Disinherited son can't challenge appointment of personal rep

'Interested person' status under MUPC doesn't confer standing

Eric T. Berkman (mailto:?subject=Disinherited son can't challenge appointment of personal rep&body=The Appeals Court has ruled in a case of first impression that a disinherited son's status as an "interested person" under the Massachusetts Uniform Probate Code did not give him... You can read the content in details following link https%3A%2F%2Fmasslawyersweekly.com%2F2024%2F01%2F03%2Fdisinherited-son-cant-challenge-appointment-of-personal-rep%2F) (https://masslawyersweekly.com/2024/01/03/disinherited-son-cant-challenge-appointment-of-personal-rep/) // January 3, 2024

Listen to this article

The Appeals Court has ruled in a case of first impression that a disinherited son's status as an "interested person" under the Massachusetts Uniform Probate Code did not give him standing to challenge his stepmother's appointment as personal representative of his father's estate.

Represents stepmother

Testator Ronald Birkenfeld's will left all his tangible property to his wife, Pamela, with the residue of his estate pouring over into a revocable trust.

The will explicitly excluded Birkenfeld's three adult sons from a prior marriage, including plaintiff Bradley Birkenfeld, because they had been provided for under the trust, which called for them to receive income and principal upon Pamela's death in amounts and proportions as directed in her will.

Bradley sought formal proceedings in Probate & Family Court to have his brother appointed as personal representative of his father's estate instead of Pamela, who had been named executor.

In support of his petition, Bradley argued that as the testator's son, he fell within the definition of an "interested person" under §3-401, which authorizes an interested person to bring a formal testacy proceeding challenging the will.

Though he was not challenging the will itself, Bradley argued that §3-401 conferred standing to challenge his stepmother's appointment.

The Appeals Court disagreed, emphasizing that MUPC §3-414, which addresses the appointment of personal representatives, is silent as to who can bring such a challenge.

"In the absence of statutory language on the issue, our pre-MUPC case law imposed a common-law requirement that a person have 'a legal interest in the decedent's estate, such as [that of] legatees and creditors,' in order to have standing to petition to remove, or to oppose the appointment of, a personal representative," Justice Gabrielle R. Wolohojian wrote for the panel. "Here … the MUPC does not identify the class of persons entitled to challenge the appointment of a personal representative. Thus, it did not displace the common-law requirement of standing."

The Appeals Court panel also rejected Bradley's argument that his contingent remainder beneficiary interest in the pour-over trust gave him sufficient legal interest in the estate to confer standing.

Verdicts & Settlements (https://masslawyersweekly.com/category/verdicts-settlements/)

Prom-goer fractures femur when date falls asleep at wheel…
Lift carrying worker topples over; multiple injuries result…
Delivery truck driver goes through stop sign, hitting motorist…
Jury finds condo owners tried to drive out commercial tenants…
Employee injures neck stacking flour bags at bakery…
Patron slips in restaurant, tears rotator cuff…
Unprovoked German Shepherd bites child in the head…
Woman severs tip of thumb while shopping for granite…
Laborer sustains injury to shoulder, back…
Construction worker hurts head in fall…
Nursing home patient, 78, dies after excruciating pain from Stage IV ulcer…
Woman killed when dump truck runs over her…

See All Verdicts & Settlements ›

Editor's Picks (https://masslawyersweekly.com/category/editors-picks/)

The 11-page decision is ***In the Matter of the Estate of Birkenfeld, Ronald***, Lawyers Weekly No. 11-127-23 (https://masslawyersweekly.com/2023/12/30/wills-and-trusts-standing-interested-person/).

'Actual interest'

Pamela's attorney, Scott C. Ford of Boston, said the decision confirmed a simple but fundamental point: An actual interest in an estate is needed to challenge the appointment of a personal representative.

"Both common law and the MUPC recognize that the circumstances of each case must be considered in the determination of a petitioner's claim of interest," Ford said. "Here, that point is particularly important, given that [Bradley] has waged an unsuccessful three-year, three-court litigation campaign against [Pamela] in an effort to harass her and cause her to spend legal fees unnecessarily."

Bradley's counsel, Mark E. Swirbalus of Boston, expressed disappointment with the Appeals Court's finding that, despite falling squarely within the MUPC's definition of an "interested person" as his father's child, heir and beneficiary, Bradley still lacked standing to protect his interest in his father's estate from the appointment of an "unsuitable" personal representative.

"We're surprised by the decision," he said.

Franklin probate litigator Gabriel W. Bell called the decision "welcome" in that it would be helpful in fleshing out the provisions of the MUPC for practitioners and trial judges.

He also said the facts of the case were unique, which might narrow the range of cases that it will impact. Typically, children receive at least a portion of a parent's property in a will, even if the residue pours over into a trust, Bell said.

"In any instance where, like in the case of a probate estate, the entity is something other than an individual, the court needs to ensure that the individual representing an entity is pursuing the entity's interest and not some other agenda."

Similarly, children are usually either direct beneficiaries of a trust or, if there is a surviving spouse, they are contingent beneficiaries of the remainder after the spouse's death instead of, as here, requiring the spouse to direct the remainder via her own will.

While it was unclear whether either of those situations would provide standing for a petitioner seeking to appoint or remove a personal representative, Bell emphasized that the ruling implied in dicta that had Bradley challenged the validity of the will itself, that may have been enough.

"These questions, of course, become much more meaningful if the will contains a no-contest clause and the objecting party is at risk of losing their entire inheritance for challenging the validity of the will, especially if their primary or sole issue is an objection to the personal representative," he said

Harry M. Haytayan Jr. of Waltham said he thought the panel reached the correct result.

"In any instance where, like in the case of a probate estate, the entity is something other than an individual, the court needs to ensure that the individual representing an entity is pursuing the entity's interest and not some other agenda," he said. "So the analysis wasn't really that difficult in an equitable context. Testamentary intent is the driving factor for the Probate Court, and Pamela was clearly the appropriate person in Ronald's mind to pursue his objectives."

Swansea attorney Eric D. Correira said the case serves as a reminder that while many clients think they should leave $1 to any family member they wish to disinherit in order to make it harder for that person to argue they were excluded by mistake, that is not a good idea.

"Even a small bequest gives a person standing to challenge the appointment and actions of the personal representative," he said, pointing out that in addition to distributing assets, a personal representative holds the decedent's attorney-client privilege and right to medical and tax records and decides whether to pursue a claim or prosecute a lawsuit. "Instead, the right approach, which is found in Mr. Birkenfeld's will, is to include wording in the will that clearly and unequivocally disinherits the person."

Intra-family challenge

In 2007, the testator executed a will giving his tangible personal property to Pamela, who was named as executor, with the residue pouring over into a revocable trust.

Disinherited son can't challenge appointment of personal rep

The Appeals Court has ruled in a case of first impression that a disinherited son's status as an [...]

(https://masslawyersweekly.com/2024/01/03/disinherited-son-cant-challenge-appointment-of-personal-rep/)

Two-plus years after 'clickwrap makes retur

With its 2021 decision in Kaude Technologies, Inc., the Supreme

(https://masslawyersweek plus-years-after-kauders-u makes-return-trip-to-sjc/)

Opinion Digests (https://masslawyersweekly.com/category/opinions/)

- Patent and trademark – Amendment – Good cause…
- Retirement – Disability – Scope of employment…
- Administrative – Registry of abusers…
- Labor – Unilateral change – Repudiation…
- Labor – Strike (https://masslawyersweekly.com/2024/01/03/labor-strike-2/)
- Retirement – Veteran – Annuity…
- Taxation – Income – Untimely appeal…
- Employment – Wage Act – Deductions…
- Employment – Constructive discharge…
- Civil practice – Third-party complaint – Untimeliness…
- Civil practice – Res judicata…
- Constitutional – Second Amendment – AR-15…

See All Digests ›

Birkenfeld's three sons from his prior marriage were explicitly excluded, with the will stating they were provided for under the trust.

The trust property was divided into two subtrusts for estate tax purposes, with Pamela receiving all income of "subtrust A" during her lifetime plus distributions from the principal as determined by the trustees. Upon Pamela's death, accumulated and undistributed income from subtrust A would go to her estate, with the remaining principal distributed to Birkenfeld's sons as Pamela might direct in her will.

As for "subtrust B," Pamela would receive as much income and principal as the trustees determined in her lifetime, with the remaining income and principal distributed upon her death to the three sons in amounts and proportions she directed in her will.

When Birkenfeld died in December 2020, Bradley immediately sued Pamela in Superior Court, asserting fraud, unjust enrichment and tortious interference. The claims were dismissed.

Meanwhile, he filed suit in Probate & Family Court seeking to have his brother appointed as personal representative of Birkenfeld's estate instead of Pamela. He did not challenge the will's validity or claim it was the product of undue influence.

In the Matter of the Estate of Birkenfeld, Ronald (https://masslawyersweekly.com/2023/12/30/wills-and-trusts-standing-interested-person/)

THE ISSUE: Did a disinherited son's status as an "interested person" under the Massachusetts Uniform Probate Code confer standing to challenge his stepmother's appointment as personal representative of his father's estate?

DECISION: No (Appeals Court)

LAWYERS: Mark E. Swirbalus of Holland & Knight, Boston (plaintiff)

Scott C. Ford of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Boston (defense)

Judge Elaine M. Moriarty dismissed Bradley's petition for lack of standing, and he appealed.

Lack of standing

The Appeals Court rejected Bradley's assertion that as an "interested person" under the MUPC for purposes of challenging the validity of a will, he also had standing to challenge appointment of a personal representative.

Specifically, the panel emphasized that pre-MUPC, for lack of any statutory guidance, courts imposed a common-law requirement that a person have a legal interest in the estate for standing to challenge a personal representative.

"A cognizable legal interest in the estate is required because '[c]ourts are not established to enable parties to litigate matters in which they have no interest affecting their liberty, rights or property,'" Wolohojian said, quoting the Supreme Judicial Court's 1985 ***Clymer v. Mayo*** decision **(https://casetext.com/case/clymer-v-mayo)**.

The panel also noted that the MUPC, as broad as it was, did not replace all common-law principles.

Without the MUPC specifically identifying a class of persons empowered to challenge a personal representative, the panel found that the common-law requirement of standing still held force.

The panel also rejected Bradley's claim that his interest in the trust conferred such standing.

"Bradley's contingent remainder interest in the trust [was insufficient]," Wolohojian wrote. "As was held in the appeal from [his] Superior Court action, 'Bradley can only receive income and principal from the trust (if any remains) upon Pamela's death and at her discretion' and thus has no expectancy in Birkenfeld's estate sufficient to confer standing."

RELATED JUDICIAL PROFILES

- Wolohojian, Gabrielle R. **(https://masslawyersweekly.com/judicial-profiles/?p=2770)**
- MORIARTY, ELAINE M. **(https://masslawyersweekly.com/judicial-profiles/?p=153)**

Lawyers Weekly No. 11-127-23

Massachusetts Lawyers Weekly

- Wills and trusts – Standing – 'Interested person' **(https://masslawyersweekly.com/?p=487418)**

Related Content