

COURT OF APPEALS OF NORTH CAROLINA

Steele v. Kenna

No. COA25-530 · No. COA25-530 · Decided February 18, 2026

SUMMARY

The North Carolina Court of Appeals affirmed an order compelling the production of estate-planning documents from the law firm Wyrick Robbins in a dispute over the meaning of “my nieces and nephews” in the Patrick Steele Revocable Trust. The court held, as a matter of first impression under North Carolina law, that the testamentary exception to the attorney-client privilege applies to disputes concerning distributions under a trust as well as a will. The court also concluded that the order did not violate the trustee’s personal attorney-client privilege because it was limited to documents responsive to the subpoena and related to the grantor’s estate planning.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Judge Valerie Zachary; Judge Flood; Judge Stading
JURISDICTION	North Carolina Court of Appeals
DECIDED	February 18, 2026
DOCKET	COA25-530
DISPOSITION	affirmed
PROCEDURAL POSTURE	Trustee appealed an interlocutory superior court order compelling the trustee's law firm to produce estate-planning documents in a declaratory-judgment proceeding concerning the meaning of a trust's reference to the grantor's nieces and nephews.
STANDARD OF REVIEW	A motion to compel discovery is reviewed for abuse of discretion; determination of privilege is a question of law reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Mary Paula Zaytoun Steele v. Kevin I. Kenna, Jeffrey A. Kenna, Patrick E. Kenna, Peter L. Kenna, Thomas X. Kenna, Martha Zaytoun, Clare K. Zaytoun, Taylor M. Zaytoun, Reeves M. Zaytoun, Mary L. Zaytoun Berne, Henry S. Zaytoun, III, Jeremiah R. Zaytoun, Christian S. Zaytoun, Haynes Zaytoun, Blaise Waters, Becket Waters, Alexandra Penny, Elena Penny, Mark Foster, Jr., Martha Lee Brissette, Augustus Howard, Charles N. Howard, Katie Allare, Gregory Allare, John

Mickelson, Ashley Steele, Danny Steele, Brigid Steele, Henry S. Zaytoun, Jr., as guardian for Margaret A. Zaytoun, Rachel L. Zaytoun

TOPICS

attorney client privilege trusts interlocutory appeal appellate jurisdiction estate planning

PRACTICE AREAS

trusts estate planning evidence appellate procedure

QUESTIONS PRESENTED

1. Whether an order compelling production of documents allegedly protected by attorney-client privilege was immediately appealable as affecting a substantial right.
2. Whether the testamentary exception to the attorney-client privilege applies to communications and documents concerning the drafting and amendment of a trust when the parties dispute who is entitled to take under the trust.
3. Whether compelling production violated Mary Paula Zaytoun Steele's personal attorney-client privilege or required an in camera review.

HOLDINGS

1. An interlocutory order compelling disclosure of documents allegedly protected by the common-law attorney-client privilege is immediately appealable when the privilege assertion is not frivolous or insubstantial because the order affects a substantial right.
2. The testamentary exception to the attorney-client privilege applies equally to a dispute regarding distribution under a will or a trust; where the controversy concerns who takes by succession, the decedent's communications with counsel concerning the trust and its amendments are subject to discovery by the competing claimants.
3. The order compelling production did not violate Mary Paula Zaytoun Steele's personal attorney-client privilege because it was limited to documents responsive to the subpoena concerning the grantor's estate planning and expressly excluded privileged information of other law-firm clients.

KEY QUOTATIONS

“Considering this issue of first impression under North Carolina law, we now similarly conclude that the testamentary exception to the attorney-client privilege applies equally to a dispute regarding distribution under either a will or a trust.” (at 8-9)

“For the foregoing reasons, we conclude that the testamentary exception to the attorney-client privilege applies to Grantor’s communications with Wyrick Robbins concerning the drafting of the Trust and its amendments.” (at 12)

FACTUAL BACKGROUND

Patrick Steele created a revocable trust in 2007 and amended it several times before his death in 2022. The trust amendments provided for distributions to the grantor's sister and "my nieces and nephews," including a distribution capped at \$5 million. The parties disputed whether that class included only Patrick Steele's biological nieces and nephews or also marital nieces and nephews. Counter-Petitioners sought estate-planning documents from the drafting law firm to resolve the grantor's intent, while the trustee asserted attorney-client privilege.

PROCEDURAL HISTORY

Mary Paula Zaytoun Steele, as trustee of the Patrick Steele Revocable Trust, filed a petition for declaratory judgment seeking construction of the phrase "my nieces and nephews." Counter-Petitioners served Wyrick Robbins Yates & Ponton LLP with a subpoena for documents related to Patrick Steele's estate planning. After the firm asserted attorney-client privilege, the Counter-Petitioners moved to compel. The Wake County Superior Court granted the motion on 22 November 2024 and ordered production within 14 days. The Court of Appeals held that the privilege-based discovery order affected a substantial right and affirmed.

DISPOSITION

affirmed

CASES CITED

- Goldston v. Am. Motors Corp., 326 N.C. 723, 392 S.E.2d 735 (1990)
- Veazey v. City of Durham, 231 N.C. 357, 57 S.E.2d 377 (1950)
- Campbell v. Campbell, 237 N.C. App. 1, 764 S.E.2d 630 (2014)
- Sessions v. Sloane, 248 N.C. App. 370, 789 S.E.2d 844 (2016)
- Sharpe v. Worland, 351 N.C. 159, 522 S.E.2d 577 (1999)
- State v. Chemuti, 388 N.C. 412, 920 S.E.2d 810 (2025)
- K2 Asia Ventures v. Trota, 215 N.C. App. 443, 717 S.E.2d 1 (2011), disc. review denied, 365 N.C. 369, 719 S.E.2d 37 (2011)
- Maldjian v. Bloomquist, 245 N.C. App. 222, 782 S.E.2d 80 (2016)
- Medlin v. N.C. Specialty Hosp., LLC, 233 N.C. App. 327, 756 S.E.2d 812 (2014)
- In re Appeal of Greens of Pine Glen Ltd. P'ship, 356 N.C. 642, 576 S.E.2d 316 (2003)
- Dickson v. Rucho, 366 N.C. 332, 737 S.E.2d 362 (2013)
- In re Investigation of Death of Miller, 357 N.C. 316, 584 S.E.2d 772 (2003)
- Glover v. Patten, 165 U.S. 394, 41 L. Ed. 760 (1897)
- In re Will of Kemp, 236 N.C. 680, 73 S.E.2d 906 (1953)
- In re Will of Johnston, 157 N.C. App. 258, 578 S.E.2d 635 (2003), aff'd on other grounds, 357 N.C. 569, 597 S.E.2d 670 (2003)
- Zook v. Pesce, 91 A.3d 1114 (Md. 2014)

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