

COURT OF APPEALS OF OREGON

Hammond v. Rush

345 Or. App. 660 (2025) · No. A186447 · Decided December 17, 2025

SUMMARY

The Oregon Court of Appeals held that a decedent’s stepson and cotrustee lacked standing to petition for probate or appointment as personal representative because he was not an intestate heir, had no property right or claim against the estate, and was not a fiduciary representing an interested person. The court reversed and remanded with instructions to dismiss the probate proceeding for lack of standing.

CASE DETAILS

|                       |                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Oregon                                                                                                                                                        |
| WRITING FOR THE COURT | Kamins, J.; Tookey, Presiding Judge; Kamins, Judge; Jacquot, Judge                                                                                                                |
| JURISDICTION          | Oregon Court of Appeals                                                                                                                                                           |
| DECIDED               | December 17, 2025                                                                                                                                                                 |
| DOCKET                | A186447                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                             |
| PROCEDURAL POSTURE    | Appeal from a limited judgment confirming the appointment of the decedent's stepson as administrator of an intestate estate.                                                      |
| STANDARD OF REVIEW    | Not expressly stated; the court reviewed whether the petitioner satisfied the statutory standing requirements to petition for probate and appointment as personal representative. |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                 |
| PARTIES               | Joan Hammond v. Dale W. Rush                                                                                                                                                      |

TOPICS

- probate procedure
- standing
- intestacy
- estate administration
- appellate procedure

PRACTICE AREAS

- Probate
- Estate administration
- Trusts
- Civil procedure
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the decedent's stepson had standing under ORS 113.035 and ORS 111.005(19) to petition for probate and appointment as personal representative after the pour-over will could not be admitted.
2. Whether the petitioner's anticipated compensation as personal representative or fiduciary duties as cotrustee gave him a property right or claim against the estate sufficient to establish standing.

## HOLDINGS

1. The petitioner lacked standing because, once the pour-over will could not be admitted, he had no property right in or claim against the intestate estate and was not an intestate heir.
2. The petitioner's potential compensation as personal representative did not establish standing because that financial interest would arise only after appointment and successful pursuit of the elder-abuse claim.
3. The petitioner was not a fiduciary representing an interested person because his fiduciary duties as cotrustee ran to the trust beneficiaries, not to the beneficiaries of the estate, and the trust was not an estate asset.

## KEY QUOTATIONS

*“Unless and until petitioner became personal representative and was successful in pursuing the elder abuse claim, petitioner did not have a property interest or claim sufficient to qualify as an interested person and, therefore, did not have standing to petition the court for probate or appointment as personal representative.”* (662)

*“Reversed and remanded with instructions to dismiss the probate proceeding for lack of standing.”* (663)

## FACTUAL BACKGROUND

The decedent's stepson and cotrustee of the decedent's trust petitioned for probate and appointment as personal representative solely to pursue an elder-abuse claim against the decedent's daughter, who was also a cotrustee. The petitioner initially relied on a pour-over will naming him and the daughter as copersonal representatives and devisees, but the will was never admitted to probate. The estate was instead opened intestate, and the petitioner was appointed administrator despite being only the decedent's stepson and not an intestate heir.

## PROCEDURAL HISTORY

The petitioner sought appointment as personal representative to pursue an elder-abuse claim against the objector, initially relying on a pour-over will naming the parties as copersonal representatives and devisees. After determining that the will could not be admitted to probate, the trial court opened the estate intestate and appointed petitioner as administrator, later confirming that appointment in a limited judgment. The decedent's daughter and cotrustee appealed, arguing that petitioner lacked standing to initiate the probate proceeding.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Dismiss the probate proceeding for lack of standing, including the limited judgment opening the estate and appointing the petitioner as administrator.

#### **CASES CITED**

- Price v. Lotlikar, 285 Or. App. 692, 705, 397 P.3d 54 (2017)
- In re Frazier's Estate, 180 Or. 232, 236-37, 177 P.2d 254 (1947)
- Couey v. Atkins, 357 Or. 460, 469, 355 P.3d 866 (2015)
- Skaggs v. Yunk, 10 Or. App. 536, 537, 500 P.2d 1230 (1972)