

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

---

LAW COURT DKT. NO. WAL-25-390

---

**In re ESTATE OF ROBERT R. YOUNG**

---

On Appeal from the Waldo County Probate Court

Docket No. 2017-0219

---

**BRIEF OF APPELLANTS ROBERT F. YOUNG  
& DIANNE PARKER**

F. David Walker, Esq. (Bar No. 9584)  
Walker Law  
9 Central Suite 308  
Bangor, ME 04401  
(207)291-2686  
dwalker@walkerlawmaine.com

Jennifer L. Eastman, Esq., (Bar No. 9502)  
Eastman Law, LLC  
82 Columbia Street  
Bangor, ME 04401  
(207) 951-5224  
jennifereastman@eastmanlawllc.com

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....2

TABLE OF AUTHORITIES.....4

INTRODUCTION .....6

STATEMENT OF FACTS AND PROCEDURAL HISTORY .....9

Factual Background .....9

Procedural History .....13

STATEMENT OF ISSUES PRESENTED FOR REVIEW .....16

ARGUMENT .....16

Standard of Review .....16

I. THE PROBATE COURT ERRED AS A MATTER OF LAW BY FINDING THE HOLOGRAPHIC WILL WAS NOT A VALID LAST WILL AND TESTAMENT. ....17

II. THE PROBATE COURT ERRED AS A MATTER OF LAW IN ADMITTING EXTRINSIC EVIDENCE AS TO TESTAMENTARY INTENT WHERE THERE WAS NO AMBIGUITY ON THE FACE OF THE DOCUMENT. ....21

III. THE PROBATE COURT’S FACTUAL FINDINGS ARE CLEARLY ERRONEOUS WHERE THEY ARE NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD. ....24

IV. THE PROBATE COURT VIOLATED DUE PROCESS BY DECIDING THE CASE ON AN UNPLEADED THEORY OF “INTENT.” .....27

CONCLUSION.....32

CERTIFICATE OF SERVICE .....36

## TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Blue Spruce Company v. E.H. Parent</i> , 365 A.2d 797 (Me. 1976) .....	29
<i>Alexander's Estate v. Hatcher</i> , 193 Miss. 369, 9 So. 2d 791 (1942) .....	19
<i>Appeal of Thompson</i> , 375 Pa. 193, 100 A.2d 69 (1953) .....	22-23
<i>Crosby v. Cornforth</i> , 112 Me. 109, 90 A. 981(1914) .....	21
<i>Estate of Fournier</i> , 2009 ME 17 .....	17
<i>Estate of Giguere</i> , 2024 ME 41 .....	16, 17
<i>Estate of Greenblat</i> , 2014 ME 3 86 A.3d 121 .....	16
<i>Estate of Hatch</i> , 2020 ME 46 .....	17
<i>Estate of Hoch</i> , 2018 ME 83 .....	17
<i>Estate of Jacobs</i> , 1998 ME 223, 719 A.2d 523 .....	16
<i>Estate of Leighton</i> , 638 A.2d 723 (Me.1994) .....	22
<i>Estate of Utterback</i> , 521 A.2d 1184 (1987).....	21, 23
<i>Fuller v. Fuller</i> , 84 Me. 475, 24 A. 946 (1892) .....	21
<i>Green v. Allen</i> , 132 Me. 256, 170 A. 504 (1934) .....	21
<i>In Re Button's Estate</i> , 209 Cal. 325 (1930).....	19
<i>In Re Laurin's Estate</i> , 492 Pa. 477, 424 A.2d 1290 (1981) .....	23
<i>Jusseume v. Ducatt</i> , 2011 ME 43, 15 A.3d 714 .....	27

<i>Matter of Estate of Hand</i> , 295 N.J. Super. 33, 684 A.2d 521 (1996).....	18
<i>Mitchell v. Kriekhaus</i> , 2017 ME 70, 158 A.3d 951 .....	27
<i>Nasberg v. City of Augusta</i> , 662 A.2d 227 (Me. 1995).....	17, 18
<i>Nelson v. Nelson</i> , 235 Ky. 189, 30 S.W.2d 893 (1930).....	23
<i>Philbrook v. Randall</i> , 114 Me. 397, 96 A. 725 (1916).....	21
<i>Swan v Swan</i> , 147 A.2d 140 (1958) .....	21
<i>Wells v Lewis</i> , 190 Ky. 626, 228 S.W. 3 (1921).....	19
<i>Whisenant v. McKamie</i> , 2018 Ark. App. 87, 543 S.W.3d 528 (2018).....	22
<i>Wing v. Rogers</i> , 149 Me. 340, 107 A.2d 708 (1953).....	21

#### Statutes

18-A M.R.S. § 2-803(a) .....	14
18-C M.R.S. § 2-506.....	24
18-C M.R.S. § 2-502(2) .....	14, 17, 18, 19, 20, 26
18-C M.R.S. § 3-407 .....	15, 18, 20, 22

#### Other Authorities

46 A.L.R. 3d 938.....	23, 24
75 A.L.R. 2d 895 .....	19
80 Am. Jur 2d Wills § 873 .....	232-23
Charles Dickens, <i>Bleak House</i> 1–5 (Stephen Gill ed., Penguin Classics 2003). 1–5 .....	6

## INTRODUCTION

Dickens' *Bleak House* begins with a description of an impenetrable fog permeating London. (Charles Dickens, *Bleak House* 1–5; Stephen Gill ed., Penguin Classics 2003.) In the novel, at the center of that fog sits the court of chancery. *Id.*

A similar fog persists in Maine jurisprudence, arising from the overlapping jurisdictions of probate and superior courts. Civil litigators, generally more accustomed to superior court litigation, routinely remove concurrent claims from probate courts to superior courts. The assumption is that superior courts are more capable of presiding over complex litigation. Probate courts retain the exclusive jurisdiction to determine the validity of a will.

Notwithstanding attempts by this Court to clarify jurisdictional contours, confusion abounds amongst bench and bar. This case perfectly illustrates that confusion and the costs associated therewith. These costs are borne by the parties and the courts in the form of wasted time, money, and judicial resources. This case is about a holographic will penned by the decedent Robert R. Young. (Hereafter Bob or Decedent.)

On the eve of his passing, Bob wrote an amendment to his formally drafted will. He dramatically altered his existing estate plan, declaring that his lobster pound was to be auctioned and the proceeds were to go to the Dana Farber Cancer Institute.

(A. 52-53.) Bob was found deceased in his home the day after he wrote the holograph, leaving it to be found on the kitchen table.<sup>1</sup>

Under the formal will, Appellee Raymond Young (hereafter “Raymond”) was to inherit the lobster pound. (A. 179-180.) In the wake of Bob’s death, Raymond mounted a lawsuit that embroiled the parties in years of litigation. He elected to wage the litigation in the Waldo County Superior Court, and therefore probate of the Estate was stayed. Raymond filed a nine-count complaint with the Superior Court. (A. 54-71.) His Complaint consists of inflammatory and baseless claims, suggesting (amongst other things) that his siblings (Appellants) feloniously killed their father. These were conspiracy theories. There is not now, and never has been, a scintilla of evidence supporting the claims.

After six long years of toxic litigation (including depositions and all manner of paper discovery), the Superior Court (*Murray, J.*) mercifully ended the ordeal with the issuance of a thirty-nine-page Summary Judgment. (A. 72-110). Raymond’s claims were so weak that the Superior Court concluded that no rational fact finder could find in his favor. Thereafter, Raymond filed a notice of appeal which he later abandoned.

In the wake of the Superior Court’s decision, Appellants believed that their ordeal was over. The breadth and thoroughness of the Superior Court’s decision

---

<sup>1</sup> It was originally discovered by Raymond who concealed it in his pocket and pretended to not know of its existence, until confronted with a picture of the document.

surely resolved and finally disposed of all claims Raymond had brought, or could have brought. This relief, however, was short-lived.

With the Probate Court stay lifted, the parties returned to Probate Court to finally administer the Estate. After the initial appearance in the Probate Court (following the Summary Judgment), two things became apparent: **(1) Raymond intended to relitigate all of the same claims resolved by Justice Murray and (2) the Probate Court was going to let him do it.**

Motions long decided by the Superior Court (such as whether to exhume Robert's body) had to be re-briefed. Raymond made the same claims but now couched them as issues falling within the exclusive jurisdiction of the Probate Court. He was permitted to do so despite the fact that he chose to litigate these claims in Superior Court.

Appellants attempted to avoid the re-litigation of decided issues, first by filing a Motion to Dismiss. (A. 116-121.) When that failed—in the absence of any certainty as to the issues that were to be tried—Appellants filed a Motion for Clarification of Issues for Trial. (A. 157-165.) That resulted in an Order informing Appellants that they would indeed have to litigate anew issues decided by Justice Murray. The Probate Court Order (dated November 19<sup>th</sup>, 2024) set forth five distinct issues for trial. (A. 23-28.) These included: (1) capacity; (2) undue influence; (3) fraud; (4) duress; and (5) mistake or revocation. (A. 28.) All of these claims, or

some version of them, had been litigated over six years in Superior Court. In the end, the Probate Court's decision would rest upon an issue neither pled by Raymond nor identified by the Probate Court in its Order clarifying trial issues.

Only upon receiving the Probate Court's decision did Appellants learn that the trial was not about any of the five articulated issues. Rather, the trial was decided solely on the issue of whether Bob intended the holograph to be a testamentary document. Testamentary intent—an argument never advanced in all of the years of litigation—was the dispositive issue.

Dana Farber lost its bequest. All the money and time spent litigating in Superior Court was waste. Justice Murray's thirty-nine-page decision grappling with Raymond's claims (such as undue influence and fraud) was a waste of judicial resources, given that they had to be re-tried in probate court. The process and outcome to which Appellants were subjected offends nearly every stated goal of our judicial system, including finality, economy, comity, and fairness.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

### Factual Background

Bob died on October 1, 2017. (A. 12). His wife of over fifty years, Claire, predeceased him on July 27, 2017. (A. 13). Decedent was the owner of Young's Lobster Pound & Seafood Restaurant (hereafter "Young's Lobster" or the "pound") in Belfast, Maine, having handed management of the business to Appellee Raymond

upon his retirement in 2000. (Tr. Vol. 1 at 19:2-9.)<sup>2</sup> Appellant Robert F. Young (hereinafter “Appellant” or “Bobby”) became estranged from his parents in the mid-1980s. (Tr. Vol. 1 at 14:1-14.) Appellant Dianne Parker (hereinafter “Appellant” or “Dianne”) remained close with her parents and worked her entire adult life at Young’s Lobster. (Tr. Vol. 1 at 122:14-20.) Under the terms of the Decedent’s will executed in 2000, Raymond was to receive the pound and certain other real estate, and the residue of the estate was to be divided between Raymond and Dianne. (A.178-191). Bobby was devised one dollar. (A. 179).

Though Bobby and his father had their differences over the years, late in Bob’s life they worked to mend the relationship. (Tr. Vol. 1 at 193:18-25.) By the end of Bob’s life, Bobby visited and spoke regularly with his father. (Tr. Vol. 1 at 193:18-25.) Following Claire’s passing, Bobby visited his father more frequently and the two became closer. (Tr. Vol. 1 at 193:18-25.) Bob had multiple discussions regarding including Bobby in his estate, particularly with regard to naming him as beneficiary of a bond, and within the weeks prior to his death, Bob engaged in a heartfelt conversation with his pastor about Bobby’s role as the Prodigal Son. (See Tr. Vol 2 at 11:22-12:4; 59:9-25; 60:1-5;97:24-98:3.)

In late August of 2017, Bob told Dianne and Bobby on separate occasions that Raymond was trying to sell Young’s Lobster behind his back. (Tr. Vol. 1 at 216:14-

---

<sup>2</sup> “(Tr. Vol. 1 at 19:2-9)” refers to the Transcript of the trial, Volume 1, page number, and line numbers.

217:25; 164:15-165:25.) Bob was outraged as Young's Lobster was not Raymond's to sell. (Tr. Vol. at 216:14-217:25; 164:15-165:25.) The Decedent was angry that he had been excluded from Raymond's daughter's wedding and that Raymond had lied to him about whether the wedding had already occurred. (Tr. Vol. 1 at 132:1-133-10; 135:3-8.) Appellants also testified that the Decedent discussed with them his concerns regarding Raymond's management of the business. (Tr. Vol. 1 at 200:10-25; 203:12-20.) He asked both Bobby and Dianne on separate occasions if either of them wanted the pound, stating that he would sign it over to them immediately. (Tr. Vol. 1 at 153:11-13; 193:12-17; 199:10-15.)

On September 30, 2017, Bobby went to Bob's home at his repeated request. (Tr. Vol. 1 at 191:17-192:10; 196:12-197:2.) Bob was seated at the kitchen table writing something. (Tr. Vol. 1 at 191:17-25-192:10; 198:15-20.) When he stopped writing, he signed the document and handed it to Bobby, asking him to read it. (Tr. Vol. 1 at 199:1-7.) The document was a holographic will. (A. 52-53.) Bob told Bobby to take a picture of the will in case something happened to it. (Tr. Vol. 1 at 201:20-202:1-4.) Bob told Bobby that he would have the holograph made into a formal (non holographic) will while he was at his attorney's office the following Monday. (Tr. Vol. 1 at 202:5-19.) The holograph was on the kitchen table when Bobby left his father's house that afternoon. (Tr. Vol.1 at 202:5-6.)

Early the next morning, the Decedent was discovered dead in his home by a friend. (Tr. Vol. 1 at 52:2-25.) Raymond and his wife were first called to the house as they lived across the street. (Tr. Vol. 1 at 52:2-25.) When Bobby arrived about an hour later, the holograph was missing from the table. (Tr. Vol. 1 at 53:9-21.) Upon questioning and searching, Raymond was found to have the holograph in his shirt pocket. (Tr. Vol. 1 at 54:3-6.) Raymond's wife had picked it up and secreted it away, purportedly to avoid the appearance of a suicide. (Tr. Vol. 1 at 54:2-6.)

The holographic will is a drastic change from the 2000 Will. The document states in the Decedent's handwriting, "**THIS [IS] MY LAST WILL & TESTAMENT ON 9/30/17.**" (A. 52-53.) The Decedent directed that Raymond and his family were to cease employment at the lobster pound, the pound was to be sold with the proceeds donated to the Dana Farber Cancer Institute, the remaining real property distributed to Dianne, and the residue divided between Dianne and Bobby. (A. 52-53). The Decedent signed the holograph "**AND THEN I SHALL GO AND BE WITH THE LOVE OF MY LIFE INTO ETERNITY, WHERE I'LL BELONG. LOVE, BOB YOUNG.**" (A. 53.) There were significant nonprobate assets that passed to all three children – \$88,000 in bonds to Bobby, and multiple millions of dollars in cash and investments to each of Dianne and Raymond, none of which are in dispute. (Tr. Vol. 1 at 107:3-5; 20-21.)

### Procedural History

Raymond brought a petition for formal probate of the 2000 Will in the Waldo County Probate Court, acknowledging the existence of:

[A] holographic document dated September 30, 2017. The document purports to be a last will and testament of the decedent. Robert R. Young lacked the testamentary capacity and independent counsel necessary for a valid will. The writing is also an invalid product of undue influence, unfair persuasion, abuse of a confidential/fiduciary relationship, breach of a relationship of trust, tortious interference with inheritance expectations, fraud, and constructive fraud by the decedent's son Robert F. Young.

(A.42.)

Appellants brought a petition for formal probate of the holographic will signed by the Testator on September 30, 2017 (the "holographic will"). (A. 47-53.)

Raymond brought a barrage of claims in Waldo County Superior Court. (A. 54-71.) Consequently, the petitions in the Probate Court were stayed during the litigation of claims challenging the validity of the holographic will in the Waldo County Superior Court. On June 7, 2022, the Superior Court granted summary judgment in favor of Appellants on all claims. (A. 72-110). Having reached final adjudication of those claims in the Superior Court, Appellants returned to the Waldo County Probate Court to admit the 2017 holographic will for final administration and to commence probate of the estate.

Undeterred, Raymond promptly began relitigating the Superior Court issues, He filed a new Motion to Exhume the body of his father in the Probate

Court. Appellants filed a motion to dismiss on the basis of collateral estoppel and *res judicata*, as all claims had been dismissed by the Superior Court. (A. 116-121.) On June 7, 2024, the Probate Court ordered the parties to provide a memorandum of law explaining the legal arguments under the Maine Uniform Probate Code or any other pertinent statute for support of arguments as to whether the will being put forward for probate dated is in fact a valid, or alternatively, an invalid will under the Maine Uniform Probate Code. The Probate Court ordered that the parties address “[s]pecifically, where in the Maine Uniform Probate Code or any other pertinent statute that it can be construed that this is a legal will?” (A. 20-22.)

Raymond listed as issues (1) the Appellants’ burden to prove compliance with Section 2-502(2); (2) lack of capacity of the Decedent (including that the holographic will was in fact a suicide note); (3) undue influence; (4) racial animus; (5) preclusion of Appellants as beneficiaries under 18-A M.R.S. § 2-803(a) “due to their involvement in the homicidal death of Robert Young.” (A. 130-142.)<sup>3</sup> On August 1, 2024, Appellants filed a motion for clarification of issues, specifically requesting the Court delineate the issues remaining for hearing before the Probate Court and those disposed of by the Superior Court action. (A. 157-165.) The Probate Court’s November 19, 2024 order states: “[I]t is this Court’s opinion that the following issues can be heard by this court in addition to whether the 2017

---

<sup>3</sup> The racial animus claim was new, the rest of Appellee’s claims were identical to those dismissed by the Superior Court.

holographic document should be admitted into probate: testamentary capacity, undue influence, fraud as it relates to statements purportedly made by one of the Respondents, duress, mistake, or revocation.” (A. 28.) The issues listed by the Court are a direct recitation of 18-C M.R.S. § 3-407, grounds for contesting a will, with one noticeable omission – lack of testamentary intent. The Probate Court specifically omitted this potential claim in ordering the issues to be heard at trial. The claim was never raised by Raymond in his probate pleadings.

A three-day trial was held on April 15, 16, and 29, 2025, in the Waldo County Probate Court. The Court overruled repeated and standing objections to testimony regarding thirty years of family relations, hearsay testimony regarding the Decedent’s statements to others regarding his estate plan from years prior to up to weeks before his death, testimony regarding the Appellants’ behavior the morning of their father’s death, allegations of theft of personal property from the house, Raymond’s and his wife’s intuitions that Bobby knew the Decedent planned to commit suicide and therefore facilitated his death by failing to intervene, and additional evidence not relevant to the issues identified by the Probate Court for trial.

Appellants now appeal the Order of the Waldo County Probate Court published on August 8, 2025, finding that “the holographic document was not a valid last will and testament of the Decedent.” (A. 12-19.)

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Probate Court erred in concluding that the holographic will was invalid based on lack of testamentary intent.
2. Whether the Probate Court erred in admitting extrinsic evidence regarding testamentary intent where there was no ambiguity on the face of the holographic will.
3. Whether the Probate Court's factual findings were clearly erroneous where they were not supported by any evidence in the record.
4. Whether the Appellants' due process rights were violated by the Probate Court's determination that the testator lacked testamentary intent when the Court specifically omitted that claim as an issue to be determined at trial.

## ARGUMENT

### Standard of Review

This Court “defers to the Probate Court on factual findings unless they are clearly erroneous but reviews *de novo* the application of the law to the facts.” *Estate of Giguere*, 2024 ME 41 ¶ 15, citing *Estate of Greenblatt*, 2014 ME 32, ¶ 12, 86 A.3d 1215. “Statutory interpretation is a matter of law, and an appellate court reviews a trial court's decision relating to statutory interpretation *de novo*.” *Estate of Jacobs*, 1998 ME 223, ¶4, 719 A.2d 523, 524. When interpreting a statute, this Court

looks first to its plain meaning and to give effect to the intent of the Legislature, construing the statutory language to avoid absurd, illogical, or inconsistent results. *See Nasberg v. City of Augusta*, 662 A.2d 227, 229 (Me. 1995).

Legal determination of testamentary intent by application of law to facts is a conclusion of Law and therefore reviewed de novo, with no deference to the Probate Court's legal reasoning. *In re Estate of Hatch*, 2020 ME 46, ¶9. Interpretation of a will presents a question of law when the document is unambiguous and is reviewed de novo. *See Estate of Giguere, id.* Findings regarding authenticity or handwriting are reviewed for clear error; however, where handwriting is uncontested and statutory compliance is met, construction is a legal determination based solely on the instrument. *See Estate of Hoch*, 2018 ME 83, ¶15; *Estate of Fournier*, 2009 ME 17, ¶13.

**I. THE PROBATE COURT ERRED AS A MATTER OF LAW BY FINDING THE HOLOGRAPHIC WILL WAS NOT A VALID LAST WILL AND TESTAMENT.**

A holographic will is valid under Maine law “if the signature and material portions of the document are in the testator’s handwriting.” 18-C M.R.S. § 2-502(2). The evidence is undisputed that the entire document, including the signature, is in Bob’s handwriting (Tr. Vol. 1 at 68:2-16.), clearly meeting the statutory requirements of § 2-502(2). The Probate Court concluded that because the Decedent’s signature on the holograph was not signed in cursive, it was not intended

as a “final expression of his testamentary disposition” and therefore “not a valid last will and testament.” (A. 15-16.) It was, nonetheless, by the Court’s order, found to be the Decedent’s signature. (A. 15.) Even if this Court finds that the printed signature raises a question of testamentary intent, that does not invalidate the holograph under the statutory requirements of § 2-502(2), but instead, creates a claim for contest of a will under 18-C M.R.S. § 3-407, which the Appellee failed to bring over the course of seven years of litigation, which the trial court repeatedly declined to state as a claim pending in the probate matter, and of which the Appellee failed to carry his burden of proof at trial.

There is no Maine case law dealing with sufficiency as to form of signature to a holographic will. When interpreting a statute, this Court looks first to its plain meaning of the language. *See Nasberg v. City of Augusta*, 662 A.2d 227, 229 (Me. 1995). A signature is defined as the name of a person written in that person’s own hand. *Matter of Estate of Hand*, 295 N.J. Super. 33, 38, 684 A.2d 521, 523 (1996) *citing* Webster’s New World Collegiate Dictionary 1079 (1973). “By definition, a signature is not necessarily inscribed in cursive. It only must be the writer’s name in the writer’s handwriting. It need have no particular ‘cast or form.’” *Id.* “For purposes of statutes dealing with holographic wills, a signature could be in cursive or in block lettering, as long as it was in the writer's name and in the writer's hand.” *Id.* For holographic wills, handwriting includes whatever the person has written by

hand, and not “merely his usual and common style of chirography.” *Alexander's Estate v. Hatcher*, 193 Miss. 369, 9 So. 2d 791 (1942). Regardless of the fact that the Decedent printed his signature in block lettering, it is still his signature within the plain meaning of the word and within judicial interpretation of the context, meeting the statutory requirements of § 2-502(2).

Nor does the Decedent’s signature fail under § 2-502(2) as a matter of law because the holograph is signed “LOVE, BOB YOUNG.” Aside from the requirement that in holographic wills the signature must be in writing, courts passing upon the sufficiency of a signature generally hold “that any writing intended by the writer to operate as a signature, and made *animo testandi*, will be given effect, approving as signatures such designations as descriptions by relationship, initials, first names or nicknames, and misspelled names.” 75 A.L.R. 2d 895. “The requirement of signature ... does not require a signing of the legal or true name, so long as the signature is in the [testator's] handwriting, concluding that the evidence indicated the words in question were intended as a signature.” *See In Re Button's Estate*, 209 Cal. 325, 287 P. 964 (1930) (holding that the words "Love from 'Muddy'" on the left margin of the last page of a letter offered for probate as a will was a sufficient signature, where the court noted that the letter was addressed to the immediate family of the testatrix, to whom she was affectionately known as "Muddy"). *See also Wells v Lewis*, 190 Ky. 626, 228 S.W. 3 (1921) (holding the

signature "Ant Nanie" to a holographic will sufficient. The valediction of the holograph by the Decedent is sufficient as a signature under § 2-502 as a matter of law.

Even if determination by the Probate Court that the printed signature of the Decedent raised the question of testamentary intent was proper, that contest must be brought, not under § 2-502(2), but under 18-C M.R.S. § 3-407, which shifts the burden of proof from the proponent of the will to the contestant of the will. *See* 18-C M.R.S. § 3-407 (“Contestants of a will have the burden of establishing lack of testamentary intent...”). The extrinsic evidence the Court relied upon is not admissible to determine testamentary intent where the document unambiguously states “THIS [IS] MY LAST WILL AND TESTAMENT.” (A. 53.) The Probate Court’s finding that the “Decedent’s state of mind at the time he wrote the holographic document will never be known,” (A. 15.) is not only completely contradicted by the writing of the Decedent, the statement demonstrates that Appellee failed to meet his burden under 18-C M.R.S. § 3-407 to prove that the Decedent lacked testamentary intent. Further Raymond himself testified at trial that Bob remained “sharp” up until the time of his passing. (Tr. Vol. I at 68:17-69:5.) There was no evidence at trial suggesting that Bob lacked capacity or that there were issues regarding his state of mind, aside from his growing animus towards Raymond.

## **II. THE PROBATE COURT ERRED AS A MATTER OF LAW IN ADMITTING EXTRINSIC EVIDENCE AS TO TESTAMENTARY INTENT WHERE THERE WAS NO AMBIGUITY ON THE FACE OF THE DOCUMENT.**

The Probate Court's conclusion that the Decedent lacked testamentary intent is based wholly on extrinsic evidence that was inadmissible to determine intent where there was no ambiguity in the holographic will. Absent any ambiguity in the terms of a will, the intent of the testator is to be ascertained from the four corners of the instrument without resort to parol evidence as to that intent. *See Estate of Utterback*, 521 A.2d 1184, 1186 (1987); *Crosby v. Cornforth*, 112 Me. 109, 90 A. 981 (1914); *Philbrook v. Randall*, 114 Me. 397, 398, 96 A. 725 (1916); *Swan v Swan*, 147 A.2d 140, 143 (1958). Any inquiry regarding the Decedent's intent is completely dispelled by his own writing. There was no ambiguity in the Decedent's words that compelled looking beyond the document at extrinsic evidence to determine intent.

It is an axiom of estate law that the intention of the testator as "expressed must govern. . . . Such intention may be determined by an examination of the whole instrument, including its general scope, logical implications, and necessary inferences. . . . intent will not be allowed to fail for want of apt phrase or conventional formula." *Green v. Allen*, 132 Me. 256, 258, 170 A. 504, 505 (1934) *citing Fuller v. Fuller*, 84 Me. 475, 24 A. 946 (1892); *Wing v. Rogers*, 149 Me. 340, 343, 107 A.2d

708, 709 (1953). The cardinal rule for the interpretation of wills and other testamentary documents is that the intent of the testator should be ascertained from the instrument itself and effect given to that intent. *See Whisenant v. McKamie*, 2018 Ark. App. 87, 543 S.W.3d 528 (2018).

To challenge a will based on lack of testamentary intent, the contestant of the will must affirmatively bring that claim under § 3-407, and the court must first look to the four corners of the document to resolve any ambiguity. Only if the ambiguity cannot be resolved by the document in its entirety will Maine courts consider extrinsic evidence to clarify intent. *Estate of Leighton*, 638 A.2d 723, 724 (Me.1994). Where the Probate Court found that the printed signature of the Decedent raised the issue of testamentary intent, review of the holograph itself satisfies the inquiry. Because the Probate Court allowed the relitigation of issues already decided by the Superior Court, Appellants' repeated objections to evidence were overruled and allowed as relevant to other claims, then dispositively applied to the issue of intent for which such evidence is inadmissible by law.

- A. That the Decedent's signature on the holograph was printed rather than in cursive does not determine a lack of testamentary intent where there is no ambiguity on the face of the document.

If the sufficiency of Bob's handwritten signature raised a question of testamentary intent, that question "is one of law for the court rather than one of fact. . . to be ascertained from the language alone. . . . from the face of the instrument

whether the writer intended to make a testamentary disposition.” 80 Am. Jur 2d Wills § 873, *citing Appeal of Thompson*, 375 Pa. 193, 100 A.2d 69 (1953). The holographic will states unambiguously in Bob’s handwriting, “THIS [IS] MY LAST WILL & TESTAMENT ON 9/30/17.” (A. 52-53.) Absent any ambiguity on its face, the intent of the testator is to be ascertained from the four corners of the instrument without resort to parol evidence as to that intent. *See Estate of Utterback*, 521 A.2d at 1186.

- B. The Court erred in concluding that the testimony that the Decedent intended to have his attorney draw the holographic will into a formal and attested will invalidated the holographic will.

Again, because the holograph is unambiguous on its face, the Court should have looked no further than the document which clearly states the testator’s intent. Even if extrinsic evidence of the Decedent’s statements regarding his plan to see his attorney to formalize the holograph were admissible, the mere fact that the testator intended to execute a new and more formal will later does not detract from the testamentary character of the holograph. 46 A.L.R. 3d 938 § 8. *See also Nelson v. Nelson*, 235 Ky. 189, 30 S.W.2d 893 (1930) (paper executed by the decedent stating that "Until I can have my will written the following are my wishes in regard to my estate," going on to set out the disposition of his property, was held to be clearly testamentary, and to contain no ambiguity justifying the admission of extrinsic evidence on the question of testamentary intent.) *See also In Re Laurin's Estate*, 492

Pa. 477, 424 A.2d 1290 (1981) (validly executed informal writing properly probated as last will and testament, even though earlier formal will existed, where testamentary intent as to informal writing was shown by evidence that testatrix was ill at time writing was prepared, language demonstrated her intent to dispose of all worldly possessions, and it was signed at the end).

In those cases where it is not clear from the language used in the document whether the testator intended to write the will himself or to have someone else draw it up, the document has been held testamentary in character, as the testator's intention to execute a new and more formal will later does not negate the testamentary character of the document in question. 46 A.L.R. 3d 938, § 14.

Wills are revocable. 18-C M.R.S. § 2-506. A will does not become "permanent" or "final" until the incapacity or death of the testator. Every person competent to make a will has the right to make a later will, and that the fact that the Decedent expressed his intention to have the holograph drawn up into a formal will by his attorney does not negate the intent as stated clearly in the holograph. The Probate Court's conclusion to the contrary is in error as a matter of law.

**III. THE PROBATE COURT'S FACTUAL FINDINGS ARE CLEARLY ERRONEOUS WHERE THEY ARE NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD.**

In the Court's lengthy order, evidence is not only erroneously applied to unstated claims, the facts are repeatedly confused, misconstrued, or plainly not what

was testified to in the record. These confusions and misstatements lead to erroneous fact finding that serve as the basis for conclusions of law not based in evidence on the record.

A. The Court erroneously referenced documents not part of Respondent's Exhibit 1.

For example, the Court relies heavily on its analysis of the wrong exhibit. “The holographic document dated September 30, 2017 (R1) as admitted into evidence consists of five pages.” (A. 14.) This is pure error. Respondents’ Exhibit 1 consists of two pages. App. 216-217. The other three pages referred to by the Court do not constitute the holographic writing offered by Appellants.

This is prejudicial error as the Court goes into great detail comparing and analyzing the two page holograph against the three pages not a part of Appellants’ exhibit when concluding that the five pages were not prepared contemporaneously and that the signatures are different. (A. 14.) The implication in the Court’s order is that the printed signature on the holograph is a forgery,<sup>4</sup> but no such claim was before the Court, and no such allegation was ever made by the Appellee, who testified that the entirety of the holograph was in the handwriting of the Decedent. (Tr. Vol. 1, p.68, 8-16; p.88, 14-17).

---

<sup>4</sup> “In sum, there is no reason to doubt that the signature on the 2000 Will was the signature of the Decedent” (implying that there is reason to doubt the signature on the holograph.) (A. 14).

- B. The Court’s findings that “the Decedent told him that he was going to attorney Lee Woodward to make a will the following Monday” and that “the Decedent told [Bobby] that he was “taking the note to attorney Lee Woodward to make a will the following Monday” is not supported by the record.

Bobby’s exact testimony was “Because my father told me that I am – I am making my will now because I don’t like what was going on with my lifestyle and my son. So he said this was his words exactly.” Transcript Vol. 1, p 190, Lines 17-20. Bobby testified, “He said – I’m going to leave this — this right here on the table right now (indiscernible). Monday, I’m going to Lee Woodward’s office and see Lee about some documents I have to take care of for your mother’s estate. Now (indiscernible) [I’ll have him put this]<sup>5</sup> in a permanent will while I’m there.” (Tr. Vol I, at 202:5-10). Bob told his son that he would have the holographic will made into a permanent will while he was at his attorney’s office on the following Monday. The actual testimony provides very different statements than what the Court erroneously quoted.

The Court’s finding that the Decedent said he was going to his attorney to have a will drafted is substantively and consequentially different from the actual testimony that the Decedent said he was going to have the holographic will drafted into a formal will, implicitly looking to satisfy statutory requirements for execution, attestation, and self-proved in accord with 18-C M.R.S. § 2-502 and § 2-503. The

---

<sup>5</sup> Bobby suffered a stroke during the pendency of this case, rendering part of his face paralyzed, to the effect that he is sometimes difficult to understand, as reflected in the transcript.

Court relied expressly on this erroneous testimony when finding that those words (never spoken by Bobby) compel a finding that the holographic document was not a new last will and testament. (A. 15-16.) “Taking the note to Lee Woodward on Monday to make a permanent will” implies a significantly different intention than taking a statutorily valid holographic will to his attorney to draft a more formalized will executed and attested in accordance with applicable statutes.<sup>6</sup> (A. 15-16.)

#### **IV. THE PROBATE COURT VIOLATED DUE PROCESS BY DECIDING THE CASE ON AN UNPLEADED THEORY OF “INTENT.”**

##### A. Legal Standard.

This Court reviews “de novo whether an individual was afforded procedural due process.” *Mitchell v. Kriekhaus*, 2017 ME 70, ¶16, 158 A.3d 951 (quotation marks omitted). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* ¶¶16, 20. (quotation marks omitted). “When significant rights are at stake, due process requires: notice of the issues, an opportunity to be heard, the right to introduce evidence and present witnesses, the right to respond to claims and evidence, and an impartial fact-finder.” *Jusseume v. Ducatt*, 2011 ME 43, ¶12, 15 A.3d 714 (Citation omitted).

---

<sup>6</sup> Regardless of the Court’s erroneous factual statements, there is no such thing as a “permanent” will, *see* discussion in Section II *supra*, and this evidence should never have been admissible as to the testator’s intent.

### B. Duplication of Claims.

Every claim expressly pled by Raymond in the Superior Court and in the Probate Court tacitly concedes that Bob intended the holographic will to be binding. By pleading fraud, undue influence, et cetera, Raymond conceded that the holograph was in fact a handwritten testamentary document. From the outset, the gravamen of Appellee's case has been that the decedent's intent was manipulated and the product of undue influence visited upon him by Appellants. In the several years of litigating this controversy, Raymond never alleged that the holographic will was not a valid and final expression of Bob's testamentary intent.

### C. Argument

The Probate Court's judgment must be vacated because it rests on a dispositive theory—the decedent's "intent"—that was neither pleaded nor identified as an issue for trial, and that was expressly objected to before and during trial. Appellants pressed the Probate Court to isolate and identify the actual issues to be litigated. In hopes of avoiding relitigating the issues disposed of by the Superior Court, Appellants filed a Motion to Dismiss. (A. 116-121.) The Probate Court issued an Order on the Motion to Dismiss which failed to clearly establish the issues being litigated. Subsequently, Appellants filed a Motion for "Clarification" of the issues to be tried. (A. 157-165.) These measures reflect the confusion concerning issues

remaining to be litigated in light of the Superior Court's decision on summary judgment.

D. Trial Evidence.

Ultimately, the Probate Court rejected argument that all issues raised by the Appellee had been adjudicated and the matter proceeded to a trial. Although evidence touching on signature and intent was admitted at trial, it was admitted solely for purposes of the pleaded claims, and not by consent to try a separate, dispositive issue. The court's reliance on intent as the basis for its decision therefore violated the Appellant's right to due process.

E. The Decedent's Intent was Not Tried by Consent.

Raymond is likely to argue that, regardless of what was pled or identified as a trial issue, "intent" was tried by the consent of the parties. In *Blue Spruce Company v. E.H. Parent*, this Court addressed the issue of trial by consent:

Notwithstanding that the purpose of Rule 15(b) is obviously "to avoid the tyranny of formalism," nevertheless, the rule is not to be used as a device by which a litigant, thwarted on one theory, may raise an alternative theory after trial in hopes of avoiding the consequences of an adverse judgment.

The rule was not intended to permit a party to amend his pleadings after verdict and thereby upset the verdict by asserting a new theory which was not included in the original pleadings and upon which the case was not tried.

The mere fact that evidence presented at trial which is competent and relevant to the issues raised by the pleadings ***may incidentally tend to prove another fact*** not put in issue does not give rise to the application of Rule 15(b) and support a claim that

the issue was tried by consent, unless notice of the nonpleaded issue is given clearly during the course of the trial.

365 A.2d 797 (Me. 1976). (Internal citation omitted; emphasis added.)

*Blue Spruce* differs from the case at bar in that it involves a defeated party attempting to retroactively invoke Rule 15(b). However, the underlying principle holds. The fact that the Probate Court admitted evidence relevant to a claim actually pled by the Appellee—which may incidentally be relevant to a claim that the decedent lacked intent to draft a holograph—does not mean that the issue of intent was tried by the consent of the parties.

#### F. Trial Objections.

At trial, the opposing party introduced *some* evidence concerning the decedent's signature and intent. Appellants lodged a standing objection, expressly preserving the limitation that such evidence was admissible only insofar as it related to the pleaded issues of undue influence, fraud, mistake, or similar tort-based challenges to the testamentary instrument.

The admission of evidence relevant to existing issues does not constitute implied consent to try an unpleaded claim. Where evidence is relevant to issues already in the case, it does not place the opposing party on notice that a new theory is being tried.

Here, evidence regarding signature and intent was relevant to the pleaded claims, particularly undue influence and mistake. Its admission—subject to a standing objection—did not signal that the Probate Court would resolve the case on a freestanding inquiry into intent divorced from those causes of action.

G. Preservation of Issues for Appeal.

Throughout the Probate litigation, Appellants sought to preserve issues for appeal. Once apparent that the Probate Court intended on entertaining a second trial on previously litigated issues—motions were filed (to dismiss and then clarify). Trial objections were made. A judgment violates due process when it is based on a theory that the affected party had no reason to anticipate would be dispositive. It is unclear that any further procedural steps were available to raise issues around res judicata, estoppel, judicial economy, comity, and the need for a clear understanding of what precisely was being litigated.

H. Deciding the Case on “Intent” Deprived the Appellant of a Meaningful Opportunity to Be Heard.

By deciding the case on intent—an issue never identified as independently controlling—the Probate Court deprived the Appellant of the opportunity to tailor evidence, cross-examination, and legal argument to that theory. Had intent been identified as dispositive, the Appellant could have pursued a materially different litigation strategy, including statutory arguments regarding testamentary validity and the limits of post hoc intent analysis. The focus would have been on signature

exemplars as opposed to undue influence and other “re-treaded” issues. The absence of notice foreclosed that opportunity and undermined the adversarial process.

#### I. The Error Was Prejudicial and Requires Vacatur.

The error was not harmless. The Probate Court’s reliance on intent was outcome-determinative and supplanted the legal framework governing the pleaded claims. Where a party is denied notice and a meaningful opportunity to be heard on a dispositive issue, vacatur and remand are required.

Accordingly, the judgment should be vacated and the matter remanded for decision based solely on the issues properly pleaded and tried.

### **CONCLUSION**

This case illustrates the jeopardy that can result from confusion around jurisdictional boundaries. The costs to the parties and the Superior Court cannot be overstated. The Superior Court spent countless hours entertaining motions and resolving claims, all for naught. The parties spent small fortunes litigating issues in Superior Court, all for naught.

Raymond’s own Complaint filed with the Superior Court alleges: “The ‘note’ consisted of a holographic testamentary document/suicide note written and signed by Robert R.” (A. 56) (citing Paragraph 36 of the Complaint). In response to a request for admissions served upon him, Raymond “admitted” that the “decendent

wrote and signed the holographic testamentary document.” (Tr. Vol. III at 16:3-14.) This was proffered to the Court in the course of an argument for judgement as a matter of law at the conclusion of Raymond’s case, as an established fact of which the Court could take judicial notice.

Finally, during the same argument for judgment as a matter of law, Appellant’s counsel referenced the jurisdiction of the Probate Court in this instance as being limited to whether the holographic will was “void for issues like capacity.” (Tr. Vol. III at 16:15-23.) The Probate Court’s one-word response was: “Correct.” (Tr. Vol. III at 16:24.) Thus, even in the midst of trial, at the conclusion of Raymond’s case, Appellants labored under the impression that the issues for trial were capacity, fraud, undue influence, et cetera. Not testamentary intent, which had never been challenged and had been conceded tacitly (by bringing undue-influence claims), expressly in his Complaint and answers to requests for admissions, and impliedly through Raymond’s trial testimony that Bob remained “sharp” until the end.

If affirmed, the Probate Court’s decision effectively means that petitioners/plaintiffs can elect to litigate their claims in superior court with the knowledge that—should they not prevail—they can start anew in probate court. If affirmed, the precedent subjects respondents/defendants to two trials. Two rounds of discovery. And costs that will bankrupt most estates.

The Probate Court's decision upends the fundamental purpose and policy upon which the holographic will statute is built. Holographic wills are acknowledged as legally valid wills in Maine precisely so that testators can memorialize their testamentary intent for the disposition of their worldly assets in an informal manner without necessity for a lawyer to draft a complex document. The statute exists to uphold the intent of the testator in the face of strict statutory compliance with the formalities of wills. If Bob's holographic will, in large block lettering stating "THIS [IS] MY LAST WILL & TESTAMENT," signed and dated, cannot be upheld as a valid statement of his testamentary intent, then there is no purpose to the holographic will statute existing.

Testators are allowed to change their minds. They are allowed to change their estate plans at any time up to their incapacity or death. Indeed, it is completely in the norm for testamentary dispositions to change multiple times over the course of a person's life, and it is not unusual for family relationships to morph and mature through the crises of major life events, such as the death of a parent or spouse. Under Maine law, people are allowed to document these changes to testamentary dispositions by their own hand, informally. A plan to have their informal wishes, properly documented by their own hand, later formalized by a lawyer does not invalidate the pure testamentary intent that compels a testator to create a holographic will. If that were the case, then holographic wills would not be permitted to exist at

all, as the entire policy behind them – to allow a testator to record his intent for disposition of his estate in a moment where formalities may be unavailable – would be pointless. If Bob’s holographic will does not suffice, then no holographic will could be upheld under the Probate Court’s theory.

For all of the foregoing reasons, Appellants respectfully request that this Court reverse the decision of the Probate Court and remand this case for further appropriate proceedings.

Respectfully Submitted,

/s/ F. David Walker  
F. David Walker, Esq.  
Maine Bar No. 9584  
dwalker@walkerlawmaine.com

Walker Law  
9 Central Street Suite 308  
Bangor, ME 04401  
(207)291-2686

/s/ Jennifer L. Eastman  
Jennifer L. Eastman, Esq.  
Maine Bar No. 9502  
jennifereastman@eastmanlawllc.com

Eastman Law, LLC  
82 Columbia Street  
Bangor, ME 04401  
(207) 951-5224

Attorneys for Appellants Robert F. Young and Dianne M. Parker

## CERTIFICATE OF SERVICE

I, F. David Walker, IV, certify that I served two copies of the Appellants' Brief upon Appellee by hand delivery to the law office of Appellee's attorneys, Russell Johnson Beaupain, at 175 Exchange Street, Bangor, ME 04401. Hand delivery was made on Friday, December 19, 2025.

Dated: December 19, 2025

/s/ F. David Walker, IV

F. David Walker, IV, Esq. (Bar No. 9584)