

SUPREME COURT OF ALASKA

Helgason v. Merriman

36 P.3d 703 (Alaska 2001) · No. S-9665 · Decided December 7, 2001

SUMMARY

The Alaska Supreme Court reviewed the denial of a motion to remove Thomas Merriman as personal representative of Clara Helgason's estate. The court held that removal based on a conflict of interest requires evidence raising a real issue of a substantial conflict, and that the appellants had not made that showing or established relevant hostility. The court affirmed the superior court's decision retaining Merriman.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Fabe, Chief Justice; Matthews, Justice; Eastaugh, Justice; Bryner, Justice
JURISDICTION	Alaska
DECIDED	December 7, 2001
DOCKET	S-9665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the superior court's denial of a motion to remove the personal representative of a probate estate.
STANDARD OF REVIEW	The denial of a motion to remove a personal representative is reviewed for abuse of discretion; underlying factual findings are overturned only if clearly erroneous.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Alaska.
PARTIES	Leonard Helgason, Kenneth Wood v. Thomas Merriman

TOPICS

- probate procedure
- estate administration
- undue influence
- appellate procedure
- standard of review

PRACTICE AREAS

- probate
- estate administration
- trusts
- estate planning

QUESTIONS PRESENTED

1. What standard governs removal of a personal representative under AS 13.16.295 based on an alleged conflict of interest?
2. Whether the evidence raised a real issue of a substantial conflict of interest requiring Merriman's removal.
3. Whether alleged undue influence in connection with Helgason's will created a conflict requiring removal.
4. Whether hostility between the personal representative and the beneficiaries required removal.

HOLDINGS

1. Removal of a personal representative is mandatory when the evidence raises a real issue as to whether a substantial conflict of interest exists, such as a potential claim by the estate against the representative; a mere allegation is insufficient.
2. The evidence concerning the \$100,000 loan and its later forgiveness did not raise a real issue of a substantial conflict of interest because the appellants presented no evidence of wrongful conduct or an actionable claim by the estate.
3. The alleged undue influence did not raise a real issue of a substantial conflict requiring removal because Merriman was not the principal or sole beneficiary, the record did not establish a confidential relationship or meaningful participation in drafting the will, and there was no evidence that Helgason was virtually compelled to make a will she otherwise would not have made.
4. Alleged hostility between the personal representative and beneficiaries does not require removal absent evidence that the hostility will prevent the representative from performing his duties.

KEY QUOTATIONS

“Once a “real issue” of a substantial conflict of interest is raised, removal of the personal representative is mandatory and it is an abuse of discretion to deny removal.” (36 P.3d at 706-707)

“Therefore, the alleged hostility is not a basis for removal of Merriman as personal representative of the estate.” (36 P.3d at 710)

FACTUAL BACKGROUND

Clara Helgason died testate in 1998, leaving her sons Leonard Helgason and Ken Wood as heirs. Her 1996 will nominated her friend Thomas Merriman as personal representative and trustee of trusts benefiting her sons and grandson, and gave Merriman a \$15,000 devise. Merriman had maintained a friendship with Helgason, had received a \$100,000 loan that was later partially repaid and forgiven, and had discussed aspects of her estate planning with her. The sons alleged that these circumstances created conflicts of interest and resulted from undue influence, but presented no evidence establishing a viable claim against Merriman or relevant hostility impairing his duties.

PROCEDURAL HISTORY

After Clara Helgason's 1998 death, her sons moved to revoke her will and remove Thomas Merriman as personal representative. They withdrew the will-revocation motion but proceeded with the removal request. Following a hearing before Standing Master Anna Moran, the superior court adopted the master's recommendation denying removal, and the sons appealed.

DISPOSITION

affirmed

CASES CITED

- Gudschinsky v. Hartill, 815 P.2d 851, 854 (Alaska 1991)
- In re Estate of Gregory, 487 P.2d 59, 64 (Alaska 1971)
- Rubright v. Arnold, 973 P.2d 580, 585 (Alaska 1999)
- Bowman v. Blair, 889 P.2d 1069, 1072 n.5 (Alaska 1995)
- Wharff v. Rohrback, 152 Or. App. 68, 952 P.2d 87, 89-90 (1998)
- In re Estate of Peterson, 265 Mont. 104, 874 P.2d 1230, 1232-33 (1994)
- In re Estate of Wemyss, 49 Cal. App. 3d 53, 122 Cal. Rptr. 134, 138 (1975)
- Ramsdell v. Union Trust Co., 202 Conn. 57, 519 A.2d 1185, 1190 (1987)
- In re Estate of Devoy, 231 Ill. App. 3d 883, 173 Ill. Dec. 460, 596 N.E.2d 1339, 1342 (1992)
- Vaughn v. Batchelder, 633 So. 2d 526, 528 (Fla. App. 1994)
- In re Dissolution of Marriage of Alaback, 997 P.2d 1181, 1184 n.3 (Alaska 2000)
- Laushway v. Onofrio, 670 So. 2d 1135, 1136 (Fla. App. 1996)
- Pio v. Ramsier, 88 Ohio App. 3d 133, 623 N.E.2d 174, 176 (1993)
- Paskvan v. Mesich, 455 P.2d 229, 232-33 (Alaska 1969)
- In re Estate of Kraft, 374 P.2d 413, 416-17 (Alaska 1962)