

SUPREME JUDICIAL COURT OF MAINE

Conservatorship of Emma

2017 ME 1, 153 A.3d 102 · Decided January 5, 2017

SUMMARY

The Maine Law Court declined to answer a reported question concerning public electronic access to financial information in conservatorship records. The Court concluded that the question involved broad policy issues better addressed through rulemaking, could become moot based on an independent ADA-related ruling, and would not finally resolve all disputes in the conservatorship matter. The reported question was discharged.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Chief Justice Saufley; Alexander; Gorman; Hjelm; Humphrey; Jabar; Mead; Saufley
JURISDICTION	Maine
DECIDED	January 5, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	The Kennebec County Probate Court reported an interlocutory legal question concerning public online access to financial information in conservatorship records pursuant to Maine Rule of Appellate Procedure 24(a).
STANDARD OF REVIEW	The Supreme Judicial Court independently determines whether acceptance of a reported question is consistent with its appellate function or would improperly place it in the role of an advisory body.
PRECEDENTIAL VALUE	Published opinion; precedential on the standards governing reported questions under Maine Rule of Appellate Procedure 24.
PARTIES	Conservator of Emma v. Maine Freedom of Information Coalition

TOPICS

[appellate procedure](#)[final judgment rule](#)[conservatorship](#)[probate procedure](#)[ada / disability](#)

PRACTICE AREAS

appellate procedure

probate

conservatorship

public access to court records

Americans with Disabilities Act

QUESTIONS PRESENTED

1. Whether the Supreme Judicial Court should accept and answer a reported question concerning whether conservatorship inventories, accounts, or summary financial information should be available online.
2. Whether answering the reported question would be consistent with the court's appellate function rather than constitute an advisory opinion or de facto rulemaking.

HOLDINGS

1. The court declined to accept or answer the reported question because it raised broad policy issues extending beyond the controversy, sought an advisory determination inconsistent with the court's appellate function, and could become moot through subsequent proceedings.
2. The court may not undertake de facto rulemaking or issue an advisory opinion through a reported question when the question presents broad policy issues that should instead be addressed through rulemaking or statutory action.

KEY QUOTATIONS

“We cannot undertake de facto rulemaking— without public notice and a full opportunity for public comment —by responding to a reported question that seeks an advisory opinion in a matter that may well be resolved on a separate legal basis.” (¶ 13)

“Because the reported question may not be answered consistent with our basic function as an appellate court and instead seeks an advisory opinion on an issue that may be rendered moot by subsequent decision-making, we discharge the reported question.” (¶ 14)

FACTUAL BACKGROUND

Emma's husband was appointed conservator in 2011 and filed inventories and accounts identifying the approximate value of her estate. After his death, Emma's son became conservator, filed updated and amended inventories, and sought to remove estate-value information from the publicly available online probate docket. While the matter was pending, the son also requested removal of the information as an accommodation under the Americans with Disabilities Act.

PROCEDURAL HISTORY

Emma's son, acting as conservator, moved to remove financial information concerning the estate from the publicly available probate docket and later sought the same relief as an accommodation under the Americans with Disabilities Act. The Probate Court denied the initial motion, later temporarily removed summary financial information from the online docket, and reported a broader question to the Supreme Judicial Court. The Supreme Judicial Court declined to answer the reported question and discharged the report.

DISPOSITION

dismissed

CASES CITED

- Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC, 2013 ME 89, 81 A.3d 348

OPINION

SAUFLEY, J.

SAUFLEY, C.J. [¶ 1] The Kennebec County Probate Court (J. Mitchell, J.) has reported a question to us that concerns public access to information held by probate courts in electronic format, specifically, financial information in conservatorship matters.

Because we conclude that the reported question (1) raises broad issues that extend beyond the controversy at hand, (2) requests decisions that are inconsistent with our basic function as an appellate court, and (3) may be rendered moot by subsequent proceedings, we decline to answer the reported question.

I. BACKGROUND [¶ 2] In February 2011, Emma's husband petitioned to be appointed as her guardian and conservator in the Kennebec County Probate Court.¹ He amended his petition, with leave of the court, to seek the appointment of an attorney as Emma's guardian and himself as the conservator of her estate.

As conservator, he filed an inventory and accounts identifying the approximate value of the estate's assets. See 18-A M.R.S. §§ 5-418, 5-419 (2015). [¶ 3] Emma's husband died in February 2014, and her son successfully petitioned to be appointed as the new conservator. With his¹⁰⁴ petition, Emma's son filed an updated inventory of the estate's assets indicating an increase in the value of the estate.

After being appointed as the estate's conservator in October 2014, the son filed an amended inventory. [¶ 4] In August 2015, Emma's son, as conservator, moved to have financial details regarding the value of the estate removed from the publicly available docket in the case, pursuant to M.R. Prob. P. 92.12.

The court summarily denied the motion. The conservator moved for the court to reconsider and to amend the judgment pursuant to M.R. Prob. P. 59 and M.R. Civ. P. 59. The conservator focused in this motion on limiting the availability of the inventory and account information on the Probate Court's public website.

After a hearing, the court indicated that it would consider whether to report a question to us pursuant to M.R. App. P. 24(a). [¶ 5] While the court had the matter under consideration, the conservator filed a request for the financial information to be removed from the public docket as

an accommodation pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C.S. §§ 12101-12213 (LEXIS through Pub.

L. No. 114-248), based on his argument that persons without the kinds of disabilities that invoke probate court jurisdiction are not subject to public disclosure of that information. Two days later, the court reported to us the following question: When a conservator files an inventory and account for the ward, a. should the image of the documents be available on line; b. should the summary numbers from the documents be available on line while the document images remain as publicly available only in the court (current practice in Kennebec); c. should neither the image of the document nor any summary numbers be available on line (current practice in fourteen counties); or d. should the Probate Court adopt a policy different from a, b, or c above?

The court made clear that, despite the request for ADA accommodation, “[t]hat does not appear to be a recurring type of request and no certification of that question is implied.” The court entered a separate ruling on the request for ADA accommodation, however, stating that it had “certified a similar issue to the Law Court,” and that “[p]ending the result of that certification, but without deciding the issue finally, the Court will accommodate [the conservator] by removing from the docket, as available on line, the summary numbers from the inventory and account he has filed for [Emma].” II.

DISCUSSION [¶ 6] By rule, a court “may, where all parties appearing so agree, report any action in the trial court to the Law Court if it is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report, provided that the decision thereof would in at least one alternative finally dispose of the action.” M.R. App.

P. 24(a). A properly reported action “shall be entered in the Law Court and heard and determined in the manner provided in case of appeals, with the plaintiff or the party aggrieved by a reported interlocutory ruling being treated as the appellant.” M.R. App. P. 24(d). [¶ 7] Because Rule 24 exists as an exception to the final judgment rule, see *Littlebrook Airpark Condo.*

Ass’n v. Sweet Peas, LLC, 2013 ME 89, ¶ 10, 81 A.3d 348, we begin by determining whether it is appropriate to accept the reported question for response. “When the trial court reports questions for review, we independently determine whether acceptance of the report is consistent with our basic function as an appellate court, or would *105improperly place us in the role of an advisory board.” *Id.* ¶ 9 (quotation marks omitted). “In making this determination, we consider the following factors: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions; and (3) whether a decision on the issue would, in at least one alternative, dispose of the action.” *Id.* (quotation marks omitted). [¶8] The first factor, in essence, asks whether the issue presented is sufficiently significant to outweigh the purposes served by the final judgment rule.

Id. ¶ 10. The second factor addresses the possibility of other rulings rendering the question moot. Id. ¶ 12. If there exist alternative grounds that could result in a final disposition, we are unlikely to accept the question. See *id.* The third factor asks whether at least one possible answer to the reported question would finally resolve the dispute. Id. ¶ 13. [¶ 9] Regarding the first factor, the Probate Court has reported a significant and important question concerning the availability of court records and docket information in electronic format.

Across the country, state and local courts are reviewing and amending rules addressing the shift from paper to electronic filing and file storage. See generally Hon. Paul H. Anderson, *Future Trends in Public Access: Court Information, Privacy and Technology*, in *Future Trends in State Courts* 10-11, 14-16 (National Center for State Courts ed. 2011); see, e.g., Vt. Pub.

Acc. Ct. Rec. R. 1-8. The question submitted here concerns important public policy matters generated by the decisions of Maine's probate judges to modernize probate records by making certain court records and docket information available to the public in electronic format, rather than confining public access to paper files and docket records housed at particular courthouses. [¶ 10] Although the question is important, and addresses significant matters of interest to the public, it is truly a question of policy, with long-ranging and far-reaching implications.

The issues raised by the question do not lend themselves to an adjudicatory response. Rather, they should be answered through rulemaking where the myriad questions regarding the treatment of digital records can be addressed together in an open forum. Unfortunately, no rulemaking or statutory amendments concerning privacy and transparency issues were proposed or enacted before the digitization of probate records, leaving many weighty questions, including those which the Kennebec County Probate Court has reported to us, unanswered. [¶ 11] The second factor also militates strongly against our ruling on the question reported to us.

The entire issue raised with respect to the Estate may be moot because the court may continue to preclude public access to the docketed financial information about Emma's estate based on the ADA, an independent legal authority. Such a ruling could obviate the need for any opinion from us or could, if properly presented in an appeal from a final determination, require us to address additional legal issues. [¶ 12] Regarding the third factor, the broad question presented could, in at least one alternative, resolve the finite dispute about the display of Emma's estate's financial information in the docket entries publicly available on the Internet.

It would not, however, resolve any substantive disputes regarding the accounting or other matters related to the estate, and would not finally resolve all issues arising from the conservator's initial request, which asked the court to limit the inclusion of financial information in all docket entries, *106whether or not available on the Internet.

In sum, an answer to the question propounded by the Probate Court will not have an impact on the substantive proceeding before the court and should not be addressed unless a final judgment has been entered. [¶ 13] Accordingly, we decline to answer the Kennebec County Probate Court's question seeking an advisory opinion on matters that reach far beyond the controversy presented in the matter at hand.

We cannot undertake de facto rulemaking— without public notice and a full opportunity for public comment—by responding to a reported question that seeks an advisory opinion in a matter that may well be resolved on a separate legal basis. Rulemaking or statutory action on such policy questions would have provided, and still may provide, the broader guidance that is sought in the Probate Court's question. [¶ 14] Because the reported question may not be answered consistent with our basic function as an appellate court and instead seeks an advisory opinion on an issue that may be rendered moot by subsequent decision-making, we discharge the reported question.

The entry is: Report discharged.. We granted the current conservator's motion to de-identify the protected person in this matter and have provided the pseudonym "Emma."