

STATE OF MAINE

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Law Court Docket No. KNO-25-378

ESTATE OF DOMINIK LOBKOWICZ

APPEAL FROM THE KNOX COUNTY PROBATE COURT

**BRIEF OF APPELLEE NICHOLAS LOBKOWICZ, PERSONAL
REPRESENTATIVE OF THE ESTATE OF DOMINIK LOBKOWICZ**

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STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Nicholas Lobkowicz (“Nicholas” or the “Personal Representative”) is the son of Dominik Lobkowicz (“Dominik” or “Decedent”). (A. 6, 18-19, 27.) Dominik died on February 24, 2020. (A. 6.) Dominik left a will dated April 5, 2000 (the “Will”), in which he nominated his wife, Sara Lobkowicz, to serve as personal representative of his estate, and nominated Nicholas as the backup personal representative. (A. 19.) Sara died on August 17, 2022, without probating Dominik’s Will or seeking the appointment of a personal representative. (A. 4, 6.)

On February 22, 2023 – just two days before the three-year anniversary of Dominik’s death – Appellant Christopher Stefanoni (“Stefanoni” or “Appellant”) filed an application for informal probate of Dominik’s Will in the Knox County Probate Court (the “Probate Application”). (A. 4, 22-25.) In the Probate Application, Stefanoni described his interest in Dominik’s estate as “nephew.” (A. 6, 22.) He did not request appointment of a personal representative, and none was appointed. (A. 4, 6, 22-25.) The Will was admitted to probate on March 2, 2023, three years and 6 days after Dominik’s death. (A. 4, 6.)

On March 6, 2025, Nicholas, the backup personal representative named in the Will, filed an Application for Informal Appointment of Personal Representative (the “Appointment Application”). (A. 27-31.) In the Appointment Application, Nicholas

acknowledged that more than three years had passed since Dominik’s death, and described the circumstances that nonetheless authorized his appointment under Section 3-108(1)(D) of the Maine Uniform Probate Code. (A. 29.) On March 24, 2025, the Deputy Register of Probate entered Findings and Acts to appoint Nicholas as personal representative of Dominik’s estate, and issued Letters of Authority the same day. (A. 4, 32-34.)

On March 26, 2025, just two days after Nicholas’s appointment, Stefanoni filed a petition to remove Nicholas as personal representative under Section 3-611 of the Probate Code (the “Removal Petition”). (A. 10-11.) The Removal Petition was based solely on Stefanoni’s allegation that the Appointment Application was untimely. (A. 10-11.) Stefanoni did not dispute that Nicholas, as the only surviving nominee for personal representative under Dominik’s Will, was entitled to priority for appointment, nor did Stefanoni allege that Nicholas had mismanaged the estate, committed malfeasance, or was otherwise unfit for that office. (A. 10-11.) In his Removal Petition, Stefanoni did not propose that any other person be appointed as personal representative, even though Form DE-509 required him to make such an election.¹ (See A. 11.)

¹ In the Removal Petition, Stefanoni identified the nature of his interest in Dominik’s estate as simply, “other.” (A. 10.)

On April 24, 2025, the Personal Representative moved to dismiss the Removal Petition pursuant to Probate Rule 12(a)(4), on the grounds that it failed to allege a valid basis for removal under Section 3-611. (A. 12-16.) After the Personal Representative’s motion to dismiss was fully briefed, the Probate Court (*Emery, J.*) held a conference at which it did not resolve the Personal Representative’s motion to dismiss but, instead, requested that the parties submit supplemental memoranda regarding the timeliness of the Appointment Application under Section 3-108. (A. 5, 44-57.)

After receiving the parties’ supplemental materials, the Probate Court rejected Stefanoni’s contention that the Appointment Application was untimely. (A. 6-9.) The Probate Court observed that Section 3-108(1)(D) is “frequently relied upon” to help heirs to “confirm title in the successor of the estate,” and is “especially important in real estate matters.” (A. 8 (quotation marks omitted).) The Probate Court further explained that Stefanoni’s argument – that “having the Will admitted to probate two days before the three-year date of death limitation” precluded a subsequent appointment under Section 3-108(1)(D) – would “negate[] the intention of the statute.” (A. 8.)

Because the timeliness argument was the only issue that Stefanoni had raised, the Probate Court dismissed the Removal Petition. (A. 9.) The Probate Court did not

rule on the Personal Representative’s alternative argument that Section 3-611 did not allow Stefanoni to seek the Personal Representative’s removal by challenging the timeliness of the Appointment Application. (A. 9.)

Stefanoni timely appealed. (A. 5.)

SUMMARY OF ARGUMENT

This Court can affirm the Probate Court’s judgment on several, alternative, grounds. First, Nicholas’s Appointment Application was timely under Section 3-108(1)(D) because (i) no prior administration or appointment proceeding had occurred, and (ii) Nicholas sought appointment only to determine if there are assets requiring confirmation of title in the successors to the estate. Stefanoni’s argument that his prior Probate Application precluded appointment under Section 3-108(1)(D) is at odds with the text and structure of Section 3-108, as well as other provisions of the Probate Code. Moreover, as the Probate Court observed (and as Stefanoni does not deny), Stefanoni’s misinterpretation of the statute would allow a party to bar any administration of an estate, even to “confirm title in the successors,” through a tactically-timed testacy application. The Legislature did not enact such a scheme, which would create perverse incentives for gamesmanship and run counter to the purposes of the Probate Code.

Second, Stefanoni's technical challenge to the timeliness of Nicholas's Appointment Application is not a proper basis for removal. The appointment of a personal representative is not subject to "retroactive vacation," 18-C M.R.S. § 3-307(2); rather, a duly appointed personal representative may be removed only for certain specified causes, such as mismanagement of the estate. Stefanoni does not allege any misconduct by the Personal Representative (after all, he filed his Removal Petition less than 48 hours after Nicholas was appointed). As a result, independent of Stefanoni's arguments about the timeliness of the Appointment Application, Stefanoni's Removal Petition was subject to dismissal.

At their essence, Stefanoni's procedural steps reveal his objective: to preclude any administration of Dominik's estate or any appointment of a personal representative, even to confirm title to the estate's successors. This Court has described the right to devise property as one of the "most sacred rights" in the bundle of sticks, *In re Estate of Foss*, 202 A.2d 554, 558 (Me. 1964), and if that were not emphatic enough, the Legislature has prescribed that a primary purpose and policy of the Probate Code is to "make effective the intent of a decedent in the distribution of the decedent's property," 18-C M.R.S. § 1-102(2)(B). Stefanoni evidently desires, and believes he has attained, the power to prevent the administration of Dominik's

Estate or even the confirmation of title in Dominik’s successors. Stefanoni is mistaken; Maine law does not allow him that power.

This Court should affirm the judgment of the Probate Court.

ARGUMENT

I. STANDARD OF REVIEW.²

This Court “interprets the Probate Code de novo as a question of law.” *Clark v. Clark*, 2019 ME 158, ¶ 7, 219 A.3d 1020. However, “[t]he Probate Court has broad discretion in removing or declining to remove a personal representative and its decision is reviewed for an abuse of that discretion.” *Estate of Voignier*, 609 A.2d 704, 707 (Me. 1992).

II. THE PROBATE COURT CORRECTLY CONCLUDED THAT STEFANONI FAILED TO SHOW A VALID BASIS FOR REMOVAL OF THE PERSONAL REPRESENTATIVE.

A. The Probate Court Correctly Concluded that Nicholas’s Appointment Application Was Timely.

Generally, a probate, testacy, or appointment proceeding must be commenced within 3 years after the decedent’s death. *See* 18-C M.R.S. § 3-108(1). However, this general rule – like most statutes of limitations – is subject to various exceptions and safety valves. As relevant here, Section 3-108(1)(D) provides:

² Stefanoni’s Brief does not include “a statement of the standard[] of appellate review applicable” to the issues addressed, as required under Appellate Rule 7A(a)(G).

Regardless of whether the decedent dies before, on or after the effective date of this Code, an informal testacy or appointment proceeding or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate.

This provision authorizes a “late and limited appointment” of a personal representative, and “allows the personal representative [appointed thereunder] to possess estate assets only to the extent needed to confirm title to the successors.”

In re Kendall, 159 N.E.3d 1023, 1030 (Mass. 2020).

As noted, Stefanoni does not dispute that Nicholas has priority to appointment as the Personal Representative of the estate, because Nicholas is not only Dominik’s son but is the only living nominee to that office under Dominik’s Will. Rather, Stefanoni asserts that no one can be appointed as personal representative of Dominik’s estate. He contends that his own Probate Application, filed two days before the three-year anniversary of Dominik’s death, was a “proceeding concerning the succession,” and that he has, by his unilateral action, precluded the successors of Dominik’s estate from availing themselves of Section 3-108(1)(D).

“In interpreting a statute, [the Court’s] single goal is to give effect to the Legislature’s intent in enacting the statute.” *Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶ 19, 107 A.3d 621. When interpreting a statute, a court “examine[s] the entirety of the statute, giving due weight to design, structure, and purpose as well as to aggregate language.” *State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308; *see also State v. Mourino*, 2014 ME 131, ¶ 8, 104 A.3d 893 (statute should be construed “in accordance with its plain meaning in the context of the whole statutory scheme”).

Stefanoni’s interpretation of Section 3-108(1)(D) misreads its text and context, ignores the structure of the statute, and makes no effort to engage with or explain the absurd consequences and perverse incentives that follow from his proposition (as the Probate Court, which deals with such matters regularly, recognized). His argument should be rejected.

First, Stefanoni argues that his Probate Application precludes any and all subsequent proceedings under Section 3-108(1)(D). However, Stefanoni’s Probate Application was not a “proceeding concerning the succession or estate administration”³ which, again, is the triggering language of Section 3-108(1)(D).

³ Stefanoni spends most of his Brief establishing that the Probate Application was a “proceeding.” (Blue Br. 9-11.) This misses the point. There is no dispute that the Probate Application was a “proceeding”; the issue is whether it was a proceeding “concerning the succession or estate administration” within the

The Probate Code and Rules have a standard term to refer to applications for formal or informal probate of a will: a proceeding on such an application is called a “testacy proceeding” or “probate proceeding.” 18-C M.R.S. § 1-201(60); Me. R. Prob. P. 2(a); *see generally* Title 18-C M.R.S. Art. 3. When the Legislature wants to refer to an application to probate a will, it knows very well how to do so: these phrases (“testacy proceeding” and “probate proceeding”) appear fully nine times in Section 3-108 alone, not to mention countless other times throughout the rest of the Probate Code.

In contrast to the phrases “testacy proceeding” and “probate proceeding,” the phrase at issue here – “proceeding concerning the succession” – appears in only one other section of the Probate Code: Section 3-105, where it cannot possibly mean an application to probate a will. Section 3-105 provides, in relevant part, that while the probate court has exclusive jurisdiction of proceedings “to determine how decedents’ estates . . . are to be administered, expended and distributed,” the probate court “has concurrent jurisdiction of any other action or proceeding concerning a succession” 18-C M.R.S. § 3-105 (emphasis added). If Stefanoni’s interpretation of this language in Section 3-108(1)(D) – that an informal testacy application is a “proceeding concerning succession” – is correct, then under Section

meaning of Section 3-108(1)(D). It was not.

3-105, the probate court would have concurrent jurisdiction over informal testacy applications. The probate court does not have “concurrent” jurisdiction of applications to probate a will; those are in the probate court’s exclusive jurisdiction. *See Zani v. Zani*, 2023 ME 42, ¶¶ 12-14, 299 A.3d 9. Thus, the phrase “proceeding concerning a succession” does not and, indeed, cannot refer to an informal application to probate a will.⁴

In short, Stefanoni’s Probate Application was a “testacy proceeding,” not a “proceeding concerning the succession or estate administration.” If the Legislature had intended Section 3-108(1)(D) to refer to a prior “testacy proceeding” or prior “probate proceeding,” it would have used that language – as it did numerous other times in this very same section of the Probate Code, and countless times elsewhere in the Code – rather than a phrase that appears in only one other section of the Probate Code (and where it could not possibly have the meaning that Stefanoni would ascribe to it). Because Stefanoni’s Probate Application was not a “proceeding

⁴ The out-of-state cases cited by Stefanoni are not to the contrary and do not add anything of relevance to the mix of legal materials before the Court. (Blue Br. 8-9 (citing *Estate of Yogiji*, 311 P.3d 1224, 1227-28 (N.M. Ct. App. 2013)), and *Estate of Harris*, 2015 MT 182, ¶ 13, 352 P.3d 20, 24).) Neither *Yogiji* nor *Harris* addressed the “proceeding concerning the succession or estate administration” language, because the issues in those cases involved other aspects of Section 3-108(1)(D) that are not at issue here. Stefanoni’s citations to these cases, which simply parrot the statutory language without purporting to interpret it, shed no light on the question posed in this appeal.

concerning the succession or estate administration,” it does not implicate the limitation in Section 3-108(1)(D).

Second, even if the Probate Application could be considered a “proceeding concerning the succession,” Stefanoni’s Probate Application still does not bar Nicholas’s later Appointment Application, because Section 3-108(1)(D) does not bar a later application for a different type of proceeding. As Stefanoni himself agrees, testacy/probate proceedings are “independent” of appointment proceedings. (Blue Br. 10-11 (citing *In re Gurdy*, 63 A. 322, 323 (Me. 1905) (“the allowance or probate of the will and the granting of letters testamentary are two distinct things”))). When the full text, structure, and statutory context of Section 3-108 are considered, the conclusion is inescapable that Section 3-108(1)(D) allows either a testacy or an appointment proceeding if the same type of proceeding was not previously initiated, but a prior instance of one type of proceeding does not preclude the later initiation of the other type. *See Dubois Livestock*, 2017 ME 223, ¶ 6, 174 A.3d 308.

Section 3-108, when read as a whole, consistently draws sharp distinctions between testacy and appointment proceedings by using the disjunctive “or.” Section 3-108 is replete with phrases like “probate or appointment proceeding,” a “testacy or appointment proceeding,” “proceedings to construe probated wills or determine heirs of an intestate,” and the like. Where the Legislature did intend to address these

different types of proceedings together, it did so, as in Section 3-108(1)(C), which describes a “proceeding to contest an informally probated will and to secure appointment of the person with legal priority.” In other words, the Legislature used “and” where it intended to treat both types of proceedings in tandem, but used “or” where it intended to address them in parallel. The result of this linguistic pattern, when applied to Section 3-108(1)(D), is that each referent in the phrase “succession or estate administration” is intended to correspond only to the same type of proceeding. In other words, to the extent that the commencement of a prior testacy proceeding within three years after death is considered a “proceeding concerning the succession” and precludes a subsequent testacy proceeding under Section 3-108(1)(D), it does not bar a subsequent (albeit limited) administration/appointment proceeding under the same paragraph.

The above-described textual interpretation of Section 3-108 is reinforced by the structure of Article Three of the Probate Code, which consistently treats testacy and appointment proceedings in parallel, as distinct forms, rather than in tandem. For example, the statutes concerning informal probate proceedings⁵ are structured in parallel to the statutes concerning informal appointment proceedings⁶ – i.e., the

⁵ Sections 3-302 to 3-306.

⁶ Sections 3-307 to 3-311.

first section addresses the “effect” of the particular proceeding, the second addresses the “proof and findings required,” the next sections address situations where informal proceedings are not available, and so on. But no one would think of those statutes what Stefanoni thinks of this one: that a provision about informal probate proceedings would apply to informal appointment proceedings. Section 3-108, and the relevant language of subsection 3-108(1)(D), follow the same pattern in miniature.

Third, even if the textual and structural analysis did not fully resolve the question (although it does), the consequences of Stefanoni’s reading are simply too perverse and too contrary to the statute’s purpose to be correct. *See Dickau*, 2014 ME 158, ¶¶ 20-21, 107 A.3d 621 (noting that a court “must interpret [a statute’s] plain language by taking into account the subject matter and purposes of the statute, and the consequences of a particular interpretation,” and that a court “may reject any construction that . . . creates absurd, illogical, unreasonable, inconsistent, or anomalous results if an alternative interpretation avoids such results”). The obvious purpose of the paragraph (1)(D) “escape valve” is to ameliorate the harsh consequences that could otherwise follow an heir’s failure – often through naivete or a misplaced sense of security – to take action to administer the decedent’s estate during the three-year period following death. Without paragraph (1)(D), the strict

three-year deadline of Section 3-108(1) would effectively leave successors or heirs high-and-dry, with no way to properly or conclusively confirm their title, when, out of innocence or a lack of sophistication, a will was probated or intestacy established but no administration was initiated during the three-year period following death. The “limited” powers of a late-appointed personal representative under Section 3-108(1)(D) are consistent with this purpose. *Kendall*, 159 N.E.3d at 1030.

Stefanoni’s interpretation creates obvious opportunities for gamesmanship, as this case amply illustrates and as Stefanoni’s Brief does not attempt to deny or even qualify. Stefanoni filed the Probate Application to informally probate Dominik’s Will (but not to appoint any personal representative or otherwise administer the estate) just two days before the three-year anniversary of Dominik’s death. In light of Stefanoni’s subsequently-asserted (albeit erroneous) interpretation of Section 3-108(1)(D), the obvious purpose for the timing of Stefanoni’s Probate Application is plain; he was attempting – for reasons known only to him – to prevent the appointment of any personal representative and forever preclude the administration of Dominik’s estate. Given the obscure nature of Stefanoni’s interest in the estate, one can only speculate as to his purpose in deploying this tactic (what good is an estate without administration?), but the timing is plainly not a coincidence. An apex purpose of the Probate Code is to “make effective the intent of a decedent in the

distribution of the decedent’s property” 18-C M.R.S. § 1-102(2)(B) – the right to devise property being, of course, “one of the most sacred rights attached to property,” *In re Estate of Foss*, 202 A.2d 554, 558 (Me. 1964). The Code’s purposes do not include thwarting the intent of a decedent through the manipulation of the Code’s technical provisions.

Finally, the importance of Section 3-108(1)(D) to the administration of Maine’s probate system should not be discounted. This is not an obscure corner of probate law, and Section 3-108(1)(D) is not a dusty or rarely-invoked provision of the Probate Code. As the Probate Court observed, Section 3-108(1)(D) “is a statute frequently relied upon” to “carry out the wishes of a decedent and determine heirs of the decedent and is especially important in real estate matters.” (A. 8.) A personal representative’s powers under Section 3-108(1)(D) are limited, but ensuring that a procedure is available to “confirm title to the successors” can be critically important for families and heirs. It would be troubling, and contrary to the Probate Code’s purposes, to allow an individual (who is not even an interested person⁷) to

⁷ Under Section 1-201(26) of the Probate Code, “‘Interested person’ includes heirs, devisees, children, spouses, domestic partner, creditors, beneficiaries and any others having a property right in or claim against . . . the estate” On the face of Stefanoni’s Probate Application, in which he describes his interest as only “nephew,” (A. 22), he has no legal interest in the estate and had no right or standing to file the application to probate Dominik’s Will.

unilaterally deprive the heirs of that vital procedure by a strategically-timed probate application.

For the foregoing reasons, the Probate Court did not err in concluding that the Appointment Application was timely under Section 3-108(1)(D), and therefore dismissing the Removal Petition on that basis.

B. Separately from the Timeliness Issue, Appellant's Petition Does Not Allege a Valid Basis for Removal Under Section 3-611.

Alternatively, without addressing the timeliness issue, this Court can affirm the Probate Court's judgment on the grounds that Stefanoni's Removal Petition does not allege a valid basis for removal under Section 3-611 in any event. *See Me. R. App. P. 2C(a)(1)*. Even if the Appointment Application had been untimely (although it was not, for the reasons explained above), the Probate Code does not provide for retroactive vacation of a duly appointed personal representative. Rather, a personal representative may be removed only for certain misconduct – such as mismanagement of the estate, fraudulent misrepresentation in the appointment proceedings, or dereliction of duty – none of which are alleged here. Accordingly, Stefanoni's Removal Petition does not state a legally sufficient basis for removal, and for that reason was also subject to dismissal under Probate Rule 12(a)(4).

The appointment of a personal representative in informal proceedings, “and the office of personal representative it creates, is subject to termination as provided

in sections 3-608 to 3-612 [of the Probate Code] but is not subject to retroactive vacation.” 18-C M.R.S. § 3-307(2). Stefanoni’s Removal Petition cited only Section 3-611, which provides as follows:

Cause for removal exists when removal would be in the best interests of the estate or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, has mismanaged the estate or has failed to perform any duty pertaining to the office.

18-C M.R.S. § 3-611(2). While this Court has not had occasion to address Section 3-611(2) in depth, courts in other jurisdictions applying the Uniform Probate Code have described these grounds as “narrow,” and have stated that a personal representative may only be removed on “valid” grounds. *In re Estate of Robbin*, 747 P.2d 869, 871 (Mont. 1987) (cited in *Estate of Voignier*, 609 A.2d 704, 707 (Me. 1992)); *see also In re Estate of Nemetz*, 735 N.W.2d 363, 368 (Neb. 2007) (affirming denial of petition to remove personal representative, because the record “[did] not show that [the personal representative] has intentionally misrepresented any facts, disregarded any court orders, become incapable of discharging the duties of her office, or mismanaged the estate”).

Relatedly, Section 3-611 does not authorize collateral challenges to the propriety of the underlying appointment – removal proceedings address the personal

representative’s conduct in office, not the propriety of the appointment *ab initio*. “A removal petition is filed when acts of the personal representative . . . subsequent to their appointment warrant a finding by the court that the appointee is unsuitable to serve as a fiduciary.” Jennifer L. Kruszewski, *A Practical Guide to Probate in Maine* § 5.1.3(c) (Westlaw, 2d ed. 2023) (emphasis in original). This is a corollary of the principle that collateral attacks on probate appointments are disfavored (a principle which is directly set forth in Section 3-307(2) of the Code, quoted above). *See Grady v. Blackwell*, 902 S.E.2d 64, 71 (Va. Ct. App. 2024) (“When an administrator’s appointment is not properly or timely contested, it cannot be collaterally attacked unless the appointment is void *ab initio*,” which occurs “only when the putative decedent is alive” or “has already a personal representative in being.”); *see also In re Neely’s Estate*, 1 A.2d 772, 773 (Me. 1938) (“Decrees of probate courts in matters of probate, within the authority conferred upon them by law, are, when not appealed from, conclusive.”); *cf. Record v. Howard*, 58 Me. 225, 230 (1870) (“Administration having been commenced upon the assumption that the deceased at the time of her death was a citizen of Maine, and not a citizen of Ohio, and no appeal having been taken or claimed from the decree of the probate court granting the administration, and there being no suggestion of fraud, we think the settlement of the estate must be closed upon the same assumption.”).

Nor is there merit to Stefanoni’s suggestion (which he made in the Probate Court but has not pressed here) that if the Appointment Application was untimely, the Probate Court would have lacked jurisdiction to appoint Nicholas as Personal Representative. (*See* A. 36 (arguing, paradoxically, that the Probate Court lacked jurisdiction to appoint Nicholas as Personal Representative and, therefore, that removal of Nicholas would be “in the best interests of the estate”).) Generally, statutes of limitations are not jurisdictional,⁸ and the Probate Code provides that “[t]o the full extent permitted by the constitution, [the Probate Court] has jurisdiction over all subject matter relating to . . . estates of decedents, including construction of wills and determination of heirs and successors of decedents,” as well as “full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.” 18-C M.R.S. § 1-302(a), (b). And there is certainly nothing in Section 3-108 to suggest that the general three-year limit to initiate an appointment proceeding is jurisdictional, particularly given that many of the exceptions to the three-year limit depend upon the purpose of the appointment.

⁸ *See Bellegarde Custom Kitchens v. Leavitt*, 295 A.2d 909, 912 (Me. 1972) (statute of limitations “is not jurisdictional”); *Green v. Gerber*, 303 P.3d 729, 734 (Mont. 2013) (“Quite simply, unless a statute, rule, or constitutional provision expressly imposes jurisdictional limitations, the expiration of a time bar does not deprive a [court] of the jurisdiction to further act in the matter before it.”).

Accordingly, as an alternative to resolving the timeliness issue on which the Probate Court resolved the case, the dismissal of Stefanoni's Removal Petition could be affirmed for two additional reasons. *First*, the Removal Petition does not allege any of the discrete, narrow grounds for removal set forth in Section 3-611. In the Appointment Application, Nicholas acknowledged that more than three years had passed since Dominik's death, described the limited purpose for which he sought appointment, and explained why his appointment was authorized under Section 3-108(1)(D). Stefanoni does not allege that any of the information in the Appointment Application is inaccurate, nor does he allege that the Personal Representative has committed any misconduct justifying removal under Section 3-611; after all, Stefanoni filed the Removal Petition just two days after Nicholas's appointment.⁹ Rather, the Removal Petition alleges only that the Appointment Application was untimely under Section 3-108. (A. 11.) This alleged defect in the Appointment Application does not fall within any of the enumerated grounds for removal under

⁹ The quick filing of Stefanoni's Removal Petition suggests that it was prepared in advance and that Stefanoni was lying in wait for Nicholas to seek appointment as Personal Representative (a role for which it is undisputed that Nicholas has priority). As a result of Stefanoni's knee-jerk filing of the Removal Petition, Nicholas has been unable to take any action in his capacity as Personal Representative of his father's Estate. *See* 18-C M.R.S. § 3-611(1) ("Except as otherwise ordered as provided in section 3-607, after receipt of notice of removal proceedings, the personal representative may not act except to account, to correct maladministration or to preserve the estate.").

Section 3-611. Because the Removal Petition failed to even allege a valid basis for removal, it was subject to dismissal under Probate Rule 12(a)(4).

Second, the facts and circumstances relating to the timeliness of the appointment were fully presented in the Appointment Application and determined by the Deputy Register to satisfy the statute of limitations under Section 3-108. (A. 29, 32-34.) As discussed above, Petitioner cannot seek to use a removal proceeding under Section 3-611 to collaterally attack the propriety of that determination. *See In re Neely's Estate*, 1 A.2d at 773. In other words, the Removal Petition amounts to nothing more than a request that Nicholas's appointment be "retroactive[ly] vacat[ed]," which Section 3-307(2) prohibits.¹⁰ Indeed, this Court has held that even where "grounds for removal pursuant to Section 3-611(b) were present," the Probate Court does not necessarily "abuse[] its discretion in deciding not to order removal." *Estate of Voignier*, 609 A.2d at 708.

¹⁰ In response to the Personal Representative's Motion to Dismiss pointing out this defect, Stefanoni requested leave to amend his pleading to seek a declaratory judgment from the Probate Court "that the PR Application was untimely and that the [Letters of Authority] are void." (A. 36, 38-40.) Because it ruled on the substance of the timeliness issue, the Probate Court did not address Stefanoni's motion for leave to amend. However, should this Court reach the issue, it should reject Stefanoni's motion to amend as futile. Without waiving other procedural or jurisdictional shortcomings in Stefanoni's request, the relief requested in Stefanoni's proposed amended petition – which seeks a declaratory judgment that Nicholas's Letters of Authority "are void" – amounts in substance to a retroactive vacation of Nicholas's Appointment and is, thus, likewise barred by Section 3-307(2) of the Probate Code. *Cf. Zani*, 2023 ME 42, ¶¶ 13-15, 299 A.3d 9 (rejecting claimant's attempt to challenge a decedent's will through a declaratory judgment action and thereby circumvent statute providing that will contests could only be brought in probate court).

Accordingly, the probate court's judgment should be affirmed on the alternative basis that Stefanoni's Removal Petition fails to allege a valid basis for removal under Section 3-611.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Probate Court.

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