

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – PROBATE DIVISION

Estate of:)	Case No. 2014 P 2200
)	
MARJORIE G. IVY,)	
)	
Deceased.)	Hon. Terrence McGuire
)	
CHRISTOPHER IVY, Independent)	Supplemental Proceeding
Administrator)	
)	
Petitioner,)	
)	
v.)	
)	
ESTATE OF MORDECHAI FASKOWITZ,)	
)	
Respondent.)	

ORDER

This case coming to be heard on Christopher Ivy's, Petitioner and Independent Administrator of the Estate of Marjorie G. Ivy, *First Amended Petition to Disqualify Mordechai Faskowitz from Receiving Benefits under the Slayer Statute and Distribution Assets to Successor Beneficiaries or to the Estate of Marjorie G. Ivy*, filed on August 25, 2016. The Court, sitting as the trier of fact, finds as follows:

BACKGROUND

On October 3, 2013, during a well-being check, Chicago police officers discovered the body of Marjorie G. Ivy ("Decedent" or "Marjorie"). It was later determined that her death was the result of homicide committed by her long-term partner, Mordechai Faskowitz ("Mordechai"). The criminal court proceeding found that Mordechai was not guilty by reason of insanity ("NGRI") for causing Marjorie's death.

On May 16, 2014, Judge Karen O'Malley ("Judge O'Malley") named Marjorie's nephew, Christopher Ivy ("Petitioner" or "Ivy"), the Independent Administrator of her Estate. Marjorie died intestate, leaving several nieces and nephews as her heirs at law. However, prior to her death, she named Mordechai as a beneficiary on a number of assets.

On August 25, 2016, Ivy filed a *First Amended Petition to Disqualify Mordechai Faskowitz from Receiving Benefits under the Slayer Statute and Distribution Assets to Successor Beneficiaries or to the Estate of Marjorie G. Ivy*. In his petition, Ivy alleged that Mordechai was charged with two counts of first-degree murder and one count of concealment of a homicidal death in connection with Marjorie's death. Per an October 20, 2017 Order, the parties agreed Mordechai would not be called or deposed and that discovery would close in December 2017.

In June 2018, Judge O'Malley granted Ivy's motion for summary judgment. Judge O'Malley ruled that Mordechai was ineligible to inherit under the Slayer Statute because, in order for Mordechai to claim the NGRI defense in the criminal case, the State was required to prove each element of each offense charged beyond reasonable doubt. Judge O'Malley reasoned that since Mordechai was determined to be NGRI for first degree murder, there was no genuine issue of material fact regarding as to whether he intentionally and unjustifiably caused Marjorie's death.

The appellate court disagreed. The appellate court found that, for purposes of the Slayer Statute, the criminal court did not rule as to whether Mordechai "intentionally" caused Marjorie's death. See *Ivy v. Faskowitz (In re Estate of Ivy)*, 2019 IL App (1st) 181691, ¶85. Specifically, the criminal court did not identify whether Mordechai intended to kill Marjorie, cause great bodily harm, and/or if he knew that his acts would cause her death. *Id.* at ¶47. The matter was remanded to this Court for an evidentiary hearing. *Id.* at ¶87.

While on appeal, Mordechai died on May 15, 2019, and Judge O'Malley was re-assigned to the Law Division since the case was remanded. Accordingly, this Court has decided several issues on remand. First, this Court disqualified Miriam Solo Greenfield ("Solo") from serving as the Estate of Faskowitz's ("Respondent" or "Faskowitz's Estate") attorney and witness. Solo is Mordechai's sister and the Executor of his last will and testament. Further she provided testimony at this trial and one of her children is the sole beneficiary of Faskowitz's Estate, which stands to benefit from Ivy's Estate. Second, this Court denied Ivy's motion to admit the entire transcript from criminal proceeding. No case law was provided to this Court that supported the admission of the entire transcript. However, support was provided to admit stipulated testimony from criminal trial. Third, discovery was re-opened by sua sponte order because of the change in circumstances that had occurred, namely (a) Mordechai's passing foreclosed any ability to depose him, (b) this Court did not hear the 2017 proceedings and was not privy to discovery issues, (c) discovery had previously been closed by agreement, and (d) re-opening was consistent with the appellate court's order to have a full and open evidentiary hearing on this case, and (e) the matter was remanded on appeal.

A bench trial was conducted from August 23, 2022 to August 26, 2022.

I. Estate of Ivy's Case in Chief

A. Examination of Timothy Harrington

Harrington testified that he owned and operated Barr Funeral Home in Chicago. Transcript, p. 44. Sometime in October of 2013, Harrington received a phone call from Marjorie's caller ID. *Id.* at 46. Harrington stated that he picked up the phone and "a gentleman with a heavy accent" was on the other end. *Id.* at 47. Harrington learned this man to be Mordechai. *Id.* at 47-49. Mordechai asked Harrington "to come pick up a killed body." *Id.* at 49.

Harrington responded by asking whether the deceased was under a doctor's care or in hospice.

Id. at 49 & 62. Mordechai stated that the deceased was not and Harrington responded by explaining:

“... in Chicago you need to call 911. They will then send an ambulance. The ambulance crew will check for signs of life. Finding none, then they will leave, and then the police will come, do an inquiry, get in touch with the medical examiner. And if the medical examiner then releases it, we can come and pick up the body.”
Id. at 50.

Mordechai stated that he did not want the police involved and hung up. *Id.* at 50-51. Less than a half hour later, Mordechai called Harrington from Marjorie's phone again. *Id.* at 51, 67-68. Again, Mordechai asked Harrington to come pick up a “killed body,” to which Harrington repeated that it was necessary to call the police. *Id.* at 52-53. Harrington proceeded to call his friend, a Chicago police detective, to “relay the information” he had received from Mordechai. *Id.* at 53-54. Harrington testified that Mordechai did not refer to Marjorie or her body as a demon during the phone calls. *Id.* at 53-54.

B. Discovery Deposition of Officer Jesse James Eng

Next, Ivy entered into evidence Officer Jesse James Eng's (“Officer Eng”) discovery deposition's transcript and video recording as Petitioner's Exhibit 1A (“Pet. Ex. 1A”).¹² As a part of his duties as a Chicago Police Officer, Officer Eng was assigned to perform a well-being check on Marjorie. Upon arriving at the apartment, Officer Eng met with Marjorie's landlord and knocked on her unit's door. A man, who was later determined to be Mordechai, responded from the other side of the unit's door, saying “go away, we are not entertaining.” Officer Eng then

¹ Ivy admitted the Discovery Deposition of Officer Jesse James Eng as “Petitioner's Exhibit 1.” Transcript, p. 79. Additionally, Ivy also admitted the Police Incident Report as “Petitioner's Exhibit 1.” Transcript, p. 91. To avoid further confusion, Eng's Deposition will be known as “Petitioner's Exhibit 1A” and the Police Incident Report will be known as “Petitioner's Exhibit 1B.”

² The Court was not provided a written transcript of Officer Eng's discovery deposition. Consequently, the Court is unable to provide pin cite citations.

identified himself and made several requests for Mordechai to open the door and to speak to him and Marjorie, but Mordechai repeated “go away, we are not entertaining.” Officer Eng reported that he heard footsteps that sounded like they were going towards the back of Marjorie’s unit and asked the landlord to open the unit. Officer Eng and another officer entered the apartment, noticed blood on the walls, and proceeded to the back of the apartment unit. The Officers found Mordechai standing the sunroom, with his hands behind his back. Officer Eng ordered Mordechai to show his hands. Mordechai refused and repeated, “I’m sorry. I’m sorry. I did it. You have to go, I need to repent.” The Officers tased Mordechai after he continued to refuse to show his hands.

On cross, Officer Eng clarified that Mordechai made several statements that were not in the incident’s police report. For example, Officer Eng reported that Mordechai referred to Marjorie as a “skinhead.” Additionally, the police report indicated that Mordechai stated “I didn’t mean to do it,” however Officer Eng remembers him stating “I did it.” Officer Eng attributed the inconsistencies to a detective writing the final report, who must have omitted or edited the phrases.

C. Police Incident Report

The police report following Officer Eng’s well-being check was admitted into evidence as Petitioner's Exhibit 1B (“Pet. Ex. 1B”). The well-being check was prompted after it was reported that a strange odor was coming from Marjorie’s apartment and that she had not been seen for a few days. Pet. Ex. 1B, p. 2. The report states that Mordechai told the police to leave several times before his arrest and necessary force was used. *Id.*

D. Criminal Trial Examination of Dr. Roni Seltzberg

Portion of the criminal trial transcript that contain examination of Dr. Roni Seltzberg (“Dr. Seltzberg”) were admitted as Petitioner’s Exhibit 6 (Pet. Ex. 6”). Dr. Seltzberg is a medical doctor, board certified in general psychiatry with qualifications in forensic psychiatry. Pet. Ex. 6, p. 126. She was retained by the Cook County Public Defender’s Office to make a determination as to whether Mordechai was “insane” at the time of the offense. *Id.* at 128-29. In preparing this determination, she interviewed Mordechai, reviewed the police report, reviewed his medical history, and interviewed Solo for factual history. *Id.* at 129.

Dr. Seltzberg determined to a reasonable degree of forensic psychiatric certainty that Mordechai suffered from schizophrenia. *Id.* at 144. She believed Mordechai experienced the onset of symptoms in his late teenage years, which became more apparent in his twenties. *Id.* at 142. Dr. Seltzberg confirmed that he had delusions about skinheads, the Irish mafia, demons, and Nazis, and that consuming raw rats plagued these groups and saved the homeless and helpless. *Id.* at 133, 145-46. She believed the subject of his delusions were consistent over time, but his delusions intensified when he was not medicated. *Id.* at 145.

Dr. Seltzberg stated that prior to killing Marjorie, Mordechai believed she was evil and going to kill him, Orthodox Jewish people and a number of others. *Id.* at 148. She opined that in Mordechai’s mind, he was acting in self-defense. *Id.* Mordechai ultimately decided to go to Marjorie’s home on the day of the killing because he received signs from God, Dr. Seltzberg summarized his beliefs as:

“well, one of the signs that made it in his mind he believed that he had the approval of God, and the go ahead from God to kill these bad people . . . when he opened a closet door in his home, he was looking for a coat, and it wasn’t there. And he closed the door and then he reopened it, and then miraculously four coats were there transported from [Marjorie’s] apartment to his apartment, and he saw

this as a sign that he was absolutely doing the right thing that he had to go ahead with killing [Marjorie].” *Id.* at 142.

Then Dr. Seltzberg reported that Mordechai admitted “he took a knife and walked over there, and he let himself into her apartment with the key, and he stabbed her repeatedly, and then cut her throat. I think he said sliced to make sure that she was dead, and then he stayed there for a couple of days.” *Id.* at 148.

Dr. Seltzberg interviewed Mordechai two weeks after he began taking his medication again. *Id.* at 140. She reported that he was able to respond to questions coherently, but still questioned about whether what he experienced was true or not. *Id.* at 140-41. Further, she testified that he was sorry for what happened to Marjorie and indicated that “he was repenting himself for not helping the homeless and the helpless for various periods of time in his life in the past.” *Id.* at 141.

Dr. Seltzberg concluded, within a reasonable degree of medical and psychiatric certainty, that Mordechai was substantially impaired to the extent that he was not able to appreciate the criminality of his conduct on the date he killed Marjorie. *Id.* at 149.

E. Stipulated Statements of Dr. Christina Floreani

Portions of the criminal trial transcript that contain stipulated statements from Dr. Christiana Floreani’s (“Dr. Floreani”) were admitted as Petitioner’s Exhibit 7 (“Pet. Ex. 7”). Dr. Floreani is a psychiatrist who was ordered by the criminal court to evaluate Mordechai. Pet. Ex. 7, p. 150-51. Her evaluation consisted of interviewing Mordechai and Solo, and reviewing police reports, other psychiatric evaluations, medical records, and Mordechai’s own handwritten documents. *Id.* at 151.

Dr. Floreani stated that Mordechai was involuntarily admitted to a psychiatric facility on September 12, 2013 after he assaulted a pedestrian. *Id.* at 152. He refused medication during his

and when he was discharged on September 27, 2013. *Id.* at 152. Dr. Floreani stated that on the day of the killing, Mordechai brought a knife to Marjorie’s apartment “with the intent to kill her.” *Id.* at 152-53. Mordechai also provided Dr. Floreani with details from the day of the killing:

“Well, I came into the house. I had the keys. I had thought she changed the lock, but she didn’t. She was just sitting there. I called her a monster, and I threw her on the floor where she was sitting, and I killed her.” *Id.* at 153.

“At that point, I was already thinking that there were these people running around like demons, posing as people, and I thought [Marjorie] might be one of these demons.” *Id.*

“I’m not sure if I choked her, or I slit her throat.” *Id.*

Dr. Floreani concluded within a reasonable degree of psychiatric and scientific certainty that Mordechai was legally insane at the time of the alleged offense as he was suffering from a mental disease and/or defect that resulted in a substantial lack of capacity to appreciate the criminality of his conduct. *Id.*

F. Stipulated Statements of Dr. Ariel Goldschmidt

Portions of the criminal trial transcript that contain stipulated statements from Dr. Ariel Goldschmidt’s (“Dr. Goldschmidt”) were admitted as Petitioner’s Exhibit 8 (“Pet. Ex. 8”). Dr. Goldschmidt was the assigned medical examiner in the criminal trial and examined Marjorie’s body post-mortem. Pet. Ex. 8, p. 108-09. The stipulated testimony detailed over 40 stab wounds and incisions. *Id.* at 109-17. Dr. Goldschmidt concluded within a reasonable degree of medical certainty: (a) the cause of Marjorie’s death was multiple stab and incised wounds, and (b) the manner of death was homicide. *Id.* at 117.

G. Petitioner’s Remaining Exhibits

A Certified copy of Solo’s response to Independent Administrator of the Estate of Ivy’s First Set of Requests to Admit was admitted as Petitioner’s Exhibit 2. Mordechai’s Last Will and

Testament was admitted as Petitioner's Exhibit 4. Mordechai executed his will on May 4, 2019 and died on May 15, 2019. He named Solo's son, Avrohom Soloveichick, as his sole beneficiary. Finally, the Verified Motion to Spread Death of Record of Mordechai Faskowitz was admitted as Petitioner's Exhibit 5.³

II. Estate of Faskowitz's Case in Chief

A. Examination of Julie Theoharopoulos

Julie Theoharopoulos ("Theoharopoulos") was a Community Support Specialist at Thresholds psychiatric rehabilitation facility. Transcript, p. 129. She testified that she assisted Mordechai from January 2013 to October 2013. *Id.* Theoharopoulos went to Mordechai's house weekly to manage his medications, go over social benefits, and provide support. *Id.* at 131. She described Mordechai as polite and actively engaged with the rehab program, and that he loved to talk about his girlfriend and his dog. *Id.* at 131-32. Around August 2013, Theoharopoulos noticed Mordechai struggling and began to meet with him daily, but eventually he did not want to meet with her at all. *Id.* at 151.

During this time, Mordechai was not able to get one or two of his medications refilled. *Id.* at 139. While Theoharopoulos was assisting Mordechai with these issues, she noticed that Mordechai was failing to maintain his hygiene, was more depressed, and was fixated on his delusions about religious gangs and skinheads. *Id.* at 142. Theoharopoulos reported that Mordechai believed that Marjorie was the leader of a skinhead group that was out to harm or kill him because he was Orthodox Jewish. *Id.* at 151.

³ Note, the record does not show any record of a "Petitioner's Exhibit 3" being offered or admitted into evidence.

B. Examination of Dr. Roni Seltzberg

Dr. Seltzberg also provided live testimony in the current civil proceeding. She confirmed that she met with Mordechai on two separate occasions, November 2013 and January 2014. *Id.* at 196-97. During both occasions, Mordechai described an ongoing conspiracy that demons were trying to kill him and other Orthodox Jewish people. *Id.* at 198-99. Further, Dr. Seltzberg reported Mordechai believed that God instructed him to kill Marjorie because she was the leader of the Skinheads and was a bad, evil monster. *Id.* at 199, 204, & 207. Dr. Seltzberg could not confirm whether Mordechai referred to Marjorie as a demon. *Id.* at 212.

Dr. Seltzberg was asked “during your interviews with him, [do] you believe that Mordechai knew that the knife he was using to stab Marjorie Gail Ivy would kill her?” and she responded “[Mordechai] had stated that he brought the knife for the purposes of killing the skinhead Gail Marjorie Ivy.” *Id.* at 206. Further, Dr. Seltzberg affirmed that Mordechai told her that “on the date of the homicide [he] took a knife from his apartment and walked over to [Marjorie’s] apartment.” *Id.* at 209.

When asked “was it your understanding that Mordechai knew that he was killing Marjorie Gail Ivy,” Dr. Seltzberg responded “[i]n his mind he was killing Marjorie Gail Ivy, the leader of the skinheads.” *Id.* at 207. Further, Dr. Seltzberg testified that “[Mordechai] did say that the stabbed her. He didn’t remember how many times. And cut her throat to make sure that she was dead.” *Id.* at 209. Lastly, Dr. Seltzberg clarified Mordechai’s psychotic thoughts as:

“He believed the person that he was killing was a skinhead, likely a demon because of all the evil people were likely demons that were against him, Orthodox Jews, the helpless, the homeless. So that he was killing the person or the thing. I don’t know if he would have called it a person.... But he was killing this Gail Ivy, who is the leader of the skinheads, who was causing all these bad things, bad harm to a lot of people, and potentially killing them.” *Id.* at 213.

C. Examination of Miriam Solo Greenfield

Solo is Mordechai's sister and the independent executor of his last will and testament. *Id.* 167-68. Her son, Avrohom Soloveichick, is the sole beneficiary of Mordechai's will. *Id.* at 260-61. Solo testified to her experiences with Mordechai's ongoing mental health issues. She reported Mordechai's symptoms started in his late 20s, but he had "his first break with reality" when he started acting erratically and ranting about various delusions at a bar mitzvah. *Id.* at 178-80. These breaks with reality included paranoid delusions about the Irish mafia, skinheads, demons, the CIA, and the FBI. *Id.* at 180. Mordechai stated that everyone should eat raw rats to prevent the evils of the world. *Id.* at 177. Shortly thereafter, Mordechai was hospitalized and it became clear that his mental health symptoms improved with medication. *Id.* at 179-80.

Solo testified that sometime either before or after the hospitalization, she received a "science fiction letter" from Mordechai that contained his ongoing delusions about skinheads, the government, and Satan cultists. *Id.* at 180-81. Mordechai hand wrote the letter, copied it, and sent it out to about 70-80 people, including prominent religious figures. *Id.* at 181.

In 2003 Mordechai was involuntarily hospitalized after he crashed his car due to the belief that the CIA was chasing him. *Id.* at 222. Mordechai remained hospitalized until 2010, when he was able to get an apartment through Thresholds' rehab facility. *Id.* at 223. Solo stated that around this time, Mordechai was back to his normal self. *Id.* at 224.

In June 2013, Solo reported that Mordechai's demeanor was calm and happy. *Id.* at 230-31. In August 2013, Solo received a second letter ("Respondents Exhibit 1") from Mordechai that was almost identical the previous letter he sent out.⁴ *Id.* at 185. This letter did not mention

⁴ Initially Mordechai's Estate offers the 2013 letter as exhibit as Respondent Exhibit 2 (Transcript, p. 183), but later clarifies that this letter is Respondent's Exhibit 1 (Transcript, p. 246). Additionally, Respondent or the court reporter is confused on whether the second of Mordechai's two letters was written in 2013 or 2003.

the word demon or Marjorie's name. *Id.* at 263. Solo was concerned by the letter and tried to contact Mordechai. *Id.* at 227. She was unable to contact Mordechai until late August when her friend found him wandering the streets. *Id.* at 227-28. Solo testified that Mordechai was agitated and pacing, "smelly, dirty, and had lost weight." *Id.* at 230, 232. Solo reported that Mordechai refused to answer whether he was taking his medication. *Id.* at 232. She attempted to call Thresholds but was unable to get through so Mordechai stayed at her house for a few weeks. *Id.* at 234-37. While at her house, Mordechai's condition did not improve, and he would call Solo hundreds of times a day because he believed people were "tapping the phones." *Id.* at 235-37.

In early September of 2013, Mordechai left Solo's home after one of her sons returned home to celebrate an upcoming Jewish holiday. *Id.* at 240. Solo testified that Mordechai believed that her son had to leave because he was an evil force. *Id.* at 239. Sometime after Mordechai left, Solo discovered that he was hospitalized, but she was unable to obtain information as to why. *Id.* at 242. Mordechai called Solo after he was discharged from the hospital, but told her that he escaped and then began ranting about his ongoing delusions including that Marjorie was overtaken by evil forces. *Id.* at 243-44.

Solo testified that she was contacted by the hospital Mordechai was staying at after he killed Marjorie. *Id.* at 245-46. She reports that Mordechai was refusing to eat, unless he was brought raw rats. *Id.* at 246. Solo testified that when she finally got to speak with Mordechai he seemed paranoid and confused. *Id.* at 247

By the time of the criminal trial in 2016, Solo stated that Mordechai was taking his medication and had "calmed down." *Id.* at 248. Solo reported that she had a conversation with Mordechai about killing Marjorie,

“[h]e talked about that he was insane when he had done this, that he didn’t realize what he was doing, that he loved [Marjorie], that he never would have hurt her, that his delusions were caused because he couldn’t get his meds.” *Id.* at 251.

III. Closing Arguments

A. Petitioner’s Closing Argument

Ivy contended that the following, by a preponderance of the evidence, shows that Mordechai had the requisite civil intent to bar him from inheriting or otherwise benefit from Marjorie’s Estate:

- Dr. Floreani’s stipulated testimony that Mordechai expressly admitted that he took a knife from his apartment, walked to Marjorie’s apartment, let himself in, called her a monster, stabbed her repeatedly, and slit her throat to make sure she was dead.
- Dr. Seltzberg’s criminal trial testimony, as well as her testimony in this trial, reiterated that Mordechai admitted that he took a knife to Marjorie’s apartment, stabbed her repeatedly, and sliced her to make sure she was dead.
- Dr. Seltzberg testified at this trial that Mordechai thought about killing Marjorie before the actual homicide because he believed she was the leader of a skinhead group that was planning to kill him and others.
- Officer Eng, in his deposition testimony, reported that Mordechai told him that he killed Marjorie because she was a skinhead. Petitioner contended that skinheads are people. Inversely, Petitioner pointed to Theoharopoulos’s field notes lacked any indication that Mordechai thought Marjorie was something besides a human.
- Mordechai running away from Officer Eng was telling because it indicated that Mordechai was cognizant of the fact that he did something wrong.
- Mordechai’s conversations with Harrington, and Mordechai’s desire to avoid the police’s involvement as evidence that demonstrates that Mordechai knew he had killed a person.
- Dr. Goldschmidt’s stipulated testimony from the criminal trial, Mordechai stabbed Marjorie over 40 times, which demonstrates that this was an intentional homicide.
- While Mordechai’s six page handwritten letter was offered for the purposes of showing his delusions or paranoia, the letter actually demonstrates his lucidity and it has a clear thesis on how those in power are corrupt criminals. Further, the fact that Mordechai was able to find mailing addresses and mail the letter, demonstrates that he was capable of following through on actions.

Next, Ivy argued that, for purposes of determining intent under the Slayer Statute, civil courts do not consider criminal intent *mens rea*. *Laborer’s Pension Fund v. Miscevic*, 800 F.3d 927, 936 (7th Cir. 2018). Petitioner argued that *Laborer’s Pension Fund* applied Illinois law and only required that there be a showing that the person intended his or her actions, not that the

person had knowledge that their actions were wrongful. Stated differently, tortious intent refers to a desire to cause consequences, or at least a substantially certain belief that consequences will result. *Ziarko v. Soo Line R.R. Co.*, 161 Ill. 2d. 267, 272 (1994). Consequently, Petitioner contended that Mordechai's beliefs while committing murder are not a factor in determining whether civil intent has been satisfied.

Petitioner contended the criminal court's determination that Mordechai was NGRI has no bearing in this case because it is well-settled that though a defendant may be found NGRI for a criminal action, the defendant may still be liable for a civil action. *McIntyre v. Sholty*, 121 Ill. 660, 664 (1887). Additionally, insanity is not a defense to an action based on civil intent. *Vosnos v. Perry*, 43 Ill. App. 3d 834, 836-837 (1st Dist. 1976).

Next, Petitioner argued that this case is factually similar to *Dougherty v. Cole*, 401 Ill. App. 3d 341 (4th Dist. 2010). The *Dougherty* court determined that the slayer had the requisite civil intent to kill his mother, even though he was being told by a voice inside his head that she was the enemy. The slayer in *Dougherty* testified that he knew he was grabbing the knife and trying to kill her when he stabbed his mother. 401 Ill. App. 3d at 347. Petitioner contended multiple reasons why *Dougherty* is similar to the case at bar. First, Mordechai planned ahead of time to kill a person, namely Marjorie. Second, he planned to kill a specific person, Marjorie. Third, Mordechai took the knife from his apartment and keys to Marjorie's apartment, so he could access her apartment and stab her. Fourth, Mordechai admitted to walking over to Marjorie's apartment, letting himself in, stabbing her 40 times, and slitting her throat to make sure she was dead. In summation, *Petitioner* argued that this was not an accidental killing, rather it was methodical and deliberate as Mordechai knew who he was going to kill and where he was going to kill her.

Petitioner also discussed how *Dougherty* did not expressly find that it was a statutory requirement for the slayer to be “cognizant” that he was killing a person in order to be barred from benefiting from the victim’s estate. 401 Ill. App. 3d at 348. Additionally, Petitioner contended that when reviewing this case, the appellate court made no finding that the slayer be cognizant that he or she was killing a person. Petitioner argued that making cognizance a requirement goes against established case law, which states that insane persons are liable for their civil wrongs. *McIntyre v. Sholty*, 12 Ill. 660 (1887).

However, Petitioner argued *arguendo*, even if cognizance were an element for capability under the Slayer Statute, it is undisputed that Mordechai killed a specific person who identified in human form as Marjorie. Petitioner argued that despite his mental illness, Mordechai was highly aware and lucid in deciding to go to Marjorie’s apartment, with a knife, stabbing Marjorie 40 times, calling the funeral home to pick up a killed body, hiding inside Marjorie’s apartment, and attempting to run from the police. Further, Petitioner argued that skinheads are in fact people, and if Mordechai believed he was killing a skinhead, then he would have believed he was killing a person.

Finally, Petitioner argued that Mordechai’s belief that he was killing a demon may be a basis for a finding of insanity to avoid criminal responsibility, but is not a basis to avoid civil tort liability. These beliefs or delusions do not excuse his intentional actions for tort purposes as he knew he knew when he went inside Marjorie’s apartment, stabbed Marjorie, and slit Marjorie’s throat, that he was causing Marjorie’s death.

B. Respondent’s Closing Argument

The Estate of Faskowitz argued that the key issue in this case is whether Mordechai should be deprived of what Marjorie wanted to leave him. Here, Faskowitz’s Estate argued the

appellate court made it clear that cognizance and adopted the cognizance test found in *Dougherty* at 401 Ill. App 3d, 341. Further, while every sane man is presumed to intend all the natural and probable consequences, here Mordechai's insanity has been adjudicated.

Further, the appellate court found that Mordechai's intent remained a question of material fact that needed resolution. Faskowitz's Estate argued that Marjorie's Estate did not present any new or additional facts or evidence that satisfies the burden set by the appellate court. Specifically, Faskowitz's Estate contended that nothing was offered to respond or address the appellate court's concern that the testimonies of Drs. Floreani and Seltzberg indicate that Mordechai was uncertain as to who or what he was interacting with.

Respondent argued the evidence presented by Petitioner to show that the issue of cognizance was not resolved:

- As previously stated in ¶ 74 of the appellate order, Dr. Goldschmidt's criminal trial testimony said nothing about Mordechai's intentions of whether any justification exists for his conduct.
- The appellate court determined that Dr. Floreani's report raised an issue of material fact in ¶ 83 of its order. The report claimed that Mordechai believed Marjorie to be a demon.
- Dr. Seltzberg's criminal trial testimony does not show intent as Mordechai was still delusional when interviewed, including severe delusions regarding Marjorie. On cross examination in this trial, Marjorie's Estate only reiterated that Mordechai lacked the ability to know that he was killing Marjorie. Petitioner's cross examination did not provide any additional evidence and Dr. Seltzberg stated that Mordechai's lack of cognizance that he was killing the Marjorie he knew remained the same. Further, Petitioner's recount of the physical details of Marjorie's death does not change the fact that the appellate court discarded these details as irrelevant to the issue of intent.
- [Faskowitz's estate makes an argument regarding Dr. Shoenbach's criminal trial testimony, however this was never admitted as evidence in this matter.]
- Harrington's testimony was irrelevant to cognizance and supports actually provided support to the argument that Mordechai was irrational. Further, Harrington stated that Mordechai had a thick accent on the calls when he does not have an accent at all. Finally, per *People v. Harrison* (366 Ill. App. 3d, 210) insane persons cannot make effective choices and acting irrational on the phone shows that Mordechai could not make an effective choice. *Id.* Harrington's testimony is that Mordechai was irrational and implacable of reasonable thought.
- Officer Eng's deposition was completed 9 years after the incident occurred. Officer Eng testified that Mordechai told him "I did it," but the police report stated that Mordechai

told Officer Eng “I didn’t mean to do it.” When questioned why an admission such as “I did it” would be left out of a final police report, Eng speculated that the person who “actually” wrote the report must have left it out.⁵ The phrase “I didn’t mean to do it” goes to intent, the possible statement of “I did it” add nothing because Mordechai never denied doing it.

Next, Faskowitz’s Estate argued that the appellate court explicitly rejected *Labors Pension Fund v. Miscevic* as irrelevant to this matter. *Labors*, a federal case, defers to the state court’s interpretation of the state statute. Thus, Faskowitz’s Estate concluded the appellate order of this case prevails over any application of *Miscevic*.

Faskowitz’s Estate argued the following witness testimony shows Mordechai lacked cognizance when he killed Marjorie:

- Dr. Seltzberg reiterated her previous testimony that Mordechai was suffering from delusions and under his state of mind, he was killing Marjorie – the skinhead leader, not Marjorie – his girlfriend.
- Theoharopoulos described how she watched Mordechai deteriorate when he was deprived of his medication. She reports that even though she visited him over 40 times, Mordechai did not recognize her and suspected that she was part of the conspiracy.
- Solo testified to Mordechai’s history with mental illness and the delusions he had close to the time of Marjorie’s death. She testified Mordechai stated that Marjorie was taken over by evil force. Solo’s testimony is consistent with the accounts given by Dr. Floreani, Dr. Seltzberg, and Theoharopoulos. [Faskowitz’s Estate makes an argument regarding an affidavit by Solo as well as her responses to interrogatories. While the estate contends that these documents are in the record, neither of these documents, were entered into evidence during bench trial.]

Faskowitz’s Estate concluded that after three days of testimony, it is uncontested that Mordechai was kind, rational, and polite while on medication. Conversely, after he was unwilling deprived of his medication, he refused to eat unless given raw rats, he refused to defecate, and he was seeing “demons, warlocks, monsters, and spies.” Faskowitz’s Estate argued that the very fact that Mordechai has so many confused and delusional impressions of who he

⁵ Note, Officer Eng clarified that he drafted the Police Incident Report, but someone else made final edits to it.

was killing proves there was a lack of cognizance. Further, Faskowitz's Estate argued that Ivy did not present any evidence that was new or added or detracted from the facts reviewed by the appellate court. Finally, Faskowitz's Estate argued that the burden of showing that Mordechai was cognizant for the purposes of intent under the Slayer Statute rests with Ivy and that burden not been met.

ANALYSIS

Section 2-6 of the Illinois Probate Act ("Slayer Statute") states, in pertinent part, as follows:

A person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, joint tenant, survivor, appointee or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing the death died before the decedent, provided that with respect to joint tenancy property the interest possessed prior to the death by the person causing the death shall not be diminished by the application of this Section. A determination under this Section may be made by any court of competent jurisdiction separate and apart from any criminal proceeding arising from the death, provided that no such civil proceeding shall proceed to trial nor shall the person be required to submit to discovery in such civil proceeding until such time as any criminal proceeding has been finally determined by the trial court or, in the event no criminal charge has been brought, prior to one year after the date of death. A person convicted of first degree murder or second degree murder of the decedent is conclusively presumed to have caused the death intentionally and unjustifiably for purposes of this Section. 755 ILCS 5/2-6.

Thus, the Slayer Statute bars individuals who intentionally and unjustifiably causes the death of another from receiving a property from the victim's estate. 755 ILCS 5/2-6; *In re Estate of Ivy*, 2019 IL App (1st) 181691, ¶82. The moving party must prove that Mordechai intended to kill Marjorie without legal justification.

Persons found to be insane cannot be held criminally liable, but are liable to civil actions for torts the persons may commit. *McIntyre*, 24 Ill. at 664. "The party with the burden of persuasion must prove his or her case by a preponderance of the evidence," meaning the party

must show a proposition is more probably true than not true.” *Avery v. State Farm Mut. Auto. Ins.*, 216 Ill. 2d 100, 191 (2005). The burden is satisfied when there has been sufficient evidence established to “allow a reasonable trier of fact to conclude that element to be proven.” *Thacker v. UNR Industries*, 151 Ill. 2d 343, 354 (1992).

A. Procedural Posture

This bench trial was heard on remand from the appellate court on the *First Amended Petition to Disqualify Mordechai Faskowitz from Receiving Benefits under the Slayer Statute and Distribution Assets to Successor Beneficiaries or to the Estate of Marjorie G. Ivy*. In 2018, the probate court granted summary judgement in favor of Ivy on barring Mordechai under the Slayer Statute. *In re Estate of Ivy*, 2019 IL App (1st) 181691, ¶19. In ruling on the summary judgement, the probate court took judicial notice of two facts: (1) Mordechai was charged with two counts of first-degree murder and one count of concealment of a homicide; and (2) Mordechai was adjudicated as NGRI on all three counts. *Id.* Accordingly, the probate court reasoned that the criminal trial judge’s determination of Mordechai’s state of mind for purposes of the NGRI defense was sufficient to satisfy the Slayer Statute’s intentional and unjustifiable requirements. *Id.* at ¶21. Next, the probate court concluded that the criminal litigation was a final judgement on the merits to which Mordechai was a party and had the opportunity to have a full and fair opportunity to litigate all relevant issues. *Id.* Thus, the probate court determined that Mordechai was collaterally estopped from re-litigating the issue of whether he intentionally and unjustifiably caused Marjorie’s death. *Id.*

The appellate court disagreed and clarified that the plain language of the Slayer Statute only conclusively presumes that death was intentionally and unjustifiably caused when the slayer is convicted of first or second degree murder. *Id.* ¶¶33-35. Further, the court contended that a

NGRI verdict is an acquittal, and thus, not a conviction that conclusively presumes that Mordechai intentionally and unjustifiably caused Marjorie's death. *Id.* ¶¶34-36.

Next, the appellate court determined that Mordechai was not collaterally estopped from litigating whether he was barred under the Slayer Statute because the issues litigated in the probate and criminal proceedings were not identical. *Id.* ¶¶43-44. The court explained that the criminal trial, in determining whether Mordechai was NGRI for first and second degree murder, did not adjudicate the question of whether he intended to cause Marjorie's death under the Slayer Statute. *Id.* at ¶47. Finally, the appellate court determined, for purposes of the slayer statute, that there was a question of fact as to whether Mordechai intentionally caused Marjorie's death. *Id.* ¶85.

Further, neither party provided any evidence suggesting that Mordechai was justified in killing Marjorie. Accordingly, the only issue that remains before this Court is whether Mordechai "intentionally" caused Marjorie's death for purposes of the Slayer Statute.

B. Intentionality

The Illinois Supreme Court determined that tortious intent is defined as "a desire to consequences or at least a substantially certain belief that the consequences will result." *Ziarko v. Soo Line R.R.*, 161 Ill. 2d 267, 272 (1994). In the context of the Slayer Statute, the 7th Circuit – in applying Illinois law – explained "we do not consider criminal intent ('mens rea'), we consider civil intent." *Laborer's Pension Fund*, 800 F. 3d 927, 936. Further, civil intent only requires a "showing that a person intended his or her actions; there is no requirement that a person have knowledge that his or her actions were wrongful." *Id.*

In *Dougherty*, the court found Jack caused his mother's death and was barred from receiving her property. 401 Ill. App. 3d at 342, 348. A psychiatric evaluation revealed that Jack

was suffering from a severe manic episode with psychotic features at the time he beat and stabbed his mother to death. *Id.* at 342. The criminal court found Jack NGRI. *Id.* “Jack testified he intended to kill, but only did so at the direction of a voice inside his head.” *Id.* at 347. Further, he testified that he knew the person he beat and stabbed was his mother, but that he was being told she was the enemy. *Id.* at 347. The appellate court affirmed the trial court’s application of the slayer statute and concluded that when “an individual was insane for criminal purposes, but nevertheless cognizant he was killing a person, the Slayer Statute will prevent him from benefitting from his actions.” *Id.* at 348. *Dougherty* is directly analogous to the case at hand.

Accordingly, even though a person was found NGRI and fails to appreciate the criminality of their conduct, they may still be barred from recovery under the slayer statute if they acted with intent in killing another. Here, the Court finds that it is more probable than not that Mordechai intentionally killed Marjorie or caused her death.

In our present hearing, the testimony of Dr. Seltzberg demonstrates that is more likely than not that Mordechai intentionally killed or caused Marjorie’s death. In response to being asked whether she believed “that Mordechai knew that the knife he was using to stab Marjorie Gail Ivy would kill her,” Dr. Seltzberg responded “[Mordechai] had stated that he brought the knife for the purposes of killing the skinhead Gail Marjorie Ivy.” Transcript, p. 206. Further, Dr. Seltzberg affirmed that Mordechai told her that “on the date of the homicide [he] took a knife from his apartment and walked over to [Marjorie’s] apartment.” *Id.* at 209. Once at the apartment, Dr. Seltzberg testified that “[Mordechai Faskowitz] did say that the stabbed her. He didn’t remember how many times. And cut her throat to make sure that she was dead.” *Id.*

Analogous, to how the slayer in *Dougherty* believed the victim was the “enemy” due to a delusion, Dr. Seltzberg testified in our present case that that Mordechai believed that God

instructed him to kill Marjorie because she was the leader of the Skinheads and was a bad, evil monster. *Id.* at 199, 204, & 207. When asked “was it your understanding that Mordechai knew that he was killing Marjorie Gail Ivy,” Dr. Seltzberg responded “[i]n his mind he was killing Marjorie Gail Ivy, the leader of the skinheads.” *Id.* at 207. Lastly, Dr. Seltzberg clarified Mordechai’s psychotic thoughts as:

“He believed the person that he was killing was a skinhead, likely a demon because of all the evil people were likely demons that were against him, Orthodox Jews, the helpless, the homeless. So that he was killing the person or the thing. I don’t know if he would have called it a person.... But he was killing this Gail Ivy, who is the leader of the skinheads, who was causing all these bad things, bad harm to a lot of people, and potentially killing them.” *Id.* at 213.

In summary, Dr. Seltzberg testified that Mordechai believed Marjorie was a person and that person as a skin head. *Id.* Further, Dr. Seltzberg testified that Mordechai stated to her that he walked to Marjorie’s apartment with a knife in-hand for the purpose of killing Marjorie. *Id.* at 206. Finally, Dr. Seltzberg testified that Mordechai stated that he stabbed her with the intent to kill her. *See id.* at 209. Specifically, Dr. Seltzberg reported that Mordechai admit that he “cut her throat to make sure she was dead.” *Id.* This testimony alone is sufficient to find that Mordechai intentionally caused Marjorie’s death.

Also presented by Respondent in our present hearing, Ms. Julie Theoharopoulos, a Community Support Specialist at Thresholds, testified that prior to the killing Mordechai believed Marjorie was a skinhead and she wanted to harm or kill him because he was Orthodox Jewish. *Id.* at 151. Again, this is analogous to *Dougherty*, where the slayer intentionally murdered the person he knew to be his mother, while also operating under the delusion that she was the “enemy.” *Dougherty*, 401 Ill. App. 3d at 347.

Petitioner presented evidence from the criminal trial that was consistent with the evidence offered by Respondent in our present hearing. For example, in the criminal trial Dr. Seltzberg

testified that Mordechai admitted that “he took a knife and walked over there, and he let himself into her apartment with the key, and he stabbed her repeatedly, and then cut her throat” and “I think he said [he] sliced to make sure that she was dead, and then he stayed there for a couple of days.” Pet. Ex. 6, p. 148. Similarly, stipulated statements of Dr. Floreani from the criminal trial recount Mordechai’s intentional actions in killing Marjorie. Dr. Floreani retold Mordechai’s admission:

“Well, I came into the house. I had the keys. I had thought she changed the lock, but she didn’t. She was just sitting there. I called her a monster, and I threw her on the floor where she was sitting, and I killed her.” Pet. Ex. 7, p.153.

Once more, Dr. Goldschmidt’s detailing of over 40 stab wounds and incisions provide further evidence that Mordechai’s actions were intentional. Pet. Ex. 8, p. 117. This illustrates that Mordechai’s actions were not accidental, but rather that he intentionally and repeatedly stabbed Marjorie.

The Court concludes that Mordechai, even though he could not appreciate the criminality of his conduct, intentionally killed Marjorie. This finding is consistent with the *Dougherty* court’s analysis of the statutory intent of amendments to the slayer statute – that the ban is extended to “insane killers.” 401 Ill. App. 3d at 347. Identical to the killer in *Dougherty*, Mordechai admitted in his own words to Dr. Seltzberg that the person he intended to kill was Gail Marjorie Ivy and that Gail Marjorie Ivy was the person he killed. Mordechai’s delusion that Marjorie was a skinhead or demon, does not negate the fact that he knew the person he was stabbing was Gail Marjorie Ivy, that he intentionally acted in stabbing her and slitting her throat to make sure she was dead.

C. Application of Cognizance

The appellate court did not explicitly state that cognizance was an element needed to be established, nor did it adopt a cognizance test.

However in our present case, testimony presented of Mordechai Faskowitz's own words prove that he was cognizant that the person he intended to kill and did kill was in fact Gail Marjorie Ivy. The fact that Mordechai Faskowitz was under the mistaken delusion that Gail Marjorie Ivy was a skinhead does negate the evidence that he was killing the person. The evidence also proves he knew this person to be Gail Marjorie Ivy. This is directly analogous to the situation in *Dougherty*.

The Court finds that, based on the evidence presented at our present hearing, Mordechai was most likely cognizant that the individual he was killing was the person he believed to be Marjorie. Similarly, the slayer in *Dougherty* killed his mother after hearing a voice in his head telling him that his mother was the "enemy." *Dougherty*, 401 Ill. App. 3d at 348. This case is directly analogous. Mordechai admitted that the person he killed was Marjorie Gail Ivy, but due to his symptomology, he believed Marjorie was a demon or skin head that was going to kill Orthodox Jewish people. *See e.g.* Dr. Seltzberg testifying that Mordechai believed he killed Marjorie Gail Ivy, the leader of the skinheads (Transcript, p. 213). Further, the killer in *Dougherty* was suffering from a severe manic episode with psychotic features, which prevented him from appreciating the criminality of his conduct. *Dougherty*. 401 Ill. App. 3d at 342. Similarly, it is undisputed that at the time Mordechai killed Marjorie, he "was suffering from a mental disease and or defect that resulted in a substantial lack of capacity to appreciate the criminality of his conduct." Pet. Ex. 7, p. 153. Both here and in *Dougherty*, experiencing psychotic symptoms does prevent a finding that the slayer was cognizant that they were

intentionally causing the death of another person. In both cases, the slayers knew the victim, stated they killed the person by name, and were under a mistaken delusion as to the victim's motivations. These cases are virtually identical.

Further, evidence of Mordechai's awareness that he killed a person can be found in Harrington's testimony. Harrington testified that Mordechai asked him "to come pick up a killed body." Transcript, at 49 & 52-53. When Harrington responded that the police needed to be called, Mordechai stated he did not want the police involved and hung up. *Id.* at 50-51. Harrington's testimony makes it clear that Mordechai was aware that he had killed a human person. Mordechai's unwillingness to involve the police tends to indicate his understanding of the ramifications of killing a person.

CONCLUSION

For the reasons stated above, the Court finds that Mordechai Faskowitz intentionally and unjustifiably killed Marjorie Ivy. Accordingly, Mordechai and his estate are barred under the Slayer Statute from receiving any benefit or distribution from the Estate of Marjorie Ivy.

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ENTER:



Judge Terrence McGuire

No.

4.7.23

Date

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