi Gallo,” “Durable Power of Attorney” and “Renunciation,” were each dated September 11, 2011, executed by Ms. Crisconi-Gallo on that date, witnessed by Anthony J. Gallo and Sister Leonilla who signed as subscribing witnesses, and were notarized by Claudio C. Cifoni.

The will, having been properly executed, raises the presumption of testamentary capacity and lack of undue influence.

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<sup>29</sup> Decree dated 11/15/11

## Testamentary Capacity

Where the presumption of testamentary capacity is raised, the Contestant, Mr. Rollo the Administrator of the decedent's Estate, must prove by clear and convincing evidence lack of testamentary capacity. Testamentary capacity requires knowledge of the natural objects of one's bounty, what her estate consists of, and what she desires done with it, even though memory may be impaired by age or disease. *In re Hastings' Estate*, 387 A.2d 865 (Pa. 1978)(citations omitted).

The Administrator relies heavily on the adjudication of Ms. Crisconi-Gallo as incapacitated by this Court's Decree of November 15, 2011.<sup>30</sup> While the adjudication of incapacity soon after execution of the document is proof, it is not conclusive. The Court must evaluate the evidence of the testatrix's condition at the time the document was executed. *In re Hastings' Estate*, 387 A.2d 865 (Pa. 1978). To that end, the Contestant presented medical evidence from five days prior to the execution of the document from Ms. Crisconi-Gallo's treating physician, the report of the geriatric psychiatrist and full mental status evaluation performed three days after the document was signed, and the medical records from Saunders House covering her admission through her discharge. The Court notes that parties stipulated to the medical records; and that no contradicting medical evidence was offered or presented.

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<sup>30</sup> Plaintiff's Exhibit B

On September 11, 2011, at the time the documents were executed, neither Mr. Gallo, nor Mr. Cifoni or Sr. Leonilla knew or were informed of Dr. Silver's medical opinion of Ms. Crisconi-Gallo five days prior that: "given her orientation and her understanding, which does not appear to be depth, I do not think she is competent to make medical or other decisions for herself at this time."<sup>31</sup>

His medical opinion was confirmed by Dr. Streim's evaluation, with an Italian interpreter, three days later, who found that Ms. Crisconi-Gallo "appeared to understand some English, but did not respond in English," "her speech was only partially intelligible in Italian," and "many of her responses were mumbled and discernable responses were often irrelevant to the question." He found that she was "unable to make decisions regarding her medical care, finances, or appointment of a proxy decision-maker."<sup>32</sup>

Ms. Mattia, Ms. Crisconi-Gallo's niece, who had intimate knowledge of the family history, had maintained a close relationship with her Aunt, and was familiar with her desires and the plan to return to Italy, testified that during her visits at Saunders House, her Aunt did not remember anything or recognize her sisters, and "she had this lost look on her face."<sup>33</sup>

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<sup>31</sup> Plaintiff's Exhibit H, Physician Progress Notes, 9/6/11, Bruce G. Silver, M.D.

<sup>32</sup> Plaintiff's Exhibit H, Physician Progress Notes, 9/14/11, Joel E. Streim, M.D.

<sup>33</sup> N.T. 10/9/13, p 104-107

Mr. Gallo, the proponent and scrivener, did not have a close relationship with his step-mother over the years, was not aware that she had been hospitalized due to a massive stroke or that she was receiving rehabilitation at Saunders House. He did not know that she had living relatives in Italy, and was unaware of her plans to return to Italy with Dominic.

The Court finds that the presumption of testamentary capacity has been overcome, and the medical testimony, coupled with the testimony of Ms. Mattia, presented clear and convincing evidence that at the time of execution of the document on September 11, 2011, Ms. Crisconi-Gallo lacked testamentary capacity. She was not aware of the natural objects of her bounty, did not know what her estate consisted of or how she wished it be distributed.

The Court having determined that Ms. Crisconi-Gallo lacked testamentary capacity, it need not reach the issue of undue influence.

### **Conclusion**

In this matter, the decedent, Ms. Crisconi-Gallo, who was residing in a nursing home and recovering from the effects of a massive stroke, was informed that her only son was killed. Her step-son, Mr. Gallo, who she hadn't seen in years and who only lived with her for a brief period of time over thirty years ago, suddenly appeared wanting to comfort her and assist her with affairs concerning her son. He did not know that she had living relatives in Italy. He did not speak

Italian, and in order for him to communicate with her, an interpreter was necessary. Documents were prepared by him and executed by her in the presence of witnesses and a notary. However, the medical records reveal that at the time of execution, she was not competent to make medical or other decisions for herself. The Court finds that the decedent may very well have appeared as Appellant, the notary and the witness have testified, but even with the prudent and appropriate measures as employed here, she nevertheless lacked testamentary capacity.

Under the circumstances of this case, the Court must give greater weight to the medical testimony of Dr. Silver and Dr. Streim, and the lay testimony of Ms. Mattia, Ms. Crisconi-Gallo's niece, over that of the scrivener, Mr. Gallo, and find that at the time the document dated September 11, 2011 was executed, Ms. Crisconi-Gallo lacked testamentary capacity.

The Appeal of the Register of Will's Decision sustaining the Caveat and declaring the document dated September 11, 2011 null and void is affirmed.

  
CARRAFIELLO, A.J.  
9/8/2015

John J. D'Angelo, Esquire

Frank Campese, Jr., Esquire