STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. KNO-25-378

ESTATE OF DOMINIK LOBKOWICZ

ON APPEAL FROM THE KNOX COUNTY PROBATE COURT

REPLY BRIEF OF APPELLANT CHRISTOPHER STEFANONI

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PREFACE

Stefanoni[1] concedes that his brief neglected to state the standard of review for the issue that he appealed; and agrees with Lobkowicz that the standard of *de novo* review as to the meaning of the statute in question is applicable.

Lobkowicz's arguments are: (1) the PR Application was filed timely because the Will Application was not a proceeding "concerning succession;" (2) the PR Application was timely even if the Will Application did constitute a proceeding concerning succession; (3) disallowance of the PR Application would effectively gut important estate administration that cannot possibly be countenanced by the Code; and (4) there was no statutory reason to remove him as PR. Each of these arguments falls from its own weight.

ARGUMENT

A. The Will Application Was A Proceeding Concerning Succession

Lobkowicz concedes this much—that the Will Application was a "proceeding" under the Probate Code. Incredibly, however, he also

[1] Capitalized terms have the same meaning as contained in the Brief of Appellant unless otherwise defined herein.

asserts that it was not a proceeding "concerning succession;" and consequently, the limitation in section 3-108(1)(D) does not appertain to the PR Application.

Lobkowicz argues that the Will Application was a "testacy proceeding," not one concerning "succession." He supports his argument using the Code's definition of testacy proceeding, "a proceeding to establish a will," as describing the Will Application. His logic, therefore, is that because the Will Application was a "testacy proceeding," it cannot be one "concerning succession." Evidently, he believes that they must be mutually exclusive.[2]

Merriam-Webster defines "succession" to mean "the order in which or the conditions under which one person after another succeeds to a property, dignity, title, or throne" and defines "successor" as "one who succeeds to a throne, title, estate, or office." **Merriam-Webster https://www.merriam-webster.com/.** Clearly, one becomes a "successor" through "succession."

[2] A kangaroo is a marsupial. However, identifying one as a "kangaroo" does not mean it that it cannot also be a marsupial, i.e., a kangaroo is a type of marsupial. Identifying probate of a will as a "testacy proceeding" does not mean it cannot be a "proceeding concerning succession," i.e., a testacy proceeding is a type of proceeding concerning succession.

In fact, the Code defines "successor" to mean "those persons, other than creditors, ***who are entitled to property of a decedent under the decedent's will*** or this Code." 18-C M.R.S. § 1-201(57)(emphasis added). Furthermore, "Upon the death of a person, the person's real and personal property ***devolves to the persons to whom it is devised by the person's last will*** . . . or, in the absence of testamentary disposition, to the person's heirs . . . ." *Id*. § 3-101(emphasis added); *Id*. § 3-102 ("to be effective to prove the transfer of any property or to nominate an executor, ***a will must be declared to be valid*** by an order of informal probate by the registers or an adjudication of probate by the court."); s*ee, e.g., Cousens v. Advent Church of City of Biddeford*, 93 Me. 292, 45 A. 43, 43–44 (1899)("***Wills do not become operative until proved and established in some court having jurisdiction*** for that purpose,-in this state, by allowance by the court of probate . . . . Until established in that forum, it has no life.").

Following the thread, a "successor" is someone entitled to property under a decedent's will, and a decedent's will does not become operative until proved by a probate register or judge. The ineluctable conclusion

is that the filing of an application or petition to probate a will is most certainly a "proceeding concerning succession."

Even taking the definition of "testacy proceeding" cries out that it most certainly is one "concerning succession." The Code provides: ""'Testacy proceeding' means a proceeding to establish a will or determine intestacy." 18-C M.R.S. § 1-201(60). A testacy proceeding establishes a will (this case) or intestacy; and for at least one reason, that being to determine who succeeds to the decedent's estate. *Id.* § 3-101 & 3-102.

B. A Timely Filed Proceeding Bars a Late-Filed Proceeding

Lobkowicz asserts that even if the Will Application was a proceeding "concerning succession," it does not bar the late-filed PR Application because it is a "different type." In effect, Lobkowicz is contending that section 3-108(D) should be read as shown with the following revisions marks:

> **D.** 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; and an informal appointment or formal appointment proceeding may be

> commenced more than 3 years after the decedent's death if no proceeding concerning estate administration has occurred within the 3-year period after the decedent's death.

Such extensive re-writing of the statute must be left to the Legislature.

Understandably, Lobkowicz wishes the statute read as here revised; it does not. The statute is clear—the filing of either a probate proceeding or an appointment proceeding is allowed after the three-year deadline only if no proceeding ***concerning succession or administration*** was filed within the deadline.

C. The Sky Is Not Falling

Lobkowicz argues that "the consequences of Stefanoni's reading are simply too perverse and too contrary to the statute's purpose to be correct." As so construed, his argument goes, "would effectively leave successors or heirs high-and-dry, ***with no way to properly or conclusively confirm their title*** . . . ." He adds to this hysteria that it would create opportunities for "gamesmanship," as evidenced in this case,[3] because why would someone file for probate without an appointment ("what good is an estate without administration?"), which

[3] Of course, there is no such evidence—just Lobkowicz's feckless and unproven allegations that are not part of the record.

would thwart "the right to devise property being, of course, 'one of the most sacred rights attached to property.'"

The reality, of course, is very different. The Probate Code itself contemplates that a will may be probated without seeking administration. 18-C M.R.S. § 3-401 ("A formal testacy proceeding may, ***but need not, involve a request for appointment of a personal representative.***). And, no surprise, the Code also addresses instances of no administration:

> ***In the absence of administration***, the heirs and devisees are entitled to the estate ***in accordance with the terms of a probated will*** or the laws of intestate succession. ***Devisees may establish title by the probated will to devised property***. Persons entitled to property by homestead allowance, exemption or intestacy may establish title by proof of the decedent's ownership and death and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others

resulting from abatement, retainer, advancement and ademption.

Id. § 3-901(emphasis added).[4]

A devisee or heir, even without estate administration, may establish title to the decedent's property by declaratory judgment or quiet title action filed in the Superior Court. *See, e.g., Desmond v. Persina,* 381 A.2d 633, 637 (Me. 1978)("legal title to devised real estate vests in the devisees, when the will becomes operative, that is, after it has been proved and allowed by the court having jurisdiction for that purpose, i. e. the probate court . . . .").

It is worth noting that a personal representative does not obtain any interest in the property of the decedent. *See, e.g., Clark v. Clark,* 2019 ME 158, ¶ 11, 219 A.3d 1020, 1023–24 ("the personal representative's power over title 'permits the personal representative to sell or convey the property. If this power is not exercised, title remains

[4] "Title to a decedent's property passes to his heirs and devisees at the time of his death. See Section 3-101. This section adds little to Section 3-101 except to indicate how successors may establish record title in the absence of administration." **Uniform Probate Code Comment**.

with the heirs or devisees to whom the property devolved upon the death of the decedent, under Section 3-101.'").

Such interests immediately upon death devolve to devises and/or heirs. Accordingly, if there is no estate administration, a devisee/heir may establish title even without a conveying instrument (e.g., a deed) from a personal representative.

Lobkowicz's lament, "what good is an estate without administration?" rings hollow. First, as explained above, property of the decedent devolves to the devisees or the heirs. Thus, for example, a devisee may wish to probate a will to assure their property rights in the devised property as opposed to it otherwise going to heirs.

Second, Lobkowicz is being a bit disingenuous, in that even if the PR Application were allowed, there would not be much "estate administration" given that a personal representative's authority is tightly circumscribed.

Third, if Lobkowicz truly believed this statement, why did he wait until five years after the decedent's death to seek appointment, knowing how "crucial" it was to the estate?

Specifically, the PR's authority is delimited "to confirm title in the successors to the estate." As just demonstrated above, any devisee has the right to confirm their title—by filing an action in the Superior Court. Whether that is not as preferable as having a PR make determination may be debatable; but what is not debatable is the fact that lack of administrative does not, contrary to Lobkowicz's dire warning, "effectively leave successors or heirs high-and-dry, with no way to properly or conclusively confirm their title."

D. A Register's Action Is Not Etched in Stone

Lobkowicz essentially argues that once the register issues letters, whether validly or not, there is nothing that anyone can do to challenge the erroneous action. He asserts that the Petition for Removal, regardless of the propriety of the appointment, should be denied because the reason for removal is not on the list of reasons contained in section 3-611. Lobkowicz's construction would eliminate a challenge to a register's decision, giving the register far more authority than a probate judge. That is not the case, of course.

Stefanoni had no ability to object to the PR Application when it was filed. See M. Prob. R. 7(a)(1). Thus, when the register issued the

Letters of Authority, it became "conclusive as to all persons until superseded by an order in a formal testacy proceeding." Stefanoni thus sought an order from the court to supersede the register's decision in the form of the Removal Petition. Lobkowicz responded by filing a Motion to Dismiss, making the same arguments he makes in his brief. **App. at 12**.

In turn, Stefanoni objected to the motion to dismiss by contending that if the Removal Petition was not a proper procedural vehicle, then he should be allowed to amend the petition. **App. at 35.** In connection with that objection, Stefanoni included an "Amended Petition for Declaratory Judgment." **App. at 38.** That amended petition made clear that Stefanoni sought a judgment declaring that the PR appointment by the register was erroneous and thus void.

Although no formal ruling on the motion to amend was made, it is clear that the Probate Court took up the issue as to whether the PR Application was timely or not, albeit declining Stefanoni's request to find it untimely. **App. at 7.** Accordingly, focus on whether actions by the PR supported removal is a red herring.

Dated: February 19, 2026

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