

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

**O. C. NO. 229 of 1999**

**Estate of STEPHEN F. FABIAN, Deceased**

**OPINION and DECREE**  
**SUR APPEAL FROM DECREE OF REGISTER**

Stephen Fabian died in a Philadelphia hospital, on November 3, 1998, leaving his wife and son, Myrna Fabian and Mark Fabian, to survive him as his heirs-at-law and next of kin under the intestate laws.

By Decree dated December 1, 1998, the Register of Wills admitted a writing dated June 1, 1993 to probate as the last and testament of Stephen Fabian, and, granted Letters Testamentary to Myrna Fabian. The writing of June 1, 1993 gives pecuniary bequests totaling \$260,000.00, and, gives the residue of the decedent's estate to his wife, Myrna Fabian. The writing of June 1, 1993 recites that the decedent is of West Chester, Pennsylvania.

On April 11, 1999, Mark Fabian, son of the decedent, filed an appeal from probate and a Petition for citation sur appeal. In his said Petition, the son avers that the decedent was domiciled in the Commonwealth of Pennsylvania at the time of his death; and, that the last family and principal residence of the decedent was at 333 West Street Road, Kennett Square, East Marlborough Township, Chester County, Pennsylvania. Also in said Petition, the son cites Section 3131 and 3151 of

**the Probate, Estates and Fiduciaries Code in support of his positions: that the Register of Wills of Philadelphia County lacked jurisdiction to probate the will of the decedent; and, that the Register of Wills of Philadelphia County lacked jurisdiction to grant letters testamentary on the estate of the decedent. In her Answer to the Petition for citation sur appeal, the decedent's wife avers that his last residence, at the time of his death, was 2940 North 5th Street, Philadelphia, Pennsylvania.**

**Section 3131 of the P.E.F. Code reads as follows,**

**“ The will of a decedent domiciled in the Commonwealth at the time of his death shall be probated only before the register of the county where the decedent had his last family or principal residence. If the decedent had no domicile in the Commonwealth, his will may be probated before the register of any county where any of his property is located.”**

**Section 3151 of the P.E.F. Code reads as follows, in relevant part,**

**“ Letters testamentary or of administration on the estate of a decedent domiciled in the Commonwealth at the time of his death shall be granted only by the register of the county where the decedent had his last family or principal residence. If the decedent had no such domicile in the Commonwealth, letters testamentary or of administration may be granted by the register of any county wherein property of the estate shall be located and, when granted, shall be exclusive throughout the Commonwealth. ....”**

**On June 24, 1999, this Court held a hearing at which the parties offered testimony and exhibits in support of their respective**

positions as to the domicile of the decedent at the time of his death, and, as to the location of his last family or principal residence at the time of his death.

In determining the issues in this matter, this Court will apply the following principles which are summarized in the opinion of our Supreme Court in Loudenslager Will, 430 Pa. 33, 37-39 (1968),

“ Where the appeal challenges the *validity* of the will itself the burden is upon the contestants, once execution of the will has been shown and the facts of probate established, to prove the invalidity of the instrument:..... However, where the appeal attacks the *jurisdiction* of the register of wills to probate a will a different rule prevails.

The sole place of probate of a will of a Pennsylvania resident is mandated by statute to be the county wherein such person had ‘his last family or principal residence’ (Act of June 28, 1951, P.L. 638, §301, 20 P.S. §1840.301) at the time of his death. Under our case law, ‘residence’, in the statutory sense, is synonymous with ‘domicile’ (*Obici Estate*, 373 Pa. 567, 570, 571, 97 A.2d 49 (1953). ‘The domicile of a person is the place where he has voluntarily fixed his habitation with a present intention to make it either his permanent home or his home for the indefinite future.’: *Publicker Estate*, 385 Pa. 403, 405, 123 A.2d 655 (1956). See also: *Dorrance’s Estate*, 309 Pa. 151, 172, 163 A. 303 (1932). We further said in *Publicker*, supra: ‘To effect a change of domicile there must be a concurrence of the following factors: (1) physical presence in the place where domicile is alleged to have been acquired, and (2) an intention to make it his home without any fixed or certain purpose to return to his former place of abode: [citing an authority].’ 9pp. 405, 406).

In determining a person’s domicile, the language of the United States Supreme Court,

almost a century ago in *Mitchell v. United States*, 21 Wallace 350, is most appropriate: 'A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. ... Mere absence from a fixed home, however long continued, cannot work the change [of domicile]. There must be the *animus* to change the prior domicile for another. These principles are axiomatic in the law upon the subject.'(p. 353) See also: .....

In the case at bar, it is not disputed--indeed, it could not be--that upon until July 8, 1966--*19 days prior to his death*--the domicile of decedent was in Philadelphia County which had been his domicile for many, many years. The question at issue is whether the decedent had changed his domicile to Montgomery County and the burden of proving that such a change of domicile had been effected was not upon the contestants, as the court below held, but upon the proponents of the probate of the will:..... It was the duty of the proponents of the probate of this will, by clear and satisfactory proof, to overcome the presumption that decedent continued to retain his domicile in Philadelphia County. .... The present attack is not on the manner in which the register exercised his judicial functions but whether he had the right, under the circumstances, to exercise *any* judicial function. The case law, in our view, mandated that the will proponents, on the appeal to the court below, carry the burden of establishing that the register of wills had *jurisdiction* to probate this will." (Some citations omitted)

Myrna Fabian, wife of the decedent and proponent of the probated writing, testified that she and the decedent were married on February 11, 1991; that they were living together, at 1130 Dorsett Drive,

West Chester, Pennsylvania, when the decedent executed the probated writing on June 1, 1993; and, that they continued living together in the Dorsett Drive property until June of 1997.

Myrna Fabian identified her Exhibit "P-4" as being a copy of the joint income tax return, Form 1040, which she and the decedent filed with the Internal Revenue Service for Calendar Year 1997. This return was signed by the taxpayers on April 14, 1998, and, indicates that the "Home Address" of the taxpayers is 1130 Dorsett Drive, West Chester, Pennsylvania.

Myrna Fabian identified her Exhibit "P-1" as being a copy of the settlement sheet on the sale of premises 1130 Dorsett Drive, West Chester, Pennsylvania, on April 30, 1998. This document identifies the decedent as the "Seller" of the Dorsett Drive property.

Myrna Fabian identified her Exhibit "P-2" as being a copy of the deed dated August 28, 1996 whereby the decedent purchased premises 2940-42 North 5th Street, Philadelphia, Pennsylvania. This document identifies the grantor as "Stephen Fabian, M.D". Mrs.Fabian described the 5th Street property as a two story building of which the first floor was entirely devoted to the operation of a medical clinic; one room on the second floor was an office in which the decedent saw patients; and, two other rooms on the second floor were empty. According to Mrs.Fabian, the

5th Street property had only one bathroom, which was on the first floor; had no shower; had no kitchen; and, had no beds.

Myrna Fabian testified that she and the decedent were separated for a short time in 1993. They executed a separation agreement whereby she took sole and separate title to a property in New Jersey, and, he took sole and separate title to the property on Dorsett Drive in West Chester. Mrs. Fabian stated that a divorce proceeding was commenced, in Philadelphia, but withdrawn without the entry of a decree.

Myrna Fabian testified that she moved from the Dorsett Drive property to her house in New Jersey in June of 1997, and, that the decedent continued living on Dorsett Drive until settlement on the sale of the property on April 30, 1998. Mrs. Fabian stated that she was not aware that the decedent owned any real estate other than 2940-42 North 5th Street, Philadelphia, after April 30, 1998.

Speaking of the period from April 30, 1998 until the death of the decedent on November 3, 1998, Myrna Fabian testified, variously, that the decedent lived with her, in her New Jersey house; that he spent almost every day in New Jersey; that he spent the majority of his time in New Jersey; that he was in New Jersey all the time; that she and the decedent went to church every week; and, that the decedent slept some nights in New Jersey and some nights on a couch in the 5th Street property in Philadelphia. According to Mrs. Fabian, the decedent once took her to the 5th Street property and showed her his computer and his toiletries, but, he

never said that he was going to move into the 5th Street property permanently.

Myrna Fabian testified that the decedent was sick and underwent treatment at the Hospital of the University of Pennsylvania (HUP) in the period from April 30 to November 3, 1998. Mrs.Fabian stated that the decedent spent some time at the 5th Street property, in Philadelphia, so as not to inconvenience her and her children in her house in New Jersey. According to Mrs.Fabian, the decedent told her that he would buy a house for them to live in when he was feeling better. Mrs.Fabian could not recall from which place, her house in New Jersey or the 5th Street Property in Philadelphia, the decedent went for treatment at HUP.

Myrna Fabian identified her Exhibit "P-5" as being a copy of the decedent's death certificate which is dated November 6, 1998, and, which indicates that the decedent died of lung cancer. "Maria Milcu, M.D." is identified as the "informant" on the certificate. Mrs.Fabian stated that the decedent first met Maria Milcu in March of 1997 when he hired her to work as a doctor at his clinic. As originally filled out, based on information supplied by Maria Milcu, the decedent's death certificate indicates that he was divorced; that there was no surviving spouse; that the decedent's mailing address was 323 West Street Road, Kennett Square, Pennsylvania; that his actual residence was in Chester County, Pennsylvania; and, that he lived within the actual limits of Kennett Square. As amended, based on

information supplied by Myrna Fabian, the death certificate now indicates that he was married; that his surviving spouse is "Myrna Edwards"; that his mailing address was 2940 North 5th Street, Philadelphia, Pennsylvania; that his actual residence was in Philadelphia County, Pennsylvania; and, that he lived within the actual limits of the City of Philadelphia. According to Mrs.Fabian, she knew nothing about a property in Kennett Square, and, she was not aware that the decedent had ever lived in Kennett Square.

Roger Edwards, son of Myrna Fabian and step-son of the decedent, testified that the decedent employed him to pick up patients and drive them to the decedent's medical clinic on North 5th Street in Philadelphia. Mr.Edwards stated that the decedent stopped working in the clinic shortly after Christmas of 1997. This was because of conflicts in the office and not because of illness. According to Mr.Edwards, the decedent still owned the clinic but he no longer participated in its operation or management on a day to day basis.

Roger Edwards testified that he lived with his mother, the proponent, in New Jersey, in the period from April of 1998 until the death of the decedent on November 3, 1998. Speaking of the said time period, Mr.Edwards stated, variously, that the decedent resided with the proponent, in New Jersey; that Mr.Edwards saw the decedent, everyday, at the proponent's house in New Jersey; that the decedent had clothes at the proponent's house in New Jersey; that the decedent had clothes in the property on North 5th Street in Philadelphia; and, that the decedent took

baths in a property across the street from the North 5th Street property. Mr.Edwards could not say, from first hand knowledge, that the decedent regularly slept in the North 5th Street property. According to Mr.Edwards, he and the decedent spoke frequently, but, the decedent never said that he was going to make his home in the North 5th Street property.

Roger Edwards testified that he was on the second floor of the property on North 5th Street in Philadelphia, after the death of the decedent, at which time Mr.Edwards found clothes, books, toiletries, keys and insurance papers belonging to the decedent.

Roger Edwards testified that he was unaware of the fact that the decedent had cancer. Mr.Edwards stated that the decedent complained of headaches. According to Mr.Edwards, the decedent said that he had been bitten by a tick and acquired Lyme Disease. Roger Edwards testified that he did not see the decedent for a period of three weeks, during which time Mr.Edwards assumed that the decedent had gone on a trip. Mr.Edwards stated that he learned that the decedent was in the Hospital of the University of Pennsylvania by tracing a call which had been made in the lobby of HUP. Mr.Edwards later learned that the decedent had been in HUP for three weeks. According to Mr.Edwards, he first learned of the existence of Maria Milcu when he met her in HUP. Mr.Edwards recalled that Ms.Milcu had told the HUP staff that she was the decedent's wife.

Saleem Azeez is a medical doctor who was called to the witness stand by the contestant. Dr.Azeez testified that he had known the decedent since 1986; that he had leased an office from the decedent, on 52d Street, in Philadelphia, in 1986; and, that he had rented the property at 2940-42 North 5th Street, Philadelphia, from the decedent in January of 1997. Dr.Azeez stated that the building at 2940 North 5th Street was a two story commercial building; that the first floor consisted of medical clinic; and, that the decedent had had an office on the second floor. According to Dr.Azeez, he found the North 5th Street property vacant when he rented it in January of 1997; he continuously practiced medicine, alone, in the first floor clinic from January of 1997 onward; and, the decedent did not live in the North 5th Street property at any time after January of 1997.

Dr.Saleem Azeez testified that the decedent lived in Kennett Square, Pennsylvania, until the decedent entered the hospital at the end of July, 1998. Dr.Azeez stated that he visited the decedent at a house in Kennett Square in 1996, in 1997, and, in 1998. The said visits were at the invitation of the decedent to discuss business matters.

Dr.Saleem Azeez testified that he took the decedent to the hospital for a biopsy in the last week in July of 1998, at which time the decedent was admitted to the hospital. Dr.Azeez stated that the decedent had a stroke in the Intensive Care Unit of the hospital, and, Dr.Azeez visited the decedent every day during this hospitalization. According to Dr.Azeez, the decedent recuperated from his stroke; he began walking; and, he was

sent to the Bryn Mawr Rehabilitation nursing home for rehabilitation. Dr.Azeez testified that the decedent spent about one month in the nursing home and then returned home with oxygen and a gastric tube. Dr.Azeez stated that the decedent began to bleed heavily one day, and, was taken from home to a nearby hospital in Chester or West Chester, Pennsylvania, by ambulance. According to Dr.Azeez, the decedent was then flown from the hospital in Chester or West Chester to the Hospital of the University of Pennsylvania, in Philadelphia, by helicopter. Dr.Azeez testified that the decedent died in HUP.

Dr.Saleem Azeez testified that he received one phone call from Myrna Fabian who was inquiring about the whereabouts of the decedent. Dr.Azeez stated that the decedent was in the hospital at this time, but, Dr.Azeez did not tell Mrs.Fabian that the decedent was in the hospital. This was because the decedent had strictly instructed Dr.Azeez not to tell anyone about the decedent's illness, whereabouts or activities.

Maria Milcu is a medical doctor who was called to the witness stand by the contestant. Ms.Milcu admitted that she and Myrna Fabian, the proponent, were engaged in litigation, in Federal Court, over \$1,000,000.00 in proceeds of a policy of insurance on the life of Stephen Fabian.

Maria Milcu testified that she met the decedent in January of 1997; that she began working for him in March of 1997; and, that he stopped working in the clinic on North 5th Street in June of 1997. Ms.Milcu

stated that she was not aware that the decedent had ever lived in the clinic on North 5th Street.

Maria Milcu testified that she and the decedent lived together in her apartment in Haverford, Pennsylvania, in May of 1997. Ms.Milcu stated that she was aware that the decedent had been married to Cynthia Reed, but, she believed him when he told her that he was a divorced man. According to Ms.Milcu, she and the decedent did their own marriage ceremony in June of 1997, and, the decedent thereafter held her out to the world as his wife. Ms.Milcu testified that she was not aware that the decedent had a wife in New Jersey when she began living with the decedent.

Maria Milcu identified contestant's Exhibit "P-6" as being a copy of a deed to premises 333 West Street Road, Kennett Square, Chester County, Pennsylvania. This deed is dated November 18, 1998, and, is from Ms.Milcu to her herself. This deed contains a recital that the subject premises is the same premises which were conveyed to the decedent and Ms.Milcu, as joint tenants with the right of survivorship, on August 1, 1997, and, that the decedent had died on November 3, 1998. Ms.Milcu testified that she and the decedent bought the Kennett Square property, for \$285,000.00, from a person who had moved to Chicago. Ms.Milcu stated that she contributed one-third of the purchase price and the decedent paid the balance. According to Ms.Milcu, she and the decedent lived together in the Kennett Square property, continuously, from July of 1997 until he

became ill in July of 1998. Ms.Milcu testified that the decedent slept every night in Kennett Square except when he attended a convention of motorcyclists in the Fall of 1997; when he spent eight or ten days in Florida in late May of 1998; and, when he was in a hospital or rehabilitation center. According to Ms.Milcu, the decedent spent every Sunday at home with her, in Kennett Square, and, he sent to church with her three times. All of this left Ms.Milcu unable to understand how the decedent could be at home with her and in New Jersey with Myrna Fabian.

Maria Milcu testified that the decedent had a bronchoscopy done in the Fox Chase Cancer Center, and, began taking pills for a lesion in the Winter of 1998. Ms.Milcu stated that the decedent was undergoing a test in the Hospital of the University of Pennsylvania (HUP), on July 30, 1998, when profuse bleeding required that he undergo an operation. According to Ms.Milcu, the decedent was in HUP for two weeks, and, suffered a stroke during this hospitalization. Ms.Milcu testified that the decedent next spent two weeks at the Bryn Mawr Rehabilitation Center in Malvern, Pennsylvania.

Maria Milcu testified that she stayed by the decedent's bedside while he was hospitalized in the Hospital of the University of Pennsylvania (HUP), in Philadelphia, for the last three months of his life. Ms.Milcu stated that the decedent introduced her to the HUP staff as his wife. According to Ms.Milcu, she took care of the decedent because he trusted her and asked her not to leave his side.

**Maria Milcu testified that she first learned that the decedent was married when she got a call from the legal office at HUP. This call came on a Monday, and, it was during this call that Ms.Milcu was advised that the decedent had a wife in New Jersey. Ms.Milcu stated that the decedent had previously told all of the doctors at HUP that Ms.Milcu was his wife, and, Ms.Milcu had done the same. Ms.Milcu recalled a meeting between herself and Myrna Fabian, at HUP, before the decedent died. At this meeting, Mrs.Fabian stated that she was still married to the decedent. According to Ms.Milcu, she rejected the statements of Mrs.Fabian because she believed what she had been told by the decedent, that is, that he was a divorced man.**

**Maria Milcu testified that the decedent's funeral was arranged by herself and the decedent's mother. Ms.Milcu stated that she told the funeral director that the decedent was divorced because the decedent had said so.**

**In the instant appeal from probate, the probated writing is dated June 1, 1993, and, begins with the words, "I, STEPHEN FABIAN, of West Chester, Pennsylvania, ....." The proponent, testified that she and the decedent were living together, at 1130 Dorsett Drive, West Chester, Pennsylvania, on June 1, 1993. This Court thus holds that the decedent was domiciled in Pennsylvania on June 1, 1993. The decedent undoubtedly owned premises 2940-42 North 5th Street, Philadelphia, Pennsylvania, at the time of his death. To establish that the Register of Wills of Philadelphia**

County had jurisdiction to probate the will of this decedent, the proponent has the burden of proving, by clear and satisfactory evidence: that the decedent changed his domicile to the State of New Jersey; or, that the decedent had his last family or principal residence in Philadelphia County. See Loudenslager, supra, and Sections 3131 and 3151 of the P.E.F. Code.

Having observed the demeanor of the witnesses on the stand, and considered the exhibits which have been received into evidence, this Court believes that Dr.Saleem Azeez and Maria Milcu testified truthfully and to the best of their respective recollections. This Court finds the testimony of Dr.Azeez and Ms.Milcu to be credible. This Court believes that the testimony of Myrna Fabian was greatly influenced by her interest in the outcome of this matter. This Court believes that the testimony of Roger Edwards was influenced by his loyalty to his mother. This Court finds the testimony of Myrna Fabian and Roger Edwards to be incredible.

The decedent signed an income tax return which indicates that his "Home Address" for Calendar Year 1997 was 1130 Dorsett Drive, West Chester, Pennsylvania. Myrna Fabian testified that the decedent lived in the Dorsett Drive property until April 30, 1998. Proponent's Exhibit No. "P-6" states that premises 333 West Street Road, Kennett Square, Pennsylvania, was conveyed to the decedent and Maria Milcu, as joint tenants with right of survivorship, on August 1, 1997. There is no evidence that the decedent was physically present in the State of New Jersey at any time before April 30, 1998. There is no evidence that the decedent formed

**an intent to make his home in the State of New Jersey at any time before April 30, 1998.**

**Myrna Fabian and Roger Edwards would have this Court believe that the decedent lived with Mrs.Fabian, in New Jersey, from April 30 to November 3, 1998, but, spent some nights sleeping on a couch in the North 5th Street Property in that time period so as not to inconvenience Mrs.Fabian and her children with his illness. This Court rejects the testimony of Myrna Fabian and Roger Edwards as being incredible because it conflicts with that of two witnesses, Dr.Azeez and Maria Milcu, who were personally involved in the care of the decedent in the last six months of his life, from July 30 to November 3, 1998, and, who testified from their personal observation of the progress of the decedent's illness and death.**

**Myrna Fabian and Roger Edwards gave no testimony about Dr.Azeez driving the decedent to HUP in the last week of July, 1998; about the decedent's stroke in HUP in August of 1998; about his stay in the Bryn Mawr Rehabilitation nursing home in Malvern; about his coming home from the nursing home with oxygen and a gastric tube; about his being rushed to a hospital in Chester or West Chester; or, about his being flown to HUP by helicopter. The decedent's funeral was arranged by Maria Milcu and the decedent's mother. Myrna Fabian made one call to Dr.Azeez to ascertain the whereabouts of her husband, and, was not told of his whereabouts or his medical condition. Roger Edwards lived with his mother and first**

learned that the decedent was in HUP by tracing a phone call. Given the decedent's strict instructions that no one was to be told of his illness, whereabouts or activities, and, their apparent ignorance of the progress of the decedent's illness, this Court finds that neither Myrna Fabian or Roger Edwards knew that the decedent was ill and in the hospital until the very last days of his life. This Court finds that the decedent was a very sick man who spent very little time outside of hospitals and the nursing home in the period from July 30, 1998 until he died on November 3, 1998. This Court finds that the decedent spent no time living in the State of New Jersey and no time sleeping on a couch in the North 5th Street property from July 30 to November 3, 1998. This Court finds that the decedent spent all of his time, from July 30 to November 3, 1998, in hospitals, in a nursing home, or, living with Maria Milcu at 333 West Street Road, Kennett Square, Chester County, Pennsylvania.

Having rejected the testimony of Myrna Fabian and Roger Edwards that the decedent lived with Myrna, in New Jersey, from July 30 to November 3, 1998, as being incredible, this Court also rejects their testimony that the decedent lived with Myrna, in New Jersey, from April 30 to July 30, 1998, for the same reason. Proponent's Exhibit No. "P-6" shows that the decedent and Maria Milcu took title to premises 333 West Street Road, Kennett Square, in Chester County, Pennsylvania, on August 1, 1997. Dr. Azeez testified that the decedent lived in Kennett Square until Dr. Azeez drove him to HUP in the last week of July, 1998. Maria Milcu

testified that the decedent lived with her, in Chester County, Pennsylvania, from May of 1997 until July 30, 1998. Given the fact that the decedent and Myrna Fabian separated in 1993 and were almost divorced, and, the fact that the decedent chose not to reveal his illness, whereabouts or activities to Mrs.Fabian in the last six months of his life, this Court believes the testimony of Dr.Azeez and Maria Milcu, and, rejects the testimony of Myrna Fabian and Roger Edwards as being incredible. This Court finds that the decedent spent no time living in the State of New Jersey and no time sleeping on a couch in the North 5th Street property from April 30 to July 30, 1998. This Court finds that, with exception of the motorcycle convention in the Fall of 1997 and the trip to Florida in late May of 1997, the decedent spent all of his time, from May of 1997 to July 30, 1998, living with Maria Milcu at 333 West Street Road, Kennett Square, Chester County, Pennsylvania.

This Court does not believe that the decedent ever told Myrna Fabian that he would buy a house for them to live in when he was feeling better. In any event, a statement of an intent to buy a house, without any indication as to where the house would be located, is not a statement of an intent to make one's home in the State of New Jersey. The decedent never told Myrna Fabian or Roger Edwards that he was going to make his home in the North 5th Street property. There is no credible evidence in the record that the decedent ever formed an intention to change his domicile

from Chester County, Pennsylvania, to the State of New Jersey. There is no evidence in the record, whatsoever, that the decedent ever formed an intention to make Philadelphia his family or principal residence.

The proponent has not presented clear and satisfactory evidence that the decedent was ever physically present in the State of New Jersey. Nor has she presented clear and satisfactory evidence that the decedent formed an intention to make his home in the State of New Jersey. This Court thus holds, as a matter of law, that the decedent has not proven that the decedent changed his domicile from Chester County, Pennsylvania, to the State of New Jersey.

The record shows that the decedent worked and received medical treatment in Philadelphia. However, there is no evidence that the decedent ever formed an intention to make Philadelphia his family or principal residence. This Court thus holds, as a matter of law, that the decedent had his last family or principal residence in Chester County.

Because Stephen Fabian was domiciled in the Commonwealth of Pennsylvania at the time of his death, with his last family or principal residence in Chester County, the Register of Wills of Philadelphia County did not have jurisdiction to probate any testamentary writing of this decedent. See Loudenslager, supra, and Sections 3131 and 3151 of the P.E.F. Code. Accordingly, this Court finds must sustain the appeal of Mark Fabian from the Decree of the Register of Wills admitting to probate a writing dated June 1, 1993 as the Last Will and Testament of Stephen

**Fabian and granting Letters Testamentary thereon. An appropriate Decree will be entered.**

**Dated:\_\_\_\_\_**

**J.**

**DECREE**

**AND NOW, this                      day of SEPTEMBER, 2000, it is hereby ORDERED and DECREED that the Appeal of Mark Fabian from the Decree of the Register of Wills dated December 1, 1998, admitting to probate a certain writing dated June 1, 1993 as the Last Will and Testament of Stephen Fabian, deceased, and granting Letters Testamentary thereon, is SUSTAINED; that the Decree of Probate and Grant of Letters**

**Testamentary is REVOKED; that the record shall be remitted to the Register of Wills; and, that the Register of Wills shall forward the original writing dated June 1, 1993 to the Register of Wills of Chester County.**

**Unless exceptions are filed to this Decree within twenty (20) days, the same shall become absolute and final as of course.**

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**Pawelec, J.**