

**STATE OF MAINE
CUMBERLAND, SS.**

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

**IN RE: THE ESTATE OF CLAUDETTE SHELTRA
ON APPEAL FROM YORK COUNTY PROBATE COURT**

**REPLY BRIEF OF APPELLANT, JANET SHELTRA
PETITIONER**

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REPLY BRIEF
STATEMENT OF THE ISSUES

- I. PETITIONER'S APPEAL IS TIMELY FILED
- II. TRIAL JUDGE DID NOT ERR IN ACCEPTING PETITIONER'S
RESPONSIVE FILING TO MOTION FOR SUMMARY JUDGMENT

ARGUMENT

I. PETITIONER'S APPEAL WAS TIMELY FILED

Appellee argues that Petitioner's Appeal was untimely filed, and should have been filed upon the Court's ruling on Summary Judgment. Appellant rejects this argument and asserts that the appeal was timely filed.

An appeal can only be taken from a final judgment, with few exceptions. A final judgment is that "fully decides and disposes of the entire matter pending before the Court or administrative agency." MacPherson v Estate of MacPherson, 2007 ME 52, ¶5, 919 A.2d 1174, 1175. There are three exceptions to the final order requirement: The Death Knell Exception, Judicial Economy Exception and the Collateral Order Exception. The instance case does not meet any of these exceptions.

In the instant case, the court entered judgment on one of Appellant's complaints, but did not dispose of the remaining Petition. A final order was not issued until June 28, 2019. (Appendix pp. 4 through 12). Appeal was taken 21 days from the entry of the final order.

Appellee argues that the Court's order on the Motion for Summary Judgment, because it was dispositive of the Petition for Formal Probate and Request for Appointment Representative, made the order a final order under the Collateral Order Exception. However, this exception requires that

“[t]he collateral order exception to the final judgment rule allows an immediate appeal from an interlocutory order ... where (1) that order involves a claim separable from and collateral to the gravamen of the lawsuit; (2) it presents a major and unsettled question of law; and (3) there would be irreparable loss of the rights claimed in absence of immediate review.

Moshe Myerowitz, D.C., P.A., v. Howard, 507 A.2d 578, 580 (Me.1986).

The Summary Judgment order involved a claim separable from and collateral to the gravamen of the lawsuit, and it could be argued that it presents a major and unsettled question of law. However, there were no irreparable loss of the rights claimed in absence of immediate review.

Therefore, the Summary Judgment order is interlocutory and not a final order that does not meet any exception for interlocutory appeal.

II. THE TRIAL JUDGE DID NOT ERR IN ACCEPTING PETITIONER'S RESPONSE TO SUMMARY JUDGMENT MOTION

Appellee filed a Motion for Summary Judgment with a Statement of Material Facts. (Appendix 23, 32) Appellant was granted leave of Court to respond to Appellee's Motion for Summary Judgment beyond the required response time. (App. 4). Appellant did not file a Statement of Material Facts that responded to the Appellee's Statement and to assert any additional facts for the Court to consider. (M.R.Civ. P. Rule 56(h)(2)) If Appellant failed to file such a statement the Court must take all the facts set forth by Appellee in his Statement of Material Facts as true. Michaud v. Blue Hill Memorial Hosp. 942 A.2d 686, 688 (Me. 2008). It does not

automatically require the Court to determine that no genuine issue of material fact exists. (Id.)

A review of the Statement of Material facts presented by Appellee does not present any fact that is dispositive of the question as to whether Appellant met any of the exceptions to the statute of limitations. Thus, there remains a genuine issue of material fact as to whether any tolling exception applied to this case to toll the statute of limitations. "When facts, though undisputed, are capable of supporting conflicting yet plausible inferences — inferences that are capable of leading a rational fact-finder to different outcomes in a litigated matter depending on which of them the fact-finder draws —then the choice between those inferences is not for the court on summary judgment." Lougee Conservancy, 2012 ME 103, ¶ 11, 48 A.3d 774.

CONCLUSION

Based upon the arguments set forth above and those set forth in Appellant's Brief, the Court should vacate the Summary Judgment order and final order, and remand to the Probate Court for further proceedings.

Respectfully Submitted,

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