

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)

OPINION

PER CURIAM.

660 December 17, 2025 No. 1081 IN THE COURT OF APPEALS OF THE STATE OF OREGON
In the Matter of the Estate of Thomas R. Nagy, deceased. Joan HAMMOND, Appellant, v. Dale W. RUSH, Respondent, Deschutes County Circuit Court 24PB07079; A186447 Alicia N. Sykora, Judge. Argued and submitted November 19, 2025. Matthew Whitman argued the cause for appellant. Also on the briefs was Brooks F. Cooper.

Christopher L. Cauble argued the cause for respondent. Also on the brief was Cauble, Furr & Beguin, LLP. Before Tookey, Presiding Judge, Kamins, Judge, and Jacquot, Judge. KAMINS, J. Reversed and remanded with instructions to dismiss the probate proceeding for lack of standing. Cite as 345 Or App 660 (2025) 661 KAMINS, J. Petitioner, decedent's stepson and cotrustee of decedent's trust, brought a probate action and was appointed as administrator of decedent's estate in a limited judgment.

Objector, decedent's daughter and cotrustee of decedent's trust, appeals, contending that the trial court erred in concluding petitioner had standing to bring the probate action. We reverse and remand the limited judgment opening the estate and appointing petitioner as administrator. Petitioner brought a probate action seeking appointment as personal representative of decedent's estate for "the sole purpose of pursuing an elder abuse claim" against objector.

Petitioner initially sought appointment based on a pour over will that designated petitioner and objector as copersonal representatives and devisees. That pour over will, however, was never deemed valid and thus could not be admitted to probate. Instead, the trial court opened the estate intestate, meaning without a will, and appointed petitioner as administrator of the intestate estate.

Objector filed an objection and hearing request. After the hearing, the trial court issued a limited judgment confirming petitioner's appointment. At issue is whether the court erred in concluding that petitioner had standing to petition the court for probate and for appointment as personal representative. ORS 113.035 sets out the standing requirements for probate: "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." "Interested person" is defined as "any person having a property right in or claim against the estate of a decedent that may be affected by the proceeding" or a fiduciary representing such a person.

ORS 111.005(19)(a), (c). A petitioner must meet this requirement even if the petitioner is an heir, devisee, or has a familial relationship. *Price v. Lotlikar*, 285 Or App 692, 705, 397 P3d 54 (2017); ORS 111.005(19)(b). Petitioner is not an "interested person" under that statutory definition because he has no claim to the estate. *662 Hammond v. Rush* When a decedent dies intestate, decedent's estate passes as determined by statute.

ORS 112.015. If decedent leaves no surviving spouse, the intestate estate passes "[t]o the descendants of the decedent * * *." ORS 112.045(1). " 'Descendant' means a person who is descended from a specific ancestor and includes an adopted child and the adopted child's descendants." ORS 111.005(9)(a). It does not include stepchildren. Cf. *In re Frazier's Estate*, 180 Or 232, 236-37, 177 P2d 254 (1947) (stepmother who never adopted stepson was not stepson's intestate heir).

As decedent's stepson, petitioner is not an intestate heir and, therefore, has no property right or claim to the estate. ORS 112.015-112.115. While petitioner may have been an "interested person" under the pour over will at the outset of his petition, the court should have dismissed his petition once it determined that that will could not be admitted and thus that petitioner had no property interest in the estate.

See *Couey v. Atkins*, 357 Or 460, 469, 355 P3d 866 (2015) ("[P]laintiff's concrete stake in the outcome must continue throughout the pendency of the case."). Petitioner contends that he has a financial interest because, if appointed as personal representative and successful in the elder abuse claim, he would be entitled to compensation as personal representative.

See ORS 116.173 ("[A] personal representative is entitled to receive compensation for services" based on the value of the estate, including "all income received during the course of the administration of the estate.").

However, that financial interest would only apply after petitioner had been appointed personal representative, rather than at the outset of his petition. See *Couey*, 357 Or at 469 ("[A] plaintiff must establish at the outset that [they] satisfy the statutory requirements for standing to bring the action."). 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.

ORS 113.035; see *Price*, 285 Or App at 705 (determining relatives did not have standing to petition for probate where they did not have a property right or claim against the estate). Cite as 345 Or App 660 (2025) 663 Petitioner further argues that he is an interested person due to his fiduciary duty to the estate's beneficiaries as cotrustee of decedent's trust.

However, petitioner's fiduciary duty as trustee extends only to the trust's beneficiaries, not the estate's beneficiaries, though there is overlap between the two groups. See *Skaggs v. Yunk*, 10 Or App 536, 537, 500 P2d 1230 (1972) (inter vivos trust is a non-probate asset).

Because petitioner's fiduciary obligation only runs to the trust, which is not an estate asset, petitioner also did not qualify as a fiduciary representing an interested person. ORS 111.005(19)(c). Reversed and remanded with instructions to dismiss the probate proceeding for lack of standing.