

STATE OF NEW HAMPSHIRE  
SUPREME COURT

CASE NO. 2019-0590

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In re Estate of Lorraine R. O'Neill

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**BRIEF OF APPELLANT  
PAUL T. O'NEILL, TRUSTEE OF THE  
LORRAINE R. O'NEILL REVOCABLE TRUST - 2004**

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RULE 7 MANDATORY APPEAL FROM FINAL ORDER OF THE  
10TH CIRCUIT—PROBATE DIVISION—BRENTWOOD

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Oral Argument Requested. Mr. McEachern will argue.

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## **QUESTIONS PRESENTED**

1. Under New Hampshire law, a decedent's real estate passes directly to the decedent's devisee upon death, subject only to divestment in the event of insolvency. Decedent died on June 28, 2015 and Appellee did not file his Petition for Ancillary Administration until June 19, 2019, nearly four years after death. Here, the Appellee, as the Massachusetts Personal Representative, has not sought or obtained a finding of insolvency from the Massachusetts Probate Court required to support an ancillary administration. Did the Probate Division err by granting ancillary administration without any determination of insolvency?

*The question was raised in an unheard<sup>1</sup> Motion for Reconsideration, Apx. at 88-89;<sup>2</sup> it is reviewable pursuant to Supreme Court Rule 16-A.*

2. RSA 556:29 prohibits creditors from maintaining any action or proceeding in any court to appropriate a decedent's New Hampshire real estate unless administration is taken out in New Hampshire within two years of the decedent's death. On June 19, 2019, nearly four years after the Decedent's death, the Massachusetts Personal Representative petitioned for

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<sup>1</sup> Appellant filed his motion for reconsideration below, one day after the ten-day time limit, which was docketed and objected to by Appellee. To protect his appellate rights, the Trustee timely filed his Notice of Appeal, after which the Probate Division scheduled a hearing on the motion for reconsideration. At the scheduled hearing, the Probate Division indicated that the Appeal had stayed the case and it declined to proceed on the motion. Apx. at 103.

<sup>2</sup> Citations to the Appendix will be indicated as "Apx.". Citations to the Addendum will be indicated as "Add.".

ancillary administration seeking to appropriate the decedent's real estate. Did the Probate Division err by granting ancillary administration after the expiration of the statutory claim period when the law makes clear that all creditor claims are barred?

*O'Neill seeks review pursuant to Supreme Court Rule 16-A.*

3. There is no estate property, real or personal, of the Decedent in New Hampshire to be administered because the Decedent had no personalty in this state and her New Hampshire real estate passed to her Trust by operation of law upon her death on June 28, 2015. Because there is no New Hampshire estate currently requiring administration and because New Hampshire law requires that an estate exist in New Hampshire for administration to be granted, did the Probate Division err by granting ancillary administration to the Massachusetts Personal Representative?

*The question was raised in an unheard Motion for Reconsideration, Apx. 88-89; it is reviewable pursuant to Supreme Court Rule 16-A.*

4. The Probate Division only has the subject-matter jurisdiction conferred upon it by statute. The statutes require a judicial determination of insolvency to establish the Probate Division's jurisdiction over ancillary real estate matters. Here, the Probate Division granted Appellee's ancillary administration over the decedent's real estate nearly four years after the Decedent's death and without a judicial determination of insolvency. Did the Probate Division lack subject-matter jurisdiction to grant probate administration absent a finding of insolvency?

*The question addresses subject-matter jurisdiction and may be timely raised at any point in the proceedings. Maldini v. Maldini, 168 N.H. 191, 194, 124 A.3d 229, 232 (2015) (citing Daine v. Daine, 157 N.H. 426, 428, 951 A.2d 133 (2008)).*

### **STATUTES INVOLVED IN THE CASE**

**RSA 547:3 Jurisdiction.** – See Apx. at 104-105.

**RSA 547:11-b Declaratory Judgments.** – Any person claiming a present legal or equitable right or title to real or personal property in the estate of deceased persons or to guardianship, conservatorship, or trust assets may maintain a petition against the estate, guardian, conservator, or trustee to determine the question as between the parties, and the probate court's judgment or decree thereon shall be conclusive. The existence of an adequate remedy at law or in equity shall not preclude any person from obtaining such declaratory relief.

**RSA 547:11-c Quiet Title.** – An action may be brought in probate court by any person claiming title to, or any interest in, real or personal property, or both, in partition under RSA 547-C, listed in the estate of a deceased person or listed as guardianship, conservatorship, or trust assets over which the probate court has jurisdiction, against the estate, guardian, conservator, or trustee who may claim to own the same, either in fee, for years, for life or in reversion or remainder, or to have any interest in the same, or any lien or encumbrance thereon, adverse to the plaintiff, or in whom the land records disclose any

interest, whether or not the plaintiff is entitled to the immediate or exclusive possession of such property, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the same. In any action brought under this provision, where applicable, the procedure set forth in RSA 498:5-b through 5-d shall be followed.

**RSA 552:13 Foreign Will.** – A duly authenticated copy of a will made out of this state, which has been proved and allowed by a court of probate or by a court of similar powers in one of the United States, or in a foreign country, and a duly authenticated copy of the probate of such will, upon the written application of a party in interest, and upon such citation and notice as the court shall order, may, by a decree of the court of probate, be filed and recorded in the probate office; and thereupon the will shall have the same effect as if executed with the formalities required by the laws of this state and duly proved and allowed.

**RSA 554:15 Duties as to Real Estate.** – The administrator shall receive the rents and profits of the real estate, in case the estate is insolvent, and keep the same in repair, and account for the net proceeds thereof in his administration account.

**RSA 554:17 Sale of Real Estate.** – Every administrator shall apply for and procure license for the sale of so much of the real estate as may be necessary to pay debts and legacies, if the personal estate is insufficient; and neglect or refusal to obtain such license, to make such sale, to account for the proceeds



thereof, or fraudulent conduct therein, shall be deemed maladministration and a breach of his bond.

**RSA 556:3 Exhibition of Demand; Time.** – No such action shall be sustained unless the demand was exhibited to the administrator within six months after the original grant of administration, exclusive of the time such administration may have been suspended.

**556:5 Suit Within One Year.** – No suit shall be maintained against an administrator for any cause of action against the deceased, unless it is begun within one year next after the original grant of administration, exclusive of the time such administration may have been suspended, except in cases where he has retained estate in his hands for the payment of the claim by order of the judge, and cases provided for by RSA 556:7 and RSA 556:28.

**RSA 556:29 Two-Year Limitation.** – If no administration shall have been granted upon the estate of a deceased person within two years from the date of death, no creditor of the deceased shall thereafter be entitled to maintain any action or proceeding in any court to appropriate the real estate or interests therein of which the deceased died seized, to the payment or satisfaction in whole or in part of his claim against the estate.

**559:1 When License Granted.** – The judge, on application of the administrator, may grant a license for the sale of the real estate of any person deceased, or of lands purchased or set off to the administrator in payment of

debts due to the estate, when the personal property shall be insufficient to pay the just demands by law chargeable to the estate.

### **STATEMENT OF THE CASE**

This is an ancillary probate matter. The decedent, Lorraine R. O'Neill, was a Massachusetts resident who died on June 28, 2015 with no personal estate in New Hampshire. Apx. at 10. In her will, the decedent left her New Hampshire real estate to the Trustees of the Lorraine R. O'Neill Revocable Trust – 2004 (the “Trust”). Apx. at 21.

The decedent's Massachusetts probate proceeding began in November 2015, when Paul T. O'Neill, one of the Decedent's nominated personal representatives, filed a petition requesting formal probate administration and the appointment of a personal representative. Apx. at 33-40. By family settlement agreement dated April 3, 2018, which was formally approved by the Massachusetts Probate Court on May 18, 2018, the Decedent's will was admitted to formal probate and the Appellee, John Dugan, was appointed personal representative for the decedent's Massachusetts probate estate in a supervised administration, pursuant to the agreement. Apx. at 53-54. The Massachusetts Probate and Family Court has not found the estate to be insolvent, nor has it authorized the foreign supervised personal representative to pursue an ancillary administration in New Hampshire for any purpose. *See generally* Apx. at 19-56 (Authenticated Copy of Will and Probate).

On June 19, 2019, Dugan filed a Petition for Estate Administration (the “Petition”) with the 10th Circuit – Probate Division – Brentwood, seeking ancillary administration of the decedent's New Hampshire real estate, title to

which had passed to the Trustee upon decedent's death. Apx. at 4. In support, he filed an Authenticated Copy of the Will and Probate from Massachusetts, which did not include an accounting or any finding of insolvency. Apx. 19-56. The Probate Division (Moran, J.) granted Dugan's Petition. Add. at 41. The Trustee filed a *pro se* motion for reconsideration on September 20, 2019 at 3:51AM, one day late, which was accepted and docketed by the court, but which did not toll his thirty-day deadline to appeal. Apx. at 86; *See* Sup. Ct. R. 7(1)(A). The Probate Division did not act on the Trustee's motion for reconsideration before the required appellate deadline, so the Trustee filed a timely Notice of Appeal to preserve his rights.

After the Trustee initiated this appeal, the Probate Division noticed and held a hearing on The Trustee's motion for reconsideration on December 11, 2019. Apx. at 103. The Probate Division (Weaver, J.) held that it could not rule on the motion for reconsideration. *Id.* (stating "Given that the court's original granting of the petition for estate administration was appealed to the New Hampshire Supreme Court on October 10, 2019, no further action may be taken on the motion as all action is stayed pursuant to RSA 567-A:7.")).

## **STATEMENT OF THE FACTS**

### **A. The Decedent, her heirs, and her will.**

Lorraine R. O'Neill ("Lorraine") was a resident of Melrose, Massachusetts when she died on June 28, 2015. Apx. at 33. Lorraine, a widow, was survived by four of her children Robert J. O'Neill, Jr., John F. O'Neill, Patricia M. O'Neill and Paul T. O'Neill. Apx. at 34-36. Her other son, Michael J. O'Neill, who was the father of Russell O'Neill, pre-deceased her on December 25, 2014.<sup>3</sup> Apx. at 36. Upon her death, Lorraine owned eleven, separately-deeded parcels of real estate located in New Hampshire (the "New Hampshire Real Estate"). Apx. at 14.

In Lorraine's will, she left her tangible, personal property in equal shares to her surviving children and her New Hampshire Real Estate, along with all other remaining property, to the Trustees of the Lorraine R. O'Neill Revocable Trust – 2004, a trust created prior to her death. Apx. at 21.

### **B. Massachusetts probate proceedings.**

On November 3, 2015, Paul T. O'Neill, who was nominated in the will with Robert J. O'Neill, filed a Petition for Formal Probate of a Will and Appointment of Personal Representative in the Probate Court for Middlesex County, Massachusetts ("Massachusetts Probate Court"), identifying himself as Trustee of the Trust and seeking appointment as personal representative of Lorraine's Estate. Apx. at 33-40.

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<sup>3</sup> Russell O'Neill was specifically excluded by the provisions of Decedent's will. Apx. at 28.

Although no one challenged the operative provisions of Lorraine's will, disputes arose between some of Lorraine's surviving children over who should serve as personal representative of Lorraine's Massachusetts Probate Estate, resulting in litigation that led to the appointment of a special personal representative by the Massachusetts Probate Court. On April 3, 2018, Lorraine's surviving children entered into an agreement to allow Lorraine's will and for the appointment of the Appellee as the personal representative for Lorraine's Massachusetts Probate Estate in a supervised administration. Apx. at 53.

On May 18, 2018, the Massachusetts Probate Court admitted Lorraine's will to formal probate and appointed the Appellee as personal representative to serve in a supervised administration, requiring that he "file an accounting each year and a final account with the Court. After filing, each account shall be presented to the Court for allowance with notice to all interested parties." Apx. at 53-54. There is no annual accounting in the Authenticated Copy of Will and Probate. Apx. 19-56.

### **C. New Hampshire probate proceedings.**

On June 19, 2019, with no account filed and no adjudication of insolvency by the Massachusetts Probate Court, the Appellee filed a Petition for Estate Administration in the 10<sup>th</sup> Circuit Court – Probate Division – Brentwood (the "Probate Division"), seeking ancillary administration over Lorraine's New Hampshire real estate ("Petition for Ancillary Administration"). Apx. at 4-14. In the Petition for Ancillary Administration, the Appellee identified Lorraine's New Hampshire Real Estate but did not identify any personal property in New Hampshire. Apx. at 10.

In support of his Petition for Ancillary Administration, the Appellee filed an authenticated copy of Lorraine's will and probate dated April 29, 2019. Apx. at 19-56. The authenticated copy of Lorraine's will and probate does not contain, *inter alia*: 1) an accounting; 2) any judicial determination that Lorraine's Estate is insolvent; or 3) any evidence that the Appellee has petitioned the Massachusetts Probate Court for a finding of insolvency.

On August 1, 2019, the Trustee filed a Certification of Trust dated August 1, 2019, with the Probate Division, identifying himself as the sole trustee of Lorraine's Revocable Trust, and a separate copy of a Certification of Trust dated November 3, 2017, previously filed with the Probate Division on November 4, 2017, which also identifies the Trustee as sole trustee of Lorraine's Revocable Trust. Apx. at 60-62.

### **SUMMARY OF THE ARGUMENT**

New Hampshire law is long settled that title to real estate passes to the devisee or heirs at law on the date of the decedent's death, subject only to divestment in the event the estate is determined to be insolvent. *Bergin v. McFarland*, 26 N.H. 533, 536 (1853); *Lucy v. Lucy*, 55 N.H. 9, 10 (1874). Consequently, when Lorraine died on June 28, 2015, title to her New Hampshire Real Estate vested in her devisee, the Trustee, subject only to divestment upon a determination of insolvency as provided for by RSA 554:15, RSA 554:17, and RSA 559:1.

In his Petition for Ancillary Administration, the Appellee identified Lorraine's New Hampshire Real Estate as the only estate property and failed to demonstrate a judicial determination of insolvency by the Massachusetts Probate Court, or any unpaid claim in that foreign proceeding that could be filed as a claim against the New Hampshire Probate Estate. With no personal estate in New Hampshire, no determination of insolvency and no claims, the Probate Division had no basis for subject matter jurisdiction to entertain or allow an ancillary administration by the foreign, supervised, personal representative over Lorraine's New Hampshire Real Estate. Because the Appellee has no title or interest in the real estate under bedrock New Hampshire law, the Probate Division should have denied the Petition for Estate Administration.

Even if the Authenticated Copy of Will and Probate had contained an adjudication of insolvency that recognized an unpaid claim owed to the Appellee for his services as the personal representative of the Massachusetts Probate Estate, such claim would not be an expense of administration of the New Hampshire Probate Estate. As made clear by *Goodall v. Marshall*, the decedent's domicile administration and ancillary administration must be treated as separate, independent proceedings. 11 N.H. 88, 94 (1840).

If the Massachusetts personal representative had obtained a claim for unpaid services in the Massachusetts Probate Administration and sought to enforce it against Lorraine's New Hampshire Real Estate in the ancillary administration, such claim is barred by RSA 556:29, which provides, "If no

administration shall have been granted upon the estate of a deceased person within two years from the date of death, no creditor of the deceased shall thereafter be entitled to maintain any action or proceeding in any court to appropriate the real estate or interests therein of which the deceased died seized, to the payment or satisfaction in whole or in part of his claim against the estate.”

The Probate Division erred by granting ancillary administration to the Appellee absent a judicial determination of insolvency more than two years after Lorraine’s date of death. This error was plain because the only property identified in the Appellee’s Petition was New Hampshire real estate and the Authenticated Copy of Will and Probate submitted fails to demonstrate the required showing of insolvency needed to establish a claim that could be filed against the ancillary estate to give rise to a determination of insolvency in the ancillary probate administration. This plain error affects substantial rights because it arguably deprives the Appellant of the two-year limitation period set forth in RSA 556:29 - which had run long before the Probate Division granted the Appellee’s Petition - by needlessly reopening the Estate to creditor claims under RSA 556:3 and 556:5.

This error, caused by the Appellee’s improper filing of his petition for ancillary administration, has seriously affected the fairness, integrity and public reputation of judicial proceedings because it resulted in the court mistakenly exceeding its subject-matter jurisdiction and failing to follow unambiguous statutes and common law central to the probate of estates in New Hampshire. If the Probate Division’s order were to stand, future



testators, devisees, heirs and beneficiaries would rightfully question whether they could rely on New Hampshire's statutes and common law and in particular, on the two-year hard limitations bar on the appropriation of real estate interests in New Hampshire for the payment of valid claims and debts under RSA 556:29.

### **STANDARD OF REVIEW**

On appeal, the Trustee makes two categories of argument. First, the Trustee claims that the Probate Division lacks subject-matter jurisdiction over the Estate pursuant to RSA 547:3 because the only asset in the New Hampshire ancillary administration is real estate which passed to the Trustee upon the decedent's death and the Probate Court has no jurisdiction over real estate unless it first determines that the estate is insolvent, which cannot happen because the two-year creditor claim period under RSA 556:29 has expired. Second, the Trustee claims the Probate Division erred by granting the Appellee's petition for ancillary probate administration because there are no ancillary estate assets to administer without an adjudication of insolvency and because the two-year creditor-claim period of RSA 556:29 had lapsed by the time the Probate Division granted the ancillary petition. Each category has a distinct standard of review.

#### **A. Subject-matter jurisdiction receives *de novo* review.**

Litigants, who question the trial court's subject-matter jurisdiction, even if they do so for the first time on appeal, are entitled to *de novo* review of that issue. *Maldini v. Maldini*, 168 N.H. 191, 194, 124 A.3d 229, 232 (2015) (citing *Daine v. Daine*, 157 N.H. 426, 428, 951 A.2d 133, (2008)). Litigants

may question subject-matter jurisdiction at any step in the proceedings because subject-matter jurisdiction “cannot be conferred where it does not already exist.” *Maldini*, 168 N.H. at 194 (quoting *Daine*, 157 N.H. at 428).

**B. All other issues raised receive plain-error review.**

The Trustee brought his issues to the Probate Division’s attention in a motion to reconsider, Apx. at 86, which the Probate Division scheduled for hearing but ultimately determined it could not rule on due to the pendency of the Trustee’s Notice of Appeal, Apx. at 103. Consequently, the Probate Division did not have the opportunity to rule on the issues that the Trustee raises on appeal.

Court rules entitle the Trustee to plain-error review. Pursuant to Supreme Court Rule 16-A, “[a] plain error that affects substantial rights may be considered even though it was not brought to the attention of the trial court or the supreme court.” An appellate issue qualifies for plain-error review when: 1) there [was] an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.” *State v. Lamy*, 158 N.H. 511, 524, 969 A.2d 451, 462 (2009) (citing *State v. MacInnes*, 151 N.H. 732, 736-37, 867 A.2d 435 (2005)).

**ARGUMENT**

**I. ABSENT A JUDICIAL DETERMINATION OF INSOLVENCY, THE PROBATE DIVISION HAS NO SUBJECT-MATTER JURISDICTION TO ADMINISTER REAL PROPERTY. EVEN IF INSOLVENCY HAD BEEN**

**ESTABLISHED, RSA 556:29 NOW BARS ANY  
PROCEEDING AGAINST THE REAL ESTATE WHICH  
HAS PASSED TO THE TRUSTEE FREE OF ALL CLAIMS.**

Subject-matter jurisdiction is a question of law, subject to *de novo* review, and may be raised at any time in a proceeding, even on appeal. *Maldini*, 168 N.H. at 194. “The probate court is not a court of general jurisdiction; rather, ‘[i]ts powers are limited to those conferred upon it by statute.’” *Rogers v. Rogers*, 171 N.H. 738, 742-43, 203 A.3d 85, 89 (2019) (quoting *Petition of Cigna Healthcare*, 146 N.H. 683, 688, 777 A.2d 884 (2001)). The Probate Division has no “power to hear or determine a case concerning subject matters over which it has no jurisdiction.” *In the Matter of Muller & Muller*, 164 N. H. 512, 516-17, 62 A. 3d 770, 774 (2013).

The Probate Division’s jurisdiction to administer estates is established by RSA 547:3, I(b), which provides, in pertinent part, that the “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” shall be the Probate Division’s exclusive jurisdiction. The Probate Division’s jurisdiction with respect to real estate is further defined by RSA 554:15 (governing the administrator’s duty to receive rents and profits of real estate when the estate is insolvent); RSA 554:17 (governing administrator’s duty to apply for and procure a license to sell so much of decedent’s real estate as may be necessary to pay the estate’s debts if decedent’s personal estate is insufficient); RSA 559:1 (giving Probate Division judges authority to grant license for sale of decedent’s real property when estate’s personal property is insufficient to pay estate debts); and RSA 552:13 (allowing a duly authenticated copy of a foreign will and probate to be

filed and recorded in the probate office without administration, to establish title to New Hampshire real estate).

The foregoing statutes pertaining to the Probate Division's jurisdiction over a decedent's real estate operate in conjunction with New Hampshire's longstanding, bedrock common law principle that a decedent's real estate passes to the devisees or heirs outside of the Probate Division's administration. As stated in *Bergin v. McFarland*,

[a]t common law, the real estate of a deceased owner at once vested in the heir at law or devisee. . . . The personal representative of the deceased had, as such, no rights whatever, connected with the real estate.

26 N.H. 533, 533 (1853). In *Gregg v. Currier*, this Court stated that, unless the estate is insolvent, "the land descends, on the death of the testator or intestate, to the devisees or heirs, with no right or duty on the part of the executor or administrator, as such, in any way to intermeddle therewith." 36 N.H. 200, 200 (1858). See also, *Lucy*, 55 N.H. 9 ("It is well settled that, in this state, real estate of the intestate, immediately upon his death, vests in the heirs, subject to be divested by proper proceedings for the payment of the intestate's debts.").

Consequently, "real estate of a decedent is not considered an asset of the decedent for purposes of the administration of the estate. The title to real estate passes upon death instantaneously to the heirs of the property, subject to divestment by the administrator only when there are insufficient estate assets to pay debts." 10 C. DEGRANDPRE & W. ZORN, NEW HAMPSHIRE PRACTICE, PROBATE AND ADMINISTRATION OF ESTATES, TRUSTS & GUARDIANSHIPS, § 18.9, at 18–7 (4th ed. 2008).

Prior to the enactment of the Omnibus Justice Act of 1993, probate court jurisdiction over a decedent's real estate was confined to the lone circumstance in which an estate was determined to be insolvent. In *Fleming v. Aiken*, this Court held, "[i]n the absence of the necessity of the executor seeking a license to sell the real estate, the probate court has no jurisdiction of the real estate of a decedent." 14 N.H. 687, 689, 327 A.2d 724, 726 (1974) (ruling that the probate court lacked jurisdiction to hear plaintiffs' constructive-trust claims for recognition as cotenants). In *In re Estate of O'Dwyer*, the Court quoted *Fleming* with approval when ruling that the probate court lacked jurisdiction to resolve disputes over title to real estate. 135 N.H. 324, 324, 605 A.2d 216, 217 (1992) ("[u]nless and until the legislature chooses to enlarge the probate court's jurisdiction to encompass disputes over title to real estate, we hold that the probate court has neither such statutory authority, *see* RSA 547:3, nor such common law jurisdiction, *see, e.g., Hayes v. Hayes*, 48 N.H. 219, 229 (1868).").

After the passage of the Omnibus Justice Act of 1993, this Court decided *In re Estate of Porter*, in which an appellant challenged the probate court's jurisdiction to decide an estate's petition to terminate his life estate in the decedent's real estate. 159 N.H. 212, 214, 977 A.2d 1026, 1027 (2009). In support of his position, the appellant relied on *Fleming* and *O'Dwyer* for the proposition that the probate court had no jurisdiction over the estate's petition unless the estate first obtained a license to sell the decedent's real estate pursuant to RSA 559:1, which requires an estate to demonstrate that its personal property is insufficient to pay the estate's claims.

In rejecting the appellant's argument, the Court noted that, since the Court's decisions in *Fleming* and *O'Dwyer*, the legislature had expanded the

probate court's jurisdiction as part of the Omnibus Justice Act of 1993, by giving the probate court specific statutory authority to decide both declaratory judgment actions and quiet-title actions involving a decedent's real property. *Porter*, 159 N.H. at 214-215. See RSA 547:11-b (establishing jurisdiction over declaratory judgment actions regarding title to real property owned by a decedent); RSA 547:11-c (establishing jurisdiction over quiet-title actions regarding real property of a decedent). As a result, the *Porter* Court concluded that the holdings in *Fleming* and *O'Dwyer* – to the extent they stood for the proposition that RSA 559:1 was the only statutory basis for probate court jurisdiction over a decedent's real estate - had been “superseded by the current statutory scheme.” *Porter*, 159 N.H. at 215.

This case does not involve a declaratory judgment action or petition to quiet title. This case involves the supervised personal representative of a Massachusetts probate estate seeking to administer the decedent's New Hampshire real estate through ancillary administration in the absence of the Decedent being insolvent nearly four years after her death. As demonstrated by the authenticated copy of Lorraine's will and probate filed with the New Hampshire Probate Division, the Appellee did not represent the estate as insolvent to the Massachusetts probate court, which has not issued an order determining insolvency.<sup>4</sup> See generally, Apx. at 19-56. Because the

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<sup>4</sup> M.G.L. ch. 190B, §3-807 (b) establishes a mandatory judicial process for insolvent estates, providing,

If a personal representative finds that the estate of the deceased will probably be insufficient for the payment of his debts, the personal representative shall represent the estate to be insolvent to the court, and shall, pursuant to court order, after notice to all

Appellee failed to demonstrate any legal interest in the assets he seeks to administer, the Probate Division should have denied the Appellee's Petition for Administration based on lack of jurisdiction. In the absence of a determination of insolvency, the Probate Division had no statutory authority to take any action with respect to Lorraine's New Hampshire real estate – other than to grant a petition to file an authenticated copy of Lorraine's Will and Probate pursuant to RSA 552:13. The probate court has no "power to hear or determine a case concerning subject matters over which it has no jurisdiction." *Muller*, 164 N.H. at 516-17.

To rule otherwise would negate nearly two hundred years of precedent holding that title to a decedent's real estate passes to the devisees or heirs upon death subject to divestment only when the administrator has proved that estate assets are insufficient to pay the estate's debts. In the absence of insolvency, the Appellee has no legal rights in Lorraine's New Hampshire real estate and the Probate Division consequently has no statutory authority to allow him to administer it and therefore erred in granting the Appellee's Petition for Administration.

Even if the Authenticated Copy of Will and Probate had demonstrated that the Massachusetts Probate Estate was adjudicated insolvent and that the Massachusetts personal representative had a proven claim for unpaid services, the Massachusetts personal representative would then be required to file his claim against the New Hampshire Estate pursuant to New Hampshire law.

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persons interested, divide and pay over what remains in the personal representative's hands among the creditors who prove their debts.

As stated in *Goodall*, the ancillary administrator “receives his authority, not from the executor, but under a different law. He administers the estate which comes to his hands, up to the final settlement, under a different, and perhaps conflicting, law from that under which the executor acts; and he is in no way subject to the orders of the executor in the performance of his duties.” 11 N.H. at 94. Lorraine’s New Hampshire real estate must be administered, in all regards, pursuant to the laws of New Hampshire. *Id.* (“ancillary administration, so far as creditors are concerned, is to be governed by the *lex loci*.”) If the Massachusetts personal representative were to come to New Hampshire and seek to recover on a claim for unpaid fees resulting from the Massachusetts Probate Administration, he would be no different than any other creditor and must satisfy New Hampshire law as it pertains to creditors.

Any creditor seeking to appropriate Lorraine’s New Hampshire Real Estate to pay their claim, including the Massachusetts personal representative, is subject to the limitation of RSA 556:29, which provides that, “If no administration shall have been granted upon the estate of a deceased person within two years from the date of death, no creditor of the deceased shall thereafter be entitled to maintain any action or proceeding in any court to appropriate the real estate or interests therein of which the deceased died seized, to the payment or satisfaction in whole or in part of his claim against the estate.” Given the passage of nearly four years from the date of Lorraine’s death until the Appellee’s filing of his petition for ancillary administration, his effort to appropriate Lorraine’s New Hampshire Real Estate to pay any claim that may result from his Massachusetts Probate Administration is now time barred and the Petition for Administration should not have been granted.



To rule otherwise would forever cast doubt on New Hampshire real estate titles passing by operation of law under RSA 556:29, as they would remain forever subject to surprise attack by foreign personal representatives for a myriad of unknown reasons, many years after a decedent's death, for actions completely unknown and unrelated to New Hampshire. Such a result would be directly contrary to the plain language of RSA 556:29 and the longstanding principles, first elucidated in *Goodall*, which require that ancillary administrations in this state and, in particular, the claims of creditors, be governed by the laws of this state.

**II. GRANTING ANCILLARY ADMINISTRATION WITHOUT A FINDING OF INSOLVENCY WAS PLAIN ERROR, VITIATING STATUTORY PROTECTIONS AND SERIOUSLY AFFECTING THE FAIRNESS, INTEGRITY AND PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS.**

“A plain error that affects substantial rights may be considered even though it was not brought to the attention of the trial court or the supreme court.” Sup. Ct. R. 16-A. An appellate issue qualifies for plain-error review when: 1) there [was] an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.” *Lamy*, 158 N.H. at 524 (citing *MacInnes*, 151 N.H. at 736-37). The Probate Division's error in granting the Appellee's Petition is manifest from the record because the only alleged New Hampshire asset of the Decedent disclosed in the Petition is New Hampshire real estate, which already passed to the Appellant by operation of

law upon Lorraine's death, so the Appellee has no current interest in such property.

As made clear in *Bergin v. McFarland*,

At common law, the real estate of a deceased owner at once vested in the heir at law or devisee. As such, the heir or devisee was at once entitled to maintain any action, real or personal, which he might find necessary for the protection his rights.

*Bean v. Moulton*, 5 N.H. 450. The personal representative of the deceased had, as such, no rights whatever, connected with the real estate. His duties and his powers were entirely confined to the personal estate and choses in action of the deceased.

26 N.H. at 536. *See also Gregg*, 36 N.H. at 202 (in the absence of insolvency, "the land descends, on the death of the testator or intestate, to the devisees or heirs, with no right or duty on the part of the executor or administrator, as such, in any way to intermeddle therewith."); *Lucy*, 55 N.H. at 9 ("It is well settled that, in this state, real estate of the intestate, immediately upon his death, vests in the heirs, subject to be divested by proper proceedings for the payment of the intestate's debts.").

Without a determination of insolvency from the Probate Division, the Appellee has no right or interest in Lorraine's New Hampshire Real Estate, so there is no estate to administer. The Probate Division erred by granting administration to the Appellee absent a judicial determination of insolvency. This error was plain because the only property identified in the Appellee's Petition was New Hampshire real estate and the Authenticated Copy of Will and Probate failed to demonstrate insolvency in the Massachusetts Probate Administration or a claim on which a New Hampshire insolvency could have been based. This plain error affects substantial rights because it interferes

with the Appellant's New Hampshire real estate interests and conflicts with and arguably deprives the Appellant of the Legislature's intended protection provided by the two-year limitation period set forth in RSA 556:29, which accrued on June 28, 2017, by potentially reopening the Estate to creditor claims under RSA 556:3 and 556:5, when those claims are otherwise now barred.

This error has seriously affected the fairness, integrity and public reputation of judicial proceedings because the decision exceeds the Probate Court's subject-matter jurisdiction and fails to follow and vindicate unambiguous statutes and common law that are critical to ensuring the finality of devised titles in New Hampshire which is critical to the state's real estate economy and individuals' rights to final ownership of real estate. Allowing such a defective grant of ancillary administration to stand would cause future testators, beneficiaries, heirs, devisees, financial lenders, and purchasers to rightfully question whether they could rely on New Hampshire's statutes and common law, and devised title in New Hampshire. The avoidance of such important problems with respect to title are the exact issues that the requirements for insolvency and the limitations periods contained in RSA 556 were explicitly designed to address. Accordingly, this Court should uphold those requirements by overturning the Probate Division's grant of ancillary administration and ordering that the Petition below be dismissed.

## **CONCLUSION**

The Probate Division's jurisdiction to administer a decedent's estate is limited to personal property and does not extend to real estate unless there has been an adjudication of insolvency. With no personal estate and no adjudication of insolvency - or even the possibility of a valid claim due to the prior expiration of the two-year creditor claim period under RSA 556:29 - the Probate Division had no statutory basis to exercise jurisdiction over the decedent's real estate and it should have denied the petition for ancillary administration.

The Probate Division's decision to grant ancillary administration for the sole purpose of administering Lorraine's New Hampshire Real Estate when it had no jurisdiction and when administration was unnecessary was error. This error was plain because title had passed to the Trustee upon Lorraine's death, the Authenticated Copy of Will and Probate provided by the Appellee failed to demonstrate insolvency in the Massachusetts estate or the existence of any claims that might be made against the New Hampshire estate and any such claims would be barred by application of RSA 556:29. This error will affect the Trustee's title to Lorraine's New Hampshire Real Estate, which is a substantial right, and will seriously affect the fairness, integrity and public reputation of probate administration in this state by calling into question the title of any foreign-owned real estate passing by devise.

### **REQUESTED RELIEF**

The Court should reverse the Probate Division's Order granting John G. Dugan, Esq.'s Petition for Estate Administration, and remand the matter to the Probate Division with instructions that it be closed in accordance with that reversal.

### **ORAL ARGUMENT**

The Appellant requests oral argument and that Alec McEachern, Esq., be allowed to present oral argument on behalf of the Appellant.

### **CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Supreme Court Rule 26(7), that the Appellant's Opening Brief complies with the rules of the court pertaining to the formatting, filing, and service of briefs. The brief contains 6295 words, excluding parts of the document exempted by Supreme Court Rule 16(11). I further certify pursuant to Supreme Court Rule 16(3)(i), that each appealed decision that is in writing has been submitted in the addendum that is made part of this Brief.

Respectfully submitted,

PAUL T. O'NEILL, TRUSTEE

By his attorneys,

SHAINES & MCEACHERN, P.A.

Dated: April 7, 2020

/s/ Alec McEachern  
Alec McEachern, NH Bar # 10568  
Jacob Marvelley, NH Bar # 20654  
282 Corporate Drive, Unit 2  
Portsmouth, NH 03801  
(603) 436-3110

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Brief will be timely served via the electronic filing service on Alexandra S. Cote, Esq., counsel for the appellee John G. Dugan, Esq., and a copy of the foregoing Brief has been on this date sent via First-Class U.S. Mail to Robert O'Neill, Jr., John O'Neill, and Patricia O'Neill, *pro se*.

Dated: April 7, 2020

/s/ Alec McEachern  
Alec McEachern, NH Bar # 10568  
Jacob Marvelley, NH Bar # 20654

STATE OF NEW HAMPSHIRE  
SUPREME COURT

CASE NO. 2019-0590

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In re Estate of Lorraine R. O'Neill

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**ADDENDUM TO BRIEF OF APPELLANT  
PAUL T. O'NEILL, TRUSTEE OF THE  
LORRAINE R. O'NEILL REVOCABLE TRUST - 2004**

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RULE 7 MANDATORY APPEAL FROM FINAL ORDER OF THE  
10TH CIRCUIT—PROBATE DIVISION—BRENTWOOD

---

Alec McEachern, Esq. (10568)  
Jacob Marvelley, Esq. (20654)  
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282 Corporate Drive, Suite 2  
Portsmouth NH 03801  
(603) 436-3110

*Counsel for Appellant*

Oral Argument Requested. Mr. McEachern will argue.

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APPELLANT PAUL O'NEILL, TRUSTEE**

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

10th Circuit - Probate Division - Brentwood  
PO Box 789  
Kingston NH 03848-0789

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**NOTICE OF DECISION**

Case Name: **Estate of Lorraine R. O'Neill**  
Case Number: **318-2019-ET-00981**

**Notice to Parties:**

On August 23, 2019, Judge Margaret Ann Moran issued orders relative to:

Motion to Serve Notice by Publication - Granted

Petition for Estate Administration - Granted with Conditions:

Prior to the issuance of the letter of appointment, the fiduciary is ordered to file with the court, within 30 days of this order, a fiduciary bond in the amount of \$2,400,000.00 with corporate sureties. Failure to file the bond within 30 days may result in dismissal of the case.

Mail the corporate surety bond to: NH Judicial Branch Administrative Offices, Attn: Electronic Filing Center, 1 Granite Place, Suite N400, Concord, NH 03301.

Please review all e-mails and mail which may contain orders, notices or important information about your case.

Any Motion for Reconsideration must be filed with this court by September 19, 2019. Any appeals to the Supreme Court must be filed by October 09, 2019.

September 09, 2019

LoriAnne Hensel  
Clerk of Court

C: Whitney Anne Gagnon, ESQ; Paul T O'Neill; John F O'Neill; Patricia M O'Neill; Robert J O'Neill, JR

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
<http://www.courts.state.nh.us>

Court Name: 10TH CIRCUIT - PROBATE DIVISION - BRENTWOOD  
 Case Name: Estate of Lorraine R. O'Neill  
318-2019-ET-00981  
 Case Number: \_\_\_\_\_  
 (if known)

**PETITION FOR ESTATE ADMINISTRATION**

- ☒ Original  
☐ Amended (include brief explanation)

1. Petitioner name: John G. Dugan, Esquire  
Doherty, Dugan, Cannon, Raymond & Weil, PC, 124 Grove St. #220,  
 Mailing address: Franklin, MA 02038  
 Street City State Zip code  
 Telephone: (508) 541-3000 E-mail: jgd@dcdclaw.com  
 Petitioner was named executor in will of the deceased: ☐ Yes ☒ No  
☐ Petitioner is a New Hampshire resident.  
☒ Petitioner is not a New Hampshire resident. (If more than one Petitioner, and neither is a NH resident, an Appointment of Resident Agent form (NHJB-2120-Pe) must be filed with this Petition)
2. Petitioner name: \_\_\_\_\_  
 Mailing address: \_\_\_\_\_  
 Street City State Zip code  
 Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
 Petitioner was named executor in will of the deceased: ☐ Yes ☐ No  
☐ Petitioner is a New Hampshire resident.  
☐ Petitioner is not a New Hampshire resident. (If more than one Petitioner, and neither is a NH resident, an Appointment of Resident Agent form (NHJB-2120-Pe) must be filed with this Petition)
3. Attorney name: Whitney A. Gagnon Telephone: (603) 436-2818  
 Firm name: McLane Middleton, Professional Association Bar ID #: 270270  
 Mailing address: 100 Arboretum Drive, Suite 140, Newington, NH 03801  
 Street City State Zip code
4. Deceased name: Lorraine R. O'Neill Date of Death: 06/28/15  
 Residence: Melrose MA  
 City State
5. Did the deceased die with a will?  
☒ Yes ☐ No  
 5A. If yes, was the will executed in New Hampshire? ☐ Yes ☒ No
6. Was the will declared valid by a court during the life of the deceased?  
☐ Yes ☒ No  
 6A. If yes, which court declared the will valid? \_\_\_\_\_  
 Name of court

**PETITION FOR ESTATE ADMINISTRATION**

7. Petitioner asks to serve as: ☐ Executor (If will) ☐ Administrator (If NO will)  
☒ Ancillary executor or administrator (If decedent was an out of state resident, but owned real estate in New Hampshire at the time of death and had an estate probated in another state)

8. Is there a named executor or previous administrator or executor who is unable to serve?  
☒ Yes ☐ No

8A. If yes, the name of executor or previous administrator/executor is:

Robert J. O'Neill, Jr. Of Hampton, NH

Name of executor or admin unable to serve City/State

The named executor or previous administrator or executor (referenced above) cannot serve or continue to serve because: see attached statement.

8B. If more than one, the named executor or previous administrator/executor unable to serve is:

Paul T. O'Neill Of Melrose, MA

Name of executor or admin unable to serve City/State

The named executor or previous administrator or executor (referenced above) cannot serve or continue to serve because: see attached statement.

9. Is the petitioner requesting Waiver of Full Administration?

☐ Yes ☒ No

9A. If yes, petitioner is requesting WAIVER OF ADMINISTRATION and if the deceased owned real estate in New Hampshire, list the location of the real estate, including the book and page numbers. (If more space is needed, attach additional pages)

\_\_\_\_\_  
Street City

and recorded in the County of \_\_\_\_\_ Book/Page \_\_\_\_\_ / \_\_\_\_\_

10. The deceased was not a resident of New Hampshire and at the time of death, the deceased owned real estate in the State of New Hampshire and the deceased did **not** have an estate probated in another state. (If more space is needed, attach additional pages)

☐ Yes ☒ No If **yes** complete Section 10A

10A. At the time of death the deceased owned real estate located at:

\_\_\_\_\_  
Street City

and recorded in the County of \_\_\_\_\_ Book/Page \_\_\_\_\_ / \_\_\_\_\_

Authenticated copy of out-of-state Probate

11. The deceased was not a resident of New Hampshire and at the time of death, the deceased owned real estate in the State of New Hampshire **and** the estate was probated in another state. (If more space is needed, attach additional pages)

☒ Yes ☐ No If **yes** complete Section 11A-11B

11A. At the time of death the deceased owned real estate located at:

See attached list of properties in Hampton and Franconia

\_\_\_\_\_  
Street City

and recorded in the County of Rockingham and Grafton Book/Page \_\_\_\_\_ / \_\_\_\_\_

Case Name: Estate of Lorraine R. O'Neill

Case Number: 318-2019-ET-00981

**PETITION FOR ESTATE ADMINISTRATION**

11B. A copy of the probate (including will, if applicable) of the deceased duly authenticated by the court in the state where the estate is open must be mailed to the Circuit Court Administrative Office.

12. Complete sections 12A, 12B and 12C only if the deceased died **with a will**:

12A. List all persons and/or entities named in the will to inherit personal or real property that were living at the time of the decedent's death. (Do not list "contingent" beneficiaries in this section.) If the entity to inherit is a trust, list the name of the trust and trustee(s). (If more space is needed, attach additional pages)

Name: Paul T. O'Neill

Relationship to decedent: son Under 18 y/o: ☐ Yes ☒ No

Mailing address: 153 East Emerson Street, Melrose, MA 02176  
Street City State Zip code

Name: John F. O'Neill

Relationship to decedent: son Under 18 y/o: ☐ Yes ☒ No

Mailing address: 61 Melrose Street, Melrose, MA 02176  
Street City State Zip code

Name: Patricia M. O'Neill

Relationship to decedent: Daughter Under 18 y/o: ☐ Yes ☒ No

Mailing address: 109 Forest Street #2, Lowell, MA 01851  
Street City State Zip code

Name: Robert J. O'Neill, Jr.

Relationship to decedent: son Under 18 y/o: ☐ Yes ☒ No

Mailing address: 17 Auburn Avenue, Hampton, NH 03842  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name of Entity: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name of Trust: The Lorraine R. O'Neill Revocable Trust - 2004

Name of Trustee: Robert J. O'Neill, Jr.

Mailing address: 17 Auburn Avenue, Hampton, NH 03842  
Street City State Zip code

Name of Trustee (if more than one): Paul T. O'Neill

Mailing address: 153 East Emerson Street, Melrose, MA 02176  
Street City State Zip code

Case Name: Estate of Lorraine R. O'Neill

Case Number: 318-2019-ET-00981

**PETITION FOR ESTATE ADMINISTRATION**

- 12B. List any persons named in the will to inherit personal or real property that were not living at the time of the decedent's death. (If there is more than one deceased person named in the will or if more space is needed, attach additional pages)

Name: Michael J. O'Neill Date of Death 12/25/14

12B(1). If the will requires a person to survive the decedent in order to inherit, list the contingent persons named in the will.

Name: None Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_  
Street City State Zip code

12B(2). If the will does not require a person to survive the decedent in order to inherit, list the children of the deceased person named in the will who would have inherited under the will. (If any children of the deceased person named in the will were not alive when decedent died, list the children of that deceased child pursuant to RSA 551:12.) (If more space is needed, attach additional pages)

Name: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Relationship to deceased person who would have inherited: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Relationship to deceased person who would have inherited: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Relationship to deceased person who would have inherited: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Relationship to deceased person who would have inherited: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
Street City State Zip code

**PETITION FOR ESTATE ADMINISTRATION**

- 12C. List the spouse and all known children of the decedent, not named in the will as a beneficiary to inherit. If any of these children were not alive at decedent's date of death, list the children of that deceased child (decedent's grandchildren). If any of these children were not alive at decedent's date of death, list the children of that deceased child (decedent's great-grandchildren). If any of these children were not alive at decedent's date of death, list the children of that deceased child (decedent's great-great-grandchildren). If none, list the parents of the decedent, if living. If neither parent is alive, list the decedent's brothers and sisters, if living, and the children of any deceased brothers and sisters. If any of the children of the deceased brothers or sisters are not living, list the children of that deceased child. If none, list the grandparent(s) of the decedent, if living. If none, list the decedent's aunts and uncles, if living, and the children of any deceased aunts and uncles. (If more space is needed, attach additional pages)

Name: Russell O'NeillRelationship to decedent: Grandson (son of Michael) Under 18 y/o: ☐ Yes ☒ NoMailing address: Address is unknown

Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_

Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_

Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_

Street City State Zip code

13. Complete sections 13A-13F only if the deceased died **without a will**:

- 13A. List the decedent's surviving spouse, if any.

Name \_\_\_\_\_ Street/City/State/Zip code \_\_\_\_\_

- 13B. Does the surviving spouse have children who are not children of the marriage to the decedent AND who were not adopted by the decedent?

☐ Yes ☐ No

- 13C. List all the children born of or adopted by the decedent who were living at the time of the decedent's death.

Name: \_\_\_\_\_

Child of surviving spouse: ☐ Yes ☐ No Under 18 y/o: ☐ Yes ☐ No

Mailing address: \_\_\_\_\_

Street City State Zip code

**PETITION FOR ESTATE ADMINISTRATION**

Name: \_\_\_\_\_

Child of surviving spouse: ☐ Yes ☐ No Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Child of surviving spouse: ☐ Yes ☐ No Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Child of surviving spouse: ☐ Yes ☐ No Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

- 13D. List all children born of or adopted by the decedent who were not living at the time of the decedent's death. (If there is more than one deceased child or if more space is needed, attach additional pages)

Name: \_\_\_\_\_ Date of Death \_\_\_\_\_

List the deceased child's surviving children, grandchildren, etc.  
(If more space is needed, attach additional pages)

Name: \_\_\_\_\_

Relationship to deceased child: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to deceased child: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to deceased child: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

- 13E. If the decedent had no surviving children, grandchildren etc. (to the fourth degree of kinship) list the decedent's parent(s) if living at the time of the decedent's death.

Name \_\_\_\_\_ Street/City/State/Zip code \_\_\_\_\_

Name \_\_\_\_\_ Street/City/State/Zip code \_\_\_\_\_

**PETITION FOR ESTATE ADMINISTRATION**

13F. If the decedent had no surviving spouse, parents or children, grandchildren etc. (to the fourth degree of kinship) list the decedent's brothers and sisters, if living, and the children and grandchildren of any deceased brothers and sisters. If none, list the grandparent(s) of the decedent, if living. If none, list the decedent's aunts and uncles, if living, and the children of any deceased aunts and uncles. (If more space is needed, attach additional pages)

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

Name: \_\_\_\_\_

Relationship to decedent: \_\_\_\_\_ Under 18 y/o: ☐ Yes ☐ NoMailing address: \_\_\_\_\_  
Street City State Zip code

14. The value of the estate of the deceased consists, as nearly as can be ascertained, of:

Real Estate (only if located in NH)..... \$ 2,449,400.00

Personal Estate ..... \$ 0.00

Total amount of Estate ..... \$ 2,449,400.00

- If you are filing an **ORIGINAL** Petition for Estate Administration **the court will send copies** to all interested parties to the addresses you provided above. (Do not send copies and do not complete the statement below certifying you are sending them)

OR

- If you are filing an **AMENDED** Petition for Estate Administration **you must send copies** and complete the statement below certifying you have done this.



Case Name: Estate of Lorraine R. O'Neill

Case Number: 318-2019-ET-00981

**PETITION FOR ESTATE ADMINISTRATION**

Complete this only if this is an **Amended** petition:

☐ I state that on this date I am sending a copy of this document as required by the rules of the Circuit Court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

**Bond Acknowledgment:** If appointed, I understand the court may require a surety bond. If a bond is not required, I understand that it is my responsibility to manage all assets of the estate in a prudent manner. I further understand that if I fail to do so I may be held personally responsible up to the value of the assets of the estate.

**Signature Instructions: The signature area below is for Petitioner(s) only.**  
**Attorneys representing Petitioner(s) do not sign here.**

**Verification:** I verify the truth and accuracy of all facts alleged within this document to the best of my belief and further verify that all facts contained in this document are alleged in good faith. By affixing my electronic signature to this document I acknowledge my understanding that any false statements made in this document are punishable as perjury which may include a fine or imprisonment or both.

John G. Dugan, Esquire

Petitioner Name

/s/ John G. Dugan, Esq. 05/24/2019

Petitioner Signature John G. Dugan, Esquire Date

Doherty, Dugan, Cannon, Raymond & Weil PC

Petitioner Address

124 Grove St. #220, Franklin, MA 02038

City State Zip code

(508) 541-3000

Petitioner Telephone

jgd@dcdclaw.com

Petitioner E-mail

**Verification:** I verify the truth and accuracy of all facts alleged within this document to the best of my belief and further verify that all facts contained in this document are alleged in good faith. By affixing my electronic signature to this document I acknowledge my understanding that any false statements made in this document are punishable as perjury which may include a fine or imprisonment or both.

\_\_\_\_\_  
Co-Petitioner Name

/s/ \_\_\_\_\_  
Co-Petitioner Signature Date

\_\_\_\_\_  
Co-Petitioner Address

\_\_\_\_\_  
City State Zip code

\_\_\_\_\_  
Co-Petitioner Telephone

\_\_\_\_\_  
Co-Petitioner E-mail

**NOTE ONLY IF THIS IS AN ORIGINAL PETITION (not an Amended): FOR THIS FILING TO BE COMPLETE THE FOLLOWING MUST BE MAILED TO THE CIRCUIT COURT ADMINISTRATIVE OFFICE.**

- A **CERTIFIED COPY OF THE DEATH CERTIFICATE**
- THE **ORIGINAL WILL AND ANY CODICILS (AMENDMENTS)** IF THE DECEASED DIED WITH A WILL

Case Name: Estate of Lorraine R. O'Neill

Case Number: 318-2019-ET-00981

**PETITION FOR ESTATE ADMINISTRATION**

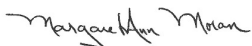
**FOR COURT USE**

**ORDER**

- ☐ Request for Waiver of Full Administration is granted; certificate of appointment to be issued.
- ☐ Petition for administration is granted; certificate of appointment to be issued.
- ☒ Petition for administration is granted; certificate of appointment to be issued. Prior to issuance the Executor/Administrator is ordered to file with the court, within 30 days of this order, a corporate surety bond in the amount of \$ 2,400,000.00  
Failure to file the bond within 30 days may result in dismissal of the case.

☐ **Recommended:**

☒ **Ordered by the Court:**



Judge Margaret Ann Moran

08/23/2019

ESTATE OF LORRAINE R. O'NEILL  
10<sup>TH</sup> CIRCUIT – PROBATE DIVISION – BRENTWOOD  
CASE NO.

ATTACHMENT TO PETITION FOR ESTATE ADMINISTRATION  
QUESTION 8A AND 8B

The named executors, Robert J. O'Neill, Jr., and Paul T. O'Neill, have failed to file for administration in accordance in RSA 553:3. In addition, they agreed not to serve as Personal Representatives in Massachusetts in accordance with a signed Stipulation and Memorandum of Agreement filed with the Middlesex County Probate Court in Massachusetts and approved on 05/18/18 (see Decree and Order on Petition for Formal Adjudication included with authenticated copy of Massachusetts probate). The Massachusetts Agreement further provides that Attorney John G. Dugan be appointed in their place. Attorney Dugan respectfully requests appointment as New Hampshire ancillary administrator in accordance with the Agreement.

ESTATE OF LORRAINE R. O'NEILL  
10TH CIRCUIT - PROBATE DIVISION - BRENTWOOD  
CASE NO.

ATTACHMENT TO PETITION FOR ESTATE ADMINISTRATION  
QUESTION NO. 11A

<u>Real Estate Description</u>	<u>Book/Page</u>	<u>Assessed Value</u>	<u>Total Value</u>
<u>Town of Hampton, Rockingham County, NH:</u>			
4 Auburn Avenue Ext.	3104/2627	\$ 265,700.00	
12 Auburn Avenue	1678/0139	331,100.00	
13-15 Auburn Avenue	1886/0373	265,400.00	
17 Auburn Avenue	1766/0203	236,600.00	
22 Auburn Avenue	2307/0418	347,600.00	
24 Auburn Avenue	2548/2127	260,300.00	
26 Auburn Avenue	2068/0474	19,200.00	
28 Auburn Avenue	2068/0474	17,500.00	
2-14 Gookin Court	2068/0474	490,100.00	
Total Hampton			\$ 2,233,500.00
<u>Town of Franconia, Grafton County, NH*:</u>			
96 Slalom Lane	2155/157	\$ 199,900.00	
Lot - Slalom Lane	2155/157	16,000.00	
Total Franconia			215,900.00
Total Real Estate			\$ 2,449,400.00

**\*NOTE:** The Franconia real estate was taken by the Town of Franconia via Tax Collector's Deeds dated 10/07/16 recorded at Book 4269, Pages 340 and 341, and are no longer owned by the Estate.