

Will contest wrongly tossed on summary judgment

By: Eric T. Berkman ◉ May 21, 2021

The Rhode Island Supreme Court has determined that a widow who sought to challenge her estranged husband's will did not fail to perfect her probate appeal as the trial judge had found.

Plaintiff Virginia Garan was separated from her late husband, attorney John P. Garan, at the time of his death. She objected to probate of his will — which named his married secretary and former college girlfriend, defendant Laurel Conway, as executrix and left his law firm assets to her — on undue influence grounds.

When the plaintiff sought to appeal a Probate Court judge's order rejecting her challenge, a Superior Court judge granted summary judgment for Conway, finding that Garan failed to perfect her appeal by requesting a certified copy of her claim and paying the required fees in strict compliance with the procedural requirements of G.L. 1956 §33-23-1.

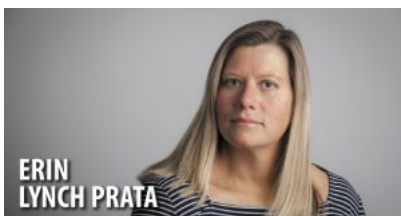
That statute requires anyone appealing a Probate Court order to file with the probate clerk a claim of appeal to the Superior Court; to file a request for a certified copy of the claim and the record; and to pay the clerk relevant fees within 20 days of the decree.

Here, the Superior Court judge found insufficient evidence that the plaintiff ever made a written request for a certified copy of a second, amended claim, which the judge deemed the operative claim, citing vagueness in her affidavits as well as a competing affidavit from a clerk in the Probate Court that cast doubt on her having done so.

But the Supreme Court reversed, finding that the plaintiff's initial claim, which it described as virtually identical to the amended one, sufficed.

"The record shows that the appellant has claimed that she paid sufficient fees for a certified copy of the first claim of appeal and that the probate court clerk has indicated in her affidavit that, when a certified copy is requested, it is the practice of the clerk's office to issue that copy the same day," Justice Erin Lynch Prata wrote for the court, adding that the claim-of-appeal form states on its face that the undersigned claimant "request[s] a certified copy of said claim."

Accordingly, Lynch Prata said, "we hold that the appellant perfected her probate appeal, and we therefore reverse the decision of the Superior Court granting summary judgment in favor of the appellee."



The 16-page decision is Estate of Garan, John P., Lawyers Weekly No. 60-025-21. The full text of the ruling can be found at: <https://rilawyersweekly.com/blog/2021/05/11/wills-and-trusts-appeal-perfection/>

Trap doors and tripwires

A pleased Bernard A. Jackvony of Johnston, counsel for the plaintiff, said the estate was trying to argue that Garan did not follow the statute and

that the appeal was not timely filed.

“Essentially, the issue was that she supposedly never requested or received the certified copy, and that was incorrect because the document itself acts as the request for the certified copy since that’s what it says on the notice of appeal.”

Jackvony said the decision is important because if an appellant does not meet all the statute’s requirements, there is no cure.

“Historically, it’s been tricky and there have been amendments to [the statute] to cure what ended up being some pretty draconian results,” he said.

The Supreme Court’s ruling makes sure the statute is not interpreted to add on additional requirements, such as the defendant’s argument that the proper fee was not paid for the certified copy — when the statute does not set a specific amount.

“The point is that when someone is taking an appeal from a probate proceeding — typically a family member — there won’t be any trap doors or tripwires to perfecting the appeal,” he said.

Providence lawyers Brittanee N. Bland and Charles N. Redihan Jr., who represented Conway, did not respond to requests for comment.

Imperfect appeal?

The plaintiff’s husband died of cancer on May 25, 2015.

His last will and testament, executed on Oct. 4, 2014, named the defendant as executrix and left her the assets from his law firm.

The plaintiff subsequently objected to probate, alleging undue influence and lack of testamentary capacity.

After a hearing, a Pawtucket Probate Court judge issued an order on Sept. 7, 2017, admitting the will to probate, finding no evidence to support the allegations.

Nineteen days later, on Sept. 26, 2017, the plaintiff filed her claim of appeal in Probate Court.

CASE: Estate of Garan, John P., Lawyers Weekly No. 60-025-21

COURT: Rhode Island Supreme Court

ISSUE: Did a widow who sought to challenge her estranged husband’s will fail to perfect her probate appeal?

DECISION: No

She returned later that day to file a second version of her claim of appeal, largely identical to the first. Form language on both claims stated that the undersigned claimant “request[s] a certified copy of said claim.”

She also apparently paid the clerk at least \$1.50 for a copy.

The plaintiff subsequently retained Jackvony's firm as counsel. On Oct. 4, 2017, a legal assistant for the firm visited the Probate Court Clerk's Office requesting and obtaining certified copies of the plaintiff's two claims of appeal and paying fees totaling \$10.18 for certified copies of both.

Two days later, the plaintiff filed her reasons of appeal in Superior Court, including a certified copy of her second claim of appeal, which copy had been issued by the Probate Court on Oct. 4.

In her answer, the defendant alleged as an affirmative defense that the plaintiff had failed to affect her appeal and moved for summary judgment.

In support of her motion, the defendant submitted an affidavit from Holly St. Jean, a municipal clerk at the Probate Court, who stated that whenever someone appears in person at the Clerk's Office to order a certified copy, it is the office's practice to issue it the same day, apparently implying that the plaintiff must not have specifically made such a request when she filed her second claim of appeal.

The plaintiff, in response, submitted two affidavits and two receipts showing \$11.68 in payment of fees at the Probate Court Clerk's Office.

The defendant contested the sufficiency of the fees documented by the receipts, providing a list of fee amounts from the Probate Court indicating that certified copies cost at least \$3 and asserting the fees had to be paid within the statutory filing period.

The plaintiff, in a reply, attached an amended affidavit alleging that she had requested and paid for a certified copy of the first claim of appeal using a \$10 bill, without obtaining a receipt.

The defendant countered that the absence of any proof of a written request for a certified copy of the second claim of appeal was dispositive of her failure to perfect her appeal.

She also contended that the plaintiff's failure to produce evidence showing she had paid for a certified copy within the statutory period proved she did not comply.

Judge Melissa A. Darigan granted the motion, finding that while it was undisputed that a notice of appeal was filed during the first 20-day period, the evidence did not show that the plaintiff made a request for a certified copy of the claim.

Specifically, the judge noted that in two separate affidavits, the plaintiff never claimed to have requested a certified copy of the second claim, which was clearly meant to be the "operative notice of appeal."

The plaintiff's appeal to the Supreme Court followed.

Appeal restored

Reviewing Darigan's decision de novo, the Supreme Court found that the plaintiff did, in fact, comply with statutory requirements in perfecting her appeal.

"[B]ecause the differences between the two claims filed were de minimis, amounting to the elimination of surplus verbiage that was neither substantive nor material, there is no question that either of appellant's two filed claims was 'sufficient to provide notice and to confine the appeal to those enumerated issues' identically stated in both," Lynch Prata said, quoting the Supreme Court's 2012 *Mendes v. Factor* decision.

Regarding Darigan's finding that there was an absence of evidence that the plaintiff had submitted a timely request for certification of her claim, the court pointed out that each claim of appeal form submitted to the Superior Court as evidence stated clearly on its face that the undersigned claimant was requesting a certified copy.

"Our review of the admissible evidence, viewed in the light most favorable to appellant, reveals that summary judgment was not justified as to appellant's request for a certified copy of her claim, as there was competent evidence before the Superior Court proving the existence of a disputed issue of material fact," Lynch Prata said.

As to the issue of fees, Lynch Prata said the record showed that the plaintiff claimed she paid sufficient fees for a certified copy of her first claim of appeal, which was virtually identical to her second one, and accordingly her probate appeal.

Thus, the court concluded, summary judgment should be reversed.

Issue: MAY 24 2021 ISSUE