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THE SUPREME COURT OF NEW HAMPSHIRE

6th Circuit Court-Concord Probate Division
Case No. 2024-0094
Citation: Allen v. Allen, 2026 N.H. 33

DAVID ALLEN, INDIVIDUALLY, AND AS BENEFICIARY OF THE ESTATE OF
PRISCILLA W. ALLEN

v.

PETER ALLEN

Argued: May 19, 2026
Opinion Issued: September 3, 2026

Devine, Millimet & Branch, P.A., of Manchester (Richard P. Driscoll on the brief and orally), for the petitioner.

Primmer Piper Eggleston & Cramer PC, of Manchester (Thomas J. Pappas and Robert J. Kendall III on the brief, and Thomas J. Pappas orally), for the respondent.

WILL, J.

[¶1] The respondent, Peter Allen, appeals an order of the Circuit Court (Cassavechia, R., approved by Weaver, J.) granting a petition to invalidate a deed of real property brought by the petitioner, David Allen, individually and as beneficiary of the Estate of Priscilla W. Allen. Because we conclude that the

trial court lacked subject matter jurisdiction, we vacate and remand with instructions to dismiss without prejudice.

I. Background

[¶2] The probate division of the circuit court (probate court) found, or the record otherwise supports, the following facts. Priscilla W. Allen had four children: David, Peter, Frank, and Sherry.¹ She also had two close friends — James W. Bullard and W. Brad Clark — whom she engaged to assist with her personal, financial, and property affairs.

[¶3] In 2012, Priscilla purchased a farm in Temple (Temple Farm), where Peter has since resided. In 2014, Peter brought Priscilla to Temple Farm for a temporary stay that became extended. About six months after Peter ensconced Priscilla at Temple Farm, Clark engaged an attorney to prepare a deed through which Priscilla would transfer, without consideration, a one-half, undivided interest in Temple Farm to Peter, as a tenant in common. In February 2015, prior to the transaction's consummation, Priscilla suffered a series of medical events that left her in a rehabilitation center, where Peter convened a notary so that Priscilla could execute the deed. Priscilla signed the deed before the notary, and the attorney recorded the deed at the Hillsborough County Registry of Deeds in July 2015.

[¶4] In May 2015, the rehabilitation center discharged Priscilla and she returned to Temple Farm, where she became increasingly dependent on Peter for the activities of daily life. In June 2016, the probate court (Quigley, J.) granted guardianship of Priscilla's estate to Bullard consistent with Priscilla's expressed testimonial preference.

[¶5] Priscilla died in 2018. She left her estate to her four children in equal shares. The administrator of Priscilla's estate filed an inventory in the probate court that included her one-half interest in Temple Farm. David objected to the inventory, contending that Priscilla lacked capacity when she transferred the other one-half interest to Peter. David urged the administrator to litigate the ownership of the property. The administrator declined, however, on his conclusion that the cost of litigation would outweigh any value to the estate. The court, therefore, accepted the inventory as filed. Based on the record before us, Priscilla's estate remains open awaiting final resolution of this case.

[¶6] In 2020, in a docket separate from the estate matter, David petitioned the probate court to set aside the deed and for related relief against Peter. He asserted four counts: undue influence, lack of capacity, restitution for unjust enrichment, and constructive trust. He requested that the court “set

¹ Frank and Sherry are not parties to this case.

aside” the tenants-in-common deed and impose a constructive trust over Temple Farm “for the benefit of the beneficiaries of Priscilla’s estate.” The probate court held a two-day trial after which it granted David’s petition. The court invalidated the tenants-in-common deed based upon its conclusions that Peter unduly influenced Priscilla to execute the deed and that she lacked capacity to do so. The court deferred ruling on David’s request for an imposition of a constructive trust and awarded David attorney’s fees.

[¶7] The Circuit Court (Cassavecchia, R., approved by Casa, J.) denied Peter’s motion for reconsideration. Peter filed an appeal in this court and then filed a motion in the probate court “to vacate all orders and dismiss [the] case for lack of subject-matter jurisdiction.” (Capitalization and bolding omitted.) The probate court declined to address Peter’s motion based on its conclusion that he raised the same issue in his notice of appeal. Peter argues on appeal that the probate court lacks subject matter jurisdiction over David’s cause of action.

II. Analysis

[¶8] Although Peter challenged the probate court’s subject matter jurisdiction for the first time in his notice of appeal, exceedingly late in these proceedings, we acknowledge that “[a] party may challenge subject matter jurisdiction at any time during the proceeding, including on appeal, and may not waive subject matter jurisdiction.” In re Guardianship of K.B., 172 N.H. 646, 648 (2019). Even though trial has occurred, therefore, we must still analyze whether the probate court lacked subject matter jurisdiction.

[¶9] “A court lacks the authority to hear or determine a case concerning subject matters over which it has no jurisdiction.” Rogers v. Rogers, 171 N.H. 738, 742 (2019). A creature of statute, the probate court may exercise subject matter jurisdiction only in the areas the legislature has authorized. See id. at 742-43. The legislature created the probate court, see RSA 490-F:1, :3 (Supp. 2025), and the legislature alone delineates the court’s subject matter jurisdiction. Rogers, 171 N.H. at 742-43; see RSA 547:3 (Supp. 2025); RSA 547:3-b (2019).

[¶10] Whether the probate court exercised subject matter jurisdiction beyond what the legislature has authorized requires us to construe the statute, a question of law subject to our de novo review. Rogers, 171 N.H. at 743. We are guided by the well-worn tenets of statutory construction, including that we first look to the statutory language and, whenever possible, construe that language according to its plain and ordinary meaning. Id. When the language of the statute is unambiguous, we do not look beyond it for its meaning. Id.

[¶11] We have considered the provisions of RSA 547:3 and conclude that none of them provides the probate court with subject matter jurisdiction over

David's claims. The parties focus their arguments on RSA 547:3, I(b), and we agree that this is the only plausible provision of the statute under which the probate court could have had jurisdiction. RSA 547:3, I(b) vests the probate court with exclusive subject matter jurisdiction over:

(b) The granting of administration and all matters and things of probate jurisdiction relating to the composition, administration, sale, settlement, and final distribution of estates of deceased persons, including the establishment of death of a person presumed dead and assignment of homestead and claims against the executor or administrator for those services related to the prior care and maintenance of the decedent and the administration of insolvent estates and appeals therefrom.

David's claims would arguably most closely fit into the "composition" and "final distribution" of Priscilla's estate. The probate court had subject matter jurisdiction over David's claims, then, if they sufficiently "relat[e] to" the "composition" or "final distribution" of Priscilla's estate. Id.

[¶12] The statutory term "relating to" drives the analysis, but the statute does not define the term. See RSA 547:3. Ordinarily, we would construe "relating to" according to its common usage, employing the dictionary for guidance. See Appeal of Michele, 168 N.H. 98, 102 (2015). But our jurisprudence emphasizes a narrow construction of the grant of jurisdiction in RSA 547:3, I, as "plainly and unambiguously limiting the exclusive jurisdiction of the probate court." Rogers, 171 N.H. at 743. Our general policy "has been to confine the contentious jurisdiction of the probate courts within narrow limits." Id. at 744. Guided by those precepts, we have devised a two-part test to determine whether a party's claims fall within the probate court's jurisdiction. See id. at 745; DiGaetano v. DiGaetano, 163 N.H. 588, 591 (2012); Tarnawa v. Goode, 172 N.H. 321, 326 (2019). First, we inquire "whether the action relates to an estate, will, or trust." Rogers, 171 N.H. at 745. Second, we inquire "whether the relief sought is equitable or legal." Id.

[¶13] Considering the first part of this test, we have emphasized that the term "relating to" in the statute requires "a direct connection to the elements of probate court jurisdiction, which, as defined by the statute and at issue here, concern the 'composition, administration, sale, settlement, and final distribution' of an estate." Id. at 746 (quoting RSA 547:3, I(b)). For this reason, "it is the manner by which an action relates to an estate that is the critical inquiry, not whether a relationship simply exists." Id. In other words, the resolution of the subject matter jurisdiction challenge does not rest on whether David's claims relate in any way to the composition and final distribution of Priscilla's estate, but rather whether "a direct connection" exists between David's claims and the estate, and whether this connection relates to the estate in a manner that mandates the probate court's exclusive

jurisdiction. *Id.* Viewing David's claims through this more focused lens compels the conclusion that the necessary direct connection does not exist.

[¶14] David asked the probate court to invalidate Priscilla's inter vivos transfer to Peter, or otherwise to impose a constructive trust over Peter's property interest, on undue influence and incapacity grounds. David's claims "do not require the interpretation of a will or trust, nor do they require an assessment of the estate's administration or seek a re-distribution of the estate's assets." *Id.* David did not contest Priscilla's will or challenge the distribution of any assets held by her estate. To the contrary, David contended that the deed contradicted Priscilla's "fixed intention to transfer her property to her four children in equal shares" as expressed in her will. And David did not challenge the administrator's decision not to pursue the claim. Instead, he brought a separate action to challenge Priscilla's inter vivos transfer to Peter and to contest Peter's ownership of the property, an action that did not depend on an underlying probate proceeding.

[¶15] By the time of Priscilla's death, her estate no longer owned the one-half interest in Temple Farm; Peter did, at least unless or until an adjudication to the contrary. This is not a case, therefore, in which the estate owned the real estate interest that David challenges. *Cf. In re Estate of Porter*, 159 N.H. 212, 214 (2009) ("[T]he probate court has jurisdiction to resolve issues involving real estate of the decedent if the property is 'in' the estate of the decedent." (quotation omitted)); RSA 547:11-b (2019) (establishing, in relevant part, jurisdiction over declaratory judgment actions regarding title to real property in decedent's estate); RSA 547:11-c (2019) (establishing, in relevant part, jurisdiction over quiet title actions regarding real property in decedent's estate). Peter came to own this property interest in Temple Farm through a conveyance that Priscilla executed during her life; he did not receive the property interest as a result of Priscilla's death or as a result of her estate documents. This is also not a case, therefore, concerning property that passed after the decedent's death. *Cf. In re Estate of Couture*, 166 N.H. 101, 103 (2014) (affirming probate court's imposition of constructive trust over life insurance proceeds paid to respondent upon decedent's death); *In re Estate of Cass*, 143 N.H. 57, 58 (1998) (affirming probate court's imposition of constructive trust over property that decedent testator bequeathed to respondent).

[¶16] David accordingly could have brought a substantially similar claim against Peter, challenging the inter vivos conveyance, during Priscilla's life. *See e.g., Archer v. Dow*, 126 N.H. 24, 25 (1985) (plaintiff filed petition in superior court to set aside conveyance of her property to the defendant based upon defendant's undue influence); *Skaling v. Remick*, 97 N.H. 106, 106 (1951) (preface to opinion) (plaintiff brought bill in equity to set aside a deed of real estate from the plaintiff to the defendants on the grounds of fraud, undue influence and lack of consideration). If he had, the superior court would

clearly have had subject matter jurisdiction over the claims. See RSA 491:7 (Supp. 2025) (providing that superior court has jurisdiction over “civil actions and pleas, real, personal, and mixed” and “suits in equity under RSA 498:1”); RSA 498:1 (Supp. 2025) (establishing that superior court has powers of a court of equity over cases of “fraud, accident and mistake”). Even if David did not learn of Priscilla’s transfer until the filing of the probate inventory, the fundamental nature of his claims remains the same; that fact would not change his claims so as to relate them to Priscilla’s estate. Nor is it relevant that David asserted undue influence and incapacity, doctrines often applied in probate court. That a party brings an action to challenge an inter vivos transfer after the grantor has died does not require that the party bring the case in probate court, nor can a probate court exercise subject matter jurisdiction simply because a party brought a claim after a grantor’s death. See Filip v. Bogdan, 123 N.H. 98, 99 (1983) (executrix filed action to set aside deed in superior court to bring property back into decedent’s estate).

[¶17] David’s action, moreover, is separate from the administration of Priscilla’s estate. David filed a new petition about a transaction that occurred when Priscilla was alive. He brought the new action in a new docket entirely separate from the docket concerning the administration of Priscilla’s estate. He asked the court to set aside the tenants-in-common deed or to impose a constructive trust over Temple Farm.

[¶18] Stated simply, the resolution of David’s claims did not require a court — in the same case docket — to handle matters relating to the composition, administration, sale, settlement, or final distribution of Priscilla’s estate. David obtained relief separate and apart from anything occurring in the estate administration docket and his action proceeded entirely separately from that docket. The independence of David’s claims from the estate administration docket further exposes the absence of the direct relation that probate court subject matter jurisdiction requires.

[¶19] To be sure, the trial court’s invalidation of the tenants-in-common deed would effectively return Peter’s one-half interest in Temple Farm to Priscilla’s estate, and would affect in some fashion both the composition of Priscilla’s estate and the distribution of it to her beneficiaries. But “relating to” requires more than having an incidental effect upon an estate. See Rogers, 171 N.H. at 746. Our decisional law requires a much closer link. See id. David’s claims have at most a “tangential,” and not direct, relationship to Priscilla’s estate. Id. at 747. His claims, therefore, fail the first element of our two-part test and we need not address the second element, i.e., whether the relief sought is equitable or legal. See id. at 745. David’s claims fall outside of the probate court’s statutory subject matter jurisdiction. See id. at 747.

[¶20] We are mindful of the late stage in these proceedings and the effect of our conclusion upon party and judicial resources, but a lack of subject

matter jurisdiction is dispositive, In re Guardianship of K.S., 177 N.H. 630, 635 (2025), 2025 N.H. 47, ¶12, and parties may raise it at any time in the proceedings, including after trial. In light of the probate court's lack of subject matter jurisdiction, we decline to address the remaining issues Peter raised on appeal, vacate the trial court order, and remand and instruct the probate court to dismiss the petition without prejudice. See id.

Vacated and remanded.

DONOVAN, COUNTWAY, and GOULD, JJ., concurred; MACDONALD, C.J., sat for oral argument but did not participate in the final vote.