

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

REPLY BRIEF

GERALD S. NESSMANN, ESQ.
AUSTIN LAW OFFICES, P.C.
86 Church Street
Dexter, ME 04930
(207) 924-7316
Attorney for the Appellant

Appellee did not present any facts in his brief which support the contention that anything but the question of appointment of a successor trustee to the Trust was properly before the court in connection with the Trust.

Neither does the copying of several sections from Titles 18-B and 4 establish anything of substance in this case.

18-B M.R.S. §§ 201 and 202 require an issue to be properly before the court, which Appellant contends is not the case here.

18-B M.R.S. § 1001 addresses remedies related to a breach of trust. No such issue was discussed at the hearing and the only potential trustee of the Trust at that time was Appellee.

18-B M.R.S. § 412 is inapplicable on its face because the trial court did not alter any of the Trust's provisions.

4 M.R.S. § 252 establishes the probate court's equity jurisdiction which may be "exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought." Again, this is not the case here.

The holding in *Staples v. King* is predicated on the plaintiff's invocation of the probate court's equity jurisdiction. *Staples v.*

King, 433 A.2d 407, 411 (Me. 1981). Again, this is not the case here.

WHEREFORE, Appellant prays that this Honorable Court grant her the relief requested in her initial brief.

Dated this 8th day of January, 2024, at Dexter, Maine.

Respectfully submitted,

Gerald S. Nessmann, Bar No. 5131
AUSTIN LAW OFFICES, P.C.
86 Church Street
Dexter, Maine 04930
Tel.: 207-924-7316
gerald@austinlawmaine.com

Attorney for Harley Wellman

CERTIFICATE OF SERVICE

I, Gerald S. Nessmann, attorney for the Appellant, do hereby certify that I have made due service of the within Reply Brief by mailing two copies thereof by regular course of the United States Mail, postage prepaid, on the 8th day of January, 2024, to:

Joseph M. Baldacci, Esq.
P. O. Box 1423
Bangor, ME 04402-1423

Gerald S. Nessmann, Bar No. 5131