

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

ROCKINGHAM COUNTY

10<sup>th</sup> CIRCUIT - PROBATE DIVISION - BRENTWOOD

**IN RE ESTATE OF ARTHUR WALDO PERHAM**

**Case No. 318-2016-ET-1455**

**Case No. 318-2016-ET-1482**

**ORDER AFTER FURTHER STRUCTURING CONFERENCE**  
**AND ON MOTION TO EXTEND DEADLINE REGARDING SPOUSAL SHARE**

This Court held a further structuring conference on March 27, 2017, after an initial structuring conference on December 14, 2016. Appearing at the hearing were Attorney Ryder, representing the petitioner Wendy Lee, and Attorney Ricardo, representing petitioner Karen Horsman, who was also present. Prior to the hearing, the parties submitted an assented motion for discovery schedule and trial. That motion is granted as set forth in this order.

In addition, I heard arguments of the parties regarding Ms. Horsman's motion to clarify or extend deadline for election of spousal share. For the reasons set forth below, that motion is granted. Therefore, I issue the following findings and orders regarding the deadlines and trial in this matter.

Ms. Horsman has requested an order finding that good cause exists to extend the deadline set forth in RSA 560:14 for an election by a surviving spouse pursuant to RSA 560:10. Her argument for the extension is that the parties are engaged in litigation to determine which will, the 2016 will and the associated trust, or the 2014 will, is the valid will of the decedent. Although neither will names Ms. Horsman as a devisee, the 2016 will is a pour over will leaving all property to a trust created by the deceased that benefits Ms. Horsman.

As a result, although Ms. Horsman is aware of the assets of the estate, she does not know which testamentary instrument will govern the disposition of those assets, and will not know that fact until after the trial of the issues raised by Wendy Lee. She argues that until she knows which will is to be administered, she cannot make a decision about whether to seek her statutory share under RSA 560:10.

Counsel for Ms. Lee argues that since Ms. Horsman is aware of the assets of the estate, she does not need to delay any election under RSA 560:10. He claims that the other legatees will be prejudiced if they are forced to wait for the spousal election to be made after the litigation regarding the wills is concluded.

After a review of the facts and the law, I find that there is good cause to extend the deadline in this case. The purpose of the statute is to require the spouse of the deceased to make an election so that the administration of the estate will not be unreasonably delayed. See *Jaques v. Chandler*, 73 N.H. 376 (1905). Prior to the statutory deadline, estates were often in a state of uncertainty until the spouse either accepted his or her share under the will, or made an election.

In this case, the estate will not be administered until after the challenge to the 2016 will, and any related documents, is completed. Therefore, the extension requested by the spouse does not prejudice the heirs. Indeed, it would not be reasonable or just to require Ms. Horsman to make her election before she – and all of the other legatees or heirs – know which will is to be administered.

As a result, the motion of Ms. Horsman is granted. In the event that the 2016 will is invalidated by this Court such that the 2014 will is to be probated, Ms. Horsman, as the surviving spouse, shall have six months from the date of the appointment of the executor or administrator for the 2014 will to waive the 2014 will and elect to receive her share under RSA 560:10.

As for the structuring order in this matter, I order as follows:

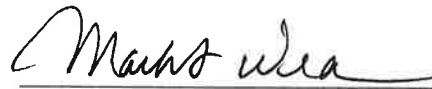
1. The parties will proceed to trial on the motion to re-examine probate will filed by Wendy Lee, the amended statement on motion to re-examine probate will filed by Ms. Lee, and the motion for declaratory relief filed by Ms. Horsman and Ms. Lee's objection thereto.
2. As represented at the structuring conference, Ms. Horsman shall not expend, transfer or encumber any of the funds she received through the deceased's Oppenheimer account(s). In addition, the parties have agreed to consult with each other regarding the disposition of the deceased's Cadillac.
3. Discovery shall close by September 1, 2017. Both parties shall disclose any experts by June 1, 2017, as well as exchange witness lists.

4. A final pretrial conference is scheduled for November 6, 2017 at 1:00 pm. At least 14 days prior to the pretrial, the parties shall prepare and file final pretrial statements with the court and exchange witness and exhibit lists. All exhibits shall be in three ring binders, with a table of contents, and tabbed for each exhibit. Ms. Lee shall number her exhibits, and Ms. Horsman shall use letters to mark her exhibits. All exhibits shall be submitted to the court at least three days prior to the commencement of trial. Any failure to disclose a witness or exhibit may result in the exclusion of that exhibit or witness from the trial.
5. Trial shall occur starting at 9:00 am each day on December 20 and 21, 2017 and January 10 and 11, 2018.

SO ORDERED

Date

3/31/17

  
Mark F. Weaver, Judge