

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. YOR-19-327**

**IN RE: THE ESTATE OF
CLAUDETTE SHELTRA**

**ON APPEAL FROM THE YORK
COUNTY PROBATE COURT**

**BRIEF OF APPELLEE PAUL SHELTRA,
PERSONAL REPRESENTATIVE FOR THE
ESTATE OF CLAUDETTE SHELTRA**

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STATEMENT OF THE CASE

Appellant Janet¹ Sheltra and Appellee Paul Sheltra (the “Personal Representative”) are the sole children of Claudette Sheltra (the “Decedent”), who died on January 7, 2015. On February 20, 2015, the York County Register of Probate admitted the Decedent’s Last Will and Testament dated March 21, 2006 (the “2006 Will”) for informal probate and appointed Appellee to serve as Personal Representative for the Decedent’s estate (the “Estate”) in accordance with the 2006 Will. *See* Probate Court Docket Sheet at 1, Appendix at 4². The Estate includes, among other things, the following significant real estate assets: (1) a condominium in Old Orchard Beach; and, (2) a leasehold interest in the Carolina Motel in Old Orchard Beach. The 2006 Will grants the Old Orchard Beach condominium and certain items of personal property to Appellant, and the residue of the Estate to the Personal Representative. 2006 Will at 1, Appendix at 100.

Commencing shortly after his appointment in February, 2015, and continuing through that summer, the Personal Representative attempted to work with Appellant to administer the estate and convey to her the Old Orchard Beach condominium granted to her under the 2006 Will. Appellant resisted and refused to cooperate with those efforts, apparently out of dissatisfaction that she had not

¹ Appellant also uses the name “Tabatha Sheltra,” which appears occasionally throughout the record.

² Because the full Appendix was unavailable as of the date of filing of this Appellee’s Brief, the Appendix page references herein refer to the first page of the document in question; jump cites are provided within the relevant document, where practical.

been granted any interest in the Carolina Motel lease. Because Appellant has been unwilling to accept the Old Orchard Beach condominium, the Personal Representative has continued to administer it as an asset of the Estate by renting it and collecting its income for Appellant's benefit.

On January 25, 2018, Appellant filed two petitions with the Probate Court: (1) a Petition for Formal Probate of Will or Appointment of Personal Representative or Both (the "Petition to Probate 2004 Will", Appendix at 18) seeking the admission of a 2004 will executed by the Decedent prior to (and revoked by) the 2006 Will; and, (2) a Petition for Removal of Personal Representative (the "Petition for Removal", Appendix at 16) seeking to remove and replace Appellee as Personal Representative for the Estate. Probate Court Docket Sheet at 2, Appendix at 4. The Personal Representative opposed both of Appellant's petitions, *see* Appendix at 71, 75, and on March 22, 2018 filed a motion for summary judgment (the "Motion for Summary Judgment", Appendix at 23) seeking judgment against Appellant on her Petition to Probate 2004 Will. On April 4, 2018, the Personal Representative filed a Petition for Order of Complete Settlement of Estate (the "Petition for Complete Settlement", Appendix at 28) seeking the Probate Court's approval for final distribution and closing of the Estate.

Appellant filed material in opposition to the Personal Representative's Motion for Summary Judgment, after her counsel³ sought and obtained an extension of time for her to do so. Probate Court Docket Sheet at 2-3, Appendix at 4. Her opposition material was not accompanied or supported by any statement of material facts, affidavits, answers to interrogatories, deposition transcripts, sworn or certified documents or other competent evidence. *See* Janet CE Sheltra's Answer to Motion Summary Judgment and Response to Paul Sheltra's Objection to Janet Sheltra's Petition for Formal Probate of Will and Appointment of Personal Representative, Appendix at 36 (the "Opposition to Summary Judgment"); *cf.* M.R.Civ.P. 56(c), (e), (h) (stating requirements for statements of material facts and evidentiary support on motions for summary judgment); M.R.Prob.P. 56 (M.R.Civ.P. 56 applicable). Although the Probate Court (Chabot, J.⁴) acknowledged these procedural deficiencies in Appellant's Opposition to Summary Judgment, it nevertheless "analyze[d] her submission as if it were compliant." Order on Motion for Summary Judgment at 2, Appendix at 8 (May 15, 2018) (the "Summary Judgment"). The Probate Court then determined that

³ Neil Weinstein, Esq. entered his appearance as Appellant's counsel on April 10, 2018, but subsequently moved to withdraw; his motion to withdraw was granted on April 27, 2018. *See* Probate Court Docket Sheet at 2-3, Appendix at 4. Substitute counsel entered their appearances for Appellant on September 25, 2018 (Andrews Campbell, Esq.) and January 16, 2019 (Vanessa Bartlett, Esq.); both Mr. Campbell and Ms. Bartlett continued to represent Appellant for the remainder of the Probate Court proceedings. *See* Probate Court Docket Sheet at 3, Appendix at 4.

⁴ Although the record transcripts erroneously indicate that Probate Judge Paul Aranson sat in this matter, *see, e.g.*, Transcript of Proceedings on February 22, 2018 at 1, Appendix at 88, in fact Probate Judge Bryan Chabot presided over all of the proceedings.

because the three year limitation period under 18-A M.R.S. sec. 3-108(a)(3) had expired prior to the filing of Appellant's Petition to Probate 2004 Will, "[t]he sole question left is whether [Appellant's Opposition to Summary Judgment] raised a genuine issue of material fact that would toll the statute of limitations." *Id.* On that question, the Probate Court found that Appellant had "not alleged an overall inability to function in society" and her "hospitalizations . . . are not sufficient to toll the statute of limitations." *Id.* Because the Probate Court determined that the Petition to Probate 2004 Will "is barred by the statute of limitations," it granted summary judgment in favor of the Personal Representative. *Id.*

Although the Summary Judgment disposed of Appellant's Petition to Probate 2004 Will, her Petition for Removal and the Personal Representative's Petition for Complete Settlement remained outstanding. Appellant's conduct as a *pro se* litigant necessitated several motions by the Personal Representative, including: (1) a Motion to Compel Mediation seeking to mandate Appellant's participation in alternative dispute resolution previously ordered by the Probate Court; and, (2) a Motion in Limine seeking to exclude from evidence a variety of irrelevant and sensational allegations by Appellant. Probate Court Docket Sheet at 3, Appendix at 4. Both of those motions were ultimately granted, although the Personal Representative's effort to resolve the parties' disputes through mediation proved fruitless. *See* Order in Limine, Appendix at 145; Probate Court Docket

Sheet, Appendix at 4. Having incurred very substantial legal fees and expenses⁵ on account of Appellant's actions, the Personal Representative also filed a Motion for Allowance of Costs including Attorneys' Fees. Appendix at 82.

The Probate Court conducted a trial on February 22, 2019. The trial was originally intended to consolidate the separate proceedings upon Appellant's Petition for Removal and the Personal Representative's Petition for Complete Settlement; however, on the morning of trial Appellant voluntarily withdrew her Petition for Removal which was then dismissed by the Probate Court, leaving for determination only the Petition for Complete Settlement. Appendix at 80, 88.

Following trial, the Probate Court ordered: (1) the Personal Representative to provide an accounting and attorneys' fee affidavit; and, (2) the parties to view and identify any of Appellant's property located at the Decedent's former residence.

Order After Hearing, Appendix at 11. Appellant subsequently objected to various aspects of the Personal Representative's accounting and inventory of the Estate⁶; to

resolve those objections the Personal Representative filed two supplemental

inventories. *See* Probate Court Docket Sheet at 4, Appendix at 4. Ultimately, by

Order dated June 28, 2019 the Probate Court decreed that the Personal

Representative should transfer to Appellant the assets granted to her under the

⁵ *See* Affidavit of Counsel for Personal Representative Paul Sheltra, Appendix at 146.

⁶ For example, Appellant objected to the values submitted by the Personal Representative for an emerald ring (which goes to Appellant under the 2006 Will, *see* 2006 Will at 1, Appendix at 100; Statement of Tangible Personal Property, Appendix at 103) and a nonfunctional 1966 Cadillac.

2006 Will, and awarded to the Personal Representative “attorney’s fees . . . in the amount of \$22,995.97, paid for out of [Appellant’s] estate assets received under the [2006] Will,” which award “represents attorney’s fees and costs incurred after [Appellant’s] filing on January 25, 2018.” Appendix at 12.

ARGUMENT

I. The Probate Court's Summary Judgment Should be Upheld

A grant of summary judgment is reviewed by the Law Court *de novo*, to determine if there is a genuine issue of material fact precluding summary judgment. Brady v. Cumberland Cy., 126 A.3d 1145, 1149 (Me. 2015) (*quoting* Budge v. Town of Millinocket, 55 A.3d 484, 488 (Me. 2012); Lubar v. Connelly, 86 A.3d 642, 649 (Me. 2014)). However, the Law Court must first have jurisdiction for appellate review of the Summary Judgment, and in this case such jurisdiction is lacking because Appellant failed to file her notice of appeal from the Summary Judgment within 20 days after it was entered. *See* Town of S. Berwick Planning Bd. v. Mainland, Inc., 409 A.2d 688, 689 (Me. 1980) (“[t]ime requirements for taking an appeal . . . are mandatory and jurisdictional”). If the Law Court nevertheless determines that it does have jurisdiction to review the Summary Judgment, that Summary Judgment should be upheld because Appellant failed to demonstrate a genuine issue of material fact precluding Summary Judgment for the Personal Representative on the basis that Appellant’s Petition to Probate 2004 Will was filed after the three year limitation period for such petitions under Section 3-108(a)(3) had expired. Appellant did not carry her burden of showing facts that operate to toll the limitation period, either pursuant to 14 M.R.S. sec. 853 (which by its express terms is inapplicable to the Petition to Probate 2004 Will) or the

doctrine of equitable estoppel. Therefore the Summary Judgment was properly granted, Appellant failed timely to appeal from it, and it should not be overturned by the Law Court.

I.A. Appellant's Appeal of the Summary Judgment was Untimely

Appellant failed to file a timely notice of appeal after entry of the Probate Court's Summary Judgment, thereby precluding the Law Court from entertaining that aspect of her appeal. Pursuant to M.R.App.P. 2B(c), Appellant had 21 days after entry of the Summary Judgment (i.e., until June 5, 2018) within which to file her notice of appeal from the Summary Judgment. However, her Notice of Appeal was not filed until July 19, 2019, more than one year after the time permitted by Rule 2B(c). Accordingly Appellant failed timely to appeal from the Summary Judgment, thereby depriving the Law Court of jurisdiction to entertain that aspect of her appeal. *See In re Estate of Brown*, 383 A.2d 1359, 1362 & n. 4 (Me. 1978); *see also Boulette v. Boulette*, 152 A.3d 156, 158 (Me. 2016) (dismissing untimely portion of appeal, *citing Bourke v. City of S. Portland*, 806 A.2d 1255, 1256 (Me. 2002)); *Lussier v. Oxford Dev. Assocs.*, 695 A.2d 1188, 1189-90 (Me. 1997) (*cited in Bourke*).

Appellant's notice of appeal from the Summary Judgment was due within 21 days after entry of the Summary Judgment because it was a final judgment that fully resolved all issues presented in the formal probate proceeding commenced by

the filing of Appellant’s Petition to Probate 2004 Will. *See MacPherson v. Estate of MacPherson*, 919 A.2d 1174, 1175 (Me. 2007) (*quoting Carroll v. Town of Rockport*, 837 A.2d 148, 154 (Me. 2003)); *see also Button v. Peoples Heritage Sav. Bank*, 666 A.2d 120, 122-23 & 123 n. 8 (Me. 1995) (“[e]ach formal proceeding results in a judgment appealable under the Rules of Probate Procedure”). Under Maine’s Probate Code⁷ and Rules of Probate Procedure, Appellant’s Petition to Probate 2004 Will commenced an independent⁸, formal probate proceeding. *See generally* M.R.Prob.P. 3(a) (“a formal probate proceeding is commenced by filing with the court a petition directed to the judge”); 18-A M.R.S. §§ 3-401 to -402 (commencement of formal probate proceeding by petition to probate will). In that proceeding, Appellant petitioned the Probate Court to: (1) admit the 2004 will for probate; and, (2) appoint Appellant⁹ as Personal Representative for the Estate. Petition to Probate 2004 Will at 4, Appendix at 18;

⁷ The probate proceedings are governed by Maine’s Probate Code originally adopted in 1981 and codified at Title 18-A of the Maine Revised Statutes, rather than the newer Maine Uniform Probate Code adopted in 2017 and codified at Title 18-C. *See* 18-C M.R.S. sec. 8-301(1), (2)(A) (Maine Uniform Probate Code “takes effect on September 1, 2019” and “applies to any wills of decedents who die after the effective date”).

⁸ Although the formal proceeding to resolve Appellant’s Petition to Probate 2004 Will was related to the other Estate proceedings because those proceedings all concerned the same estate, it was separate and distinct from those other proceedings. *Cf.* M.R.Prob.P. 79(a) (“[e]ach estate of a decedent . . . shall be assigned a master docket number when the first proceeding concerning it is commenced” and “each subsequent proceeding concerning that estate . . . shall be assigned a subsidiary docket number”); J. Mitchell & P. Hunt, *Maine Probate Procedure* § 13.01.1 (2017) (“there will be a master docket number for the estate with sub-docket numbers for various proceedings commenced in the estate”).

⁹ The 2004 Will (like the 2006 Will) names Appellee, rather than Appellant, as the Decedent’s primary nominee to serve as Personal Representative for her Estate. *See* Affidavit in Support of Motion for Summary Judgment at ¶¶ 2-3, Appendix at 34; Statement of Material Facts in Support of Motion for Summary Judgment at ¶¶ 2-3.

see also J. Mitchell & P. Hunt, *Maine Probate Procedure* § 4.4.1a (2017) (Form DE-201 petition seeks formal order admitting will to probate or appointing personal representative, or both). The Summary Judgment determined that the Petition to Probate 2004 Will was barred in its entirety, thereby resolving against Appellant all issues raised in the proceeding commenced by that petition. *See* Summary Judgment at 2, Appendix at 8. Thus the Summary Judgment was an appealable final judgment disposing of all matters before the Probate Court in the proceeding commenced by the Petition to Probate 2004 Will. *See* Button, 666 A.2d at 122-23 & 123 n. 8 (Probate Court’s summary judgment in formal proceeding “constitutes a valid final judgment” and is appealable); *see also* J. Mitchell, *Maine Probate Manual* § 1-54, Advisory Committee’s notes (P. Hunt rev. 1988) (“each formal proceeding . . . will result in a ‘judgment’ – that is, an order that may be appealed,” *cited in* Button, 666 A.2d at 123 n. 8).

Because the Summary Judgment was a final judgment, Appellant was required to appeal from that Summary Judgment within 21 days after its entry. As discussed above, the Petition to Probate 2004 Will commenced a separate formal proceeding with its own subsidiary docket. *See generally* M.R.Prob.P. 79(a).

A subsidiary docket is a separate proceeding. It can and often does go to final judgment long before estate administration is finished. When a final judgment is entered in a subsidiary docket, an aggrieved party must appeal within the 21 day limit, unless otherwise extended, or risk that the issues in that subsidiary docket proceeding will become final and binding.

J. Mitchell & P. Hunt, *Maine Probate Procedure* § 9.1.7 (emphasis added).

Appellant failed to appeal from the Summary Judgment within 21 days after its entry on May 15, 2018, thereby depriving the Law Court of jurisdiction to entertain that aspect of her appeal. *See, e.g., Collins v. Dept. of Corrections*, 122 A.3d 955, 958-59 (Me. 2015) (strict compliance with time limit for notice of appeal is prerequisite to Law Court’s entertainment of appeal); *see also Chamberlain v. Harriman*, 165 A.3d 351, 354-55 (Me. 2017) (same, *citing Collins*); *Bourke*, 806 A.2d at 1256 (same, *quoted in Collins*).

I.B. Appellant Failed Properly to Oppose Summary Judgment

Appellant failed to show that there was any genuine issue of material fact precluding summary judgment in favor of the Personal Representative, because her Opposition for Summary Judgment was unaccompanied by any statement of material facts or competent supporting evidence such as affidavits, deposition transcripts, answers to interrogatories or sworn documents as required by M.R.Civ.P. 56. *See* Summary Judgment at 2, Appendix at 8 (Appellant “did not comply with [M.R.Civ.P.] 56(h) in responding to [the Personal Representative’s] Motion for Summary Judgment”); *see also* Opposition to Summary Judgment, Appendix at 36; *cf.* M.R.Prob.P. 56 (M.R.Civ.P. 56 applicable in formal probate proceedings).

When a motion for summary judgment is made and supported as provided in [M.R.Civ.P. 56], an adverse party . . . must respond by affidavits or as otherwise provided in [Rule 56], setting forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

M.R.Civ.P. 56(e) (emphasis added); *see also* Doyle v. Dept. of Human Servs., 824 A.2d 48, 52 (Me. 2003) (summary judgment proper if opposing party fails to submit proper statement of material facts supported by admissible evidence); Kenny v. Dept. of Human Servs., 740 A.2d 560, 561-62 (Me. 1999) (party opposing summary judgment may not “rely on conclusory allegations or unsubstantiated denials,” but “must produce evidence”, *citing* Rodrigue v. Rodrigue, 694 A.2d 924, 926 (Me. 1997), Vinick v. Comm’r of Internal Revenue, 110 F.3d 168, 171 (1st Cir. 1997)). In support of his Motion for Summary Judgment, the Personal Representative submitted a statement of material facts and supporting evidence showing that the Appellant failed to file her Petition to Probate 2004 Will within the three year limitation period established by Section 3-108(a)(3). *See* Statement of Material Facts in Support of Motion for Summary Judgment, Appendix at 32; Affidavit in Support of Motion for Summary Judgment, Appendix at 34. To oppose the Motion for Summary Judgment on the basis that the limitation period was tolled, it was incumbent upon Plaintiff to submit an opposing statement of material fact supported by specific citations “to record material properly considered on summary judgment”; the Probate Court was

entitled to disregard any statements not so supported. M.R.Civ.P. 56(h)(2), (4); see Lubar, 86 A.3d at 650. Because Plaintiff did not submit any statement of material facts or competent supporting evidence in opposition to the Motion for Summary Judgment, but instead relied wholly upon bald, unsupported allegations in her Opposition to Summary Judgment and a miscellany of unsworn or otherwise inadmissible documents attached thereto, *see* Opposition to Summary Judgment, Appendix at 36, she failed to demonstrate that there was a genuine issue of material fact as to whether the limitation period was tolled. Her status as a *pro se* litigant during that portion of the proceedings does not excuse her failure in that regard. *See* Uotinen v. Hall, 636 A.2d 991, 993 (Me. 1994) (“*pro se* parties are subject to the same standards as represented parties,” *citing* Gurschick v. Clark, 511 A.2d 36, 36 (Me. 1986)); *see, e.g.*, Michaud v. Blue Hill Memorial Hosp., 942 A.2d 686, 688 (Me. 2008) (upholding summary judgment against *pro se* plaintiff who “failed to file an opposing statement of material facts, supported by record citations,” *citing* M.R.Civ.P. 56(h)(2)). Accordingly, because Plaintiff failed to carry her burden of demonstrating the existence of a genuine issue of material fact in accordance with M.R.Civ.P. 56, summary judgment was properly granted in favor of the Personal Representative on Appellant’s Petition to Probate 2004 Will. *See* Drilling & Blasting Rock Specialists, Inc. v. Rheaume, 147 A.3d 824, 829 (Me. 2016) (summary judgment properly entered against plaintiff who “fails to set

forth facts showing that there is a genuine issue for trial on a statute of limitations defense,” *quoting* Brawn v. Oral Surgery Assocs., P.A., 893 A.2d 1011, 1014 (Me. 2006)); Michaud, 942 A.2d at 688.

I.C. The Limitation Period for Appellant’s Petition was not Tolled

The three year limitation period set forth in Section 3-108(a)(3) was not tolled, either by 14 M.R.S. sec. 853 or the doctrine of equitable estoppel. By its terms, Section 853 is inapplicable to Appellant’s Petition to Probate 2004 Will because Section 853 expressly limits its scope to actions under 14 M.R.S. secs. 752-54, 851-52 and 24 M.R.S. sec. 2902 (and 24 M.R.S. sec. 2902-B, until July 1, 2017). But even if Section 853 were applicable, it would not operate to toll Section 3-108(a)(3)’s limitation period because Appellant has not shown that an “overall inability to function in society” due to mental illness prevented her from filing the Petition to Probate 2004 Will in a timely manner. McAfee v. Cole, 637 A.2d 463, 466 (Me. 1994) (emphasis in original). Appellant also has not shown that the Personal Representative “conducted himself in a manner which actually induce[d] [Appellant] not to take timely action on” her Petition to Probate 2004 Will, as would be necessary to estop the Personal Representative from asserting the time bar defense. Dasha v. Maine Medical Center, 665 A.2d 993, 995-96 (Me. 1995). Therefore the Probate Court properly held that Appellant’s Petition to

Probate 2004 Will was time barred, and granted summary judgment in favor of the Personal Representative on that petition.

I.C.1. Section 853 is Inapplicable

Appellant acknowledges that she “filed her Petition [to Probate 2004 Will] 10 days beyond the statute of limitations set forth in 18-A [M.R.S. sec. 3-108(a)(3)],” but argues that there is a genuine issue of material fact as to whether that limitation period was tolled pursuant to 14 M.R.S. sec. 853. Appellant’s Brief at 7. However, by its express terms Section 853 is inapplicable to the three year limitation period established by Section 3-108(a)(3). Section 853 provides as follows:

If a person entitled to bring any of the actions under sections 752 to 754, including section 752-C, and under sections 851 and 852 and Title 24, section 2902 and, until July 1, 2017, section 2902-B is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed.

(emphasis added). Thus, Section 853 is applicable only to actions under: (1) 14 M.R.S. secs. 752-54, 851-52 (governing various civil actions); and, (2) 24 M.R.S. secs. 2902 & 2902-B (governing claims against health care providers, practitioners and mental health professionals). But Appellant’s Petition to Probate 2004 Will did not commence a civil action governed by any of those statutes; rather, it commenced a probate proceeding governed by 18-A M.R.S. sec. 3-108(a). *See*

18-A M.R.S. secs. 3-401 to -402 (providing for formal testacy proceeding to probate a will or appoint a personal representative, or both); *see also* M.R.Prob.P. 2(a)(2), (b), 3(a)-(b) (distinguishing between “probate proceedings” and “civil proceedings” within jurisdiction of Probate Court). Therefore, the probate proceeding commenced by Appellant’s Petition to Probate 2004 Will was not within the ambit of Section 853’s tolling provision.

Section 853 should not be extended to toll a limitation period that it is beyond its intended scope. The three year limitation period established in Section 3-108(a)(3) was part of the Maine Probate Code’s integrated scheme to protect heirs, distributees, creditors, purchasers and other third parties; “[t]he basic premise underlying all of these time provisions is that interested persons who want to assume the risks implicit in the three-year period of limitations should be provided legitimate means by which they can do so.” 18-A M.R.S. § 3-108 (Uniform Probate Code Comment). Because “[t]he Legislature has explicitly outlined the contours of the statute of limitations” applicable to Appellant’s Petition to Probate 2004 Will “and has not left room for [the courts] to carve out an exception,” the three year limitation period stated in Section 3-108(a)(3) should not be circumvented by resorting to Section 853’s inapplicable tolling provision.

Dasha, 665 A.2d at 995-96; *see also* Packgen, Inc. v. Bernstein, Shur, Sawyer & Nelson, P.A., 209 A.3d 116, 121, 124-24 (Me. 2019) (declining to adopt

exceptions “which would contradict the ‘policy of repose mandated by the Legislature’” (*citing Dasha*); *Dickey v. Vermette*, 960 A.2d 1178, 1180 (Me. 2008) (same); *Lucas v. D’Angelo*, 37 F.Supp.2d 45, 46 (D. Me. 1999) (same); *cf. Douglas v. York Cy.*, 433 F.3d 143, 151-54 (1st Cir. 2005) (“Maine courts have also been noticeably and consistently strict in interpreting the . . . tolling provisions,” *citing and quoting Dasha*); *Steeves v. City of Rockland*, 600 F.Supp.2d 143, 181-82 (D. Me. 2009) (“Section 853 is inapposite; it does not apply to claims brought pursuant to the [Maine Tort Claims Act],” 14 M.R.S. ch. 741). Section 853 should not be applied to toll a limitation period established by Maine’s Probate Code that is outside of Section 853’s expressly stated and intended scope.

I.C.2. Appellant was not Unable to Function

Even if Section 853 were potentially applicable to toll the three year limitation period under Section 3-108(a)(3), Appellant nevertheless failed to show that the limitation period actually should be tolled due to her alleged mental illness. The Law Court has consistently held that “[m]ental illness under [Section 853] refers to an overall inability to function in society that prevents plaintiffs from protecting their legal rights.” *McAfee*, 637 A.2d at 466 (emphasis in original); *see also Bowden v. Grindle*, 675 A.2d 968, 971 (Me. 1996) (*quoting McAfee*); *Morris v. Hunter*, 652 A.2d 80, 82 (Me. 1994) (same); *Douglas*, 433 F.3d at 149-153 (*construing McAfee, Bowden and Morris, inter alia*). For example, the Law Court

has ruled that Section 853 did not toll the limitation period where a plaintiff “suffered ‘varying degrees of incapacity with respect to his ability to understand and manage business, financial and legal affairs,’ [but] can participate in decision-making if the issues are carefully explained to him.” Morris, 652 A.2d at 82.

Similarly, in Douglas the United States First Circuit Court of Appeals (applying Maine law) found that Section 853 did not toll the limitation period for a plaintiff who “was reasonably self-sufficient throughout the period in question, maintaining employment and paying rent, and hiring counsel twice to protect her rights.” 433 F.3d at 153-54. To justify the tolling of a limitation period for mental illness pursuant to Section 853, it is necessary to demonstrate serious functional disabilities such as an inability to remember, make informed rational judgments and perform everyday activities such as cooking meals, leaving the house and driving. *See, e.g., Bowden*, 675 A.2d at 971-72.

Appellant has failed to show facts sufficient to toll Section 3-108(a)(3)’s limitation period pursuant to Section 853. First, as discussed above Appellant did not submit any competent evidence (nor any statement of material facts) to support her argument that Section 3-108(a)(3)’s limitation period should be tolled; accordingly, she failed to show that an overall inability to function in society prevented her from protecting her rights. *See* M.R.Civ.P. 56(h) (“court may disregard any statement of fact not supported by a specific citation to record

material properly considered on summary judgment”); Summary Judgment at 2, Appendix at 8 (Appellant “did not comply with [M.R.Civ.P.] 56(h) in responding to [Personal Representative’s] Motion for Summary Judgment”); *see also* York Cy. v. Propertyinfo Corp., Inc., 200 A.3d 803, 807 (Me. 2019) (*citing* Drilling & Blasting Rock Specialists, Inc., 147 A.3d at 829 (plaintiff opposing summary judgment motion bears burden of demonstrating factual dispute as to running of limitation period)); *cf.* M.R.Prob.P. 56 (M.R.Civ.P. 56 applies in formal probate proceedings). And the materials that Appellant did submit clearly show that she was able to function in society and protect her legal rights. For example, in her Opposition to Summary Judgment Appellant indicated that she:

1. owned and operated three rental properties, personally participating in the management of those properties, Opposition to Summary Judgment at 1, 2, 3, 4-5, Appendix at 36;
2. drove a motor vehicle, *id.* at 2;
3. sued Appellee twice, through counsel¹⁰, *id.* at 2, 4-5;
4. sought and obtained a protection from harassment order against an alleged stalker (i.e., Dean Brady), *id.* at 2 & exhibit (Temporary Order for Protection from Harassment and Notice of Hearing in Tabatha J.

¹⁰ Appellant sued Appellee twice in the York County Superior Court. In the first action, against Appellee and Sheltra Realty LLC, Appellant was represented by Jeffrey Jones, Esq. and sought partition of certain business real estate assets; that action was resolved with an agreed judgment entered on December 15, 2010. *See* York County Superior Court Docket No. ALFSC-RE-2008-00139, Appendix at 122; Complaint/Petition to Partition, Appendix at 104; Settlement Agreement, Appendix at 128; Order, Appendix at 130. In the second action, Appellant was represented by Eric Cote, Esq. and sought damages for alleged personal injuries; that action was dismissed with prejudice on April 23, 2012. *See* York County Superior Court Docket No. ALFSC-CV-2011-00197. Appellant referenced those actions in her Opposition to Summary Judgment and the Personal Representative presented evidence about them to the Probate Court, *see, e.g.*, Appendix at 36, 104, 122, 128, 130; the Law Court is authorized to take judicial notice of them pursuant to M.R.Evid. 201. *See* In re. Children of Bethmarie R., 189 A.3d 252, 254 n. 1 (Me. 2018) (*citing* Guardianship of Jewel M., 2 A.3d 301, 307 (Me. 2010); M.R.Evid. 201)); King v. King, 66 A.3d 593, 595 n. 1 (Me. 2013).

- Sheltra v. Dean Brady, Biddeford Dist. Ct. Docket No. BIDDC-PA-2017-00534 (Nov. 21, 2017));
5. defended against criminal trespassing charges, through counsel, *id.* at 2 & exhibit (Agreement of Defendant and Order Deferring Disposition in State of Maine v. Janet Sheltra, Biddeford Dist. Ct. Docket No. 11-2155 (Oct. 11, 2011)); and,
 6. traveled between Maine and California, *id.* at 1, 3.

Compare Douglas, 433 F.3d at 153-54 (lack of “emotional and psychological ‘strength’” to sue insufficient to show inability to function in society where plaintiff “was reasonably self-sufficient . . . maintaining employment and paying rent, and hiring counsel twice to protect her rights”). The Probate Court properly determined in its Summary Judgment that Appellant did not satisfy the requirements for tolling pursuant to Section 853, finding that Appellant’s “hospitalizations . . . are not sufficient to toll the statute of limitations” and “she does not allege an overall inability to function in society, and thus there is no genuine issue of material fact.” Summary Judgment at 2, Appendix at 8 (*citing* McAfee, Dasha and Nuccio v. Nuccio, 673 A.2d 1331 (Me. 1996)). The Probate Court’s conclusions in this regard were well founded and correct, and should not be disturbed by the Law Court.

I.D. The Personal Representative was not Equitably Estopped from Opposing Appellant’s Petition

Appellant argues that she “present[ed] a genuine issue of material fact as to whether [the Personal Representative] took deliberate actions to place her in such

fear that she was unable to take steps to protect her legal interest,” and the Personal Representative should therefore be equitably estopped from defending against the Petition to Probate 2004 Will based upon the three year limitation period in Section 3-108(a)(3). Appellant’s Brief at 11. But this argument must fail because Appellant did not submit any competent evidence or statement of material facts in support of her opposition to the Personal Representative’s Motion for Summary Judgment; therefore, she failed to establish a genuine issue of material fact as to equitable estoppel (or any other issue). See York Cy., 200 A.3d at 807 (*citing* Rheume); Bay View Bank, N.A. v. Highland Golf Mortgagees Realty Trust, 814 A.2d 449, 452 (Me. 2002) (*citing* Key Trust Co. v. Nasson College, 697 A.2d 408, 410 (Me. 1997)); *see also* Townsend v. Appel, 446 A.2d 1132, 1134 (Me. 1982) (party asserting equitable estoppel bears burden of proof). And even if she had provided some evidentiary support for her claim, it would have been unavailing because the doctrine of equitable estoppel is inapplicable under the facts as she alleges them. “Equitable estoppel is a doctrine that should be ‘carefully and sparingly¹¹ applied,’” and a party will not be estopped from invoking a limitations defense unless that party “has conducted himself in a manner which actually induces the plaintiff not to take timely action on a claim.” Dasha, 665 A.2d at 995

¹¹ Prior to 1990, the Law Court had never “specifically recognized the application of estoppel to prevent the assertion of a statute of limitations defense to a civil action.” Hanusek v. Southern Maine Med. Center, 584 A.2d 634, 636 n. 2 (Me. 1990). And the Law Court determined that there was “an insufficient basis to apply estoppel” in Hanusek. *See id.*, 584 A.2d at 637.

(*quoting Townsend*, 446 A.2d at 1134 & *Vacuum Sys., Inc. v. Bridge Constr. Co.*, 632 A.2d 442, 444 (Me. 1993)); *see also Nuccio*, 673 A.2d at 1334-35 (*citing and quoting Dasha & Vacuum Sys., Inc.*); *Dugan v. Martel*, 588 A.2d 744, 746-47 (Me. 1991) (*quoting Townsend*); *Hanusek v. Southern Maine Med. Center*, 584 A.2d 634, 636-37 (Me. 1990) (*quoting Townsend*). Thus, to avoid summary judgment on the basis of equitable estoppel Appellant would have had to present competent evidence showing that the Personal Representative actually induced her not to file her Petition to Probate 2004 Will on or before January 15, 2018.

Appellant did not present any evidence that the Personal Representative prevented her from filing the Petition to Probate 2004 Will in a timely manner. That petition was filed very shortly after the three year limitation period had expired, and Appellant has not explained how the Personal Representative prevented her from filing it by January 15, 2018 but she was nevertheless able to file it ten days later on January 25, 2018.¹² Appellant's Opposition to Summary Judgment is extremely vague as to the timing and details of the Personal Representative's alleged conduct that she claims induced her delay, providing

¹² In the Petition to Probate 2004 Will at p. 3, Appellant explains her untimely filing as follows:

Court ordered in another state at filing for deadline. Obstructed to weather hazards. Pipes exploded in my building which had to be closed by code enforcement requiring me to bring 5 gallons of fuel by foot AM & at midnight for 30 days & ongoing not allowed to turn off electricity and car had flat tires 6 times.

Appendix at 18; *see also* Opposition to Summary Judgment at 2, Appendix at 36 (listing frozen pipes, lack of electricity, fueling heating system by hand and flat tires as reasons for late filing).

specific dates only in 2010 and prior; Appellant presented no evidence showing that the Personal Representative prevented her from filing the Petition to Probate 2004 Will throughout the three years between January 15, 2015 and January 15, 2018. *See* Opposition to Summary Judgment at 1-5, Appendix at 36; *see also* Nuccio, 673 A.2d at 1335 (defendant not estopped from asserting time bar because duress did not continue throughout limitation period); *cf.* Hanusek, 584 A.2d at 637 (defendant not estopped from asserting time bar due to “statement . . . made on the day after the alleged negligence” where plaintiffs failed to act for nearly 3 years thereafter). And the Opposition to Summary Judgment makes clear that many of the alleged reasons for Appellant’s delay were due to third parties rather than the Personal Representative; for example, Appellant refers to:

a stalker that [she] had to get a protection from harassment order from and . . . a painter who seemed very nice but who offered [her] an energy drink that turned out to be some dangerous leaf and he assaulted [her] . . . and the energy drink landed [her] sick in bed for 37 days straight. Prior to that [she] had been in bed recovering from having [her face] . . . completely rebuilt due to an assault¹³ 3 months after [the Decedent] died.

Opposition to Summary Judgment at 2, Appendix at 36. Appellant also engaged in extensive unsupported speculation that the Personal Representative was responsible for various mysterious events in her life, claiming for example that she

¹³ Appellant has not alleged that the Personal Representative committed the 2015 assault. *Cf.* Opposition to Summary Judgment at 2, 5, Appendix at 36 (describing facial injuries and Personal Representative’s reaction to seeing Appellant’s face after assault).

could not prove that he had vandalized her property because “[t]he Biddeford police . . . were trying to get his DNA from a cigarette but he doesn’t smoke.” *Id.* at 4, Appendix at 36. Thus, although Appellant makes a variety of broad, vague allegations against the Personal Representative, she has failed to: (1) provide any competent evidence to support those allegations; and, (2) show how the Personal Representative’s alleged conduct prevented her from filing her Petition to Probate 2004 Will in a timely manner. Consequently, she has not established a genuine issue of material fact as to any conduct by the Personal Representative that actually induced her not to take timely action. *See Dasha*, 665 A.2d at 995 (*quoting Townsend*, 446 A.2d at 1134).

II. The Probate Court’s Award of Attorney’s Fees and Costs Should be Upheld

The Probate Court properly awarded attorneys’ fees and costs to the Personal Representative out of Appellant’s portion of the Estate pursuant to 18-A M.R.S. sec. 1-601, because those fees and costs were necessary costs of administering the Estate in accordance with the 2006 Will and were incurred in good faith for the Estate’s benefit. Section 1-601 provides that in contested probate cases, “costs may be allowed to either party . . . as justice requires.” Appellant’s unsuccessful petitions, and her longstanding failure to cooperate in the Estate’s administration, resulted in unnecessary costs and delay for both parties and therefore the interests of justice require that the fees and costs in question

should be paid from Appellant's portion of the Estate. The Probate Court's award of such fees and costs was an appropriate exercise of discretion that should not be disturbed by the Law Court. *See In re Estate of Stowell*, 636 A.2d 440, 442 (Me. 1994) ("decision to award costs, including attorney fees, . . . is left to the sound discretion of the probate judge," *citing In re Estate of Roach*, 595 A.2d 433, 438 (Me. 1991)); *Estate of Brideau*, 458 A.2d 745, 747 (Me. 1983) ("the allowance of 'costs' in contested probate cases rests in the sole discretion of the probate judge" (emphasis omitted)); *Estate of Mitchell*, 443 A.2d 961, 964 (Me. 1982) (Law Court reviews probate court's award of costs under § 1-601 for an abuse of discretion).

The Personal Representative incurred the attorneys' fees and costs at issue in good faith for the benefit of the Estate, as required for an allowance of fees pursuant to Section 1-601. *See generally Estate of Wright*, 637 A.2d 106, 110 & n. 5 (Me. 1994) (*citing and quoting Estate of Voignier*, 609 A.2d 704, 708 (Me. 1992)); *Estate of Brideau*, 458 A.2d at 748). The 2006 Will conclusively states the Decedent's intentions for the distribution of her Estate, and nominates Appellee to serve as Personal Representative. *See* 2006 Will, Appendix at 100. By her Petition to Probate 2004 Will and Petition for Removal, Appellant sought to subvert the Decedent's intentions for her Estate. In contrast, the Personal Representative's Petition for Complete Settlement sought to complete his administration of the Estate through approval of a distribution of Estate assets in

accordance with the 2006 Will, despite Appellant's efforts to prevent and delay such distribution. Thus the Personal Representative's opposition to Appellant's petitions, and his effort finally to settle the Estate through the Petition for Complete Settlement, were undertaken in good faith for the Estate's benefit in order to effectuate the Decedent's intentions as set forth in her 2006 Will. Because the Personal Representative incurred costs and attorneys' fees in good faith for the Estate's benefit, he is entitled to allowance of those costs and attorneys' fees pursuant to Section 1-601. *See* Estate of Marquis, 822 A.2d 1153, 1159 (Me. 2003); Estate of Wright, 637 A.2d at 110; Estate of Brideau, 458 A.2d at 747-48; *see also* In re Estate of Stowell, 636 A.2d at 442; Estate of Voignier, 609 A.2d at 708.

Justice requires that the costs and attorneys' fees at issue be allowed out of Appellant's portion of the Estate. Appellant not only sought to subvert the Decedent's intentions for the Estate, but did so in a manner that was needlessly obstructive and expensive. For example she continued to prosecute her Petition for Removal through the morning of trial but then voluntarily withdrew it, requiring the Personal Representative and his counsel to appear at trial with witnesses and exhibits to address the many issues raised by that petition. She was unresponsive to multiple requests for her participation in mediation ordered by the Probate Court, necessitating the Personal Representative's Motion to Compel Mediation.

She made extensive sensational and irrelevant allegations in her court appearances and filings, necessitating the Personal Representative's Motion in Limine. And she objected pointlessly to trivial matters such as the appraised value of a ring that is to go to her in any event. The Probate Court had ample opportunity to observe Appellant's conduct and demeanor as a litigant. Because the 2006 Will grants the residue of the Estate to the Personal Representative, *see* 2006 Will at 1, Appendix at 100, an allowance of costs and attorneys' fees out of the estate in gross would have the effect of imposing upon the Personal Representative – personally – substantial expenses resulting from Appellant's unsuccessful petitions and obstruction of the Estate's administration. Such an allocation of costs would be fundamentally unjust because it would reward Appellant (and penalize the Personal Representative) for Appellant's recalcitrance. *See, e.g., Estate of Ricci*, 827 A.2d 817, 826 (Me. 2003). Therefore the Probate Court did not abuse its discretion by awarding costs and attorneys' fees to the Personal Representative out of Appellant's portion of the Estate, so that the Personal Representative does not bear them personally.

CONCLUSION

The Probate Court properly granted summary judgment in favor of the Personal Representative on Appellant's Petition to Probate 2004 Will, and awarded costs and fees to the Personal Representative. The Summary Judgment correctly held that the three year limitation period of Section 3-108(a)(3) was not tolled and therefore the Petition to Probate 2004 Will was time barred. Appellant's Opposition to Summary Judgment failed to demonstrate any genuine issue of material fact as to tolling of the limitation period. The Probate Court was best situated to assess the Appellant's conduct as a litigant in the underlying proceedings and with respect to the Estate generally, and did not abuse its discretion in awarding costs and fees to the Personal Representative. Therefore, the Probate Court's Summary Judgment and award of costs and fees to the Personal Representative should not be disturbed by the Law Court.

Date: January 10, 2020

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellee Paul Sheltra hereby certifies that he has this date caused two copies of this Appellee's Brief to be mailed, and one electronic copy thereof to be emailed, to Vanessa Bartlett, Esq., counsel for Appellant Janet Sheltra.

/s/

Date: January 10, 2020

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