

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-23-273

ESTATE OF LEO MITSIN
ON APPEAL FROM THE
PENOBSCOT COUNTY PROBATE COURT

APPELLEE'S BRIEF

Joseph M. Baldacci, Esq. Bar 7292
Attorney for the Appellee
P.O. Box 1423
Bangor, ME 04402-1423
(207) 945-3333

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-23-273

ESTATE OF LEO MITSIN
ON APPEAL FROM THE
PENOBSCOT COUNTY PROBATE COURT

APPELLEE'S BRIEF

Joseph M. Baldacci, Esq. Bar 7292
Attorney for the Appellee
P.O. Box 1423
Bangor, ME 04402-1423
(207) 945-3333

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIESii

STATEMENT OF FACTS AND PROCEDURAL HISTORY1-5

STATEMENT OF THE ISSUES PRESENTED 6

ARGUMENT

 I. **Whether the Appellant’s appeal is without merit or legal justification**.....7-10

 II. **Whether Sanctions should be imposed for Appellant’s frivolous appeal interposed for delay**.....10-11

CONCLUSION 12

CERTIFICATE OF SERVICE 13

TABLE OF AUTHORITIES

Maine Law Court Cases

<i>Staples v. King</i> , 433 A. 2d 407, 412 (Me. 1981)	9
<i>Aubuchon v. Blaisdell</i> , 2023 Me. 5,10 (Me. 2023)	11

Maine Statutes/Rules

18-B M.R.S.A. Section 201	7
18-B M.R.S.A. Section 202	7, 8
18-B M.R.S.A. Section 1001	8
18 M.R.S.A Section 412	9
4 M.R.S.A Section 252	9, 10

Statement of Facts and Procedural History

Leo Mitsin, father of both Jason and Brian Mitsin, passed away in a snowmobile accident on April 20th of 2008.

- (Hearing Transcript Vol. 1 pg. 8, line 23)
1. Leo left behind in his will and estate a camp in Orneville Maine.
 - (Hearing Transcript Vol. 1 pg. 10, line 19) → Reference to will (admitted as exhibit)
 - (Hearing Transcript Vol. 1 pg. 11, line 13) → Reference to estate (admitted as exhibit)
 2. Per Leo's will, both of his sons were named as personal representatives of his estate, thus both having control over the finances left behind to manage and maintain the camp.
 - (Hearing Transcript Vol. 1 pg. 10, line 19) → Reference to will (admitted as exhibit)
 - (Hearing Transcript Vol. 1 pg. 11, line 13) → Reference to estate (admitted as exhibit)
 3. The camp had been previously used for weekend activities between family members and friends such as camping, hunting and fishing.
 - (Hearing Transcript Vol. 1 pg. 54, line 23) → Reference to Brenda's Testimony
 - (Hearing Transcript Vol. 2 pg. 14, line 13) → Reference to Brian's Testimony
 - (Hearing Transcript Vol. 2 pg. 45, line 10) → Reference to Steven's Testimony
 4. Both the brothers grew up using that camp as a means to participate in these activities with their father as a means of bonding and sharing the activities Leo held dearest to his heart.

- (Hearing Transcript Vol. 2 pg. 14, line 11) → Reference to Brian's Testimony
 - (Hearing Transcript Vol. 2 pg. 14, line 19) → Reference to Brian's Testimony
5. Prior to Leo's passing, it was understood between the brothers, family members, and friends, that his intentions for the camp's use were to remain the same even after he died. That is, that the camp would be used by family and friends as a place to go hunting and finishing during the weekends. That Leo wanted his camp to serve as a means for his family to continue to partake in the activities that Leo loved to do. The main stipulation in his vision for this to be possible was that the camp would never serve as a primary residence. That it would be used for recreational purposes only, as this is very well reflected in his will.
- (Hearing Transcript Vol. 2 pg. 21, line 40) → Reference to Steven's Testimony
 - (Hearing Transcript Vol. 2 pg. 16, line 7) → Reference to Brians's Testimony
6. Sometime between 2015 and 2016, Jason had moved into the camp and began using it as a primary residence.
- (Hearing Transcript Vol. 2 pg. 15, line 17) → Reference to Brians's Testimony
 - (Hearing Transcript Vol. 2 pg. 16, line 7) → Reference to Brians's Testimony
7. Due to Jason living permanently at the camp, Brian and his family and friends were unable to use the camp at their leisure. They either had to give Jason advanced notice, or coordinate around his schedule. Not only did that limit Brian's use of the camp over time, but Jason being there with his family also limited the amount of friends and family members that could visit the camp at one time. As time passed, Brian continued to

have less and less access to the camp until Jason did not want Brian and his family disturbing him at the camp.

- (Hearing Transcript Vol. 2 pg. 16, line 17) → Reference to Brians's Testimony
- (Hearing Transcript Vol. 2 pg. 19, line 12) → Reference to Brians's Testimony

8. Jason passed away in May of 2021. At the time of his death he was living with Harley Wellman and had two daughters (Taylor and Avery).

- (Hearing Transcript Vol. 1 pg. 14, line 8) → Reference to Harley Testimony
- (Hearing Transcript Vol. 1 pg. 31, line 7) → Reference to Harley Testimony

9. After Jason passed, Harley was appointed personal representative of Jason's estate.

- (Hearing Transcript Vol. 1 pg. 15, line 2) → Reference to Harley Testimony

10. At the time of Jason's death, Harley was living at the camp.

11. Shortly after Jason's funeral, Brian gave Harley time to grieve and recover before addressing the use of the camp moving forward.

- (Hearing Transcript Vol. 2 pg. 17, line 13) → Reference to Brians's Testimony

12. Brian communicated to Harley that he wanted her to move out so the family could resume use of the camp in the way that Leo intended it to be used for.

- (Hearing Transcript Vol. 2 pg. 17, line 13) → Reference to Brians's Testimony

13. Harley refused to move as she believed that she was entitled to live there since she was the personal representative of Jason's 'share' of Leo's estate. She also thought that Brian would mishandle the camp finances and end up selling or destroying the camp.
- (Hearing Transcript Vol. 1 pg. 33, line 18) → Reference to Brians's Testimony
14. Brian then served Harley with an eviction notice on Sep 23, 2021 since the camp is in the estate and not in her name; and she has excluded others from access.
- (Hearing Transcript Vol. 2 pg. 20, line 6) → Reference to Brians's Testimony
15. In response, Harley filed three petitions. The first petition was to be appointed as personal representative of the estate of Leo Mitsin following the death of her significant other, Jason Mitsin, who is named co-personal representative along with brother, Brian Mitsin, of their fathers estate. The second petition was to remove Brian as personal representative of his fathers estate. The third petition was to be appointed successor trustee for Jason Mitsin's family group.
- (Hearing Transcript Vol. 1 pg. 3, line 9) → Reference to COURT on Transcript
16. As a result of trial, Harley's petitions to remove Brian as sole personal representative, based on her unfounded allegations of fraud, of his fathers estate and for her to be appointed were DENIED. Her petition to be appointed successor trustee of Jason Mitsin's family Group was Granted.
17. As for the use of the camp, the court ORDERS both Brian and Harley to devise a reasonable use agreement for the camp that establishes each family group exclusive use periods and respective financial contributions.

18. A motion to reconsider that we had filed because Harley was not even a blood relative was denied by the Probate Judge.

Statement of the Issues Presented

- I. Whether the Appellant's Appeal is Without Merit or Legal Justification.
- II. Whether Sanctions should be Imposed for Appellant's Frivolous Appeal Interposed for Delay.

Argument

I. The Appellant’s appeal is without merit or legal justification.

Maine law is very clear about the Court’s authority and scope of power—which is both legal and equitable in nature in the administration and interpretation of trusts.

18-B M.R.S.A. Section 201:

“§201. Role of court in administration of trust

1. Intervention. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
2. Continuing judicial supervision. A trust is not subject to continuing judicial supervision unless ordered by the court.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
3. Matter involving trust's administration. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.”

And that jurisdiction and authority is squarely over the trustee and those seeking to be trustee. 18-B M.R.S.A. Section 202:

“§202. Jurisdiction over trustee and beneficiary

1. Trustee. By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
2. Beneficiaries; recipients. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Not exclusive. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.”

And the Court has many legal and equitable remedies at its disposal:

18-B M.R.S.A. Section 1001

“§1001. Remedies for breach of trust

1. Violation of duty. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Remedies. To remedy a breach of trust that has occurred or may occur, the court may:

A. Compel the trustee to perform the trustee's duties; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Enjoin the trustee from committing a breach of trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Compel the trustee to redress a breach of trust by paying money, restoring property or other means; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Order a trustee to account; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. Appoint a special fiduciary to take possession of the trust property and administer the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. Suspend the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

G. Remove the trustee as provided in [section 706](#); [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

H. Reduce or deny compensation to the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

I. Subject to [section 1012](#), void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

J. Order any other appropriate relief. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt.”

Further, the Probate Court has broad power to modify or terminate a trust because of unanticipated circumstances or inability to administer it appropriately.

18 M.R.S.A Section 412

§412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

1. Modification or termination. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Modification of administrative terms. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Distribution after termination. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

On many occasions the Courts have stated that a Probate Court has authority to modify or alter terms of a trust in order to better meet the probable intent of the settlor, **Staples v. King**, 433 A. 2d 407, 412 (Me. 1981).

4 M.R.S.A Section 252 reads as follows:

“§252. Equity jurisdiction

The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased

persons, to wills and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought.”

It has been established law for more than 40 years now that 4 M.R.S.A. Section 252 gives Probate Court broad equitable powers in cases involving wills and trusts.

II. Whether sanctions should be imposed for a frivolous appeal.

Appellee respectfully requests the imposition of sanctions and reasonable attorneys fees for the bringing of this appeal which was clearly meant to continue to delay the equal and shared use of the Mitsin property as intended by Appellee’s late father. In Appellant’s own response to the probate court to my motion to reconsider, Appellant’s notes the broad authority of the Probate Court; and at no time did Appellant file any post-trial motions raising their argument presented in their brief that the Court had no authority to modify or alter the trust.

Maine statutes and Maine case law all indicate that Appellant has no reasonable legal basis for her appeal.

As this Court recently held in *Aubuchon v. Blaisdell*, 2023 Me: 5,10

(Me. 2023):

"We may, "upon a determination that an appeal, argument, or motion is frivolous, contumacious, or instituted primarily for the purpose of delay,... award an opposing party or their counsel a sanction that may include treble costs and reasonable expenses." *Lincoln v. Burbank*, 2016 ME 138, ¶ 62, 147 A.3d 1165. "Sanctions are appropriate in egregious cases, namely when a party seeks relief with no reasonable likelihood of prevailing, thereby increasing litigation costs and wasting time and resources. To support a finding of frivolousness, some degree of fault is required, but the fault need not be a wicked or subjectively reckless state of mind; rather, an individual must, at the very least, be culpably careless to commit a violation." *Whittet v. Whittet*, 2017 ME 156, ¶ 3, 167 A.3d 1258 (quotation marks and citation omitted)."

Aubuchon v. Blaisdell, 2023 Me. 5, 10 (Me. 2023)

The delay in this case has only been further compounded by the fact that it took several additional months for this appeal to be even processed appropriately.

CONCLUSION

This appeal should be denied for being without merit; and Appellant should be awarded reasonable attorneys fees and costs.

Respectfully submitted this 19th day of December, 2023.

Joseph M. Baldacci, Esq., Bar# 7292
Law Offices of Baldacci, Sullivan & Baldacci
6 State Street, Suite 605
P.O. Box 1423
Bangor, Maine 04402-1423
Ph: (207) 945-3333 Fx: (207) 942-8271
jbaldacci@baldaccilaw.com

CERTIFICATE OF SERVICE

I, Joseph M. Baldacci, Esq. Attorney for the Appellee, in the above matter, hereby certify that I have made service of the foregoing Appellee's Brief upon the following party, by email and sending them two (2) copies via first class mail, postage prepaid, on this 19th day of December, 2023.

Gerald Nessman, Esq.
Attorney for the Appellant
86 Church Street
Dexter, ME 04930
(207) 924-7316

Joseph M. Baldacci, Esq., Bar# 7292
Law Offices of Baldacci, Sullivan & Baldacci
6 State Street, Suite 605
P.O. Box 1423
Bangor, Maine 04402-1423
Ph: (207) 945-3333 Fx: (207) 942-8271
jbaldacci@baldaccilaw.com