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THE SUPREME COURT OF NEW HAMPSHIRE

6th Circuit Court-Concord Probate Division
Case No. 2025-0048
Citation: Moffat v. Srebro, 2026 N.H. 25

NATHANIEL MOFFAT, TRUSTEE OF THE PAMELA DAWSON MOFFAT
REVOCABLE TRUST

v.

SARAH SREBRO & a.

Argued: February 10, 2026
Opinion Issued: July 7, 2026

Devine, Millimet & Branch, P.A., of Manchester (Thomas Quarles and Joseph Dolciotto on the brief, and Thomas Quarles orally), for the petitioner.

Newkirk Law PLLC, of Bedford (Pamela J. Newkirk on the brief and orally), for Sarah Srebro.

Matthew J. Moffat, self-represented party, on the brief and orally.

COUNTWAY, J.

[¶1] The petitioner, Nathaniel Moffat as Trustee of the Pamela Dawson Moffat Revocable Trust, appeals and one of the respondents, Matthew Moffat,

also appeals rulings of the Circuit Court (King, J.) on Nathaniel's partition petition and the counterclaims for breach of fiduciary duties filed by the other respondent, Sarah Srebro, against Nathaniel as trustee. Nathaniel and Matthew (collectively, the appellants) argue that the trial court¹ erred when it: (1) awarded certain real property to Sarah; and (2) ordered as a remedy for Nathaniel's breach of his fiduciary duties as trustee that he personally reimburse the Trust for all attorney's fees and expenses incurred in this litigation. Following oral argument, the parties filed supplemental briefs on the issue of whether the probate court properly exercised jurisdiction over Sarah's counterclaims. We affirm.

[¶2] The following facts either were found by the probate court or reflect the content of documents in the appellate record. Matthew Moffat, Nathaniel Moffat, and Sarah Srebro are siblings. The parties' father died in the fall of 2020 and their mother died in the spring of 2021. The mother's estate was probated in Maryland where she resided at the time of her death, and her will left tangible personal property to Sarah, Matthew, and Nathaniel in equal shares and the residue to the Pamela Dawson Moffat Revocable Trust (the Trust). The Trust, in turn, provides that the trustee shall distribute the Trust property equally among the three children. Nathaniel was the named executor of the mother's will and is the trustee of the Trust.

[¶3] In June 2023, Nathaniel, as trustee, filed a petition for partition of real estate located in Hancock that is owned by the Trust: a colonial home on 20 acres of land and an adjacent unnumbered 5-acre parcel containing a barn and a garage (34 Kings Highway); and a home on a nearly 6-acre plot (33 Kings Highway). The two properties are located across the road from one another. 34 Kings Highway has been in the family for generations and was maintained by the parties' parents primarily as a summer home. Nathaniel purchased 33 Kings Highway in 2020 on behalf of the parties' mother using her funds. According to Nathaniel, he and his parents planned to renovate the property so that both parents could reside there with Nathaniel and his wife. Before and after the mother's death in 2021, Nathaniel used Trust money to fund significant renovations to the home at 33 Kings Highway, where Nathaniel and his wife now reside.

[¶4] In the partition petition, Nathaniel alleged that the parties could not agree on a suitable distribution of the Trust's real property and that the property could not be divided equally among them without great prejudice or inconvenience. He requested that the court distribute 33 Kings Highway to

¹ Here, the trial court was the 6th Circuit Court-Concord Probate Division. In 2011, the legislature created the New Hampshire Circuit Court, and conferred upon it the jurisdictions of the former probate and district courts and the former judicial branch family division. See RSA 490-F:1-:3 (Supp. 2025). Nevertheless, as in Rogers v. Rogers, 171 N.H. 738, 740 (2019), "this opinion will refer to the circuit court, probate division as the 'probate court' to avoid any confusion with our prior decisions concerning probate jurisdiction." Rogers, 171 N.H. at 740 n.1.

him individually and order the sale of the other property and distribution of the net proceeds consistent with the parties' interests under the Trust, accounting for the value of 33 Kings Highway. In response, Sarah moved to dismiss the petition and alleged three counterclaims of breach of fiduciary duties against Nathaniel arising from his conduct as trustee. Sarah later supplemented her answer to clarify that, if the court allowed the petition to proceed, she wished to receive 34 Kings Highway.

[¶5] The probate court denied Sarah's motion to dismiss the petition and Nathaniel's motion to dismiss the counterclaims, and held a four-day trial. As to the partition petition, the court awarded 34 Kings Highway to Sarah and 33 Kings Highway to Nathaniel. The court assigned a value to 33 Kings Highway that included the value of the property as well as the cost of improvements to the property funded by the Trust and the cost of rent for the period of time Nathaniel resided there rent-free. With respect to Sarah's counterclaims, the court concluded that Nathaniel breached his fiduciary duties as trustee by refusing without a legitimate basis to distribute 34 Kings Highway to Sarah and by occupying Trust property without paying rent, thereby elevating his personal interests and biases over his fiduciary obligations. The court ordered as a remedy for these breaches that Nathaniel personally "repay the Trust for the costs and expenses, including attorney's fees, to the extent that the Trust funds have been used to fund this litigation." The court also clarified that, despite hearing substantial evidence about personal property, it made no findings about which personal property items belong to the Trust and which belong to the mother's estate. This appeal and co-appeal followed.

[¶6] The appellants first argue that the probate court erred by awarding 34 Kings Highway to Sarah rather than ordering the sale of the property and the distribution of the proceeds. Partition actions are governed by RSA chapter 547-C, which vests the probate court with broad power to determine the rights of those with an interest in real property. See RSA 547-C:30 (2019); Hayes, Tr. v. Connolly, Tr., 172 N.H. 102, 106 (2019). Partition proceedings are "remedial in nature" and the provisions of RSA chapter 547-C "are to be liberally construed in favor of the exercise of broad equitable jurisdiction." RSA 547-C:30. In its partition ruling, the court may, after considering a non-exhaustive list of statutory factors, exercise its discretion to "award or assign the property or its proceeds on sale as a whole or in such portions as may be fair and equitable." RSA 547-C:29 (2019).

[¶7] A partition action "calls upon the court to exercise its equity powers and consider the special circumstances of the case, in order to achieve complete justice." Hayes, 172 N.H. at 106 (quotation omitted). The court has broad and flexible equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation. Id. We will uphold a trial court's equitable order unless it constitutes an unsustainable exercise of discretion. Id. When reviewing an equitable order, we consider

“whether the record establishes an objective basis sufficient to sustain the discretionary judgment made.” *Id.* (quotation omitted). “The party asserting that a trial court order is unsustainable must demonstrate that the ruling was unreasonable or untenable to the prejudice of his case.” *Id.* at 106-07 (quotation omitted). Additionally, we must treat the findings of fact of the probate court as final “unless they are so plainly erroneous that such findings could not be reasonably made.” RSA 567-A:4 (2019).

[¶8] The appellants contend that the probate court’s award of 34 Kings Highway to Sarah was unsustainable because it failed to consider the “special circumstances” of the “longstanding and deep-rooted animosity between Nathaniel and Sarah.” They assert that given the contentious relationship between the parties, the court’s proper award of 33 Kings Highway to Nathaniel, and the proximity of 33 and 34 Kings Highway to one another, the court’s ruling was unreasonable in that it “guarantees the likelihood of future conflict and litigation between the parties.” We disagree.

[¶9] Contrary to the appellants’ assertions, the probate court’s order demonstrates that it was well aware of each appellant’s respective acrimonious relationship with Sarah and that it considered these dynamics when weighing the equities of the case. The probate court expressly considered in its partition analysis the appellants’ wish that Sarah not be permitted to “liv[e] in proximity to them” — but rejected that position as “driven only by Nathaniel’s disdain” for Sarah. Instead, the court determined that there was “no rational basis” for not awarding 34 Kings Highway to Sarah based upon the following findings: neither of her siblings requested the property; the property has been in the family for over a century; she has the “most genuine connection” to the property; and the Trust has sufficient assets with which to offset apportionment of the property to her. These findings are supported by the record.

[¶10] The court also appropriately reasoned as a practical matter that, even if the property were sold, nothing would prevent Sarah from purchasing it or other property near 33 Kings Highway. We therefore conclude that the record establishes an objective basis sufficient to sustain the court’s discretionary partition ruling. *See Hayes*, 172 N.H. at 106; *see also Tarnawa v. Goode*, 172 N.H. 321, 331-32 (2019) (rejecting defendant’s request for remand so that trial court could consider certain special circumstances when it was apparent court had considered them and explaining that our role is not to “reweigh the equities”). We also note that the court’s decision is consistent with the statutory preference for equal or unequal division of property over the sale of property. *See RSA 547-C:22, :25* (2019); *DeLucca v. DeLucca*, 152 N.H. 100, 104-05 (2005); 17 Charles Szypszak, *New Hampshire Practice: Real Estate* § 3.10(C), at 91-92 (2d ed. 2023).

[¶11] Matthew additionally contends that the probate court’s partition ruling was erroneous because it “dismissed [his] interest in [his] one-third share of the property by falsely asserting that [he] had renounced [his] share” with no basis for such a finding in the record. We are unpersuaded. We do not read the court’s order as finding that Matthew renounced any claim to his one-third share of the value of the Trust’s real property. It is implicit in the court’s partition ruling that the trustee must account for the awards of real property to Sarah and Nathaniel when distributing the remaining Trust assets, including Matthew’s share. See RSA 547-C:22.

[¶12] We next address the appellants’ respective challenges to the probate court’s rulings on Sarah’s counterclaims. Relevant to this issue, we ordered supplemental briefing following oral argument on a question not raised by the parties on appeal: whether the probate court had subject matter jurisdiction over the counterclaims. Subject matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought. In re Guardianship of K.B., 172 N.H. 646, 648 (2019). A court lacks power to hear or determine a case concerning subject matter over which it has no jurisdiction. Id. Subject matter jurisdiction may be raised at any time in the proceedings, including on appeal, by the parties, or by the court sua sponte. See id.

[¶13] Nathaniel and Sarah assert in their supplemental briefs that the probate court had subject matter jurisdiction over the administration of the Trust pursuant to RSA 547:3, I(d) and therefore properly exercised jurisdiction over the counterclaims. Matthew filed no brief on the issue. Notwithstanding the parties’ apparent agreement, we must address this threshold issue because subject matter jurisdiction may not be waived. See id. We agree that the probate court had jurisdiction over the counterclaims.

[¶14] Unlike the superior court, the probate court is not a court of general jurisdiction; rather, its powers are limited to those conferred upon it by statute. Rogers v. Rogers, 171 N.H. 738, 742-43 (2019). Accordingly, determining the jurisdiction of the probate court is a matter of statutory interpretation, id. at 743, which presents a question of law for us to decide, see In the Matter of Kauble & Kauble, 176 N.H. 200, 202 (2023). When construing a statute, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Id. We interpret the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. We construe all parts of the statute together to effectuate its overall purpose and to avoid an absurd or unjust result. Id. We do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme. In re Guardianship of C.R., 174 N.H. 804, 807 (2022).

[¶15] Pursuant to RSA 547:3, I, the probate court has exclusive jurisdiction within New Hampshire over, in relevant part, “[t]he administration

of those trusts described in RSA 564-B, and the appointment, removal and surcharge of trustees of such trusts.” RSA 547:3, I(d) (Supp. 2025); see also RSA 564-B:2-203(a) (Supp. 2025). RSA 564-B:1-102, governing the scope of RSA chapter 564-B, provides in turn that the chapter applies in relevant part to “express trusts.” RSA 564-B:1-102(a) (Supp. 2025). RSA chapter 564-B does not define an “express trust.” See RSA 564-B:1-103 (2019) (definitions). When a term is not defined in a statute, we look to its common usage, using the dictionary for guidance. In the Matter of Landgraf & Landgraf, 176 N.H. 724, 727 (2024), 2024 N.H. 41, ¶9. An “express trust” is defined as “[a] trust created with the settlor’s express intent, usu[ally] declared in writing; an ordinary trust as opposed to a resulting trust or a constructive trust.” Black’s Law Dictionary 1826 (12th ed. 2024). The record demonstrates that the parties’ mother was the settlor of the Trust and that it was created with her express intent as declared in the written Trust documents. The Trust is therefore an express trust.

[¶16] The Trust provides, and the parties appear to agree, that District of Columbia law governs the Trust. Nothing in the statutory grant of jurisdiction to the probate court over the administration of express trusts, however, indicates that this choice-of-law provision deprives the probate court of subject matter jurisdiction over the Trust. See RSA 547:3 (Supp. 2025); RSA 564-B:1-102 (Supp. 2025). Indeed, we have observed that more than one state’s courts may have concurrent jurisdiction over the administration of a trust. See Bartlett v. Dumaine, 128 N.H. 497, 517 (1986); Wanda Feeley v. Clark Feeley, No. 2014-0311 (non-precedential order at 1-2), 2014 WL 11485840 (N.H. Nov. 21, 2014); cf. Estate of Mullin, 169 N.H. 632, 637 (2017) (explaining that the fact that “New Hampshire possesses jurisdiction to probate the decedent’s estate does not mean that jurisdiction is necessarily exclusive” in the sense that courts in other states cannot exercise jurisdiction over the same estate).

[¶17] The fact that the Trust is an express trust subject to the probate court’s subject matter jurisdiction under RSA 547:3, I(d) does not, however, end our inquiry. Because we narrowly construe statutory language conferring jurisdiction on the probate court, we must also consider the nature of the counterclaims to ensure that they have a sufficient connection to the relevant statutory grant of jurisdiction in RSA 547:3, I(d). See Rogers, 171 N.H. at 744-47. “The relevant inquiries into the nature of a claim include: (1) whether the action relates to an estate, will, or trust; and (2) whether the relief sought is equitable or legal.” DiGaetano v. DiGaetano, 163 N.H. 588, 591 (2012).

[¶18] At the outset, we observe that the counterclaims as pleaded could be construed as alleging breaches of fiduciary duties in part upon Nathaniel’s misconduct relative to certain tangible personal property — arguably raising questions about which tangible personal property belongs to the estate and which to the Trust. In Sarah’s post-trial requests for findings and rulings, however, she did not request rulings on her counterclaims relating to tangible

personal property. Instead, she asserted that the Trust does not hold any tangible personal property and that all of her mother's tangible personal property was part of her mother's estate and subject to the jurisdiction of Maryland, not New Hampshire. By taking the position in the probate court that there is no tangible personal property belonging to the Trust, Sarah waived any counterclaims premised upon Nathaniel's misconduct as trustee related to tangible personal property. Cf. Milliken v. Dartmouth-Hitchcock Clinic, 154 N.H. 662, 669-70 (2006) (concluding party waived appellate argument by conceding issue in the trial court). Consistent with that waiver, the probate court explicitly declined to make any findings "with respect to which personal property belongs in the Maryland estate and which belongs in the Trust."

[¶19] Setting aside any allegations related to tangible personal property, Sarah's counterclaims for breach of fiduciary duties as pleaded were premised upon the following key allegations: Nathaniel resided in Trust property, 33 Kings Highway, without paying rent and used Trust funds to renovate the property for his personal benefit; he provided deficient Trust accountings; and he attempted to use the partition proceeding to avoid a transparent accounting of Trust distributions, obtain 33 Kings Highway, and otherwise benefit his personal interests to Sarah's detriment. See D.C. Code § 19-1308.01 (2012) (duty to administer trust in good faith); D.C. Code § 19-1308.02-.03 (2012) (duties of loyalty and impartiality); D.C. Code § 19-1308.13 (2012) (duty to inform and report). These allegations all relate directly to how Nathaniel, in his capacity as trustee, administered, distributed, and accounted for Trust assets. Compare DiGaetano, 163 N.H. at 591-92 (concluding that probate court had exclusive jurisdiction because crux of dispute involved the interpretation and validity of trust), with Rogers, 171 N.H. at 747 (concluding that claims were tangentially, not directly, related to decedent's estate and will because they did not concern the manner by which defendant "administered, sold, settled or distributed estate assets"). Further, the relief Sarah sought on these claims was primarily equitable — including removal of Nathaniel as trustee and reimbursement of the Trust for fees and expenses incurred in the litigation. See DiGaetano, 163 N.H. at 591-92. Sarah subsequently litigated these claims in pretrial and post-trial filings and at trial consistent with the manner in which she initially alleged them. Accordingly, we conclude that the counterclaims Sarah pursued at trial and in post-trial filings directly challenged Nathaniel's conduct as trustee and the manner in which he administered, distributed, and accounted for Trust assets, and therefore those claims fall within the probate court's subject matter jurisdiction under RSA 547:3, I(d).

[¶20] Notwithstanding our conclusion that the probate court properly exercised subject matter jurisdiction over the counterclaims, we do not reach the merits of the appellants' respective challenges to the counterclaim rulings because we find them either waived or not preserved. Matthew contends that

the probate court erred when it concluded that Nathaniel breached his fiduciary duties as trustee, which led to its erroneous order that Nathaniel reimburse the Trust for all attorney's fees and expenses. Matthew has not, however, adequately developed this argument in his brief, and we therefore deem it waived. See State v. Blackmer, 149 N.H. 47, 49 (2003).

[¶21] Nathaniel, on the other hand, does not challenge the probate court's determination that he breached his fiduciary duties of loyalty and impartiality and his fiduciary duty to administer the Trust in good faith. Nor does he disagree that he must reimburse the Trust for the attorney's fees and expenses incurred in litigating those issues and others upon which he did not prevail. Rather, Nathaniel asserts that the court erred by failing to segregate attorney's fees and expenses incurred in litigating unsuccessful claims from those incurred in litigating successful claims and instead requiring him to repay all attorney's fees and expenses incurred by the Trust. He further contends that the court's ruling, which he characterizes as finding that the partition action was "unnecessary," improperly penalized him for bringing this action.

[¶22] Based upon our review of the record, we conclude that Nathaniel has not demonstrated that he preserved these arguments for our review. It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004). It is the burden of the appealing party, here Nathaniel, to demonstrate that he raised his issues before the trial court. Id. Because our rules affirmatively require the moving party to demonstrate where each issue presented on appeal was raised below, see Sup. Ct. R. 16(3)(b), the "failure of the moving party to comply with these requirements may be considered by the court regardless of whether the opposing party objects on those grounds." Bean, 151 N.H. at 250.

[¶23] The purpose of our preservation rule is to ensure that trial courts have an opportunity "to correct errors" and "come to sound conclusions" before parties seek appellate review. O'Malley-Joyce v. Travelers Home & Marine Ins. Co., 175 N.H. 245, 249 (2022) (quotations omitted). This rule also applies to legal issues that arise after trial as a result of the court's order. See N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002). Thus, any issues that could not have been presented to the trial court before its decision must be presented to it in a motion for reconsideration. State v. Mouser, 168 N.H. 19, 27 (2015).

[¶24] Here, Nathaniel challenges the extent of the court's reimbursement order and the basis for that ruling — issues that arose as a result of the court's order. Nathaniel had not argued for the segregation of fees between successful and unsuccessful claims before the probate court entered its order. It was therefore incumbent upon him to preserve these arguments by filing a motion

to reconsider, thereby providing the probate court an opportunity to correct these alleged errors in the first instance. See id. The record on appeal, however, does not demonstrate that Nathaniel filed such a motion. We therefore conclude that he failed to preserve for our review his challenges to the remedy awarded for his breach of fiduciary duties, and we decline to review the merits of his arguments. Under the circumstances presented, we also decline to exercise our discretion to consider these arguments under our plain error rule. See Sup. Ct. R. 16-A.

[¶25] In sum, we affirm the probate court's award of 34 Kings Highway to Sarah and its order that Nathaniel reimburse the Trust for all attorney's fees and expenses incurred in this litigation. Any issues the appellants raised in their respective notices of appeal but did not brief are deemed waived. See Blackmer, 149 N.H. at 49.

Affirmed.

MACDONALD, C.J., and DONOVAN and GOULD, JJ., concurred.