

VERMONT SUPERIOR COURT
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CIVIL DIVISION
No. 26–CV–02697

In re Cynthia Stone

MOTION TO DISMISS ORDER

This matter is before the Court on an appeal from the Probate Division’s decision that it lacked authority to consider Cynthia Stone’s petition. Cynthia Stone is the appellant, and Cheryl Gordon, as Trustee of the Mary Britch Family Trust, is the appellee. The Appellee filed a motion to dismiss the claim, stating this Court lacks jurisdiction to hear the Appellant’s appeal because it was not timely filed. For the reasons explained below, the Court grants Appellee’s motion to dismiss.

Procedural & Factual History

Cynthia Stone filed a petition to commence a trust proceeding with the probate division on October 29, 2025. She alleged the trustee failed to carry out her duties pursuant to 14A V.S.A. § 813. Ms. Stone requested the “trustee to submit all financial documents pertaining to the management of trust assets” from “April 9, 2018 to present.” See Petition to Open a Trust, 25-PR-06823 (filed 10/29/2025). The probate division granted relief to Ms. Stone on November 26, 2025, without a hearing. See Entry Order, 25-PR-06823 (filed 12/1/2025).

On December 11, 2025, the Mary Britch Family Trust (“the Trust”) filed a motion to vacate and dismiss the proceeding on the basis that Ms. Stone was not a qualified beneficiary entitled to initiate a trust proceeding. The Trust argued that since Ms. Britch was still alive, she was the only qualified beneficiary. See Motion to Vacate Entry Order and Dismiss Proceeding, 25-PR-06823 (filed 12/11/2025). On December 22, 2025, the Probate Court suspended the November 26, 2025 order and set a hearing for January 7, 2026. See Entry Regarding Motion, 25-PR-06823 (filed 12/22/2025).

At the January 7, 2026 hearing, it was disclosed that Ms. Britch died on January 3, 2026. As a result, the Probate Court gave the parties 15 additional days to file memoranda before ruling on the matter. See Entry Order, 25-PR-06823 (filed 1/7/2026). Both parties submitted memoranda.

The Probate Court issued an order granting the Trust’s motion to dismiss on the ground that Ms. Stone had no standing at the time the original petition was filed because she was not a qualified beneficiary at that time. See Entry Regarding Motions, 25-PR-06823 (filed 1/29/2026). Ms. Stone submitted additional filings after the order, and the Probate Court reiterated its decision, stating that “the Mary Britch Trust does not fall under the jurisdiction of the Probate Division.” See Entry Regarding Motion, 25-PR-06823 (filed 2/9/2026).

On February 23, 2026, Ms. Stone filed an unsigned motion to reverse the order dismissing the case and to reinstate the prior entry order as well as a motion to find the trustee in breach of trust. See Unsigned Motion to Reverse Entry Order and Reinstate Entry Order, 25-PR-06823 (filed 2/23/2026); Motion to Find Trustee in Breach of Trust, 25-PR-06823 (filed 2/23/2026). The motions were denied on March 17, 2026; the motion to reverse was denied on procedural grounds because Ms. Stone failed to request reconsideration within 14 days of the judgment, but the motion to find trustee in breach of trust reaffirmed the Probate Court's determination that it did not have jurisdiction. See Entry Regarding Motion, 25-PR-06823 (filed 3/17/2026).

Ms. Stone then made an additional request for reconsideration after the Court's March 17, 2026 order that denied reconsideration, arguing that the prior request to reconsider was delayed due to excusable neglect. The Probate Court again reaffirmed its finding that it lacked subject-matter jurisdiction to open a trust proceeding. See Entry Regarding Motion, 25-PR-06823 (filed 5/1/2026).

Ms. Stone filed this notice of appeal to the Superior Court on May 4, 2026

Conclusions of Law

The question raised by Appellee is whether Ms. Stone's appeal was timely. Rule 72 of Vermont Rules of Civil Procedure governs appeals from the probate division. Rule 72 states that probate appeal timelines are governed by Rule 4 of the Rules of Appellate Procedure. V.R.C.P. 72(a). Rule 4 states an appeal must be filed "within 30 days after the entry of the judgment." V.R.A.P. 4. This deadline is strictly enforced and jurisdictional, meaning the Superior Court will lack authority to hear an appeal filed after the period expires. *In re Trs. of Marjorie T. Palmer Tr.*, 2018 VT 134, ¶ 29, 209 Vt. 192.

The final order disposing of the probate matter was entered and filed on January 29, 2026. See Entry Regarding Motions, 25-PR-06823 (filed 1/29/2026). Generally, the 30-day time limit to appeal would start to run from this date. However, a timely motion to alter or amend a judgment will toll – or pause – the running of the time period. V.R.A.P. 4(b)(5). But if the motion is not timely, it does not effectively toll the thirty-day appeal period. *Id.*; *In re Beach Props., Inc.*, 2015 VT 130, ¶ 8, 200 Vt. 630 (refusing to consider an appeal where a motion to reconsider was filed beyond the applicable 30-day time limit and as a result failed to toll the time limit). In the Probate Division, a motion to reconsider or alter judgment must be filed within 14 days of the final judgment to be considered timely. V.R.P.P. 60(c).

After the final order on January 29, Ms. Stone made subsequent email filings within 14 days of that order. The Probate Court responded to these filings stating they "raise[] nothing that causes the court to alter or reconsider its decision." See Entry Regarding Motion, 25-PR-06823 (filed 2/9/2026). These motions and the February 9, 2026 decision were the end of the tolling allowed under Rule 4(b)(5), and the 30-day clock began on February 9, 2026.

Although Ms. Stone made subsequent filings after including a Motion to Reverse Entry Order and Reinstate Entry Order and a Motion to Find Trustee in Breach of Trust, these are irrelevant to the timing analysis. *Fagnant v. Foss*, 2013 VT 16A, ¶ 12, 194 Vt. 405. This is because the Vermont Supreme Court has held that only the first motion to amend the judgment or request reconsideration tolls the appeal timeline. *Id.* The reason for this policy is that otherwise, the finality of judgment would be compromised, allowing parties to indefinitely extend the appeal period through successive motions. *Id.*

However, even if the Court were to consider the filings made on February 23, 2026 as effectively tolling the appeal timing because they were made within 28 days of the January 29, 2026 order, *see* V.R.A.P. (b)(7), it would still not affect the analysis. The Probate Order disposing of those two motions was filed on March 17, 2026. The 30-day window to appeal in turn expired on April 16, 2026, but Ms. Stone did not file this appeal until May 4, 2026. See Notice of Appeal to Civil Division, 25-PR-06823 (filed 5/4/2026).

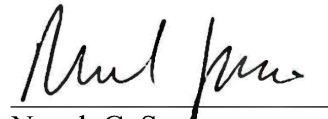
As the Court noted, litigants have only one opportunity to toll the appeal period. See *Fagnant*, 2013 VT 16A, ¶ 12. For that reason, the Court does not consider Ms. Stone's additional March 27 filing in its timeliness calculation.

The Court finds that Ms. Stone did not file the appeal within 30 days of the final order, after accounting for tolling of the time to file. As a result, the appeal is not properly before this Court and the decision of the Probate Division is final.

ORDER

The Court grants Appellee's Motion to Dismiss Ms. Stone's appeal. The case is dismissed with prejudice.

Electronically signed on August 12, 2026, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Navah C. Spero", written over a horizontal line.

Navah C. Spero
Superior Court Judge