

**COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

**No. 1788 DE of 2006**

**Estate of Boris Krichmar, Deceased**

**No. 545 DE of 2011**

**Estate of Valeriy Krichmar, Deceased**

**OPINION SUR DECREE**

Boris Krichmar and his only issue, a son named Valeriy Krichmar, died on January 31, 2005 as the result of a fire which ravaged their residence at 9276B Jamison Avenue, Philadelphia, Pennsylvania. At the time of their deaths neither Boris nor Valeriy was known to have a will.

On February 8, 2005, Daniel Krichmar, brother of Boris Krichmar, renounced his right to serve as administrator of the estate of Boris and requested that the Register of Wills grant Letters of Administration to Daniel's daughter, a niece of Boris, named Galina Krichmar. On February 11, 2005, the Register of Wills appointed Galina Krichmar to serve as Administratrix of the Estate of Boris

**Krichmar.**

**On June 15, 2005, Anna Guettel filed a Petition with the Register of Wills in which Petition Anna claimed to be the wife and sole heir of Boris Krichmar and asked the Register to revoke the Letters of Administration which had been issued to Galina Krichmar. After holding Hearings on May 17, 2006 and August 9, 2006, the Register issued a Decree dated October 20, 2006 wherein the Register revoked the Letters of Administration which had been issued to Galina Krichmar and stated that he would issue Letters of Administration D.B.N. to Anna Guettel as the spouse and sole intestate heir of Boris Krichmar.**

**On December 20, 2006, the Register of Wills issued a Decree whereby he appointed Anna Guettel to serve as Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased.**

**On February 20, 2007, the Register of Wills issued a Decree whereby he appointed Galina Krichmar to serve as Administratrix of the Estate of Valeriy Krichmar, Deceased.**

**After holding Hearings between January 27, 2009 and February 9, 2009, I issued an Opinion and 4 Decrees dated November 16, 2009, wherein I Dismissed the Appeal of Daniel and Galina Krichmar from the Decree of the Register of Wills dated October 20, 2006; I Denied an Amended Petition For Declaratory Judgment filed by Daniel and Galina Krichmar seeking a Declaration that Anna Guettel had forfeited her spousal rights; I Denied a Petition filed by Daniel and Galina Krichmar seeking to Remove Anna Guettel from her Office of Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased; I Ordered Anna**

**Guettel, Administratrix D.B.N., to file an Account of her administration of the Estate of Boris Krichmar, Deceased; I Ordered Galina Krichmar, Former Administratrix, to file an Account of her Administration of the Estate of Boris Krichmar, Deceased; and, I Ordered Jeffrey R. Solar, Esquire, Former Counsel to Galina Krichmar, Former Administratrix as aforesaid, to file an Account of all assets he received from the Estate of Boris Krichmar, Deceased.**

**By separate Decree dated April 19, 2011, I Ordered Galina Krichmar, Administratrix of the Estate of Valeriy Krichmar, Deceased, to file an Account of her Administration of the Estate of Valeriy Krichmar, Deceased.**

**On June 23, 2011, a panel of our Superior Court Affirmed my Decrees dated November 16, 2009.**

**The First And Final Account of Anna Guettel, Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased, was filed on December 29, 2009; bears Control Number 095450; and, appeared as Number 2 on my Audit List of February 1, 2010. Objections to said Account were filed by Daniel Krichmar, Individually, and, by Galina Krichmar, Individually and as Administratrix of the Estate of Valeriy Krichmar, Deceased. Daniel Krichmar also filed a Claim against the Estate of Boris Krichmar, Deceased, in the amount of \$66,650.00. Galina, in her capacity as Administratrix of the Estate of Valeriy Krichmar, Deceased, also filed a Claim against the Estate of Boris Krichmar, Deceased, in the amount of \$ 50,928.48.**

**The First And Final Account of Galina Krichmar, Former Administratrix of the Estate of Boris Krichmar, Deceased, was filed on April 18, 2011; bears Control Number 115128; and, appeared as Number 3 on my Audit List**

of June 6, 2011. Objections to said Account were filed by Anna Guettel, Individually and as Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased.

The First And Final Account of Jeffrey R. Solar, Esquire, Former Counsel to Galina Krichmar, Former Administratrix as aforesaid, was filed on January 4, 2010; bears Control Number 105000; and, appeared as Number 3 on my Audit List of February 1, 2010. Objections to said Account were filed by Anna Guettel, Individually and as Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased.

The Account of Galina Krichmar, Administratrix of the Estate of Valeriy Krichmar, Deceased, was filed on May 3, 2011; bears Orphans' Court Number 545 DE of 2011; bears Control Number 111224; and, appeared as Number 2 on my Audit List of June 6, 2011. Objections to said Account were filed by Anna Guettel, Individually and as Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased.

On April 10, 2012, Anna Guettel filed an "Amended Petition For Citation Directed To Galina Krichmar, Former Administratrix Of The Estate Of Boris Krichmar, Dec'd And Daniel Krichmar To Show Cause Why The Record And Non-Record Costs Of Anna Guettel Should Not Be Taxed Against Them". Said Petition bears Control Number 121083. Daniel and Galina Krichmar filed an Answer to said Amended Petition.

In early September 2012, disagreements between Anna Guettel and

her Counsel, Manuel A. Spigler, Esquire, resulted in the withdrawal of Mr. Spigler as Counsel for Anna.

On December 13, 2012, Mr. Spigler filed a “Petition For Leave To Intervene And Interplead” which bears Control Number 123870. In said Petition, Mr. Spigler seeks to intervene as a creditor of the Estate of Boris Krichmar. Daniel and Galina Krichmar filed an Answer to said Petition

On December 14, 2012, Mr. Spigler filed a “Petition For Counsel Fees And Costs” which bears Control Number 123884. In said Petition, Mr. Spigler seeks approval of counsel fees and costs for his representation of Anna Guettel as Administratrix of the Estate of Boris Krichmar. Daniel and Galina Krichmar filed Objections and a Response to said Amended Petition

Beginning on February 4, 2013 and ending on February 8, 2013, hearings were held on the aforementioned Accounts and Petitions. At said hearings I heard the testimony of Manuel Spigler, Esquire; Jeffrey Solar, Esquire; Galina Krichmar; JoAnn Conti; and, Anna Guettel.

Manuel A. Spigler, Esquire, offered 40 exhibits which were marked Exhibit “Spigler 1” through Exhibit “Spigler 39”, and, Exhibit S-1. Daniel and Galina Krichmar offered 20 exhibits which were marked as Exhibit “K-1” through “K-20”. Although all parties were required to attend the hearings per my Decree, Daniel Krichmar did not attend the hearings. On February 8, 2013, Galina Krichmar appeared before this Court *pro se* as her Counsel, Ms. Kamenitz, did not attend the hearing.

On February 4, 2013, during the first day of the hearings, after

considering the testimony and exhibits presented on the issue, I granted Mr.Spigler's petition to intervene as a creditor of the Estate of Boris Krichmar.

In Order to resolve the conflict between the parties, I must first address the following issues: (1) whether certain life insurance proceeds are an asset of Boris or Valeriy's estate?; (2) whether certain fire loss insurance proceeds, both for personal property loss and damage to real property, are an asset of Boris or Valeriy's estate?; (3) whether Mr.Spigler's claim for counsel fees and costs should be approved?; and, (4) whether docket and non-docket costs, as well as counsel fees, should be taxed against Daniel and Galina Krichmar?

#### Life Insurance Proceeds

Boris Krichmar owned a life insurance policy with Principal Life Insurance with a death benefit in the amount of \$140,915.00. (Exhibits K-3, K-4) The policy provided that the beneficiary was: "Valeriy Krichmar, son, if living, otherwise to the Estate of Boris Krichmar." (Exhibit K-3)

Principal Life Insurance issued two checks to Galina Krichmar as Administratrix of the Estate of Boris Krichmar, Deceased. One check is dated April 25, 2005 and is in the amount of \$50,349.32. One check is dated April 25, 2005 and is in the amount of \$90,565.68. Both checks were deposited into the account of the Estate of Boris Krichmar. (Exhibits Spigler-4, Spigler-5) In her testimony, Galina Krichmar indicated that the two checks deposited into Boris' estate account, in the total amount of \$140,915.00, were a combination of life insurance proceeds and a loan from Daniel Krichmar to pay for the expenses of Boris and Daniel Krichmar. (N.T. 2/05/13, 38:22-43:17, 60:6-61:20) Galina

Krichmar also testified that based on the death certificates she believed Valeriy had survived Boris and thus Valeriy's estate was the proper beneficiary of the life insurance proceeds. (N.T. 2/05/13, 38:22-43:17, 60:6-61:20) As a result, Galina maintained that the checks for the life insurance proceeds were assets of the Estate of Valeriy Krichmar, Deceased.

The timing of Boris and Valeriy Krichmars' deaths determines whether the life insurance proceeds are assets of Boris's estate or Valeriy's estate. Section 8504 of the Probate, Estates and Fiduciaries Code, adopting the approach of the Uniform Simultaneous Death Act, provides:

“Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. 20 Pa. C.S.A. § 8504.

In *Aetna Life Ins. Co. v. Pennsylvania*, when interpreting the Pennsylvania simultaneous death statute as it applies to insurance policies, the District Court held that “the burden is cast upon the person desiring to prove that the beneficiary survived the insured to so prove.” 180 F. Supp. 674, 677 (M.D. Pa. 1960); see also *Baldus v. Jeremias*, 145 A. 820 (Pa. 1929). In *Sweeney's Estate*, the Pennsylvania Superior Court stated that where this burden is not met the deceased parties “will be treated as dying at the same instant [. . .] in the absence of substantial evidence warranting a definite conclusion as to survivorship of those perishing in a common disaster.” 78 Pa. Super. 417, 427 (Pa. Super. 1922).

Although courts recognize that a death certificate generally constitutes prima facie evidence of its contents, when a death certificate is being

used to establish time or cause of death, courts recognize this information as hearsay. *Pittsburgh Nat. Bank v. Mutual Life Ins. Co. of New York*, 417 A.2d 1206, 1209 (Pa. Super. 1980). As a result, in establishing time of death the “contents of the certificate are admissible only insofar as they would be admissible if the official preparing the same had been called as a witness.” *Id.*; see also *Kubacki v. Metropolitan Life Insurance Co.*, 164 A.2d 48, 53 (Pa. Super. 1960); *Heffron v. Prudential Insurance Co.*, 8 A.2d 491 (Pa. Super. 1939).

Daniel and Galina Krichmar have not met their burden to establish that Valeriy Krichmar survived his father Boris Krichmar or that Valeriy and Boris died otherwise than simultaneously. The only evidence offered by Daniel and Galina are the death certificates of Boris and Valeriy Krichmar which indicate that Valeriy’s time of death was seven minutes prior to Boris’ time of death. (Exhibits K-1, K-2) The death certificates state that no autopsy was performed on either Boris or Valeriy and that Valeriy was pronounced dead at the hospital. (Exhibits K-1, K-2) Additionally, Daniel and Galina Krichmar did not present testimony from the physician or coroner who signed either death certificate. As a result, the time of death indicated on each death certificate is inadmissible hearsay and without the support of testimony from a medical examiner, physician or coroner the death certificates are not prima facie evidence of the times of death of Boris and Valeriy.

Emergency Medical Technician JoAnn Conti (“EMT Conti”) testified that she arrived on the scene at 5:30 a.m. to tend to a male body later determined to be Valeriy Krichmar. (N.T. 2/5/13, 132:2-7) EMT Conti testified that she

determined Valeriy to be dead at or before 5:31 a.m. and this was confirmed during a telephone call with a physician at the University of Pennsylvania Hospital. (N.T. 2/5/13, 114:6-116:13, 117:13-118:25) The time of death recorded on Valeriy's death certificate, 6:17 a.m., was registered upon his body's arrival at the hospital, forty five minutes after EMT Conti had pronounced Valeriy dead at the scene. (N.T. 2/5/13, 120:12-121;21, 136:13-137:8, 139:16-21) EMT Conti admitted that she could not determine an exact time of death for Valeriy because "[h]e was involved in a fire" but when she examined his body at the scene she concluded he had been dead for at least several minutes. (N.T. 2/5/13, 134:13-17)

EMT Conti also testified that at the time she arrived on the scene and tended to Valeriy's body there was still another male body in the fire. (N.T. 2/5/13, 130:20-23) Police reports indicate that Boris's body was transported directly from the scene to the Philadelphia morgue at 7:50 a.m. and the time of death indicated on both the police report and death certificate is 6:10 a.m. (Exhibits K-2, K-4)

As a finder of fact, I believe that the testimony of EMT Conti concerning the time of death of Valeriy Krichmar is both truthful and accurate. Having considered her testimony and the Exhibits offered in this matter, I find her testimony that she was unable to ascertain an exact time of death, but that she knew Valeriy to be dead at or before 5:31 am to be credible and convincing. As a result, Galina and Daniel have not met their burden of proof to demonstrate that Valeriy survived Boris or that they died other than simultaneously. As provided by 20 Pa.C.S.A. § 8504 where the insured and the beneficiary have died and there is not sufficient evidence as to priority of death, "the proceeds of the policy shall

be distributed as if the insured had survived the beneficiary”. On the record made by the parties in this matter, I hold that the life insurance proceeds are solely an asset of the Estate of Boris Krichmar, Deceased.

### **Fire Insurance Proceeds**

By Deed dated October 6, 1999, Boris Krichmar conveyed premises 9276 B Jamison Avenue, Philadelphia, to Boris Krichmar and Valeriy Krichmar for a stated consideration of \$1.00. (Exhibit Spigler-15) Said Deed was recorded in the Philadelphia Department of Records on October 25, 1999. Said Deed contains no language of survivorship. Said Deed creates a tenancy-in-common whereby each of Boris and Valeriy owns an equal, undivided, one-half interest in the premises as tenant-in-common.

By Mortgage dated October 6, 1999, Boris Krichmar and Valeriy Krichmar granted the residence at 9276B Jamison Avenue in Philadelphia to GMAC Mortgage Corporation to secure a loan in the original amount of \$57,500.00. Monthly payments on said Mortgage were made from a bank account held in the joint names of Boris and Valeriy Krichmar. On January 31, 2005, the principal balance of said loan was \$49,762.08. On April 22, 2005 a payment of \$1,878.41 was made on account of said loan. On May 27, 2005, all sums due under the said Mortgage, being \$49,715.66, were paid by Galina Krichmar by check drawn on the Account of the Estate of Boris Krichmar, Deceased. (Exhibit “K-9”).

Boris Krichmar obtained a fire insurance policy on the residence at

9276B Jamison Avenue and its contents with Farmers Insurance. The full homeowner's insurance policy was not produced in these proceedings, but the "Accord Evidence of Property Insurance" lists only Boris as the named insured on the policy. (Exhibit "K-6")

Farmers Insurance paid \$78,464.09 for real property loss sustained in the fire. Anna Guettel received said sum and deposited it into the account of the Estate of Boris Krichmar, Deceased. Farmers Insurance also paid \$14,000.00 to the City of Philadelphia Department of Licenses and Inspections. (Exhibit K-7). This amount is held in escrow by the City of Philadelphia pending the repair, secure or removal of the structure at 9276B Jamison Avenue. Philadelphia Code § 9-1904.

Farmers Insurance also paid \$57,000.00 for the personal property losses sustained in the fire. (Exhibit K-12) Galina Krichmar received said sum and deposited it into the account of the Estate of Boris Krichmar, Deceased.

### Real Property

Boris and Valeriy Krichmar owned their home as tenants-in-common. The "Accord Evidence of Property Insurance" lists only Boris as the policyholder and named insured on the fire insurance policy. (Exhibit K-5) Without the benefit of the full insurance policy, I do not have the policy's definition of who is an "insured" under the language of the policy.

In Pennsylvania, in order to recover on a policy in which an individual has been named an insured, it has to be shown that the individual possessed an insurable interest in the property. *Van Cure v. Hartford Fire Ins.*

*Co.*, 253 A.2d 663, 664 (1969); *Christ Gospel Temple v. Liberty Mutual Ins. Co.*, 417 A.2d 660, 663 (1979). To determine whether a party has an insurable interest in property, it is necessary to focus upon the facts as they existed at the time the policy was issued and at the time the loss occurred. *lehle v. Coleman*, 584 A.2d 988, 990 (1991). Generally, whether a person has an insurable interest is an issue to be decided by the finder of fact. *Campbell v. Royal Indemnity Co. of New York*, 389 A.2d 1139, 1141 (1978). See also *Bessemer Stores, Inc. v. Reed Shaw Stenhouse, Inc.*, 496 A.2d 762, 766 (1985).

A policy that insures against loss by fire is a contract for indemnity which protects the insured's interest in the property, not the property itself. *Mutual Benefit Ins. Co. v. Goschenhoppen Mutual Ins. Co.*, 572 A.2d 1275, 1277 (1990). One who “derives pecuniary benefit or advantage from the preservation or continued existence of [ ] property or who will suffer pecuniary loss from its destruction” has an insurable interest in the property. *Luchansky v. Farmers Fire Ins. Co.*, 515 A.2d 598, 599 (1986).

Valeriy Krichmar had an insurable interest in the real property at 9276B Jamison Avenue. Although the “Accord Evidence of Property Insurance” lists Boris Krichmar as the policyholder and named insured, Valeriy Krichmar clearly owned one-half of the underlying real property as a tenant-in-common. In addition, both the mortgage payments and the insurance premiums came from an account in the names of both Boris and Valeriy. At the time the policy was issued, as well as at the time the loss occurred, Valeriy was living in the residence at 9276B Jamison Avenue, as well as contributing to the mortgage

payments and insurance premiums. As a resident of the home Valeriy clearly benefited from the ongoing preservation of the property and would suffer a loss if it was destroyed.

On the record made by the parties in this matter, I hold that the fire insurance proceeds for real property in the sum of \$ 78,464.09 are to be divided equally between the Estate of Boris Krichmar and the Estate of Valeriy Krichmar. Similarly, the \$ 14,000,00 held in escrow by the City of Philadelphia Department of Licenses and Inspections is to be divided equally between the Estate of Boris Krichmar and the Estate of Valeriy Krichmar following the repair, secure or removal of the structure at 9276B Jamison Avenue.

#### Personal Property

The Farmers Insurance policy also extended to the contents of 9276B Jamison Avenue. The personal property loss inventoried by the adjuster totaled \$ 64,082.49. (Exhibits K-6, K-7) This was adjusted to the policy limits of \$ 57,000.00. (Exhibit K-6)

Galina Krichmar testified that both men had personal property in the residence. (N.T. 2/5/13, 94:7-96:9) Additionally, Galina Krichmar testified that when she applied for insurance proceeds for the contents of the house it was on behalf of both Estates and with the intent of depositing half of the proceeds into Valeriy's estate account. (N.T. 2/5/13, 94:7-96:9) The personal property loss inventoried by the adjuster fails to specify whether Valeriy or Boris owned the specific items. Due to the fire it is impossible to divide and determine the ownership of each specific item. Furthermore, Valeriy Krichmar clearly lived at

9276B Jamison Avenue and contributed to the insurance premiums and mortgage payments.

On the record made by the parties in this matter, I hold that Valeriy Krichmar had an insurable interest in the contents of the home at 9276B Jamison Avenue. Although the “Accord Evidence of Property Insurance” lists Boris Krichmar as the policyholder and named insured, for the reasons discussed above in regard to real property insurance proceeds, I conclude that the Estate of Valeriy Krichmar, Deceased, is entitled to one-half of the fire insurance proceeds for the contents.

On the record made by the parties in this matter, I hold that the fire insurance proceeds for contents in the sum of \$ 57,000.00 are to be divided equally between the Estate of Boris Krichmar and the Estate of Valeriy Krichmar.

**Petition for Counsel Fees and Costs**

Anna Guettel obtained the services of Manuel A. Spigler, Esquire, initially to obtain Letters of Administration for the Estate of Boris Krichmar. Anna and Spigler entered into a contingent fee agreement which provided for the payment of legal fees equal to one-third of the gross estate. (Exhibit Spigler-1)

Mr. Spigler has submitted detailed time records of his representation of Anna, including: representation before the Register of Wills to obtain Letters of Administration D.B.N. for Anna (57 hours); representation before the Register of Wills during attempted probate of Boris’s purported Will (22.4 hours); representation of Anna in a Declaratory Judgment action and an appeal from the Register of Wills to this Court (361.95 hours); representation of Anna in an appeal

to the Superior Court (85.2 hours); and estate administration work (464.6 hours).  
(Exhibit Spigler-3)

Mr.Spigler maintains that, on January 23, 2009, Anna agreed to Mr.Spigler's representation of the estate at a fee of \$ 300.00 an hour. (Exhibit Spigler-2) This fee agreement was for services rendered on behalf of the estate and on behalf of Anna as Administratrix. (Exhibit Spigler-2) The agreement included a provision that fees would not exceed one-third of the gross value of the estate and would not be in addition to fees relating to Anna as an heir.  
(Exhibit Spigler-2)

Mr.Spigler has requested \$ 139,380.00 in counsel fees for services, representing the 464.4 hours dedicated to matters of estate administration. Mr.Spigler has reduced his request to one-third of the gross estate, which he suggests would entitle him to fees in the amount of \$ 108,804.78, less \$ 20,000.00 paid in account, for a balance of \$ 88,804.78. (Exhibit Spigler-17)

Additionally, Mr.Spigler has submitted an itemized statement of costs totaling \$ 19,454.96, of which \$ 13,334.31 remains outstanding. (Exhibit Spigler-8) Mr.Spigler suggests that he is entitled to an award of costs, subject to recovery of a portion of those costs as taxable against Daniel and Galina Krichmar.

Daniel and Galina Krichmar oppose the award of counsel fees and costs to Manuel Spigler, Esquire. They maintain that Mr.Spigler's fees are chargeable to Anna as an individual and not to the decedent's estate. This is because, according to Daniel and Galina, the representation provided by

**Mr.Spigler benefitted Anna as an heir and not the decedent's estate.**

**Daniel and Galina Krichmar do not have standing to object to an award of counsel fees and costs to Mr.Spigler. Anna Guettel does have standing to do so.**

**In considering the claim of Mr.Spigler to counsel fees and expenses, I find the testimony of Mr.Spigler, to be accurate, credible and convincing. Mr.Spigler did only what he was required to do, and, submitted detailed records reflecting the time he spent in his representation of Anna as an heir and Administratrix D.B.N. of the Estate of Boris Krichmar, Deceased. On the record made by the parties in this matter, I hold that Mr. Spigler is entitled counsel fees in an amount representing one-third of the gross Estate of Boris Krichmar, Deceased, less \$ 20,000.00 paid on account of counsel fees. Additionally, I hold that Mr.Spigler is entitled to costs in the sum of \$13,334.31 less those costs as are taxable against Daniel and Galina Krichmar. The amounts of the counsel fees and costs in question will be determined in my separate Adjudication concerning the First And Final Account of Anna Guettel as Administratrix D.B.N.**

**Petition to Tax Costs**

**Also, before this Court is Anna Guettel's Amended Petition seeking to tax costs against Daniel and Galina Krichmar wherein Anna seeks to tax docket costs in the amount of \$ 695.00 for filing fees; to tax non-docket costs in the amount of \$ 4,320.18 for trial transcripts, production of briefs, service of subpoenas, witness fees and interpreters fees; and, to tax attorneys' fees under 42 Pa.C.S.A. § 2503 as sanctions for Galina and Daniel's conduct. (Exhibit**

Spigler-16)

**Docket and Non-Docket Costs**

Specifically Anna seeks to tax costs from Galina and Daniel’s appeal of the decree of the Register of Wills and their declaratory judgment action. The Pennsylvania Rules of Appellate Procedure provide:

“(2) If an order is affirmed, costs shall be taxed against the appellant unless otherwise ordered.”  
Pa. R.A.P. § 2741.

The Pennsylvania Rules of Appellate Procedure further describe what costs are taxable:

“The cost of printing or otherwise producing necessary copies of briefs and reproduced records, including copies of the original record reproduced under Rule 2151(a) (consideration of matters on the original record without the necessity of reproduction) shall be taxable, except as otherwise ordered pursuant to Rule 2155 (allocation of cost of reproduced record) at rates not higher than those generally charged for such work in this Commonwealth.” Pa. R.A.P. § 2742 Costs of Briefs and Reproduced Records.

.....

“ . . . taxable costs on appeal shall include:  
(1) Fees in the appellate court paid in the matter pursuant to Rule 2701 (payment of fees required).  
(2) In cases in which an evidentiary record is made before the appellate court, other than by the filing of a stipulation of facts, the cost of the original transcript as determined in the same manner as the costs of transcripts in the courts of common pleas are determined.” Pa. R.A.P. § 2743 Other Taxable Costs.

.....

“Costs incurred in the preparation and transmission of the record, the costs of the notes of testimony or other transcript, if necessary to a determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal, shall be taxed in the lower court as costs of the appeal in favor of the party

entitled to costs under this chapter.” Pa. R.A.P. § 2771  
Costs on Appeal Taxable in Lower Court.

“ . . . (b) Allocation by court. The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 (fees and costs in appellate courts and on appeal), but if either party shall cause material to be included in the reproduced record unnecessarily, the appellate court may on application filed within ten days after the last brief is filed, in its order disposing of the appeal impose the cost of reproducing such parts on the designating party.” Pa. R.A.P. § 2155(b) Allocation of Cost of Reproduced Record.

Here, the decree of the Register of Wills was affirmed on appeal and the \$ 695.00 Anna seeks for filing fees are taxable against Galina and Daniel as the parties who appealed. The second category of non-docket costs, totaling \$ 4,320.18, includes trial transcripts, recoverable under Pa. R.A.P. § 2743 and costs of briefs and the reproduced record, recoverable under Pa. R.A.P. § 2742 and Pa. R.A.P. § 2155(b). Anna also seeks to tax costs for service of subpoenas and for witness fees and interpreters’ fees at trial. Anna argues these fees are recoverable as “costs of proceedings in court” which were incurred at the direction or for the benefit of the trial court. *Smith v. Rohrbaugh*, 54 A.3d 892, 897 (Pa. Super. 2012). I disagree that these costs were incurred solely at the direction of or for the benefit of the court and will not permit Anna to tax costs for these items.

Costs are taxed in favor of Anna in the appeal from the decree of the Register of Wills and the declaratory judgment action in the amount of \$ 695.00 for docket costs and in the amount of \$ 2,939.58 for non docket costs.

#### Attorneys Fees

Finally, in her amended petition to tax costs Anna seeks additional

**counsel fees as taxable costs. An exception to the rule that attorney's fees are generally not taxable costs exists where:**

**The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:**

**...  
(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.**

**...  
(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith. 42 Pa.C.S.A. § 2503 (7), (9).**

**Anna argues counsel fees should be awarded as taxable costs in this case because of the conduct of Daniel and Galina Krichmar in “(1) probating a fraudulent will; (2) making false and misleading statements in an effort to conceal the life insurance proceeds, and (3) failing to turn over the fire loss proceeds.”**

**The amended petition requests \$ 12,375.00 in counsel fees for conduct relating to the life insurance proceeds and \$ 7,695.00 in counsel fees for conduct relating to the fire loss proceeds for the real property. The amended petition argues Daniel and Galina Krichmar's efforts to obfuscate the insurance proceeds, as well as allegedly improper disbursements made to Daniel Krichmar from the life insurance proceeds, entitles Anna to tax counsel fees as costs under 42 Pa.C.S.A. § 2503 (7). On the record made by the parties in this matter I hold that it is not appropriate to tax counsel fees as costs in the amounts of \$12,375.00 and \$7,695.00 against Daniel and Galina Krichmar.**

**Additionally, as discussed earlier, I am satisfied that half of the fire**

insurance proceeds for the real estate were the property of the estate of Valeriy Krichmar by virtue of his ownership of the Jamison property with his father as tenants in common. For this reason, I decline to tax costs in the form of counsel fees relating to fire loss proceeds for the real property. Daniel and Galina's placement of half of the fire loss proceeds into Boris's estate account was reasonable in light of Boris and Valeriy's ownership of the Jamison property as tenants in common.

In considering whether to award counsel fees in the amount of \$ 6,720.00 for Daniel and Galina's efforts to probate a fraudulent will, I am guided by the Superior Court's definition of the level of conduct necessary for 42 Pa.C.S.A. § 2503 (9):

**“An opponent's conduct has been deemed “arbitrary” within the meaning of the statute if such conduct is based on random or convenient selection or choice rather than on reason or nature. An opponent also can be deemed to have brought suit “vexatiously” if he filed the suit without sufficient grounds in either law or in fact and if the suit served the sole purpose of causing annoyance. Finally, an opponent can be charged with filing a lawsuit in “bad faith” if he filed the suit for purposes of fraud, dishonesty or corruption.” *In re Estate of Burger*, 852 A.2d 285, 392 (Pa. Super. Ct. 2004).**

The will submitted for probate by Daniel and Galina Krichmar was confirmed to be a forgery by an expert retained by Spigler and an independent expert retained by Solar. (Exhibits Spigler-6, Spigler-22) Despite their findings, Daniel Krichmar maintained that the Will was provided to him by Boris and proceeded with hearings in 2009 suggesting the document was not fraudulent. (N.T. 2/6/13, 133:6-134:24) For these reasons I hold that Daniel and Galina's

**submission of the forged will for probate suffices as “arbitrary, vexatious or in bad faith” so to satisfy taxing costs in the form of counsel fees in the amount of \$ 6,720.00 under 42 Pa.C.S.A. § 2503 (9).**

**All of the above findings and holdings will be reflected in separate Adjudications and/or Decrees which will bear even date with this Opinion.**