

State of New Hampshire Supreme Court

EVELYN TARNAWA

plaintiff/appellee,

v.

RICHARD GOODE

defendant/appellant.

N.H. Sup.Ct. No. 2018-0202

MEMORANDUM OF LAW ADDRESSING IMPACT OF OPINION IN *ROGERS v. ROGERS*

NOW COMES Evelyn Tarnawa, by and through her attorney, Joshua L. Gordon, and respectfully submits this memorandum at the direction of the court, and requests that this court affirm the judgment of the superior court.

As grounds it is stated:

1. The parties filed their briefs in October and November 2018. In February 2019, this court decided *Rogers v. Rogers*, 171 N.H. __ (dec. Feb. 1, 2019). On March 6, 2019, this court directed the parties to file a supplemental memorandum addressing the impact of this court's opinion in *Rogers* upon the jurisdiction question raised by the appellant in section A of his brief.

2. In *Rogers*, Father and Son negotiated and settled a distribution of assets in the estate of their deceased Wife and Mother. Father later learned that Son's appraisals, conducted during administration, may have been fraudulently inaccurate, to the prejudice of Father. Consequently, Father sued Son in superior court, on a variety of legal and equitable claims, for money damages. Son filed a motion to dismiss, which the superior court granted, on the grounds that jurisdiction was exclusive in the probate court. To resolve the matter, this court interpreted RSA 547:3, I, the same statute at issue here. In *Rogers* this court reversed, holding that the superior court had general jurisdiction.

3. The statute provides that the probate court has exclusive jurisdiction over matters “relating to the composition, administration, sale, settlement, and final distribution of estates of deceased persons.” RSA 547:3, I(b). Son’s argument in *Rogers* was that the phrase “relating to” should be broadly construed to mean that the probate court has exclusive jurisdiction whenever a dispute concerns assets that were once part of a probate estate. Father argued that his claims sounded in tort, and the fact that Son’s alleged misrepresentation occurred in the probate proceeding did not automatically make Father’s claims “relat[ed] to” the Wife’s/Mother’s will.

4. This court noted the long history of narrow construction of probate court jurisdictional statutes, based on its concern that if construed broadly, probate court jurisdiction could gradually grow until the probate court would essentially become a court of general jurisdiction; and the legislature – free to amend the statute – has appeared satisfied over decades with this court’s narrow jurisdictional interpretation. This court cited as an example *Estate of Porter*, 159 N.H. 212, 214 (2009), which held that probate court jurisdiction would be exclusive only when “the property is ‘in’ the estate of the decedent” (quotation in original).

5. In *Rogers*, this court made clear that it is the nature of the collateral claims, and not the genesis of property in a probate proceeding, that determines the “related to” exclusive probate court jurisdiction. Citing *DiGaetano v. DiGaetano*, 163 N.H. 588, 591 (2012), *Rogers* noted that “for the purposes of determining the nature of a party’s claim [for] jurisdictional analysis, it is the *manner* by which an action relates to an estate that is the critical inquiry, *not* whether a relationship simply exists.” *Rogers*, slip op. at 7 (emphasis added). “Therefore,” the *Rogers* court wrote,

the determination of subject matter jurisdiction ... depends upon whether a *direct connection* exists between the plaintiff’s claims and the composition, administration, sale, settlement, and final distribution of the estate, and whether the connection relates to the estate or will in a manner that mandates the probate court’s exclusive jurisdiction.

Rogers, slip op. at 7-8 (emphasis added).

6. Accordingly, *Rogers* held that the superior court – not the probate court – had jurisdiction because Father was seeking money damages, and not seeking to reopen the probate case; and because resolution of his claims did not “depend upon an analysis of the composition, administration, sale, and final distribution of the decedent’s estate or the interpretation and construction of wills.” *Rogers*, slip op. at 8. Finally, this court noted that adoption of Son’s position would risk expanding probate court jurisdiction, because it would mean that any claim associated with an asset that was once in a probate estate would thereafter forever be in the probate court.

7. As noted in Ms. Tarnawa’s brief, the parties’ dispute in the present case (who should be responsible for costs of jointly owned property) necessarily arose *after* the conclusion of the estate matter. Moreover, while Ms. Tarnawa’s and Mr. Goode’s attorneys attempted negotiation of possible post-probate claims during the time their mother’s estate was open, no settlement was reached; this makes the “related to” connection to probate in this case even more attenuated than in *Rogers*, where there was such a settlement.

8. Father’s money claims in *Rogers* are procedurally – and therefore jurisdictionally – the same as Ms. Tarnawa’s partition action here, because they are collateral and do not create a “direct connection” to, the “composition, administration, sale, settlement, [or] final distribution of the estate.” They also do not involve the interpretation of a will – here the parties acknowledge that the house is owned by brother and sister together, and the superior court held that the nature of the tenancy was inconsequential to the equities of partition, which was not challenged on appeal.

9. *Rogers* demonstrates that statutes giving exclusive jurisdiction to the probate court are construed narrowly, that mere settlement (or negotiation) of a probate case is not sufficient to subsequently confer exclusive probate court jurisdiction over collateral matters, and that the superior court remains New Hampshire’s court of general jurisdiction. Accordingly, *Rogers* controls the outcome here, and this court should affirm.

WHEREFORE, Evelyn Tarnawa respectfully requests this honorable Court recognize that

Rogers controls the outcome here, and affirm the judgment of the superior court.

Respectfully submitted
for Evelyn Tarnawa
by her attorney,

/s/

Dated: March 21, 2019

Joshua L. Gordon, Esq.
NH Bar No. 9046
Law Office of Joshua Gordon
75 South Main Street # 7
Concord, NH 03301
(603) 226-4225
JLGordon@AppealsLawyer.net

I hereby certify on this 21th day of March 2019, a copy of the foregoing is being forwarded to Leslie Nixon, Esq.; and to R. John Roy, Esq.

/s/

Dated: March 21, 2019

Joshua L. Gordon, Esq.