

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW COURT DKT. NO. WAL-25-390

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

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On Appeal from the Waldo County Probate Court

Docket No. 2017-0219

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

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## .INTRODUCTION

Appellee Raymond Young asserts one fact not addressed in Appellants' Brief and one new argument of independent grounds for invalidation of the will. In accordance with Me.R.App.Proc. 7A(c), Appellants submit this Reply Brief limited to these new issues.

## ARGUMENT

**I. ROBERT F. YOUNG'S TESTIMONY WAS "I AM NOW GOING TO SIGN IT..." WHICH IS CLEAR FROM THE CONTEXT AND AUDIO RECORDING OF THE TESTIMONY AND HAS BEEN CORRECTED WITH AN AMENDED TRANSCRIPT.**

Robert F. Young (hereinafter "Bobby") suffered two strokes and a heart attack since the inception of this litigation over eight years ago. (Tr. Vol. 1 at 180: 14-25; 181: 1-4). His speech is impaired, making transcription of his testimony extremely difficult at times, as is noted by the number of indiscernible references in the transcript. (Tr. Vol. 1 at 167-272). Bobby's transcribed testimony cited by Appellee, "Then he said I'm not going to sign it, are you watching this" (Tr. Vol. 1 at 244: 24-25) was either a transcription error due to the difficulty in understanding Bobby's speech or a typo by the transcriber. It is clear from the context of his testimony that he said the words "I'm now going to sign it," as opposed to "I'm not going to sign it." Upon review of the audio recording of the testimony,<sup>1</sup> it was confirmed that the

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<sup>1</sup> Counsel for Appellants has an audio recording of the testimony in question, available upon request.

testimony was “I’m now going to sign it.” Counsel for Appellants requested an errata be filed by the transcription service, and the transcript has been amended and provided to this Court.

It is clear from review of the testimony surrounding the phrase in question that Bobby quoted his father, saying, “I’m now going to sign it,” as opposed to “I’m not going to sign it.” (Tr. Vol. 1 at 244: 24-25). His response was given in answer to the question “Did you see your father sign that note?” (Tr. Vol. 1 at 244: 21). The immediate subsequent testimony confirms that Bobby watched his father sign the holograph. Appellee’s counsel<sup>2</sup> asked “and that’s how he signed it –” (Tr. Vol. 1 at 245: 2) and Bobby replied “Yes.” (Tr. Vol. 1 at 245:3). Had Bobby testified that his father said, “I’m not going to sign it,” the courtroom would have been in an uproar. Neither counsel followed up on what would have been a shocking statement, in complete opposite not only of all prior testimony, but in opposite of the very issue at hand – the legitimacy of the holographic will – because it was properly understood at the time that he said, “I’m now going to sign it.” Neither did the Probate Court reference such a statement in its order, because that is not what was said. Appellee’s repeated reliance on this obviously erroneous quote is misleading and disingenuous. Appellee never raised a challenge to intent in the Superior Court or in the Probate Court until after the case, in a transparent attempt to capitalize on a scrivener’s error.

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<sup>2</sup> Appellee called Bobby Young as a witness; his testimony at hearing was under direct examination by Appellee’s counsel.

## II. THE HOLOGRAPHIC WILL DOES NOT VIOLATE PUBLIC POLICY AGAINST RACISM.

Appellee's theory that public policy voids the holographic will because his father was racist does not survive the basic tenant of probate law: broad testamentary freedom to devise one's estate as one wishes. *See, e.g., In re Estate of Feinberg*, 235 Ill. 2d 256, 919 N.E.2d 888, 335 (IL 2009). It is undisputed that Bob held opinions and beliefs not untypical of his generation regarding the Jamaican workers at his lobster pound. His personal opinions are irrelevant to the provisions of his will.

No consideration of race can be extrapolated from Bob's will. Appellee's claim that he was excluded from the will because of his father's racism was entirely concocted by Appellee as a reason to invalidate an otherwise valid holographic will. There is no evidence in the record that Bob changed his will because of his racist beliefs, but such claim is predicated upon the fact that Bob intended to, and did, change his will. "The very freedom to make a will implies a concomitant freedom of every person to disinherit by will persons who would otherwise inherit his property." *Ladd v. Estate of Kellenberg*, 314 N.C. 477, 334 S.E.2d 751 (1985). Bob retained the right of testamentary freedom to choose who would benefit from his estate and had no obligation to include any of his children.

Public policy prohibits a testator from imposing upon third parties the responsibility to enforce racially discriminatory testamentary schemes for a public

purpose. For example, courts have historically prohibited scholarships for white children only (*Wachovia Bank & Trust Co., NA. v. Buchanan*, 346 F. Supp. 665 (D.C. 1972), *Trammell v. Elliott*, 230 Ga. 841, 199 S.E.2d 194, 197 (1973), *Bank of Delaware v. Buckson*, 255 A.2d 710, 713 (Del. C. 1969)); the establishment of an orphanage for white children only (*United States v. Hughes Memorial Home*, 396 F. Supp. 544, 547 (W.D. Va. 1975)); a fund for the support of poor white citizens (*In re Will of Potter*, 275 A.2d 574, 576 (Del C. 1970)); a home for aged white men (*Wooten v. Fitz-Gerald*, 440 S.W. 719, 722 (Tex. Civ. App 1969)); a trust to provide a park for white people only (*Evans v. Newton*, 221 Ga. 870, 148 S.E. 2d 329 (1966), affirmed *sub nom* 396 U.S. 435, 90 S.Ct. 628, 24 L.Ed. 2d 634 (1970)) or a playground for white children only (*LaFond v. City of Detroit*, 357 Mich. 362, 98 N.W. 530 (1959)). “By way of contrast, the United States Constitution erects no barrier against purely private conduct, however discriminating or offensive.” *Tinnin v. First United Bank*, 502 So.2d 659, 666 (Miss. 1987) citing *Evans v. Abney*, 396 U.S. 435, 445-47, 90 S.Ct. 628, 24 L.Ed. 2d 634, 644-645(1970); *Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S.Ct. 736, 842, 92 L.Ed. 1161(1948). Bob’s holographic will serves no public purpose; it is entirely private conduct and entirely within his right to devise as he determined. The Probate Court concluded that the holographic will was racially neutral, and accordingly found Appellee’s public policy claim nonjusticiable.

## CONCLUSION

As Appellee points out, all of Raymond’s claims, brought in the Superior Court, then again in the Probate Court, tacitly acknowledge a valid will. Without that assumption, Appellee had no viable claim in the Superior Court. “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.” (Appellee’s Brief, p. 33.) Appellee chose to bring his claims in Superior Court before the Probate Court determined the validity of the will. Appellee chose to pursue years of litigation and incur hundreds of thousands of dollars in attorneys’ fees all on a necessary underlying position that the holographic will was valid. Even after multiple requests by Appellant to state those claims remaining in the Probate Court, and after order of the Probate Court articulating those claims, Appellee never claimed the decedent lacked testamentary intent. In the Probate Court, Appellee repeated the same claims dismissed by the Superior Court – undue influence, fraud, duress, mistake, or revocation.<sup>3</sup>

Appellee never raised the issue of whether Bob changed his will, but only why he changed it – allegedly because of Appellants’ undue influence, fraud, duress, or

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<sup>3</sup> The Probate Court’s November 19, 2024 order additionally listed lack of testamentary capacity as a claim and narrowed the fraud claim “as it relates to statements purportedly made by one of the Respondents.” (App. 28). Though lack of testamentary capacity does not assume an otherwise valid will, this claim was not pursued by Appellee at trial. Fraud in fact, as limited by the Court’s order, necessitates underlying testamentary intent, as opposed to fraud in the inducement, i.e., the decedent thought he was signing something other than a will. Fraud in the inducement was neither pled nor pursued by Appellee.

representations leading to a mistaken belief by the Decedent. Similar to a claim of lack of capacity, a claim of lack of testamentary intent means that the testator never intended to make a will at all. *See, e.g., Estate of Washburn*, 2020 ME 18, ¶ 11, 225 A.3d 761, 766 (“the focus is still on the mental capacity to understand the will.”) The Appellee’s claims of undue influence, fraud, and mistake require that the testator intended to make a will, but that his intent was improperly affected, with the result that the terms of the will do not reflect the genuine wishes of the testator. *See Id.* at ¶ 17, 767 (the party contesting the will on the basis of undue influence has the burden of establishing by clear and convincing evidence that the will was the result of undue influence).

Appellants met their burden under 18-C M.R.S. §2-502(2) – the signature and material portions of the document are in the testator’s handwriting. It is undisputed that the entirety of the holographic will is in the Decedent’s handwriting. (Tr. Vol. 1 at 68:2-16.) If the printed signature raised a question of testamentary intent, that burden was on Appellee to bring and prove his claim under 18-C M.R.S. §3-407. Appellee did not bring that claim. The extrinsic evidence the Court relied upon in finding the Decedent lacked testamentary intent was not admissible as to that unpled claim, and was only admissible at all as relevant to the claims of undue influence, fraud, duress, and mistake, claims that necessitate the existence of an otherwise valid will.

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,

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**CERTIFICATE OF SERVICE**

I, Jennifer L. Eastman, Esq., certify that I served two copies of the Appellants' Reply 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 \_\_\_\_\_.

Dated: March 3, 2025

/s/ Jennifer L. Eastman

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