

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2018 TERM

Evelyn Tarnawa

v.

Richard Goode

Docket No.: 2018-0202

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NH SUPREME COURT

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APPELLANT'S SUPPLEMENTAL MEMORANDUM OF LAW ADDRESSING

PROBATE COURT JURISDICTION

NOW COMES Richard Goode, the appellant in this matter, by and through his counsel, Nixon, Vogelmann, Slawsky & Simoneau, PA, and, as requested by this court in its order dated March 6, 2019, discusses the impact of the court's opinion in *Rogers v. Rogers*, 171 NH __ (February 1, 2019) upon the jurisdiction question raised by the defendant in section A of his brief.

In his brief, the defendant argued that the Superior Court lacked subject matter jurisdiction over the appellee's request to partition the property devised to them by their mother. Because RSA 498:1 grants the court of probate "exclusive jurisdiction over equitable matters arising under its subject matter jurisdiction authority in RSA 547, RSA 547-C, and RSA 547-C:22 establishes the right to partition of real estate, the appellee's action should have been brought in probate court. Appellant conceded that there appears to be a conflict between this statutory grant of exclusive jurisdiction, and the separate statutory grant of concurrent jurisdiction with the superior court for "petitions for partition" in RSA 547:3,II(a). Appellant argued that "the only apparent way to resolve the conflict is to construe RSA 547:3,II(e) as not

applying to “the settlement of the estate of a person deceased”, because RSA 547:9 grants exclusive jurisdiction to the probate court over such matters.

This court’s decision in *Rogers* is distinguishable. Although this court held that the cause of action in that case did not fall within the probate court’s exclusive jurisdiction under RSA 547:9, even though it in some fashion related to the settlement of an estate, the court made it clear that the decision was confined to “common law tort claims that ‘relate’ in any sense, to an estate.” *Rogers*, Slip Op. at 6. In contrast, in this case, there is a clear statutory grant of jurisdiction over actions for partition to the probate court. There is no such statutory grant of jurisdiction to the probate court for common law tort claims.

The court relied in part upon its decision in *DiGaetano v. DiGaetano*, 163 NH 588 (2012). “In that case, we applied a 2-part test that examines: (1) whether the action relates to an estate, will, or trust; and (2) whether the relief sought is equitable or legal.” *Rogers*, Slip Op. at 7. “Thus, for the purposes of determining the nature of a party’s claim in the context of *DiGaetano*’s jurisdictional analysis, it is the manner by which an action relates to an estate that is the critical inquiry, not whether a relationship simply exists.... The determination of subject matter jurisdiction... depends upon whether a direct connection exists between the plaintiff’s claims and the composition, administration, sale, settlement, and final distribution of the estate and whether the connection relates to the estate or will in a manner that mandates the probate court’s exclusive jurisdiction.” *Rogers*, Slip Op. at 7-8.

In this case, not only is there a specific statutory grant of jurisdiction to the probate court over equitable actions for partition, there is also a question as to the interpretation of Mrs.

Goode's will, that is, whether Mrs. Goode left the property to her children as joint tenants or tenants in common.¹

Because *Rogers* involved a tort claim over which the probate court has no specific grant of statutory jurisdiction and the instant action involves a petition for partition which is the subject of a statutory grant of jurisdiction to the probate court, the decision in *Rogers* is not controlling in this matter.

Respectfully Submitted,

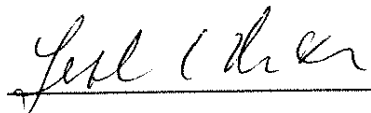
Richard Goode

By His Attorneys

NIXON, VOGELMAN, SLAWSKY
& SIMONEAU, PA

Date: March 21, 2019


By:



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CERTIFICATION

I hereby certify that a copy of the foregoing has this date been forwarded to R. John Roy, Esquire and Joshua Gordon, Esquire, counsel for the plaintiff.



Leslie C. Nixon, Esquire

¹ Although this issue was litigated in the trial court through a motion for summary judgement, appellant did not appeal the trial court's determination, but did reference it in his brief as support for his argument that the issues raised by appellee's petition were sufficiently related to an estate in the interpretation of a will as to require jurisdiction in the probate court. See Appellant's Brief at p. 11.