

ESTATE OF MICHAEL R. CANNON

Argued March 4, 2019
Decided March 12, 2019

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Anne E. Cannon appeals from a judgment of the York County Probate Court (*Chabot, J.*) awarding custody and control of Michael R. Cannon's remains to Patricia Robinson pursuant to 22 M.R.S. § 2843-A (2018).¹ Anne argues that the Probate Court (1) erroneously allocated to her the burden to prove that Robinson, Michael's domestic partner, had not exercised her rights and responsibilities of custody and control of his remains within four days after his death, (2) erred in concluding that Robinson had timely exercised her rights, and (3) failed to consider or apply its discretionary authority to determine who was "most fit" to make decisions regarding Michael's remains. *Id.* § 2843-A(1)(D), (2), (4). We recognize that both parties sought to honor their understandings of Michael's final wishes throughout these proceedings, but are satisfied that the Probate Court's judgment is without error.

First, the Probate Court did not err in allocating the burden of proof to Anne. Robinson's rights as next of kin are given priority by the plain language of the statute, which further provides that she retains her rights unless it is shown that she has failed to timely exercise them. *Id.* § 2843-A(1)(D), (2). Second, the Probate Court did not err in concluding that Robinson timely

¹ Section 2843-A was amended several times during the pendency of this case, but not in any way that affects this appeal. P.L. 2017, ch. 475, § A-31 (effective Dec. 13, 2018); P.L. 2017, ch. 402, § C-49 (effective July 1, 2019).

exercised her rights because there is sufficient evidence in the record to support the court's finding and Anne has not demonstrated that a contrary finding is compelled by the evidence. *See id.* § 2843-A(2); *In re Estate of Greenblatt*, 2014 ME 32, ¶ 12, 86 A.3d 1215; *St. Louis v. Wilkinson Law Offices*, 2012 ME 116, ¶ 16, 55 A.3d 443. Finally, the court did not err in not reaching the separate question of who was “most fit”—as defined by the statute—to make decisions regarding Michael's remains. 22 M.R.S. § 2843-A(4). Because the court's proper application of the statutory priority was sufficient to establish Robinson's rights, whether to make such an additional inquiry was purely within the court's discretionary authority and the court did not abuse its discretion in declining to do so, especially where there was no petition for a determination of fitness before the court. *See id.*; *Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 24, 961 A.2d 538.

The entry is:

Judgment affirmed.

David P. Mooney, Esq. (orally), Portsmouth, New Hampshire, for appellant Anne E. Cannon

Jill S. Cramer, Esq. (orally), and Christopher R. Causey, Esq., Bourque Clegg Causey & Morin, LLC, Sanford, for appellee Patricia Robinson