

SUPREME JUDICIAL COURT OF MAINE

Estate of Bruce H. Kingsbury, 2008 ME 79

946 A.2d 389 (Me. 2008) · No. Sag-07-520 · Decided May 6, 2008

SUMMARY

The Maine Supreme Judicial Court affirmed a Sagadahoc County Probate Court order requiring the personal representative, Robin L. Whorff, to submit to genetic testing or permitting exhumation of Bruce H. Kingsbury’s remains for genetic testing. The court held that the interlocutory appeal was reviewable under the death knell exception because the right to prevent exhumation would otherwise be irreparably lost. It further held that the Probate Court had statutory equitable authority to order exhumation in connection with determining Kingsbury’s heirs.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Clifford, J.; Saufley, C.J.; Alexander, J.; Levy, J.; Silver, J.; Mead, J.; Gorman, J.
JURISDICTION	Maine
DECIDED	May 6, 2008
DOCKET	Sag-07-520
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Estate appealed an interlocutory Probate Court order requiring Robin L. Whorff to submit to genetic testing or, if she refused, authorizing exhumation of Bruce H. Kingsbury's remains for genetic testing. The Supreme Judicial Court accepted the interlocutory appeal under the death knell exception to the final judgment rule and affirmed.
STANDARD OF REVIEW	De novo review applied to the Probate Court's authority to undertake the challenged action and its interpretation of the governing statutes.
PRECEDENTIAL VALUE	Published opinion; binding Maine Supreme Judicial Court precedent.
PARTIES	Estate of Bruce H. Kingsbury, through Robin L. Whorff, personal representative v. Terri L. MacMahan

TOPICS

probate procedure

appellate jurisdiction

interlocutory appeal

estate administration

statutory interpretation

PRACTICE AREAS

Probate

Appellate procedure

Statutory interpretation

Evidence

QUESTIONS PRESENTED

1. Whether the interlocutory appeal could be reviewed under the death knell exception to Maine's final judgment rule.
2. Whether the Probate Court had statutory and equitable authority to order exhumation of a decedent's remains for genetic testing in connection with a petition to determine heirs.
3. Whether MacMahan's petition was a time-barred paternity action under 19-A M.R.S. § 1554.

HOLDINGS

1. The appeal was reviewable because delaying review until final judgment would irreparably eliminate the Estate's ability to challenge exhumation and genetic testing of Kingsbury's remains.
2. The Probate Court had authority to order exhumation of Kingsbury's remains for genetic testing in connection with MacMahan's petition to determine his heirs.
3. The court rejected the Estate's contention that MacMahan's petition constituted a time-barred paternity action under 19-A M.R.S. § 1554.

KEY QUOTATIONS

“The Estate's appeal thus satisfies the death knell exception to the final judgment rule, and we agree to consider the appeal on the merits despite its interlocutory nature.” (393)

“Thus, the Probate Court was indeed authorized to order exhumation of Kingsbury's remains for the purpose of genetic testing in connection with MacMahan's petition.” (394)

FACTUAL BACKGROUND

Bruce H. Kingsbury died on March 18, 2006. His daughter, Robin L. Whorff, became the personal representative after the Probate Court informally admitted his will. Terri L. MacMahan petitioned for construction of the will and determination of Kingsbury's heirs, asserting that she was Kingsbury's biological daughter, and sought genetic testing after she and Whorff could not agree to testing. The Probate Court ordered Whorff to submit to testing or authorized exhumation and testing of Kingsbury's remains.

PROCEDURAL HISTORY

Kingsbury's will was informally admitted to probate, and Whorff was appointed personal representative. MacMahan then petitioned for construction of the will and determination of Kingsbury's heirs, asserting that she was his biological daughter, and moved for genetic testing. The Sagadahoc County Probate Court entered the challenged order, and the Estate appealed before a final determination of the heirs.

DISPOSITION

affirmed

CASES CITED

- Bruesewitz v. Grant, 2007 ME 13, 912 A.2d 1255
- MacPherson v. Estate of MacPherson, 2007 ME 52, 919 A.2d 1174
- In re Bailey M., 2002 ME 12, 788 A.2d 590
- In re Estate of Medlen, 286 Ill. App. 3d 860, 222 Ill. Dec. 220, 677 N.E.2d 33 (1997)
- Kilroy v. Ne. Sunspaces, Inc., 2007 ME 119, 930 A.2d 1060
- L'Heureux v. Michaud, 2007 ME 149, 938 A.2d 801

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