

ESTATE OF VERRILL R. WORCESTER JR.

Submitted on Briefs April 14, 2020
Decided April 30, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

David Hull, the “disinterested trustee” of the Verrill R. Worcester, Jr. Family Trust, appeals from an order of the Washington County Probate Court (*Holmes, J.*), acting on a petition for instructions filed by the co-personal representatives of Verrill R. Worcester Jr.’s estate.¹ See 18-A M.R.S. § 1-308 (2018).²

Verrill R. Worcester Jr. died testate in February 2018. Worcester’s will devised the residue of the estate to the trust. The court found, however, that the trust was terminated pursuant to its terms by the majority vote of Worcester’s children and grandchildren, and was therefore unavailable to receive the residuary assets of the estate.

Contrary to Hull’s contentions, the Probate Court did not err in finding that Worcester did not intend to benefit his grandchildren unless one or more of his children had passed. See *Estate of Utterback*, 521 A.2d 1184, 1188

¹ In the same order, the Probate Court also denied Hull’s petition for the removal of the personal representatives of Worcester’s Estate.

² The citations in this memorandum are to Title 18-A, the Probate Code in effect at the time of the court’s order. The Code has been repealed and replaced with a new Probate Code, codified in Title 18-C, which became effective on September 1, 2019. See P.L. 2019, ch. 417; P.L. 2017, ch. 402.

(Me. 1987); *Estate of Cushman*, 501 A.2d 811, 813 (Me. 1985). Nor did the court err in concluding that the majority vote to terminate the trust, taken prior to the distribution of the estate residue and pursuant to the terms of the trust, rendered the trust unavailable to receive the distribution.³ See *Clark v. Clark*, 2019 ME 158, ¶¶ 9-11, 219 A.3d 1020.

Therefore, the Probate Court properly instructed the co-personal representatives to distribute the estate residue according to the rules of intestacy.⁴ See *White v. Fleet Bank*, 1999 ME 148, ¶ 20, 739 A.2d 373.

The entry is:

Judgment affirmed.

Joseph W. Baiungo, Esq., Belfast, for appellant David Hull

Jeffrey W. Jones, Esq., Catherine Haynes Fenton, Esq., and Timothy W. Stanley, Esq., Jones, Kuriloff & Sargent, LLC, Ellsworth, for appellees Craig & Deyanne Worcester

Washington County Probate Court docket number 2018-051
FOR CLERK REFERENCE ONLY

³ Because the Probate Court needed to consider the trust instrument for the purpose of determining whether the trust was available to receive the residuary devise, we are unpersuaded by Hull's extrinsic evidence argument and we do not address it further.

⁴ As the court observed, distribution pursuant to the trust would have been identical to distribution according to the rules of intestacy.