

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: January 6, 2022)

ALISON E. GLASSIE

:

V.

:

C.A. No. NP-2016-0265

:

consolidated with

:

C.A. No. NC-2012-0262

:

:

PAUL DOUCETTE, IN HIS  
CAPACITY AS EXECUTOR  
OF THE ESTATE  
OF DONELSON GLASSIE

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DECISION

VAN COUYGHEN, J. This case involves a probate appeal in which Alison E. Glassie, as Executrix of the Estate of Jacquelin Glassie and Assignee of Wells Fargo Bank, N.A., Trustee of the Jacquelin Caffrey Glassie Trust II, seeks to file a claim out of time against the Estate of Donelson C. Glassie. Paul Doucette (hereinafter referred to as the Executor or Mr. Doucette) is the named Executor of Mr. Glassie’s Estate and has objected to the petition. For the reasons stated herein, Appellant’s petition is granted. Jurisdiction is pursuant to G.L. 1956 §§ 33-23-1 and 8-2-13.

I

**Standard of Review**

Section 33-23-1 of the Rhode Island General Laws authorizes a person aggrieved by an order or decree of the Probate Court to appeal to the Superior Court in the county in which the Probate Court is located. In hearing a probate appeal, “the Superior Court is not a court of review of assigned errors of the probate judge, but is rather a court for retrial of the case de novo.” *In re Estate of Paroda*, 845 A.2d 1012, 1017 (R.I. 2004) (quoting *Malinou v. McCarthy*, 98 R.I. 189, 192, 200 A.2d 578, 579 (1964)); see § 33-23-1(d). Further, “[t]he findings of fact and/or decisions

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of the probate court may be given as much weight and deference as the superior court deems appropriate, however, the superior court shall not be bound by any such findings or decisions.” Section 33-23-1(b).

When presiding over a nonjury trial, Rule 52(a) of the Superior Court Rules of Civil Procedure requires that the trial justice “find the facts specially and state separately its conclusions of law thereon . . . .” Super. R. Civ. P. 52(a). Accordingly, in a nonjury trial, “the trial justice sits as a trier of fact as well as of law . . . [and] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)).

The Rhode Island Supreme Court has stated that such “findings of fact by a trial justice sitting without a jury are entitled to great weight . . . .” *In re Dissolution of Anderson, Zangari & Bossian*, 888 A.2d 973, 975 (R.I. 2006) (quoting *Burke-Tarr Co. v. Ferland Corp.*, 724 A.2d 1014, 1018 (R.I. 1999)).

“The trial justice, however, ‘need not engage in extensive analysis to comply with this requirement.’” *Wilby v. Savoie*, 86 A.3d 362, 372 (R.I. 2014) (quoting *Connor v. Schlemmer*, 996 A.2d 98, 109 (R.I. 2010)). “A trial justice’s analysis of the evidence and findings in the bench trial context need not be exhaustive, and if the decision reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law.” *Notarantonio v. Notarantonio*, 941 A.2d 138, 144-45 (R.I. 2008) (quoting *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005)). In accordance with the above-referenced standard, the Court makes the following findings of fact and conclusions of law.

## II

### Facts and Travel

This case and its companion case (C.A. No. NC-2012-0262) have a complex procedural history dating back to 2012.<sup>1</sup> The Court will only relate the facts necessary to resolve the issues presented in this case.

Donelson Glassie died on February 3, 2011. Joint Ex. 1, ¶ 15. Mr. Doucette was appointed Executor of Mr. Glassie's Estate on February 25, 2011. *Id.* ¶ 16; Trial Tr. Vol. I, 33:24-34:1, Sept. 28, 2021 (Trial Tr. Vol. I). Mr. Doucette is married to the eldest daughter of Mr. Glassie and Mr. Glassie's first wife. Trial Tr. Vol. I, 57:12-18. Mr. Glassie and his first wife divorced. Mr. Glassie then married Marcia Sallum Glassie and the couple had three daughters: Alison, Georgia, and Jacquelin.<sup>2</sup> *Id.* at 28:20-29-5.

Mr. Glassie and Ms. Sallum Glassie subsequently divorced. *Id.* at 29:6-12. On July 1, 1993, the parties entered into a property settlement agreement. *Id.* at 29:13-15; *see* Appellant's Ex. 1. The property settlement agreement required that Mr. Glassie establish, and fund, a trust for their youngest daughter, Jacquelin, comparable to the trusts for their other two daughters established by Mr. Glassie's mother, Sara Madison Eccles. *See* Appellant's Ex. 1, at 14. The property settlement

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<sup>1</sup> The case before the Court, its companion case, and two other related cases all involving the Estate of Donelson Glassie have worked their way between the Probate Court for the City of Newport, the Newport Superior Court, and the Rhode Island Supreme Court for almost ten years. For a complete background, the reader is referred to *Glassie v. Doucette*, 159 A.3d 88 (R.I. 2017); *Glassie v. Doucette*, 157 A.3d 1092 (R.I. 2017). The Court consolidated this case with its companion case in an attempt to bring them to resolution.

<sup>2</sup> The Court is using first names to avoid confusion as many of the litigants' last names are Glassie. The Court intends no disrespect.

agreement required minimum yearly payments until the trust was equal to the amount of the trusts established for the other two daughters. *Id.* Wells Fargo Bank was the corporate trustee.<sup>3</sup>

Upon Mr. Glassie's death, Jacquelin believed that Mr. Glassie had not funded her trust as required by the property settlement agreement. Trial Tr. Vol. I, 34:10-18. Due to this belief, she filed a claim with the Newport Probate Court. *Id.* The Probate Court judge allowed the filing of the claim although it was not filed within six months of publication of Mr. Doucette as Executor and was, thus, out of time. *Id.* at 35:6-36:4; Appellant's Ex. 3. The Executor disallowed the claim and on June 22, 2012, the Probate Court entered an order pursuant to G.L. 1956 § 33-11-16, holding that the "pleading, discovery and trial of the issues presented would be more efficiently presented in the superior court," thus affirming the executor's disallowance. Appellant's Ex. 5; Trial Tr. Vol. I, 36:5-8. Jacquelin timely filed an appeal to the Superior Court on June 25, 2012. *See* C.A. No. NC-2012-0262.

Jacquelin died unexpectedly on November 18, 2012. Trial Tr. Vol. I, 39:19-22. Jacquelin's sister, Alison, was the named Executrix under Jacquelin's will. *Id.* Alison testified at trial. She testified that she has a Ph.D. in English Literature from the University of Virginia and is currently a post-doctorate fellow at the Mahindra Humanities Center at Harvard University. *Id.* at 39:7-16. Alison testified regarding her efforts to pursue Jacquelin's claim regarding funding of the trust (the Jacquelin Trust). Alison testified that in December 2012, just a month after Jacquelin's death and prior to being appointed as Executrix, she received notification from Wells Fargo Bank, as Trustee, that she was a beneficiary of the Jacquelin Trust and that she would be receiving a distribution

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<sup>3</sup> The original trustee was First Security Bank of Utah. Mr. Glassie's family had a founding interest in that bank through his mother, Sarah Madison Eccles. Trial Tr. Vol. II, 197:9-14, Sept. 29, 2021 (Trial Tr. Vol. II). Ms. Eccles had established various family trusts with First Security Bank of Utah prior to its purchase by Wells Fargo Bank. *Id.* at 219:4-10; 227:8-228:1.

from the Trust in the near future. *Id.* at 40:16-20. Alison responded by asking Wells Fargo Bank to delay distribution as she wanted time to learn more about the pending litigation initiated by Jacquelin and to consult with her attorneys regarding the Jacquelin Trust. *Id.* at 40:20-41:2. Wells Fargo Bank agreed to delay distribution as requested. *Id.* at 41:3-4.

Alison then proceeded to take the legal steps she was required to take pursuant to being named Executrix of Jacquelin's Estate. She was appointed Executrix of Jacquelin's probate Estate on January 9, 2013. Joint Ex. 1 ¶ 24. On February 21, 2013, Alison was also substituted, in her capacity as Executrix, as plaintiff in the Superior Court probate appeal initiated by Jacquelin. *Id.* ¶ 25.

Mr. Doucette, as Executor of Mr. Glassie's Estate, filed a motion for summary judgment on April 29, 2013, in the Superior Court case initiated by Jacquelin. Mr. Doucette argued that Alison did not have standing to sue on behalf of the Jacquelin Trust and that Wells Fargo Bank, as the Trustee, was the proper party to bring suit. Alison testified that she, through her attorneys, objected to the motion for summary judgment but also, at the same time, asked Wells Fargo Bank for an assignment of rights in order to pursue Jacquelin's claim. Trial Tr. Vol. I, 41:17-42:8; *see* Appellant's Ex. 8 (e-mail dated June 18, 2013 from Attorney Lawrence P. McCarthy with attachments requesting an assignment of rights from Wells Fargo Bank). Alison testified that she never received a response to Mr. McCarthy's June 18, 2013 inquiry. Trial Tr. Vol. I, 45:25-46:7.

Another justice of this Court granted the Executor's motion for summary judgment on December 10, 2013, and Alison appealed to the Rhode Island Supreme Court. Alison testified that the case was part of the appellate mediation program and was scheduled for mediation in either March or April of 2014. She testified that the mediator suggested that both this case as well as the case brought by Alison's mother, Marcia, be conjointly mediated. *Id.* at 49:17-22. By letter dated

May 30, 2014, Attorney Melissa Horne, counsel for the Executrix, notified Wells Fargo Bank of the upcoming mediation and presented the basis for not distributing the Jacquelin Trust until the Rhode Island litigation was resolved. Appellant's Ex. 9 (letter from Attorney Horne to Ms. Angstman). The letter also addressed the differing interpretation between Wells Fargo Bank, as Trustee, and Alison, as Executrix, relating to who would be entitled to the final distribution of the Jacquelin Trust. *Id.* The mediation was rescheduled to June 26, 2014. *Id.* By e-mail dated June 24, 2014 from its attorney and addressed to both Ms. Horne and Mr. Prentiss,<sup>4</sup> Wells Fargo Bank notified the parties that, in its opinion, the mediation would not resolve the conflict regarding the interpretation and distribution of the Jacquelin Trust and, therefore, refused to participate. Appellant's Ex. 10 (e-mail from Attorney John Adams to Attorneys Horne and Prentiss). The e-mail also notified the parties that Wells Fargo Bank intended to file suit in Utah to resolve the issue of distribution in favor of its interpretation of the Jacquelin Trust (the Utah litigation). *Id.*

Alison testified that the June 2014 mediation was continued to a date in August 2014 due to an attorney's illness. Trial Tr. Vol. I, 50:15-22. At the August mediation, the mediator again suggested that Wells Fargo Bank should be present. *Id.* at 60:8-22. The mediation was continued, and Wells Fargo Bank was again invited to participate in the mediation. *Id.* at 62:21-63:8. By letter from its attorney dated August 27, 2014, Wells Fargo Bank again declined to participate in the mediation. Appellant's Ex. 13 (letter from Attorney Adams to Attorney Horne). Wells Fargo Bank still had not responded to Alison's request that Wells Fargo Bank assign its rights as Trustee to Alison as Executrix so she could pursue the claims set forth in Jacquelin's complaint. Trial Tr. Vol. I, 69:19-24.

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<sup>4</sup> Mr. Prentiss, defense counsel in this case, was hired by Mr. Doucette to represent Elizabeth Doucette and Thomas Glassie as potential beneficiaries of the Jacquelin Trust.

In October 2014, Wells Fargo Bank filed a petition in the Third Judicial District Court of Utah seeking permission to distribute the Jacquelin Trust to the five children of Donelson Glassie who survived Jacquelin, namely: Elizabeth Doucette, Thomas Glassie, Alison Glassie, Georgia Glassie, and Christopher Glassie.<sup>5</sup> Appellant's Ex. 14. As stated above, Alison, as Executrix, disagreed with Wells Fargo Bank's interpretation of who was entitled to distribution of the Jacquelin Trust. Trial Tr. Vol. I, 66:12-67:11.

In response to Wells Fargo Bank's petition, Alison, as Executrix of Jacquelin's Estate, hired Utah counsel who filed an objection and counterclaims in the Utah litigation. *Id.* at 70:7-10; 85:1-9. The first counterclaim alleged misinterpretation by Wells Fargo Bank relating to distribution of the Jacquelin Trust. *Id.* at 85:11-13. The second counterclaim alleged breach of fiduciary duty by not assigning the trustee's rights to Alison in order for her to pursue Jacquelin's claim regarding the funding of the Jacquelin Trust. *Id.* at 85:13-16.

Alison testified that she reiterated her claims for assignment or substitution through her local counsel in Utah and her Rhode Island counsel while the case was pending in the Rhode Island Supreme Court. Trial Tr. Vol. I, 70:4-17; Appellant's Ex. 15 (letter from Attorney John F. Kelleher to Attorney John A. Adams, dated November 3, 2014). Alison also sought prior documentation from the law firm representing Wells Fargo Bank regarding Ms. Eccles, Mr. Glassie, and Wells Fargo Bank related to the Jacquelin Trust. Appellant's Ex. 15. In a letter from Attorney Adams dated November 18, 2014 responding to the above-referenced letter from Mr. Kelleher, Mr. Adams refused to produce requested documentation regarding the Jacquelin Trust, citing its previous representation of Sarah Madison Eccles, Donelson Glassie, and Wells Fargo Bank

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<sup>5</sup> Christopher Glassie was the child of Mr. Glassie and Melissa O'Brien. Trial Tr. vol. 1, 57:23-58:2. Christopher was born after Mr. Glassie and Marcia divorced. *Id.* at 57:25.

alleging attorney-client privilege. Appellant's Ex. 16 (letter from Attorney Adams to Attorney Kelleher). Mr. Adams also stated that as a result of not being a party to the Rhode Island litigation, "Wells Fargo believes it would be imprudent, now, to be substituted as the plaintiff in that case." *Id.*

Alison testified that during this time, she instructed her attorneys to initiate settlement negotiations to attempt to resolve Jacquelin's claims. Trial Tr. Vol. I, 80:9-12. She testified that those efforts were not successful. *Id.* at 84:22-24.

In the meantime, Alison's Utah counsel was able to negotiate a partial settlement of one of her counterclaims in the Utah litigation regarding Wells Fargo Bank's alleged breach of fiduciary duty to the Jacquelin Trust. *Id.* at 85:23-24. As a result of the partial settlement, Alison, as Executrix of Jacquelin's Estate, was assigned the rights to pursue the trust claims against Mr. Glassie's Estate on January 7, 2016. Appellant's Ex. 28. Alison testified that upon receipt of the assignment of rights, she contacted Mr. Doucette directly to see if a potential settlement was achievable. Trial Tr. Vol. I, 88:9-14. She testified that those discussions spanned from February 5, 2016 through February 21, 2016 and were ultimately unsuccessful. *Id.* at 89:20-24. Alison also testified that Wells Fargo Bank proposed settlement negotiations in March or April 2016 that were again unsuccessful. *Id.* at 96:7-97:15.

As a result of the failed settlement negotiations and recently obtained settlement of rights from Wells Fargo Bank, Alison, as Executrix and Assignee, filed a petition to file a claim out of time with the Newport Probate Court on May 9, 2016. Appellant's Ex. 30. The substance of the claim was the same as that which Jacquelin had filed in 2012. Trial T. Vol. I, 159:2-6. Alison's petition was objected to by the Executor. *Id.* at 100:11-13. The matter was heard in Newport Probate Court on May 27, 2016. On June 14, 2016, the Probate Court issued an order denying



Alison's petition to file a claim out of time.<sup>6</sup> Appellant's Ex. 31. The denial of the petition to file the claim out of time was timely appealed to this Court. Appellant's Ex. 32.<sup>7</sup>

While this case was pending, the Rhode Island Supreme Court issued its decision upholding the Superior Court's grant of summary judgment. The Court ultimately held that Alison, as Executrix, did not have standing to sue on behalf of the Jacquelin Trust. *Glassie v. Doucette*, 157 A.3d 1092 (R.I. 2017). As a result of the Supreme Court's decision and the assignment of rights from Wells Fargo Bank, Alison now has the requisite standing to pursue Jacquelin's claim if this Court grants the petition to file a claim out of time.

Alison was a credible witness, and the Court believes she accurately set forth her actions and the timeline associated with her attempts to obtain an assignment of rights from Wells Fargo Bank and to preserve Jacquelin's claim.

Alison, as Appellant, also called Mr. Doucette as a witness.<sup>8</sup> As stated above, Mr. Doucette is the Executor of the Estate of Donelson Glassie's probate estate and married to Mr. Glassie's eldest daughter from Mr. Glassie's first marriage, Elizabeth. Mr. Doucette testified that after he read the Jaquelin Trust, he believed that Mr. Glassie thought he had satisfied his obligations thereunder. Trial Tr. Vol. I, 149:7-8. He also testified that he never discussed the Jacquelin Trust with Mr. Glassie. *Id.* at 152:12-16. After reviewing the Jacquelin Trust, Mr. Doucette testified that he contacted Cathy Angstman, a Wells Fargo Bank employee who was a trust officer assigned to

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<sup>6</sup> The reasons for the Probate Court denial are not clear. The order cites the fact that the court already granted the previous petition in 2012 and that the matter was on appeal before the Rhode Island Supreme Court. Appellant's Ex. 31. The order also refers to the contents of a bench decision by the Probate Court which is not a part of this Court's record. *Id.*

<sup>7</sup> The Court declines to consider counsel's strategy associated with pursuing the Trust's claim against the Estate. As long as counsel's approach was reasonable, and the Court finds that it was, its chosen procedural path should not be analyzed with the benefit of hindsight in the context of resolving the issues before this Court.

<sup>8</sup> Mr. Doucette was also called by Mr. Prentiss for the defense.

handle the various Glassie trusts in Utah, and informed her of his opinion in that regard. *Id.* at 148:13-149:19; Appellant's Ex. 33. Mr. Doucette testified that Mr. Glassie had a longstanding relationship with Wells Fargo Bank<sup>9</sup> which involved several family trusts established by Mr. Glassie's mother, including the various individual trusts mentioned here. Trial Tr. Vol. II, 227:16-228:1. In fact, he testified that he first met Ms. Angstman and Mr. John Clower, who was the trust investment manager, in Miami with Mr. Glassie because Wells Fargo Bank was involved in the financing of various business interests of Mr. Glassie in Florida. *Id.* at 218:8-220:7.

Mr. Doucette also testified that the Donelson Glassie Estate has not been distributed and has in excess of two million dollars. Trial Tr. Vol. I, 145:17-19. Mr. Doucette was a credible witness, and the Court believes that he accurately testified regarding his actions and the timeline associated with his involvement in this litigation.

Alison also called Macrina Hjerpe as an expert witness. Ms. Hjerpe is an attorney licensed to practice law in Rhode Island and Massachusetts. In addition to her juris doctorate, Ms. Hjerpe has a Master of Laws in Taxation from Boston University School of Law. She has extensive experience in estate planning, Medicaid planning, and elder law. She was offered as an expert in trusts, trust administration, and estate administration without objection. In response to a lengthy hypothetical question which mirrored the travel of this case, Ms. Hjerpe offered her opinion that Alison, as Executrix, had no control over filing a claim against the Donelson Glassie Estate unless and until the rights of Wells Fargo Bank, as Trustee of Jacquelin's Trust, were assigned to Alison in her fiduciary capacity. Trial Tr. Vol. II, 193:15-24.

Ms. Hjerpe also testified that Wells Fargo Bank had complete control over the delay in the Executrix obtaining the assignment of rights to file the claim. *Id.* at 194:9-12. Ms. Hjerpe further

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<sup>9</sup> See *supra* n.3.

testified that Wells Fargo Bank was conflicted due to its relationship with the Glassie family and the differing positions of the beneficiaries of the Jacquelin Trust and should have petitioned the Utah court for instructions to resolve the assignment of rights issue. *Id.* at 194:12-195:10. Ms. Hjerpe testified regarding the longstanding relationship between Wells Fargo Bank and Donelson Glassie's mother's family, the Eccles. *Id.* at 197:6-14; 198:20-199:8. As stated above, the Eccles were the founders of First Security Bank in Utah which was eventually acquired by Wells Fargo Bank. *Id.* at 227:8-228:1.

On cross-examination, Ms. Hjerpe was questioned about the trust language which stated that upon the death of Jacquelin, the trust terminated. Ms. Hjerpe was asked whether Jacquelin's death required the trustee to terminate the trust and distribute the assets. Ms. Hjerpe testified that the trustee's primary obligation was to marshal the trust assets and that to terminate the trust before the assets were marshalled would be a breach of fiduciary duty. *Id.* at 201:10-14. Ms. Hjerpe was a credible witness.

### III

#### Analysis

Section 33-11-5(a) of the General Laws allows creditors to file claims in a decedent's estate within six months from the first publication of the fiduciary's appointment. Section 33-11-5(b) gives the Probate Court discretion to allow claims to be filed outside the six-month time period. Section 33-11-5(b) states as follows:

"A creditor who, by reason of accident, mistake, excusable neglect or lack of adequate notice of decedent's estate, failed to present a claim within six (6) months from the first publication, may before distribution of the estate, petition the probate court for leave to present a claim out of time . . . . [T]he probate court may in its discretion, grant leave to present the claim out of time upon such terms as the court prescribes. Any claim presented out of time, if allowed, shall be paid out of the assets remaining in the personal representative's hands when notice of the petition was received."

Accordingly, courts are “given a wide, although not unlimited, discretion in the matter of filing claims against estates out of time . . . .” *McAlpine’s Estate v. McAlpine’s Estate*, 120 R.I. 135, 141, 386 A.2d 179, 182 (1978). In exercising such discretion, this Court must also consider the legislative intent of § 33-11-5, which is to accelerate the settlement of estates. *Id.* at 143, 386 A.2d at 183; *see Tillinghast v. Iverson*, 50 R.I. 23, 26, 144 A. 673, 674 (1929); *Thompson v. Hoxsie*, 25 R.I. 377, 55 A. 930, 931 (1903).

It is well settled that “[t]he existence of excusable neglect (*vel non*) is a question of fact which must be determined on the basis of the evidence.” *Duffy v. Estate of Scire*, 111 A.3d 358, 366 (R.I. 2015) (citing *Pleasant Management, LLC v. Carrasco*, 960 A.2d 216, 222 (R.I. 2008)); *see Iddings v. McBurney*, 657 A.2d 550, 553 (R.I. 1995). “When determining whether or not the evidence in a particular case indicates that the conduct at issue amounts to excusable neglect, this Court asks whether what transpired was a ‘course of conduct that a reasonably prudent person would have taken under similar circumstances.’” *Duffy*, 111 A.3d at 366 (quoting *Boranian v. Richer*, 983 A.2d 834, 839 (R.I. 2009)). “Excusable neglect should be interpreted flexibly, because [t]he determination of excusable neglect is at bottom an equitable one, taking account of all [the] relevant circumstances . . . .” *Duffy*, 111 A.3d at 366 (citing *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993)).

Our Supreme Court has considered several factors in this regard which include “the length of the delay, its impact on the proceedings, whether the movant acted in good faith—and, importantly, whether the reason for the delay ‘was within the reasonable control of the movant.’” *Duffy*, 111 A.3d at 366 (quoting *Boranian*, 983 A.2d at 839). Excusable neglect must “‘not [be] in consequence of the party’s own carelessness, inattention, or willful disregard of the process of the

court . . . .” *In re Kyla C.*, 79 A.3d 846, 848 (R.I. 2013) (quoting *Small Business Loan Fund Corp. v. Gallant*, 795 A.2d 531, 533 (R.I. 2002)).

This Court is of the opinion that Alison, as Executrix of the Estate of Jacquelin Glassie and Assignee of the Trustee, Wells Fargo Bank, has satisfied her burden of establishing excusable neglect. Alison took the steps that any “reasonably prudent person would have taken under similar circumstances.” *Duffy*, 111 A.3d at 366 (quoting *Boronian*, 983 A.2d at 839) (internal quotations omitted). Alison was thrust into a complex legal scenario as a result of her sister’s sudden death. She expeditiously took the necessary steps to be appointed Executrix of Jacquelin’s Estate and substituted as a party in the Superior Court litigation initiated by Jacquelin, C.A. No. NC-2012-0262. Alison relied on her lawyers’ advice in attempting to navigate the twists and turns of the turbulent river, which is this case. Alison acted reasonably and prudently to attempt to have the case heard on the merits while making efforts to attempt settlement. *Duffy*, 111 A.3d at 366. There is no evidence that any of her actions were taken in bad faith or that she did anything but follow the advice of her legal counsel to effectuate those goals. *Id.*

When the Executor’s motion for summary judgment was originally filed in Superior Court, Alison objected but also asked Wells Fargo Bank for an assignment of rights. Trial Tr. Vol. I, 70:4-17. Alison was forced to undergo litigation in Utah with Wells Fargo Bank and was eventually able to obtain an assignment of rights from Wells Fargo Bank. Appellant’s Ex. 28. After Alison obtained the assignment, she petitioned the Newport Probate Court forthwith to file a claim out of time against Mr. Glassie’s Estate, which was denied. Appellant’s Ex’s. 30-31. All of this occurred before the Supreme Court rendered its decision which upheld the Superior Court’s grant of summary judgment. *Glassie*, 157 A.3d at 1099.

The delay in this case was caused by circumstances beyond Alison's control and there is no evidence that she was careless, inattentive, or exhibited a willful disregard for the processes of the court. *See Boranian*, 983 A.2d at 839. Further, there is no evidence that the delay in this case has had any negative impact on the trial on the merits. *See Duffy*, 111 A.3d at 366. Donelson Glassie's Estate has actively evolved in the issues associated with this litigation, and there is no evidence to support the proposition that Mr. Glassie's Estate has been prejudiced such that inequity would result to the Estate. *See McAlpine's Estate*, 120 R.I. at 141, 386 A.2d at 182.

The Executor argues that the excusable neglect inquiry should be applied to the actions of Wells Fargo Bank, rather than Alison as Assignee. The Executor's argument is without merit for a variety of reasons. First, caselaw has established that a court, in determining whether neglect is excusable, should consider whether the reason for the delay "was within the reasonable control of the movant[.]" *Carrasco*, 960 A.2d at 222. Here, Alison, rather than Wells Fargo Bank, is the movant and it is her action that should be the focus of the Court's analysis. *Id.*

Further, Wells Fargo Bank stated its belief that involvement with this litigation would be "imprudent." Appellant's Ex. 16. 'Imprudent' is defined as "[n]ot showing care for the consequences of an action; rash." *Imprudent*, OXFORD ENGLISH DICTIONARY, <https://www.lexico.com/en/definition/imprudent>. Accordingly, the thrust of Wells Fargo Bank's statement makes it clear that Wells Fargo Bank's awkward position as trustee induced the decision to refrain from involvement, rather than any opinion Wells Fargo Bank may have had regarding the merits of Alison's claim. Wells Fargo Bank's statement must be viewed against the backdrop of this case. Particularly, the Court must consider the disagreement among the beneficiaries of the Jacquelin Trust regarding its eventual distribution, and Wells Fargo Bank's longstanding relationships with both the beneficiaries of the Jacquelin Trust and Mr. Doucette as Executor of

Mr. Glassie's Estate. Given this factual underpinning, it is clear to this Court that Wells Fargo Bank was trying to evade the hornet's nest of potential conflicts which would be presented if it were to participate in this litigation. Thus, Wells Fargo Bank's failure to participate in this litigation in and of itself is not relevant to the issue of excusable neglect before the Court.

Accordingly, Alison, as movant, has established that the claim against Mr. Glassie's Estate should be allowed out of time. Section 33-11-5(b).

#### **IV**

#### **Conclusion**

For all of the reasons stated above, the decision of the Probate Court is reversed, and the claim shall be allowed out of time. Counsel for Appellant shall submit a form of order and judgment.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Alison E. Glassie v. Paul Doucette

**CASE NO:** NP-2016-0265  
Consolidated with  
NC-2012-0262

**COURT:** Newport County Superior Court

**DATE DECISION FILED:** January 6, 2022

**JUSTICE/MAGISTRATE:** Van Couyghen, J.

**ATTORNEYS:**

**For Plaintiff:** Melissa M. Horne, Esq.

**For Defendant:** R. Daniel Prentiss, Esq.  
Michael J. Richards, Esq.  
Lauren E. Jones, Esq.