

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 the decedent's stepson lacked standing to petition for probate or appointment as personal representative because he was not an intestate heir and the pour-over will was invalid. The court rejected his asserted financial interest in potential personal-representative compensation and his fiduciary relationship as cotrustee as bases for standing. It reversed and remanded with instructions to dismiss the probate proceeding.

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 opening the decedent's estate and appointing the decedent's stepson as administrator. The decedent's daughter and cotrustee challenged the stepson's standing to petition for probate and appointment as personal representative.
STANDARD OF REVIEW	The court reviewed whether the petitioner satisfied the statutory requirements for standing to petition for probate and appointment as personal representative.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Joan Hammond v. Dale W. Rush

TOPICS

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

PRACTICE AREAS

- probate
- estate administration
- civil 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 was determined not to be valid.
2. Whether the petitioner's anticipated compensation as personal representative gave him a sufficient property interest or claim against the estate to qualify as an interested person.
3. Whether the petitioner's fiduciary status as cotrustee made him a fiduciary representing an interested person under ORS 111.005(19)(c).

HOLDINGS

1. A stepson who is not an intestate heir and has no property right or claim against the decedent's estate is not an interested person under ORS 111.005(19) and therefore lacks standing under ORS 113.035 to petition for probate or appointment as personal representative.
2. The possibility of receiving compensation as a personal representative after appointment and successful pursuit of an elder-abuse claim does not establish the property interest or claim required for standing at the outset of the probate petition.
3. A cotrustee's fiduciary duty to trust beneficiaries does not make the cotrustee a fiduciary representing an interested person in the probate estate when the trust is not an estate asset.

KEY QUOTATIONS

“Any interested person or the person nominated as personal representative named in the will may petition for the appointment of a personal representative and for the probate of a will.” (661)

“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” (662)

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

FACTUAL BACKGROUND

Thomas R. Nagy died leaving a stepson, Joan Hammond, and a daughter, Dale W. Rush; both were cotrustees of Nagy's trust. Hammond sought appointment as personal representative solely to pursue an elder-abuse claim against Rush. Hammond initially relied on a pour-over will naming him and Rush as copersonal representatives and devisees, but the will was not admitted to probate. The estate was opened intestate, and Hammond was appointed administrator even though he was not an intestate heir and had no property right or claim against the estate.

PROCEDURAL HISTORY

The petitioner, the decedent's stepson and cotrustee, petitioned for probate and appointment as personal representative to pursue an elder-abuse claim against the objector. He initially relied on a pour-over will, but the will was not admitted to probate. The circuit court instead opened the estate intestate and confirmed the petitioner's appointment as administrator in a limited judgment. The objector appealed.

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. Yunck, 10 Or. App. 536, 537, 500 P.2d 1230 (1972)

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