

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 709-12-13 Wrcv

In Re: Trust of Virginia B. Newman

DECISION RE: FRANK LAMSON'S MOTION FOR SUMMARY AFFIRMANCE
BASED ON LACK OF STANDING AND ROGER LAMSON'S MOTION FOR
CLARIFICATION

This matter is before the court on Frank Lamson's ("Frank's") Motion for Summary Affirmance Based on Lack of Standing, filed December 12, 2013.¹ This decision will also address Roger Lamson's ("Roger's") Motion for Clarification, filed December 24, 2013.²

BACKGROUND

This appeal concerns the Trust of Virginia B. Newman (the "Trust"), a revocable trust established for Virginia Newman's benefit while she is living, and, thereafter, to be terminated and distributed equally between her two sons, Frank and Roger.

Roger initiated this appeal on December 4, 2013, challenging the Probate Division's November 19, 2013 Decision Re: Frank Lamson's Motion to Substitute Virginia B. Newman for Petitioner or to Dismiss for Lack of Standing (the "Probate Decision"). The Probate Decision found that Roger lacked standing to bring his claims against Frank for alleged breach of trust because Roger is not a current beneficiary or co-trustee of the Trust.

On December 12, 2013, Frank moved for summary affirmance of the Probate Division's ruling that Roger lacks standing to bring this action. Roger countered this motion through various filings including an opposition, allegations in opposition, a response to Frank's statement of uncontested facts, a statement of questions on appeal, and affidavits.

In its December 18, 2013 entry order, the court explained that "[t]he narrow issue of standing is appropriate to decide based upon pleadings." Entry Regarding Motion, filed Dec. 18, 2013, p. 1. Roger challenged this ruling in his opposition, filed January 31, 2014, arguing that Frank's motion is more-appropriately characterized as a motion to dismiss. Roger further asserted that his filings are sufficient to survive a motion to

¹ As the court explained in an entry order dated December 18, 2013, this motion will be treated as a motion for summary judgment.

² In addition to addressing these two motions, the court will also grant Frank Lamson's Motion for Leave to Reply, filed February 4, 2014. Accordingly, the court will consider Frank's Reply Supporting his Motion for Summary Affirmance Based on Lack of Standing, also filed February 4, 2014.

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dismiss and that he has standing to appeal (1) his removal as co-trustee and (2) the Probate Division's holding that Roger was not the appropriate party to bring a breach of trust claim against Frank.

DISCUSSION

To prevail on a motion for summary judgment, a movant must demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). In ruling on a motion for summary judgment, the court will take "all allegations made by the nonmoving party as true." *Richart v. Jackson*, 171 Vt. 94, 97 (2000). Here, because Frank has moved for summary judgment, Roger is afforded the benefit of all reasonable doubts and inferences. See *In re Beliveau NOV*, 2013 VT 41, ¶ 7, 72 A.3d 918.

As an initial matter, summary judgment is appropriate at this point in the proceedings.³ "When the record becomes clear enough to disclose that further discovery is not needed to develop significant aspects of the case and that such discovery is not likely to produce a genuine issue of material fact, discovery should be ended." *State v. Heritage Realty of Vermont*, 137 Vt. 425, 429 (1979). The court does not believe that discovery would uncover any issues of material fact regarding Roger's standing.

As explained below, the question of Roger's standing must be addressed before his substantive allegations are considered. Roger admits that he is not a co-trustee of the Trust, see Roger Lamson's Assertions in Opp. to Frank Lamson's Mot. for Summ. Affirmance Based on Lack of Standing, ¶ 7, and acknowledges that "[d]uring [Virginia] Newman's life, the trust provides that she will receive all of the income from the trust." *Id.*, ¶ 8. Accordingly, he does not dispute the material facts regarding his relationship to the Trust and summary judgment is therefore appropriate on this issue. See *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 2 (2002) ("A dispute with regard to the legal significance of a fact or facts, as opposed to the facts themselves, will not preclude summary judgment.").

The subject of this appeal is solely the Probate Decision. That was the only decision identified by Roger in his Notice of Appeal, filed December 4, 2013. In the Probate Decision, the Probate Court found that "Roger has no standing to pursue a breach of trust action because the trust remains revocable." Probate Decision, p. 6. Therefore, this court will address the issue of Roger's standing first. See *In re Estate of Swington*, 733 A.2d 62, 64 (Vt. 1999) ("The chair of the Board followed sound practice in first determining the issue of Talon Hill's standing to bring the matter before expending the full Board's time and resources on a hearing.").

³ Roger's argument that the instant motion should be treated as a motion to dismiss rather than a motion for summary judgment also fails. V.R.C.P. 56 establishes that "[a] party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or court order." V.R.C.P. 56(b) (emphasis added). Further, even if the court were to treat this motion as a motion to dismiss, Roger's lack of standing would still make dismissal appropriate. See *Brigham v. State*, 2005 VT 105, ¶ 9, 179 Vt. 525 ("[I]f a plaintiff does not have standing, a court must exercise judicial restraint and dismiss the complaint for lack of subject-matter jurisdiction.").

The Probate Decision established that Roger did not have standing to pursue his breach of trust action against Frank because Roger did not have a current interest in the Trust. Generally, “a party who is not injured has no standing to bring a suit.” *U.S. Bank Nat’l Ass’n v. Kimball*, 2011 VT 81, ¶ 12, 190 Vt. 210. The court agrees with the Probate Decision. Roger is neither a co-trustee, nor current beneficiary of the Trust. He does not have a current interest in the Trust and, therefore, does not have standing to bring his breach of trust action. The facts that Roger previously served as a co-trustee and may become a beneficiary of the Trust in the future are irrelevant for determining whether he has standing at this point.

Because the court concludes that Roger does not have standing to bring his breach of trust action, it will not address Roger’s Statement of Questions, filed January 2, 2014. *See Whitaker v. Frito-Lay, Inc.*, 88 F.3d 952, 959 n.13 (11th Cir. 1996) (“Because the standing question goes to the court’s jurisdiction, it is a threshold question that must normally be reviewed prior to the consideration of substantive questions.”). Roger cannot bootstrap his other allegations onto this appeal when he does not have standing to bring those allegations before the Probate Division. This court would need to consider those questions only if Roger had standing.

ORDER

Frank’s Motion for Summary Affirmance Based on Lack of Standing is hereby GRANTED.

Roger’s Motion for Clarification is hereby GRANTED in part, and DENIED in part, meaning that in making this decision, the court did consider Roger’s opposition to Frank’s Motion for Summary Affirmance Based on Lack of Standing, but did not consider Roger’s Statement of Questions.

Dated at Woodstock, Vermont, this 20th day of February, 2014.



Honorable Harold E. Eaton, Jr.
Superior Court Judge

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