

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 21-CV-3875

In Re: Jennifer Harman

**ORDER RE: SECOND AMENDED APPEAL FROM PROBATE COURT**

At issue is the appeal of a Probate Court order denying Appellants Jennifer and Charles Harman's motion for intervention in docket 332-6-20 Wnpr. Appellants are the remainder beneficiaries of the Trust of David E. Rogers, which in turn is a beneficiary of Mr. Rogers' estate. While lacking a biological or legal relationship with Mr. Rogers, Appellants assert that they had a close familial bond with him. However, Appellants are not beneficiaries to the estate in their own right and were not granted party status in the estate proceeding.

In relevant part, the procedural history is as follows. On July 14, 2021, Appellants moved to intervene in the estate proceedings, arguing that as remainder beneficiaries they have a property right or claim against the estate and that Mr. Rogers promised them certain properties before his death that have since been sold by the trustee of the estate. On September 29, 2021 the Probate Court denied the motion, noting that Appellants are not heirs at law to the decedent; that they are not beneficiaries under the will; that residual trust beneficiaries to trusts are not interested parties in estate proceedings involving the trust; and that the Appellants did not offer compelling evidence that they had a vested interest in any property sold by the trustee that could have otherwise granted them interested party status.

Appellants filed a notice of appeal to the Civil Division on October 29, 2021. Appellants then filed a V.R.C.P. 60 motion on November 29, 2021, seeking relief from the September 29 order in light of newly discovered evidence, in the form of an affidavit allegedly supporting the existence of a second will. Before the Probate Court had occasion to address the motion, Appellants withdrew it, and refiled it as an appeal to the Civil Division, removing the Rule 60 framing.

In their appeal, Appellants argue that the Probate Court erred by denying intervention and that their longstanding relationship with the decedent and alleged fraud on the part of the trustee should permit them to intervene despite not being heirs or will beneficiaries. Appellants additionally argue that they should be allowed to intervene to conduct limited discovery about the existence of the purported second will. Finally, Appellants contend that the Court should expand the definition of interested parties, in order to reflect the complexities of modern family arrangements. In her reply, Appellee Wendy Rivera, special administrator of the estate, argues that Appellants have failed to demonstrate any legal interest that would grant them interested party status, and that allowing Appellants to intervene at this stage would needlessly complicate the proceedings.

A hearing was held on March 14, 2022. The Court now considers the parties' arguments.

### Standard of Review

Appeals from probate to the civil division are taken de novo. *In re Trustees of Marjorie T. Palmer Trust*, 2018 VT 134, ¶ 34, 209 Vt. 192 (citation omitted). “The record on appeal shall consist of the papers and exhibits filed in the probate division, a statement of the questions which the appellant desires to have determined, and any transcript of the proceedings furnished by the parties.” V.R.C.P. 72(c). No pleadings are required, but the statement of questions must be submitted “to focus the issues for the court.” *In re Trustees of Marjorie T. Palmer Trust*, 2018 VT 134, ¶ 34.

### Questions on Appeal

First, Appellants ask the Court to review the Probate Court’s order denying their motion to intervene and to determine whether the Probate Court abused its discretionary authority by doing so.

Second, Appellants ask the Court to consider whether they should be allowed to intervene in order to conduct limited discovery about the existence of an alternate will, under which they may be direct beneficiaries.

Finally, Appellants ask the Court to reconsider the definition of “stranger” for purposes of determining interested parties in the context of estate proceedings, in light of the complexities of modern family structure.

### Analysis

To Appellants’ first question, the Court agrees with the Probate Court that Appellants are barred from intervening, as they are remainder beneficiaries of the trust, not legal heirs or beneficiaries under the will. See *In re Estate of Piche*, 166 Vt. 479, 483 (1997) (“A “stranger” to the estate is generally defined as a person or entity that is not an heir or beneficiary under the will.”). While a bona fide property right or claim in the estate could be the basis for intervention, V.R.P.P. 24(b)(2), Appellants have not shown that the decedent promised them property prior to his death beyond unsupported assertions and a document showing a contingent remainder interest in a property disposed of prior to Mr. Rogers’ passing. The Court finds these grounds insufficient to establish a property right or claim against the estate that would permit intervention.

To Appellant’s second question, the Court finds that it lacks the jurisdiction to rule on this issue. Apart from specific exceptions not relevant to the present appeal, the Civil Division only has appellate jurisdiction over probate division subject matter. 12 V.S.A. § 2553. Issues that have not been resolved by the Probate Court are not ripe for appellate review. *In re Trustees of Marjorie T. Palmer Trust*, 2018 VT 134, ¶ 35. Appellants’ claim about the second will was not effectively raised in the lower proceedings and was not addressed by the Probate Court when denying Appellants’ intervention. Therefore, the Court lacks jurisdiction to review this claim, as the issue has not yet been resolved by the lower court. Furthermore, the affidavit Appellants

submitted in support of this claim was likewise never presented to the Probate Court and was not obtained until after the Probate Court issued its order. As the record on appeal is restricted to exhibits and documents filed in the probate proceeding, the Court cannot consider this affidavit. V.R.C.P. 72(c).

Finally, to Appellants' third question, their request to broaden the scope of interested parties also lies outside of the Court's jurisdiction. In the context of decedent estates, "interested person" is strictly defined by the Legislature. 14 V.S.A. § 204(1). The power to change that definition lies solely with the Legislature. See Vt. Const. ch. II, § 6 ("[The Legislature] may prepare bills and enact them into laws"). If the Court sought to change the definition of its own accord, it would overstep its authority and plainly violate the separation of powers. See *In re Opinion of the Justices*, 115 Vt. 524, 529 (the judicial power is "the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction"); cf. *Hunter v. State*, 2004 VT 108, ¶ 21, 177 Vt. 339 ("Indeed, consolidation of power in any one agency of government represented . . . the very definition of tyranny. . . . To apply the requirement we must determine the powers of each of the branches and ensure no one exercises powers belonging to another.") (citation and quotation omitted).

#### ORDER

For the foregoing reasons, the Probate Court's order denying Appellants' motion for intervention is affirmed, and Appellants' other requests on appeal are denied.

SO ORDERED this 18<sup>th</sup> day of March, 2022



Robert A. Mello  
Superior Judge