

ESTATE OF GLORIA P. HALL

Argued February 7, 2011
Decided March 17, 2011

Panel: SAUFLELY, C.J., and LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Jonathan S. Hall and Eastern Bank appeal from a summary judgment in favor of Jeffrey H. Hall entered in the Cumberland County Probate Court (*Mazziotti, J.*) on Jonathan and the Bank's petition for formal probate of a will executed by Gloria P. Hall in 1993. Jonathan and the Bank contend that the court erred in determining that Gloria's 1993 will may not be probated given the terms of a will she executed in 2004, and notwithstanding a 2007 separation agreement purporting to require probate of the 1993 will.

We dismiss the appeal as interlocutory. *See Estate of Kingsbury*, 2008 ME 79, ¶ 4, 946 A.2d 389, 392. Although the court considered the operation of the 1993 and 2004 wills and the 2007 separation agreement on paper, the parties have yet to litigate the validity—in terms of testamentary capacity, undue influence, or otherwise—of the 2004 will itself. *See* 18-A M.R.S. §§ 3-401, 3-407 (2010). Until the validity of the 2004 will is determined, its effect on the 1993 will, and its interaction with the 2007 separation agreement, cannot be established as a matter of law. *See* 18-A M.R.S. §§ 2-507, 2-701 (2010); Mass. Ann. Laws ch. 191, § 8 (LexisNexis 1994); Mass. Ann. Laws ch. 259, § 5 (LexisNexis 2004). No final judgment exists for our review. *See Kingsbury*, 2008 ME 79, ¶ 4, 946 A.2d at 392.

The entry is:

Appeal dismissed.

Attorney for Jonathan S. Hall and Eastern Bank:

Dana E. Prescott, Esq. (orally)
Prescott, Jamieson, Nelson & Murphy, LLC
PO Box 1190
Saco, Maine 04072

Attorneys for Jeffrey H. Hall:

James B. Smith, Esq.
Michael J. O'Toole, Esq. (orally)
Woodman Edmands Danylik & Austin, P.A.
234 Main Street
PO Box 468
Biddeford, Maine 04005

Cumberland County Probate Court docket number 2009-737
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