STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET 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 APPELLEE RAYMOND YOUNG

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INTRODUCTION

Appellants contend that the jurisprudence of probate court jurisdiction has created an "impenetrable fog" resulting in innumerable errors by the Probate Court in this matter. It is undeniable that the Probate Court had exclusive jurisdiction over the will contest between these parties. *See Zani v. Zani*, 2023 ME 42, ¶¶ 13-15, 299 A.3d 9 (*citing* 18-C M.R.S. § 3-105 (2023)). In apparent recognition of the Probate Court's exclusive jurisdiction, Appellants do not raise any direct arguments on appeal that pertain to the overlapping Venn diagram of jurisdiction arising from the will contest before the Probate Court and the related Superior Court action brought by Raymond Young against his siblings and others.[1]

Appellants' penchant for literary flair overlooks the fact that the premise for the Probate Court's central ruling – that Robert R. Young did not intend for the holographic document found in his home on the day he died to serve as his last will and testament – arose from the testimony of Appellant Robert "Bobby" Young. This case highlights the central function of all trials, to seek the truth. Truth may emerge from brief excerpts of testimony from a party on cross-examination. *Cf. State v. Engroff*, 2025 ME 83, ¶¶ 47-49, 345 A.3d 91 (describing the essential role of cross-examination in seeking the truth).

[1] Any such argument would be futile in light of *Zani v. Zani,* 2023 ME 42, ¶¶ 10-16, 299 A.3d 9 which restated the jurisdiction of Probate Courts vis-à-vis Superior Courts. As a result of *Zani* and earlier decisions, the law of probate court jurisdiction is as clear as a bluebird sky in Maine.

So it was during the testimony of Bobby Young, the only person in Robert Young's house the day Robert supposedly wrote the holographic document:

> A. . . . He is now – as he wrote it down, he read it again, word for word. Then he said I'm not going to sign it, are you watching this. He – he signed and dated it, Robert R. Young, on the note.
> Q. And that's how he signed it –
> A. Yes
> Q – Robert R. Young?
> A. Yes.
> Q. You're sure? Because you saw it. You were there.
> A. . . . his R's were always big R's. Big R's. Robert R. Young. . . .

(Trial Transcript Vol. I, p. 244, line 22 to p. 245, line 8 (emphasis added), hereinafter "T.T. Vol. __ , p. __"). Bobby acknowledged that his dad had a very distinctive signature on everything he signed. (Id. at p. 245, lines 9-13). Unfortunately for Bobby, that signature was not on the holograph; what appeared was the printed name, "Bob Young." (Respondents' Exhibit 1, App. 52-53).

Due to the contradictory testimony of Bobby Young, the question of Robert's intent in creating the holograph emerged before the court, as well as the legal requirement for a valid signature on a holograph. Bobby's testimony produced the other key fact supporting Judge Owen's conclusion -- that the holographic document consisted of notes that his father intended to take to a lawyer the following Monday (T.T. Vol. I, p. 201, line 21 to p. 202, line 25). Since there is ample evidence in the record to support Judge Owen's factual findings, and her application of the law to the facts is legally correct, her order which admitted

the 2000 will of Robert Young into probate and did not allow the same treatment of the holograph should be affirmed. *See* 18-C M.R.S. § 3-407 (2020) (court should examine later purported will first in the event of a will contest).

IV. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Factual Background

The following facts support the Probate Court's findings and are supported by competent record evidence. *See Estate of Ackley*, 2023 ME 44, ¶ 2, 299 A.3d 23.

The decedent, Robert R. Young, was born on April 11, 1945 and he died on October 1, 2017. (Stipulations of Facts 1 and 2, Order dated August 8, 2025, hereinafter "the Order", App. at 12). At the time of his death, Robert was a widower, his wife Claire having predeceased him in late July 2017. (T.T. Vol. I, p. 97, lines 20-22). The Youngs had three children, Raymond, Dianne (now Parker) and Robert F. Young (hereinafter "Bobby"). (T.T. Vol. I, p. 8, lines 3-9).

Robert Young was a successful businessman who, together with his wife, ran a lobster pound, a lobster shipping company and a modest family-style lobster restaurant in Belfast, Maine. (See T.T. Vol. I, p. 17, lines 4-8). Robert decided to retire in 2000. (T.T. Vol. I, p. 18, line 14). After retiring, Robert leased the lobster pound and restaurant to his son, Raymond, which remained in place until Robert's

death in 2017. (T.T. Vol. I, p. 19, line 7 to p. 20, line 2; p. 21, lines 15-25). See also Petitioner's Exhibit 5 (App. at 201).[2]

That same year, Robert and Claire executed reciprocal wills utilizing the services of his attorney, Lee Woodward. Petitioner's Exhibit 1, App. at 178 (see T.T. Vol. II, p. 4, line 24 to p. 5, line 16). That will left the real estate and lobster business to his son, Raymond (Paragraph Third (C), see also Nickerson, T.T. Vol. II, p. 7, lines 20-22), it divided the residuary estate between Raymond and Dianne (Paragraph Third (B) and (C)) but it left only one dollar to Bobby (Paragraph Third (A);, see also Nickerson, T.T. Vol. II, p. 7, lines 12-19) who had become estranged from his father.[3] Mr. Young signed the will using a full cursive signature, "Robert R. Young." App. at 187 (T.T. Vol. I, p. 7, lines 14-20; see also T.T. Vol. II, p. 5, line 8 to line 13). The consensus of the witnesses was that Robert R. Young signed all important documents in this manner.

Having worked at the lobster pound from his youth, (T.T. Vol. I, p. 9), Raymond successfully grew the lobster business over the years. (Raymond, T.T. Vol. I, p. 25, line 23 to p. 26, line 16; Dianna, T.T. Vol. I, p. 127, lines 9-12). Robert's most trusted confidants testified that Robert was very proud of

[2] The lease was signed by Robert Young in a full cursive signature. (T.T. Vol. I, p. 22, lines 4-8).
[3] Bobby testified that his father had literally kicked him out of the business in 1984 when Bobby purchased lobster from one of Robert's competitors to fill a commercial order. (T.T. Vol. I , p. 176, line 9 to p. 178, line 18). Raymond and his wife, Katrina, had similar recollections of the origin of the rift between Robert and Bobby. (T.T. Vol. I, p. 13, line 18 through p. 14, line 5; T.T. Vol. I, p. 92, line 18 to p. 93, line 24.)

Raymond's accomplishments. Pastor Mike Evans, who snowmobiled with Robert for over 40 years (see T.T. Vol. II, p. 49, lines 3-5) and was his pastor, testified that Robert had "a proud sense of awe of what his son had done with the Lobster Pound . . . I just can't believe what Ray's turned that place into . . ." (T.T. Vol. II, p. 52, Lines 15-23). After the death of his wife, Robert continued to express to Pastor Evans "how happy he was with what Ray had done and what he was doing." (T.T. Vol. II, p. 57, lines 10-16).

Following Claire's death, Robert met with his accountant and friend, Mike Nickerson, at Robert's home to review his financial goals and strategies. (T.T. Vol. II, p. 83, lines 11-16, 18). Robert invited Raymond and Dianne to those meetings, but not Bobby. (T.T. Vol. II, p. 84, lines 2-9; see also T.T. Vol. I, p. 41, Lines 1-9). Robert told Mr. Nickerson that "[h]e was very proud of Raymond, thought he did a very good job with the – Pound . . ." (T.T. Vol. II, p. 80, lines 2-4). Robert wanted to add Raymond to his portfolio and instructed that the Pound was to go to Raymond. (T.T. Vol. II, p. 99, lines 3-8, 20-24). Dianne was to receive "a good bit of money from investments." (T.T. Vol. II, p. 89, lines 2-6). In the months leading up to Robert's death, Mr. Nickerson never saw Robert express any anger or misgivings toward Raymond. (T.T. Vol. II, p. 92, lines 19-24).

In contrast to the division of his estate between Raymond and Dianne, the only change he made in Bobby's favor was to "throw him a bone" by gifting to

him one particular bond. (T.T. Vol. I, p. 42, lines 15-24). Bobby had not been involved with his parents from 1984 until his mother became ill in 2017 (T.T. Vol. I, p. 16, lines 2-8; p. 29, line 24 to p. 30 line 3). According to Pastor Evans, Robert said that "Bobby and I don't have a relationship. We're kind of estranged. . . ." (T.T. Vol. II, p. 59, lines 17-19). When Bobby began visiting his mother the last couple of weeks during her last illness in 2017, (T.T. Vol. I, p. 31, lines 23-25), Robert regarded Bobby's efforts with suspicion, stating Bobby was "sucking up" and trying to get money. (Raymond -- T.T. Vol. I, p. 32, lines 6-11; Katrina -- T.T. Vol. I, p. 98, lines 11-15). Mike Nickerson, CPA, testified that Robert was just putting up with Bobby's visits. (T.T. Vol. II, p. 82, line 2).

When Claire died in July of 2017, Robert was very depressed, he was very lonely and he was missing his late wife. (Raymond -- T.T. Vol. I, p. 39, lines 15-16; Katrina -- T.T. Vol. I, p.100, lines 14-17; and Bobby – T.T. Vol. I, p. 197, lines 17-21). Raymond and his wife, Katrina, tried to see Robert every day. (T.T. Vol. I, p. 43, lines 3-4; and p. 100, lines 16-17). Katrina testified that Robert would often cry and say "I just want to go be with her." (T.T. Vol. I, p. 101, lines 2-3). Because of comments made by Robert, Katrina became concerned that Robert was becoming suicidal. Robert said he would not use pills because he was concerned he would not have enough, but if he used a gun, he'd shoot himself on the doorstep to minimize the cleanup. (T.T. Vol. I, p. 101, lines 8-14). Although Katrina did not

think he would actually commit suicide, "he would talk about it constantly." (T.T. Vol. I, p. 102, lines 2-3).

September 30, 2017 was the last full day of Robert Young's life. Some time that day, Robert prepared the holographic document that led to this will contest in the presence of his formerly estranged son, Bobby. (T.T. Vol. I, p. 196, lines 12-25). Robert died of an apparent suicide the following day.[4] (Respondent's Exhibit 1; Bobby's statement to a police officer at the scene, T.T. Vol. III, p. 9, lines 2-13; See also Katrina Young at Vol. I, p. 111, lines 1-2).

Bobby was the only person present with Robert that day. When asked if he saw his father sign "the note" (referring to the purported holograph) (T.T., Vol. I, p. 244), Bobby testified: "Oh, yeah. . . . as he wrote it down, he read it again word for word. Make sure – he made me read it word for word. Then he said I'm not going to sign it, are you watching this. He -- signed and dated it, Robert R. Young, on the note."[5] (T.T. Vol. I, p. 244-45, emphasis added). Bobby claimed that Robert signed the document, "Robert R. Young," and he was sure of it because "his R's were always very big R's. Robert R. Young . . . ." (T.T. Vol. I, p. 245, lines 7-8)

[4] In an effort to learn the truth of the circumstances surrounding his father's death, Raymond Young filed motions in the Superior Court and in the Probate Court to exhume his father's body for forensic examination. Bobby and Dianne opposed those motions. Both courts denied Raymond's motions, leaving the exact manner and method of Robert's death undetermined. The holographic document supports an inference of suicide: "I shall then go and be with the love of my life into eternity, where I'll belong. . . . Please say goodbye to all my friends. . . ." (App. 52, 53)

[5] Bobby's reference to the holographic document as "the note" allows the inference that he was witnessing his father prepare something other than a testamentary document. Indeed, there were other notes of a holographic nature that were signed with a full cursive signature. App. at 189-191.

Bobby admitted his father had a very distinctive signature because "[t]hat's how he signed everything." (*Id*. at line 13).

There was a major flaw in this testimony: The handprinted name on the holographic document read: "Bob Young." (App. 52-53).

Bobby testified that his father said to him that day: "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 . . . in a permanent will while I'm there. (T.T. Vol. I, p. 202, lines 6-10). The following exchange occurred:

> Q. "So he wanted to take . . . he wanted you to have a picture of those notes he intended to take . . .
> A. Yes.
> Q. – to Lee?
> A. Yes.
> Q. To Lee, to make a permanent will?
> A. Yes.

(T.T. Vol. I, p. 202, lines 11-17):

Robert Young never made it to Mr. Woodward's office.

Procedural History

This probate litigation ensued following the death of Robert R. Young on October 1, 2017. Having been named as the personal representative of his father's estate in a formal will dated September 6, 2000, Raymond Young filed a Petition for Formal Probate of Will or Appointment of Personal Representative or Both with the Waldo County Probate Court. The Petition included an addendum that

described a holographic document dated September 30, 2017, together with Petitioner's objections to the validity of the document. Simultaneously with the filing of the Petition, Raymond Young filed his acceptance of the appointment as personal representative.

On October 31, 2017, the decedent's other two children, Bobby and Dianne, Appellants herein, filed an objection to Raymond Young's Petition for Appointment as Personal Representative and to the formal probate of the 2000 will. Dianne Parker filed a competing petition to have the holographic document recognized by the Probate Court as the final will and testament of Robert R. Young and she requested to be appointed as personal representative. Bobby joined in his sister's petition. On November 21, 2017, Raymond Young filed a timely objection to Ms. Parker's petition.

A will contest ensued. All of the heirs and potential devisees[6] were served with the requisite notices. On or about January 25, 2018, the parties submitted a joint petition to the Probate Court to approve the appointment of Retired Justice Kevin Cuddy as a special administrator. Following his death, Justice Cuddy's wife, Carol Cuddy, was appointed as his successor.

[6] The only non-party devisee named in the holographic document was the Dana Farber Cancer Institute. (App. at 52). Although counsel for Dana Farber appeared at the trial, (T.T. Vol. I, p. 4, lines 16-18), it did not participate in the proceedings. Dana Farber has not joined in the appeal of the Probate Court's order.

By agreement of the parties, the probate litigation was stayed while a civil action brought by Raymond Young against his siblings and their spouses worked its way through the Waldo County Superior Court.[7] Because the Superior Court did not have subject matter jurisdiction over the validity of the purported wills before the Probate Court, *see* Probate Court Order on Motion for Exhumation and Clarification of Issues Before the Court dated November 19, 2024, the Probate Court conducted a trial to determine which of the purported wills was to be recognized as the last will and testament of Robert R. Young.

Following a series of pretrial conferences and orders, trial was held in April 2025 before the Honorable Joanna Owen. The ostensible wills were admitted into evidence by stipulation subject to the evidence and arguments of the parties regarding the legal enforceability of each. (Stipulations of Parties No. 4 and No. 5, dated April 15, 2025). In accordance with the order of proof specified by the court, Petitioner Raymond Young submitted his case-in-chief consisting of the testimony of 8 witnesses and 5 exhibits. Respondents recalled Dianne Parker as their only witness and the holographic document was submitted by stipulation, subject to argument. At the close of Petitioner's case-in-chief, Respondents moved for judgment as a matter of law; the motion was denied. (T.T. Vol. III, p. 23, lines 16-

[7] The Superior Court entered summary judgment in favor of the defendants in that action.

18). Following written closing arguments, the case was taken under advisement by the court.

On August 8, 2025, Judge Owen issued her written Order which allowed the 2000 will into probate as the last will and testament of Robert R. Young. Judge Owen declined to admit the September 2017 holographic document. (App. at 12). The Order appointed Raymond Young as Personal Representative of the Estate. Robert F. Young and Dianne Parker filed a timely appeal. Without objection, Raymond Young's appointment as personal representative was stayed pending appeal; Mrs. Cuddy continues to serve as Special Administrator of the Estate.

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

In addition to the issues identified by Appellants, the following issue may need to be addressed:

Whether the Probate Court should decline to admit Robert R. Young's holographic document into probate as a matter of public policy where the intent of the decedent was to exclude family members from his estate due to racial animus?

V. ARGUMENT

THE PROBATE COURT CORRECTLY DECLINED TO RECOGNIZE THE HOLOGRAPHIC DOCUMENT AS THE LAST WILL AND TESTAMENT OF ROBERT R. YOUNG

Standard of Review

The following principles of appellate review apply in this instance. The evidence must be viewed "in the light most favorable to the court's judgment. . . ." *Young v. Lagasse*, 2016 ME 96, ¶ 4, 143 A.3d 131. "In reviewing an order of the Probate Court, 'we defer to the Probate Court on factual findings unless they are clearly erroneous, but we review *de novo* the application of the law to the facts.'" *In re Estate of Giguere*, 2024 ME 41, ¶ 15, 315 A.3d 737 (*quoting Estate of Greenblatt*, 2014 ME 32, ¶ 12, 86 A.3d 1215). The Law Court recognizes that:

> "A factual finding is clearly erroneous if . . . there is no competent evidence in the record to support it; if the fact-finder clearly misapprehends the meaning of the evidence; or if the finding is so contrary to the credible evidence that it does not represent the truth and right of the case. *Guardianship of Hailey M.,* 2016 ME 80, ¶ 15, 140 A.3d 478 (quotation marks and citations omitted). "Factual findings should not be overturned in an appellate proceeding simply because an alternative finding also finds support in the evidence," and "[w]e defer to the trial court's determination of witnesses' credibility and its resolution of conflicts in testimony." *Gordon*, 2013 ME 113, ¶ 12, 82 A.3d 1221 (quotation marks omitted).

Young v. Lagasse, 2016 ME 96, at ¶ 8. The Law Court "will not assume fact-finding authority where there is a choice of two permissible views of the weight of evidence." *Estate of Siebert*, 1999 ME 156 ¶ 6, 739 A.2d 365. If the appellant had

the burden of proof on an issue at trial, "the appellant must show that the evidence compels a contrary finding." *Young,* 2016 ME 96, ¶ 8 (citation omitted).[8]

A. THE HOLOGRAPHIC DOCUMENT FAILED TO SATISFY THE STATUTORY REQUIREMENTS FOR A HOLOGRAPHIC WILL.

Appellants' first argument, contrary to the conclusion of the Probate Court, is that Robert R. Young validly signed the holographic document in satisfaction of 18-C M.R.S. §2-502(2)(2020). Section 2-502 of the Probate Code provides that:

> **2. Holographic wills.** A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

18-C M.R.S. §2-502(2)(2020). The proponent of a particular will has the burden of proof to establish the validity of the signature, in this case the Appellants. *See Estate of O'Brien-Hamel*, 2014 ME 75, ¶ 26, 93 A.3d 689 (requiring proof of "due execution").

This contention overlooks the factual record that Robert R. Young always signed important legal documents with a distinctive cursive signature, "Robert R. Young." Appellant Bobby Young was adamant that his father signed everything with a "very distinct" Robert R. Young with "Big R's." (T.T. Vol. I, p. 245).[9] Multiple witnesses agreed that Robert Young always signed important legal

[8] Appellants had the burden of proof at trial as to the testator's signature on the holographic document. *See Estate of O'Brien-Hamel*, 2014 ME 75, ¶ 26, 93 A.3d 689. The Appellee had the burden of proof on all of the other issues. 18-A M.R.S. § 3-407.

[9] There are no big R's in "Bob Young" as found on the holographic document.

documents with a full cursive signature. Raymond Young explained that his father always signed documents in that manner to distinguish himself from his troubled son, Bobby, as they had identical first and last names. (T.T. Vol. I, p. 22, lines 16-24).[10] Robert Young's lawyer, Lee Woodward, testified similarly. (Woodward, T.T. Vol. II, p. 9, lines 2-6) A number of documents were introduced into evidence that demonstrated Robert Young's legal signature: See Robert Young's 2000 will[11] (Petitioner's Exhibit 1; App. at p. 178, 187; a Commercial Lease dated March 1, 2000 (Petitioner's Exhibit 5, App. 201, 206); and a quitclaim deed from Robert R. Young to Raymond Young dated December 5, 2016, (Petitioner's Exhibit 6-C, App. 207). Other notes written by the decedent were signed in cursive, "Robert R. Young." (App. 189-191). In contrast, Mr. Young's attorney, Lee Woodward, had never seen Mr. Young write his signature in any other fashion. (T.T. Vol. II, p. 9, lines 7-9). No testimony was offered that Robert Young ever used or adopted a printed signature.

Contrary to Appellants' suggestion that there is a dearth of relevant law on signatures in Maine, there are statutory definitions of the verb "sign" that are germane. The Maine Probate Code sets forth the following definition:

> **52. Sign.** "Sign" means with present intent to authenticate or adopt a record other than a will:

[10] It is a reasonable inference that Robert Young wrote "Bob Young" to flag Bobby's involvement in authoring the draft.
[11] The Decedent's initials on the page margins of the 2000 will were in cursive.

A. To execute or adopt a tangible symbol . . . .

18-C M.R.S. § 1-201 (52) (Supp. 2025). The Maine Uniform Commercial Code has a similar definition of "sign" that focuses on the "present intent ... [t]o execute or adopt a tangible symbol." 11 M.R.S. § 1-1201(37-A) (Supp. 2025). *See also* 11 M.R.S. § 1-1201(37) (Supp. 2025) (definition of "signed"). Thus. these statutory definitions contemplate that whether or not a person adopts a particular mark as a signature is a question of intent.

A similar focus on intent is found in Maine case law. *Maine League Federal Credit Union v. Atlantic Motors*, 250 A.2d 497, 499 (Me. 1969). In *Maine League FCU*, a creditor sought to enforce a financing statement that had not been signed by its treasurer. Instead, the FCU relied upon the printed corporate name above the signature line on the applicable form. The Law Court disagreed, noting the typed words "taken alone were not the signature of the plaintiff unless they were a 'symbol executed or adopted by [the plaintiff] with present intention to authenticate the [financing statement]." *Id*. Because the treasurer's practice had been to personally sign all of the credit union's financing statements, the Law Court determined that "[t]he record denies the required intention." *Id*.

The question of a testator's intent is an issue of fact. *See Estate of Utterback*, 521 A.2d 1184, 1188 (Me. 1987). *See also Denman v. Peoples Heritage Bank*, 1998 ME 12, ¶ 4, 704 A.2d 411 (intention to control land is a question of fact).

Case law from elsewhere is in accord. In *Metropolitan Life Ins. Co. v. Beard*, 321 F. Supp. 3d 181 (D. Mass. 2018), subsequent proceedings after trial, 2019 U.S. Dist. LEXIS 20053 (D. Mass. 2019), the court ruled that whether or not a person signed a document was a question of fact. *Id*. at 185 (finding that beneficiary had not proven father was incapacitated by alcohol consumption on the day he signed life insurance elections); *cf. FDIC v. O'Flahaven*, 857 F. Supp. 154, 159 (D. N.H. 1994) ("genuine debate" over the capacity of a signatory demonstrates ambiguity).

The case law cited by Appellants supports the proposition that whether or not a written reference constitutes a person's signature is a factual question of intent. One paragraph from the lead case cited by Appellants is apropos:

> Marie[12] posits the unlikelihood that decedent wrote the claimed will. Her stance is based on more than mere conjecture. She claims that decedent always wrote in cursive when he wrote out something or signed his name. She has provided copies of numerous documents in support of this claim. Additionally, when signing his name, decedent invariably included his middle initial. The signature on the holographic will lacks any middle initial. The genuineness of the handwriting constituting a holographic will is a *sine qua non* for its admissibility into probate. A bona fide factual dispute exists as to that genuineness. I cannot now rule on the will's admission into probate. A resolution of that factual dispute . . . will be determined at a trial . . . .

Matter of Estate of Hand, 295 N.J. Super. 33, 39, 684 A.2d 521 (Super. Ct. 1996). Likewise, the issue of the validity of the testator's signature was properly

[12] The facts of the *Hand* case align here if the name Raymond is substituted for Marie.

submitted to a jury trial in *Alexander's Estate v. Hatcher*, 193 Miss. 369, 372, 9 So. 2d 791, 792 (1942).[13]

Appellants bore the burden of proof at trial that the name "Bob Young" as it appeared on the holograph was Robert R. Young's signature. All of the testimony was to the contrary. The record conclusively establishes that Appellants have not proven the "*sine qua non*" for admissibility of the holographic document into probate pursuant to 18-C M.R.S. 2-502 (2)(2020). Absent such proof, this appeal should be dismissed for this reason alone.

B. THE PROBATE COURT PROPERLY ADMITTED EXTRINSIC EVIDENCE OF ROBERT YOUNG'S INTENT REGARDING THE HOLOGRAPHIC DOCUMENT.

Whether a document is ambiguous is a question of law that is reviewed *de novo* on appeal. *Pew v. Sayler*, 2015 ME 120, ¶ 34, 123 A.3d 522. *See also In re Estate of Beckey*, 2024 ME 23, ¶ 14, 314 A.3d 218 (interpretation of a will is reviewed de novo).[14] Once a document is found to be ambiguous, "its interpretation is a question of fact for the factfinder," *Pew* at ¶ 34, and is reviewed for clear error. *Estate of Beckey* at ¶ 14. An ambiguity exists "if it is reasonably

[13] The other two cases cited by Appellants likewise discuss the requirement of intent to adopt a signature or to create a testamentary document. *In re Button's Estate*, 209 Cal. 325, 331 (1930) (holographic document must be intended to dispose of a person's property after death); *Wells v. Lewis*, 190 Ky. 626, 627, 228 S.W. 3 (1921) (requires "*animo testandi*").

[14] An important distinction must be kept in mind. This is not an instance where a particular provision in the holographic document must be construed, either with or without extrinsic evidence. What is at issue is whether or not Robert Young intended to adopt the holographic document as his final will and testament.

possible to give that provision [or document] two different meanings." *Keegan v. Estate of Bradbury*, 2025 ME 13, ¶ 7, 331 A.3d 394 (*quoting Reliance Nat'l Indem. v. Knowles Indus. Servs., Corp*., 2005 ME 29, ¶ 24, 868 A.2d 220).

Appellants' argument that the Probate Court erred by admitting extrinsic evidence as to Robert Young's intent to adopt the holographic document as his last will and testament fails for multiple reasons: 1. An ambiguity exists as to Robert Young's testamentary intent to adopt the holograph as his last will and testament; 2. 18-C M.R.S. § 2-502(3)(2020) expressly allows extrinsic evidence to establish a testator's intent that a document constitutes the testator's will; and 3. This Court has expressly questioned the ongoing vitality of the "*Utterback* rule," the primary authority cited by the Appellants on this issue. *Connary v. Shea*, 2024 ME 57, 320 A.3d 429.

Assuming for the sake of argument that Robert Young's failure to sign the holographic document is not outcome determinative, the question whether Robert Young intended to adopt the holographic document as his last will and testament is at least ambiguous. Indeed, the Probate Court found that the discrepancy in Robert Young's signature "clearly raises the issue whether the Decedent intended the first two pages of his holographic document to be a final expression of his testamentary disposition." Order, App. at 12,15.

Resolution of this issue is controlled by statute. Subsection (3) to Section 2-502 of the Probate Code provides:

> **3. Extrinsic evidence.** Intent that a document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

18-C M.R.S. § 2-502 (3)(2020).[15] This statute contemplates the difficulty in determining whether or not someone intended to create a holographic will and, therefore, has expressly allowed for the admissibility of extrinsic evidence. Accordingly, the Probate Court's use of extrinsic evidence to assess Robert Young's intent in drafting the holographic document is correct as a matter of law.

Appellant's reliance on *Estate of Utterback*, 521 A.2d 1184 (Me. 1987) does not account for Section 2-502(3), nor does it reconcile this Court's questioning of the "*Utterback* rule" in *Connary v. Shea*, 2024 ME 57, 320 A.3d 429. In *Estate of Utterback*, the Law Court held that extrinsic statements of the testator of a testamentary trust regarding the disposition of trust income were inadmissible. This holding has become known as the "*Utterback* rule." *See Connary v. Shea*, 2024 ME 57, ¶ 15, 320 A.3d 429.

The Law Court questioned the *Utterback* rule 37 years later in *Connary v. Shea*, 2024 ME 57, 320 A.3d 429, an opinion authored by Chief Justice Stanfill. In *Connary*, the heirs of a decedent appealed a summary judgment order on their

[15] The converse should also be true – that extrinsic evidence is admissible to disprove intent.

complaint for reformation of a family trust. The heirs sought to introduce extrinsic evidence of one of the settlors' intent regarding certain stocks that had been sold and the proceeds commingled into the trust. *Id*. at ¶ 7. After an extended analysis of the impact of amendments to the Maine Uniform Trust Code, specifically 18-B M.R.S. § 415 and the *Restatement (Third) of Prop,: Wills and Donative Transfers* § 12.1 (Am. Law Inst. 2024),[16] the Court expressed its "concern about the continuing vitality of the *Utterback* rule excluding otherwise admissible statements of testamentary intent, which may be necessary to prove that intent." *Id*. at ¶ 15. The Court held, however, that it was unnecessary to address that concern because even if the evidence of one settlor's intent was considered, the reformation claim still failed as the heirs had not shown that the other settlor harbored a mistaken belief when the trust was formed. *Id*. at ¶ 19. Thus, while *Connary* did not expressly overrule *Utterback*, *Connary* demonstrates that the Court currently favors the introduction of otherwise admissible evidence of testamentary intent.[17] *Cf. Estate of Siebert*, 1999 ME 156, ¶¶ 6-10, 739 A.2d 365 (probate court properly considered evidence from a testator's lawyer, financial advisor and neighbor in making determinations regarding the testator's capacity to make a will).

[16] Likewise, Section 10.2 of the *Restatement (Third) of Property: Donative Transfers* authorizes the introduction "of all relevant evidence" to determine a donor's intention. *Restatement (Third) of Prop,: Wills and Donative Transfers* § 12.1 (Am. Law Inst. 2003).

[17] *Utterback* and *Connary* involved issues relating to the interpretation of donative documents rather than the intention of a testator to adopt a particular document as a last will, the latter being an issue even more informed by extrinsic evidence.

Appellants argue that if extrinsic evidence was allowed, the Probate Court should have found that Robert Young's intent was to adopt the holographic document as his last will and testament. They posit that the mere fact that Robert intended to take the holographic document to his lawyer the following Monday does not preclude a determination that the holograph was his last will and testament. However, this argument is a factual determination which cannot be disturbed on appeal where there is competent evidence in the record to support the Probate Court's conclusion as discussed in the next section.

C. THE PROBATE COURT'S FACTUAL FINDINGS ARE AMPLY SUPPORTED BY EVIDENCE IN THE RECORD.

Appellants' third argument is a sufficiency of the evidence argument. To succeed on this argument, Appellants must demonstrate that the evidence introduced at trial compels this Court to reach a different result. *See, e.g., In re: Estate of Giguere,* 2024 ME 41, ¶ 15, 315 A.3d 737. Given the ample support in the record for each of the Probate Court's factual findings, the Probate Court's Order must be sustained.

The Probate Court made two primary factual findings and a number of supportive findings in reaching its decision that Robert R. Young did not intend to adopt the holographic document as his last will and testament:

1. The printed name on the holographic document did not match Decedent's signature on other documents.

2. Decedent told Bobby that he was taking "the note" to attorney Lee Woodward to make a will the following Monday.

Both of these findings are amply supported in the record. In summary, Raymond Young, Lee Woodward and Bobby testified that the decedent always signed documents in cursive "Robert R. Young." (Raymond, T.T. Vol. I, p. 22, lines 16-24; Woodward, T.T. Vol. II, p. 9, lines 2-6; Bobby, T.T. Vol. I, p. 245). A number of documents were introduced into evidence that demonstrated Robert Young's signature: See Petitioner's Exhibit 1; App. at 178, 187; Petitioner's Exhibit 5, App. 201, 206; and Petitioner's Exhibit 6-C, App. 207. Other holographic notes written by the decedent were signed in cursive, "Robert R. Young." (App. 189-191). But Bobby's testimony removed all doubt how Robert R. Young signed documents: his signature was very distinct, "Robert R. Young," "always Big R.'s Big R's. Robert R. Young. . . . That's how he signed everything." (T.T. Vol. I, p. 245, lines 2-13).

Bobby, the only person in the house with Robert the day before Robert's death, supported the court's other primary finding that his father intended to take the note to his attorney the following Monday to have a final will created.

> "Q. Was it your understanding that he had an appointment with his attorney the following Monday?
> A. That's what he told me. . . . He said, I'm going to leave this – this right here on the table right now . . . 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 . . . in a permanent will while I am there." (T.T. Vol. I, p. 201, line 21 to p. 202, line 10).
The testimony continues:
"Q. . . . So he wanted to take – he wanted you to have a picture of these notes he intended to take –"
A. Yes.
Q. – to Lee?
A. Yes.

(Id. at p. 202, lines 11-17). Later in his testimony, Bobby said that they had discussed "the note he wrote and his revised will" and that his dad said, "I'll get this done," a reference to his plan to see Lee Woodward on Monday. (T.T. Vol. I, p. 216, lines 10-15).

The court's conclusion – that Robert did not intend to adopt the holograph as his final will -- is bolstered by the court's additional findings which are amply supported in the record: that decedent intended to keep the lobster pound in the family (see Raymond Young, T.T. Vol. I, p. 19, line 18 to p. 20, line 2; Dianne Parker, Vol. I, p. 123, line 1-11; p. 154, lines 7-9); that the lobster pound was going to be left to Raymond who had been managing the pound since 2000 (Nickerson, Vol. II, p. 88, lines 20-24); that Robert never told his trusted advisors of any plans to change his will in the two months immediately before his death, other than to throw Bobby a "bone" (Raymond, Vol. I, p. 41, line 18, to p. 42, line 22; Dianne Parker, T.T. Vol. I, p. 140, lines 5-16; p. 141, lines 9-15; p. 142, line 19 to p. 143, line 5; Woodward, Vol. II, p. 8, lines 4-7, p. 13, lines 11-14; Nickerson, Vol. II, p. 92, line 25 to p. 93, line 3); and Decedent continued with his "usual daily

interactions" with Raymond in the days before his death. (Raymond, Vol. I, p. 43, line 3 to p. 44, line 4; Katrina Young, Vol. I, p. 102, lines 7-14 and p.104, lines1-9). Based upon these facts, the court observed: "It is difficult to reach any other conclusion that Decedent would not have made a 'final' last will and testament without discussing the matter with his 'team.'" (Order, App. at 16).

Appellants assert that the Probate Court relied heavily on the wrong exhibit, referring to the holographic document as five pages. (Appellants' Brief at p. 25). Contrary to Appellants' suggestion, the Probate Court carefully distinguished between different pieces of the document. On page four of the Order, App. at 15, the court observes: "The three separate pages in no way relate to the contents of the first two pages of the document which are dated September 30, 2017 . . .: but instead related to "Item Third of the 2000 will . . ." The court thoroughly evaluated the September 30 holograph on its own merits. (Id.). Thus, the court's prior reference to a five page holograph does not undermine its decision.

Appellants reiterate their argument that Robert could have intended that the holograph serve as his final will notwithstanding evidence that he planned to take the notes to his attorney on Monday. This argument was discussed at the outset of this section and is incorporated by reference.

D. APPELLANTS' DUE PROCESS RIGHTS WERE NOT VIOLATED AS THEY WERE FULLY COGNIZANT THAT ROBERT YOUNG'S INTENT WITH RESPECT TO THE HOLOGRAPHIC DOCUMENT WAS AT ISSUE BEFORE THE PROBATE COURT.

"The issue is not whether he had good reason to change his will, but whether he intended to . . ."

F. David Walker, rebuttal argument in support of Respondents' motion for judgment as a matter of law. (T.T. Vol. III, p. 23, lines 6-8 (emphasis added)).

From the outset of this case, Raymond Young objected to the admission of the holographic document into probate based on Bobby's undue influence on his father, Bobby's fraudulent statements to his father and Robert Young's mistakes of material fact underlying the holograph based on misinformation provided by Bobby. Each of these allegations subsumed the notion that Robert did not intend to adopt the holographic document as his last will; rather, the document was the product of Bobby's coercive efforts. In a Memorandum of Law filed on behalf of Raymond Young with the Probate Court on July 3, 2024, the Petitioner stated: "Whether Robert Young intended for this document to be a holographic will or something else <u>is a focal point</u> in this case. . . . the language of the document does not reflect a clear testamentary intent." Memorandum of Law at 4, App. at 133 (emphasis added). The Probate Court recognized as much in its Order on Exhumation and Clarification of Issues before the Court: "Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue

influence, fraud, duress, mistake or revocation. 18-C M.R.S. § 3-407 (2004)." Order, App. at 25. The court observed that the parties agreed the Probate Court needed to resolve the will contest, specifically which of the two competing wills needed to be admitted into probate. *Id*. at 3-4. The court then examined "what issues survived the Superior Court's order of Summary Judgment," discussing those specific issues in that particular context. Order, App. at 25-28.

Robert Young's testamentary plan was at issue from the outset of this trial. (See argument of counsel on evidentiary issue at Vol. I, p. 12, line 21 to p. 13, line 3). In responding to Respondents' motion for judgment as a matter of law, counsel for Raymond Young argued about the intent of testator to adopt the holographic will. (T.T. Vol. III, p. 18, lines 10-13), in light of the evidence of undue influence, fraud and mistake (Id. at p. 21). In response to those arguments, Appellants' counsel maintained that the testator's intent favored Appellants' motion for judgment as a matter of law. In Raymond Young's written closing argument to the Probate Court, the issue of Robert Young's intent was raised as the first argument. See Petitioner's Closing Argument, ¶ 1.[18] Thus, the issue of Robert Young's intent with respect to the holographic will was thoroughly tried by the consent of the parties, regardless of the specifics of the pleadings.[19]

[18] Respondents did not object to the Probate Court that this argument was improper.
[19] Unlike the requirements in the Maine Rules of Civil Procedure regarding affirmative defenses in a civil action, the pleading requirements in the Maine Rules of Probate Procedure are less precisely defined. *Compare* M.R. Civ. P. 8(c) with M.R. Prob. P. 8(a)(2-3).

Rule 15(b) of the Maine Rules of Civil Procedure governs amendments of the pleadings to conform to the evidence. It provides in pertinent part that:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. . . .

M. R. Civ. P. 15(b)(emphasis added).

Appellants cite *Blue Spruce Company v. E.H. Parent*, 365 A.2d 797 (Me. 1976) for the proposition that trial by consent does not occur when the evidence presented at trial on the issues raised by the pleadings incidentally tends to prove another fact not put in issue. *Id*. at 802. However, Appellants overlook the last line in the paragraph they quote: "unless notice of the nonpleaded issue is given clearly during the course of the trial." *Id*. That counsel for Appellants used the nonpleaded issue in his argument readily establishes the required notice. (T.T. Vol. III, p. 22-23, lines 6-8). *See Estate of Saliba v. Dunning*, 682 A.2d 224, 225-26 and n. 2 (Me. 1996) (affirming court's *sua sponte* amendment of pleadings based upon defendant's testimony).

More importantly, Bobby Young's testimony opened the door regarding his father's intent with respect to the holograph. The Probate Court reached the same conclusion: "The Respondent's own words compel a finding that the holographic document was not a new last will and testament." (Order, App. at 15, emphasis

added). Appellants cannot be heard to complain on appeal to an issue they raised in their testimony and arguments. *See St. Pierre v. Houde*, 269 A.2d 538, 540 (Me. 1970). *See also Estate of Saliba v. Dunning*, 682 A.2d 224, 225-26 and n. 2 (Me. 1996) (defendant's testimony established basis to amend pleadings as to issue of personal guaranty).

Lastly, Appellants posit that Raymond Young's complaint and his response to a request for admission[20] in the Superior Court action preclude him from maintaining that Robert Young lacked the intent to adopt the holograph as his will. (See Argument IV, B of Appellants' Brief, p. 28 and Conclusion at p. 32-33).[21] This suggestion misapprehends the fact that several of Raymond Young's theories of liability against his siblings in the civil action necessarily had to allege that the holograph was a valid will to state a plausible cause of action. One of Raymond's contentions in that action was that Bobby coerced his father into adopting a new will which disinherited Raymond from his father's estate plan. Unless the holograph was valid, Raymond Young lacked a basis to contend that Bobby et. al tortiously interfered with his expected inheritance from the original will. (See

[20] Initially, it is unclear if the requests for admissions are in the Probate Court record. If they are, Appellants overlook their instructions to Raymond Young: "Defendants, Robert F. Young requests that Plaintiff, Raymond E. Young, answer within thirty (30) days after service of this request to make the following admissions for the purpose of this action only . . . ." (emphasis added). Thus, the Appellants' reliance on this admission in the probate litigation is misplaced.

[21] Without saying so, this assertion appears to be some form of judicial estoppel argument. *See generally HL 1 LLC. v. Riverwalk, LLC.*, 2011 ME 29, ¶ 31, 15 A.3d 725. As this position has not been fully developed by Appellants, it may be disregarded on appeal. *See, e.g., Buck v. Buck*, 2015 ME 33, ¶ 1, n.1, 113 A.3d 1095 (undeveloped argument deemed waived).

Count IV in Complaint dated December 18, 2018, App. at 54, 62). Given the distinct issues before the Probate Court, Raymond Young was not precluded from making the alternative argument in the probate matter, particularly after Bobby made it clear that his father's signature was not on the holograph.

E. INDEPENDENT GROUNDS EXIST TO AFFIRM THE ORDER OF THE PROBATE COURT NOT TO ADMIT THE HOLOGRAPHIC DOCUMENT INTO PROBATE AS THAT DOCUMENT VIOLATES THE PUBLIC POLICY AGAINST RACISM.

> "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States."

Loving v. Virginia, 388 U.S. 1, 10 (1967).

Fifty years after the Supreme Court's decision in *Loving* that struck down criminal miscegenation laws, Robert R. Young sought to disinherit Raymond Young and his family because Raymond's two daughters engaged in racial intermarriage. Every member of the Young family who testified at trial acknowledged that Robert Young was a racist who vehemently opposed the racial intermarriages of Raymond's daughters:

Raymond Young – his father called the Jamaican help by the N-word, "[g]ood enough to work for you, but they weren't good enough to be in the family." (T.T. Vol. I, p. 28, lines 12-16); Robert had expressed that "a black guy was not to be married to a white girl." (T.T. Vol. I, p. 45, lines 6-17)

Katrina Young – Robert always referred to the Jamaican help with the N word. (Vol. I, p. 96, lines 18-24, see also p. 97);

Bobby Young – Robert didn't like Black people. (T.T. Vol. I, p. 225, lines 13-14). Robert routinely called Black people the N. word. (Id., lines 15-22). His father would call his mother and ask her to send an "N word" to help him because they had a strong back. (Id., p. 226, lines 4-14). His father told him "many times" that Black men should not marry white women because "he knew that was going to happen." (Id., lines 15-25). They would marry to "get that green card, and leave and go back to his country and leave – leave my granddaughter with a bunch of babies . . ." (Id., lines 22-25 and ongoing). According to Bobby, his father was "proud" of the fact his prediction that his granddaughter would have an absent father for her child came true. (Id., p. 227, lines 13-20).

Dianne Parker – Dianne acknowledged that everyone in her family agreed that her father held some racist views. (T.T. Vol. I, p. 128, lines 19-21); Robert said to Dianne once that black people should not marry white people and have children because the fathers would leave them, and he did not want this to happen to his granddaughters. (T.T. Vol. I, p. 128, line 22 to p. 129 line 8).

Although Raymond's first daughter invited Robert to her wedding to a Jamaican, he refused to go because in his view "the N words do not belong marrying white people . . ." (T.T. Vol. I, p. 97, lines 14-17). When Raymond's

second daughter married another Jamaican on September 17, 2017 (two weeks before his death, see Vol. I, p. 103, line 8), Robert questioned why she had to "marry a n_____ word." (Vol I, p. 44, lines 11-25). Katrina Young testified that Kayla's marriage to a black man was a source of tension between Robert and Raymond. (T.T. Vol. I, p. 102, line 22 to p. 103, line 2). Robert often said to Katrina, "she's not going to marry him is she?" (Id., p. 103, lines 3-6).

Robert did not condone his granddaughters' marriage to Black men due to the potential that their husbands would take over the lobster pound. (Dianne Parker, T.T. Vol. I, p. 135, lines 20-25). He told Dianne: "I didn't work my whole life for this business to have a N word run the pound." (Id., lines 20-25). Dianne testified that her father was mad at Raymond lying to him about his second granddaughter "marrying another N word." (Id. at p. 136, lines 7-10, lines 15-20; see also Vol. III, p. 43, lines 6 to 16). When Bobby testified that his father told him the day before Robert died that he (Robert) was tired of Raymond's "B.S.," Bobby volunteered the origin of the B.S.: "I believe it was all the – the wedding itself, with the – the Jamaicans . . ." (T.T. Vol. I, p. 200, lines 6-19). When Bobby spoke to the police the day of his father's death, he told the officer that "Robert Senior

was upset with his other son, Raymond Young, about not being invited to his granddaughter's wedding. . . ." (Vol. III, p. 9, line 24 to p. 10, line 8).[22]

Were this Court to sustain the Appellants' appeal, it will need to address the unseemly issue that the Probate Court assiduously sought to avoid[23] – whether a testator's intent to disinherit the part of his family who married Black men can be sustained as a matter of public policy. This appears to be an issue of first impression in Maine.[24]

Notwithstanding the lack of direct precedent, this Court should reject the holographic document in no uncertain terms in accordance with the unequivocal public policy against racism. Robert's goal was to disinherit the side of the family that had intermarried with Black men to assure they would not come into ownership of the lobster pound. *Loving* demonstrates that efforts against miscegenation are racist. The ensuing Civil Rights Acts, 42 U.S.C. §§ 1981 *et. seq*., and other Supreme Court decisions and are in accord with an overarching national public policy against racism. *See, e.g*., *Students for Fair Admissions, Inc.*

[22] Bobby could not recall this aspect of his conversation with Officer Young. (Vol. I, p. 221, line 20 to p. 222, line 4). But he could recall his Dad was "upset." Id.

[23] On this issue, the Probate Court deemed the holographic document facially neutral as to race. (App. at p. 18). This determination is contrary to its finding that Robert's intent was ambiguous with respect to the holographic document. In light of the uncontradicted evidence that Robert's racist views impacted the succession plan for his business, this Court should hold that the holographic document should not be admitted to probate as it is void due to public policy.

[24] A computer search of the Maine case law database using the search terms "gift and racist," "bequest and racist" and "devise and racist" did not yield any results. A search using the terms "testamentary and intent" yielded 187 cases but no results were found when the term "racial" or "racist" was added to these search terms.

v. President & Fellows of Harv. Coll., 600 U.S. 181, 231(2023) (constitutional history does not tolerate choice based on the color of one's skin)[25]. 42 U.S.C. § 1982 provides that:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof **to inherit**, purchase, lease, sell, hold, and convey real and personal property.

42 USC § 1982 (emphasis added). Justice Clarence Thomas observes: "[T]his clause suggests that the right to be free of racial discrimination with respect to the enjoyment of certain rights is a constituent part of citizenship." *United States v. Vaello-Madero*, 596 U.S. 159,1 174 (2021) (Thomas, J., concurring). The Maine Human Rights Act evinces a similar expression of public policy: the legislative purpose of the Maine Human Rights Act declares that:

> To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race . . . .

5 M.R.S. § 4552 (Supp. 2025).

[25] A recent scholarly article examined whether or not racial preferences in charitable gifts could survive in light of the Supreme Court's decision in *Students for Fair Admission*. Thomas P. Gallanis, *Is Racial Discrimination Ever Charitable*, 2025 U. Ill. L. Rev. Online 146. The author's conclusion is apropos in this case: "Racial discrimination violates the fundamental public policy to which charities must adhere. Ending it means ending all of it." *Id*.

Public policy has guided this Court in private matters involving contracts. The Law Court will not enforce a contract that contravenes public policy. *Allstate Ins. Co. v. Elwell*, 513 A.2d 269, 272 (Me. 1986). "A contract is against public policy if it 'clearly appears to be in violation of some well established rule of law, or that its tendency will be harmful to the interests of society.'" *Id*. (*quoting Lesieur v. Inhabitants of Rumford*, 113 Me. 317, 319-20, 93 A. 838, 839 (1915)). *See also Court v. Kiesman*, 2004 ME 72, ¶ 11, 850 A.2d 330 (parents could not use a contract to modify the terms of a child support order because doing so violated public policy); *Molleur v. Dairyland Ins. Co.*, 2008 ME 46, ¶ 11, 942 A.2d 1197 (contract provision contrary to a mandatory statutory provision is void and unenforceable).

In the context of an estate, the Law Court in *Eaton v. Miller*, 250 A.2d 220 (Me. 1969) affirmed a summary judgment decision that held that a provision in a will directing that funds from the estate be used to erect a mausoleum on private property violated the rule against perpetuities and was thus violative of public policy. *Id*. at 226. The Court did not need to address whether the attempted gift was violative of public policy since it ran afoul of a statute that prohibited burial arrangements on private property. Thus, *Eaton* affirms that public policy is a valid consideration in the context of a will.

The *Restatement (Third) Property: Wills and Other Donative Transfers* recognizes that a donative document such as a will may be set aside due to racist underpinnings. Section 10.1 of this Restatement provides: "**Donor's Intention Determines the Meaning of a Donative Document and Is Given Effect to the Maximum Extent Allowed by Law**." *Restatement of the Law (Third) Property, Wills and Donative Transfers* § 10.1 (Am. Law Inst. 2003) (emphasis in original). The rationale explains:

> a. Rationale. The organizing principle of the American law of donative transfers is freedom of disposition. Property owners have the nearly unrestricted right to dispose of their property as they please. This section implements this fundamental principle by stating two well-accepted propositions: (1) that the controlling consideration in determining the meaning of a donative document is the donor's intention; and (2) that the donor's intention is given effect to the maximum extent allowed by law.

Id., Cmt. (a). The comment further explains:

> American law curtails freedom of disposition only to the extent that the donor attempts to make a disposition or achieve a purpose that is prohibited or restricted by an overriding rule of law. The term "rule of law" is used in a broad sense to include rules and principles derived from the U.S. Constitution, a state constitution, or public policy; rules and principles set forth in federal or state legislation or in municipal ordinances; rules and principles of the common law and of equity; and rules and principles contained in governmental regulations. A rule of law is an overriding rule of law if it is applicable and prohibits or restricts the disposition or purpose that the donor intends. Among the rules of law that prohibit or restrict freedom of disposition in certain instances are those relating to spousal rights; creditors' rights; unreasonable restraints on alienation[26] or marriage; provisions promoting separation or divorce; impermissible racial or other

[26] Consistent with this provision of the Restatement, Maine law already disfavors restraints on alienation. *Keegan v. Bradbury,* 2025 ME. 13, ¶ 10, 331 A.2d 394.

> categoric restrictions; provisions encouraging illegal activity; and the rules against perpetuities and accumulations. . . .

Id. Cmt. (b) (emphasis added). This Court has regularly adopted various Restatement provisions, *see, e.g*., *Meridian Med. Sys., LLC. v. Epix Therapeutics, Inc*., 2021 ME 24, ¶¶ 17-24, 250 A.3d 122 (adopting Restatement regarding civil liability for aiding and abetting); and *Dyer v. Maine Drilling & Blasting, Inc*., 2009 ME 126, ¶ 29, 984 A.2d 210 (adopting Restatement approach to strict liability). Accordingly, the Court should give effect to the Restatement pronouncement against racist attitudes that are implemented through donative instruments.

One of the few cases that has considered the enforceability of a racist provision in a will is *Tinnin v. First United Bank*, 502 So. 2d 659 (Miss. 1987). The opening line is on point: "This case tests our confidence in ourselves as a free pluralistic people. It also tests our fidelity to the rule of law." *Id*. at 661. *Tinnin* involved the estate of a man who left a holographic will that created a trust that made loans to college students "who are of the caucassion (sic) race and none other." *Id*. The Mississippi Supreme Court determined that it was beyond debate that the gift was not enforceable. After reviewing the power of a testator to "have his way," and the duty of a court to give effect to testator intent, *id*. at 663, the court recognized that [t]he testator's right to make his will as he pleases is not unentailed." *Id*. at 664. The court recognized the public policy exception that a

testator's intent may "not violate the law or public policy." *Id*. Thus, in declining to enforce the gift, the court reasoned:

> Whatever may once have been the attitudes of many, it is much too late to doubt that a major social policy of our society is that entitlement that one is eligible to enjoy on one's merits shall not be denied by reason of one's race, color or creed. . . . There are limitations upon our authority to enforce racially discriminatory testamentary trusts . . . .

Id. at 664-65. *Cf*. *LaFond v. City of Detroit*, 357 Mich. 362, 365-66, 98 N.W.2d 530 (1959) (*aff'd*. by equally divided vote) (affirming lower court finding a bequest to City of Detroit to create a playground for white children violated state and federal law).

Public policy should not condone the creation of a facially neutral will that is based on well-documented, underlying racist objectives. Otherwise, avowed racists will simply draft facially neutral wills to achieve their abhorrent goals. This case precisely illustrates the need to introduce extrinsic evidence to demonstrate racial testamentary motives: "I didn't work my whole life for this business to have a N word run the pound." (Vol. I, p. 135, lines 20-25). Instead, Robert sought to eliminate Raymond and his side of the family from his estate plan to prevent his fear from coming true. Under these circumstances, Robert's holographic document should not be given any credence in a court of law.

VI. CONCLUSION

The only confusion that arose during the latter course of this Probate Court litigation occurred due to the failure of Appellants to appreciate the differences between a will contest in the Probate Court and a separate tort action brought in Superior Court. In keeping with this Court's jurisdictional parameters as outlined in *Zani v. Zani*, 2023 ME 42, 299 A.3d 9, the Probate Court properly considered all of the issues inherent in a will contest involving the two purported wills, particularly those involving the statutory requirements for a holographic will, 18-C M.R.S. § 2-502 (2020) and the recognized defenses to the validity of a will, 18-C M.R.S. § 3-407 (2020). Based upon the facts adduced at trial, particularly the testimony of Bobby Young, and the applicable law, the Probate Court correctly determined that Robert R. Young did not sign the holograph, nor did he intend to adopt the holograph as his last will and testament. Accordingly, the Order of the Probate Court should be affirmed, the appeal should be denied, and the case remanded for further probate of the 2000 last will and testament of Robert R. Young.

Respectfully submitted this _____ day of February 2026.

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VII. CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have hand delivered two copies of the Appellee's brief to counsel for Appellants, namely F. David Walker, Esq. at his office located at 9 Central Street, Suite 308, Bangor, Maine 04401 and Jennifer Eastman, Esq. at her office located at 82 Columbia Street, Bangor, Maine 04401, and have emailed an electronic version to counsel at their last known email addresses, dwalkerlawmaine.com and jennifereastman@eastmanlawllc.com.

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