

JUDITH E. SAWYER-BAUTZ et al.

v.

CINDY A. AUSTIN et al.

Submitted on Briefs July 8, 2009

Decided July 30, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

#### MEMORANDUM OF DECISION

The children of Robert F. Sawyer—Judith E. Sawyer-Bautz, Richard A. Sawyer, and Diane L. Sawyer—appeal from a judgment of the York County Probate Court (*Nadeau, J.*) in favor of Cindy A. Austin and Michael Austin on the Sawyer children’s complaint alleging that Cindy had breached her fiduciary duty as personal representative of Sawyer’s Estate and that the Austins, acting in their individual capacities, had converted property of the Estate and breached a care and maintenance agreement into which they had entered with Sawyer. Sawyer’s children also appeal from the court’s judgment on the Estate’s counterclaim for the return of certain items in Diane’s possession, including an automobile.

Contrary to the contentions of Sawyer’s children, (1) the court did not err in finding that the automobile in Diane’s possession was part of the Estate, *see Estate of Fournier*, 2009 ME 17, ¶ 18, 966 A.2d 885, 891; (2) the record supports the court’s finding that the Estate’s sale of a tractor was proper; *see Estate of Voignier*, 638 A.2d 732, 733 (Me. 1994); (3) the court did not err in upholding the Estate’s sale of personal property, which would have been part of the residual estate, to cover the Estate’s costs, *see* 18-A M.R.S. § 3-902 (2008); (4) the court did not abuse its discretion in awarding \$500 in attorney fees to the Austins and the Estate for defending against a frivolous motion for return of the proceeds from the sale of the tractor, *see* M.R. Prob. P. 11(a)(2); M.R. Civ. P. 11(a); *Estate of Dineen*, 1998

ME 268, ¶ 10, 721 A.2d 185, 188; and (5) the court did not err in authorizing the Austins to withhold money that the will directed them to deliver to Sawyer's children, pending the payment of attorney fees, *see* 18-A M.R.S. §§ 1-302(b), 3-720 (2008).

The entry is:

Judgment affirmed.

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and Richard A. Sawyer :**

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