

INTRODUCTION TO THE 2025 EDITION

The 2025 update to Ross & Reed, *Will Contests* is a review of current cases, statutes and secondary materials that relate to challenges to post-death transfer of assets by wills, trusts, deeds, contracts and bank accounts.

The update, covering the year beginning in March 2024 and ending in March 2025, reflects a large number of decisions affecting procedural issues such as parties and jurisdiction. Decedents continue to make more post-death distributions outside the probate system using a wide variety of instruments and disposition plans.

Here are some of the highlights:

Chapter 3. Parties

This year's update on standing to sue includes *Rorie v. McClain-Peterson*, 103 Mass. App. Ct. 1127, 230 N.E.3d 1061 (2024) (unpublished decision). The plaintiff was the executor of the estate of her husband. The decedent's three children were named as beneficiaries of an annuity purchased by the decedent. After the decedent's death the plaintiff filed a civil action alleging the three children conspired to have their father buy the annuity designating them beneficiaries. Held: The plaintiff/executor lacked standing to sue the McClean children individually and as executor of her husband's will.

See also *Matter of Estate of Mather*, 546 P.3d 181 (Kan. Ct. App. 2024), unpublished. Held: The daughter had standing to challenge the second codicil in her mother's will even though she was her executor. And *In re Est. of Janssen*, 7 N.W. 3rd 516 (2024). Held: When an indispensable party who has been joined and participates in pending litigation affirmatively agrees to be dismissed without objection by any party, the statute requiring joinder of all parties to a will contest has been satisfied.

Chapter 4. Jurisdiction

Federal courts are building jurisprudence on the probate exception, expanding on the three-element test for exercise of diversity jurisdiction. In *Cagle v. Sattler as trustee of Toni Jean Reitman Revocable Living Trust*, 2024 WL 2834063 (D. Or. 2024), the district court held it lacked jurisdiction to hear a declaratory judgment action to construe a revocable living trust because the

trust received funds from decedent's estate by means of a pour-over will. This represents a conservative view of the three-element test. See also *Horton v. Tayloe*, 2024 WL 1619522 (10th Cir. No. 23-6139 April 15, 2024). Held: The plaintiff may not maintain a civil RICO complaint in district court that attacks the probate court's processing of a probate estate. The RICO claim is precluded by the probate exception.

Chapter 6. Testamentary Capacity

Maryland law contains what appears to be a separate ground for invalidating the will. In *Constance and Carl Ferris Charitable Operating Foundation v. Meyer*, 2025 WL 32608 (Md. Ct. Spec. App. 2025), the Maryland Court of Appeals held that the testator lacked the ability to have knowledge and understanding of the contents of her 2010 will, despite a determination that she was of sound and disposing mind and memory, i.e. having testamentary capacity. Unusual circumstances existed such that she did not have knowledge and understanding of the contents of her will.

Chapter 7. Undue Influence

Louisiana allows a testament to be set aside due to undue influence by a preponderance of the evidence if the alleged influencer was not a family member and had a confidential relationship with the testator. See *Succession of Mouton*, 380 So. 3d 783 (La. Ct. App. 3d Cir. 2024), holding the trial court correctly applied the burden of proof by a preponderance because the beneficiaries of her will had a confidential relationship with the decedent.

In *Taylor v. Kraft*, 2024 WY 74, 552 P.3d 351 (Wyo. 2024), the court also held that the burden of proof by a contestant on the issue of undue influence remains the preponderance of the evidence. The court also overruled *Matter of Waters' Est.*, which held that the burden of proof for a testamentary claim of undue influence may change depending on the presence of "suspicious circumstances."

Chapter 8. Other Grounds for Contest and Extra-Probate Remedies

Tennessee has a special rule on payment of family members for services rendered prior to death. In *Est. of Queener v. Griffith*, 2024 WL 2105656 (Tenn. App. No. E2023-00722-COA-R3-CV May 10, 2024), the defendant family member received compensation for managing the decedent's money. The court determined that the defendant should pay the estate of her family member the amount of money paid to her because family members are gener-

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ally precluded from receiving compensation, because rendering the services was motivated more by love and affection than by expectation of compensation.

In *In re Est. of Mergenthaler*, 2024 WL 4052994 (CA No. 2020-0804-MTZ Sept., 2024), the Vice Chancellor considered whether Delaware has accepted the tort of tortious interference with a legacy. The Vice Chancellor stated that Delaware has yet to recognize the tort.

Salmon v. Tafelski, 235 N.E. 3d 867 (Ind. App. 2024). The plaintiff filed a civil action for tortious interference with an inheritance against her sister, who was also administrator of her mother's estate. The mother died intestate. The plaintiff did not contest the failure of the administrator to collect assets belonging to the mother's estate but unlawfully transferred to the sister prior to her mother's death. The court recognized the plaintiff had the right to sue for damages due to tortious interference. Held: The complaint should be dismissed because the plaintiff failed to use the probate code remedies for conversion of assets.

New Hampshire may require a written contract to make mutual wills to enforce an agreement between a couple who were not married, *Tremblay v. Bald*, 176 N.H. 439, 320 A.3d 30 (2024). The court also found continued cohabitation sufficient consideration to form an enforceable contract.

In *Carey v. Hartz*, 2024 IL App (1st) 231323 No. 1-23-1323 Dec. 18, 2024), the Illinois Appellate Court held in a case of first impression that the attorney who drafted the testator's will had no affirmative duty to assess the testator's mental capacity and was not guilty of malpractice for any failure to assess the testator's mental state.

A few courts have rules that a person holding a durable power of attorney for an elderly person who appropriated property from the decedent's assets during life, and failed to carry out the decedent's estate plan, was liable for breach of fiduciary duty to the persons who were entitled to share in the decedent's estate if the holder of the power of attorney had performed the acts necessary to carry out the decedent's wishes. See, e.g., *Broy v. Broy*, 698 S.W.3d 801 (Mo. App. 2024) transfer denied Sept. 9, 2024.

Chapter 9. Lifetime Transfers

The Louisiana Appellate Court held in *Landry v. Hypolite*, 381 So.3d 977 (La. App 3rd Cir. 2024), writ denied, 386 So. 3d 674 (La. 2024), that the decedent, who received an annuity as part of the settlement of her claim arising from brain injuries suffered in an auto accident did not possess the necessary mental capacity to execute a change of beneficiary to her annuity.

In *Standard Insurance Co. v. Guy*, 115 F.4th 518 (6th Cir. 2024), the son murdered his mother to collect on her ERISA-based life insurance policy as designated beneficiary. Held: ERISA did not preempt Tennessee's slayer statute. In addition, federal common law would deprive a slayer of the fruit of his criminal act. The designated beneficiary is not entitled to any insurance proceeds.

Gratz v. Gratz, 2024 WL 3598835 (M.D. Pa. 2024). Held: A claim that the decedent changed his ERISA-based life insurance policy designation of beneficiary due to undue influence will be adjudicated according to Pennsylvania law and the federal common law. ERISA has no provision for asserting an undue influence claim, so state law and the federal common law control the outcome of the undue influence claim.

Chapter 10. Multiparty Accounts

In *Kelso v. Applington*, 173 Idaho 664, 548 P.3d 363 (2024), the court held that Idaho Code Ann. § 15-6-104(a) requires the surviving joint account customer who claims ownership of the account balance to show by clear and convincing evidence that the donor intended to give the surviving account customer the balance of the account. The executor of the decedent's estate raised material issues of fact concerning the decedent's intent to make joint account customer a gift.

Thomas J. Reed
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