
IN THE MATTER OF THE
ESTATE OF FRANK D.
CARONE

: SUPREME COURT OF NEW JERSEY

: DOCKET NO. 091316

: Submission Date: November 24, 2025

: CIVIL ACTION

IN THE MATTER OF THE
ESTATE OF ROSEANN
CARONE

: A Petition for Certification from the
September 25, 2025 Judgment of the Superior
Court of New Jersey, Appellate Division
Docket Nos. A-000858-24; A-000860-24

: Sat below: Hon. Hany A. Mawla, J.A.D.
Hon. Joseph A. Marczyk, J.A.D.

: Trial Court Docket Nos. P227937; P228307

: Sat below: Honorable Frank Covello, P.J. Ch.

**REPLY BRIEF ON PETITION FOR CERTIFICATION OF
APPELLANTS-PETITIONERS
ANTON MAYER AND FRANCISCO MAYER**

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TABLE OF CONTENTS

	<u>Page</u>
LEGAL ARGUMENT	1
I. Certification Is Warranted	1
II. Plaintiffs Have Standing	4
III. No Theory of Estoppel Deprived Plaintiffs of Standing	7
CONCLUSION	10

TABLE OF AUTHORITIES

Page(s)

Cases

In re Camden Cnty.,
170 N.J. 439 (2002) 2

Hacker v. Jaime-Valdez,
482 N.J. Super. 169 (App. Div. 2025) 7, 8, 9

In re Hand’s Will,
95 N.J. Super. 182 (App. Div. 1967) 5

Jen Elec., Inc. v. Cnty. of Essex,
197 N.J. 627 (2009) 2

In re Lent,
142 N.J. Eq. 21 (Ct. Err. & App. 1948) 6

In re Maxson’s Will,
90 N.J. Super. 346 (App. Div. 1966) 5

In re Myers’ Will,
20 N.J. 228 (1955) 3

N.J. Citizen Action v. Riviera Motel Corp.,
296 N.J. Super. 402 (App. Div. 1997) 1

In re Prob. of Will & Codicil of Macool,
416 N.J. Super. 298 (App. Div. 2010) 6

Va. H.D. v. Bethune-Hill,
587 U.S. 658 (2019)..... 1

Watkins v. Resorts Int’l Hotel & Casino, Inc.,
124 N.J. 398 (1991) 1

Rules

R. 2:12-4 1, 3

LEGAL ARGUMENT

I. Certification Is Warranted.

Contrary to Defendants' argument, certification is warranted in this case for two clear reasons. First, this Court should intervene to correct a grievous misapplication of bedrock standing jurisprudence in the probate context. R. 2:12-4 (certification warranted where decision under review "is in conflict with any other decision of the same or a higher court"). While the facts of this case are unique, the Appellate Division's unduly restrictive view of standing in probate disputes will have far-reaching implications. Second, the interest of justice requires certification to prevent an absurd and manifestly unjust result in this case: the probate of presumptively invalid wills. R. 2:12-4 (certification warranted "if the interest of justice requires").

With respect to standing, this Court has emphasized that "[s]tanding is a threshold requirement." Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 417 (1991); see also N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411-12 (App. Div. 1997). "It neither depends on nor determines the merits of a plaintiff's claim." Watkins, 124 N.J. at 417. Further, the issue of whether a plaintiff has standing is immutable and does not depend on the parties' litigation conduct. "Standing cannot be waived," N.J. Citizen Action, 296 N.J. Super. at 411-12, nor can it be forfeited, e.g., Va. H.D. v. Bethune-Hill, 587 U.S.

658, 662-63 (2019). Put simply, a party has standing or it does not, it is a threshold determination made to ensure that courts are not put in the position of rendering advisory opinions on hypothetical disputes. E.g., In re Camden Cnty., 170 N.J. 439, 449 (2002).

Critically, standing is liberally construed. This Court has admonished that courts are to err on the side of hearing disputes on the merits:

Our liberal rules of standing are animated by a venerated principle: In the overall we have given due weight to the interests of individual justice, along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits.

Jen Elec., Inc. v. Cnty. of Essex, 197 N.J. 627, 645 (2009) (citation modified).

The Trial Court and Appellate Division—at Defendants’ urging—warped the nature of the standing requirement in this case, and more generally in probate matters, from a threshold requirement to a merits-based determination on whether a specific prior will should be admitted to probate. Defendants’ brief to this Court lays bare the backwards, merits-based approach to standing Defendants advanced, which was unfortunately adopted by the Trial Court and Appellate Division. According to Defendants, the courts below were right to deprive Plaintiffs of standing based on estoppel (discussed below), because there is a “very real possibility that the trial court could ultimately conclude after [a] lengthy trial that no Wills predating 2021 can be probated.” (Db20.)

That is not how standing (or for that matter, estoppel) works. The basic question for standing is whether a court *could* accord relief to Plaintiffs. Here, the Trial Court obviously could, by invalidating the 2021 and 2022 Wills and admitting any known prior will of Decedents to probate, all of which name Francisco as a beneficiary and most of which name both Plaintiffs. Whether the Court *should* grant that relief is a merits question, not a standing one.

The lower courts' adoption of Defendants' unduly restrictive, merits-based standing test is alone basis for certification, as it runs counter to this Court's and the Appellate Division's standing jurisprudence. And, as discussed in Section II, *infra*, it makes it very easy to get away with undue influence, as happened here. Notably, this Court has not opined in any detail on standing in will contests for seventy years, In re Myers' Will, 20 N.J. 228, 235-36 (1955), and that vacuum has clearly led to confusion in this context.

The need for certification is compounded by the result in this case, which should be corrected in the interest of justice. R. 2:12-4. Despite Defendants' quibbles with whether the Trial Court's ruling was reduced to writing,¹ there can be no dispute as to what the Trial Court said regarding the 2021 and 2022 Wills:

¹ Defendants' focus on this ruling not being in writing makes little sense, as the estoppel ruling that led to Defendants prevailing below was also never reduced to writing. (3T7-8.)

Well, I mean I don't know about you, but in my practice when I did wills, I didn't have other people in the room^[2] during the execution. But this guy [Mr. Zimmerman] did. And this guy is the attorney for the Defendants, the alleged undue influencers. So add to that there's the business relationship and the parent-child relationship. I think you've got the relationship and the suspicious circumstances to grant the motion on summary judgment on that issue of shifting the burden.

(1T16:7-15.) Indeed, the Trial Court was sufficiently concerned by the circumstances—and particularly Mr. Zimmerman's dual role as Defendants' estate planning attorney—that he shifted the burden to disprove undue influence *by clear and convincing evidence*. (3T3:22-4:6 (emphasis added).)

Unless Defendants meet that burden at trial, the 2021 and 2022 Wills are, in fact, presumptively invalid as the product of undue influence. But, absent this Court's intervention, such a trial will never occur, and the 2021 and 2022 Wills will be admitted to probate, despite the Trial Court's acknowledgement of the alarming circumstances surrounding their execution. That is an unjust result.

II. Plaintiffs Have Standing.

Defendants' argument that Plaintiffs lack standing is really an argument for application of estoppel, addressed in Section III, *infra*. Defendants accuse Plaintiffs of “shift[ing] gears” and changing arguments (Db13-16), but largely

² The 2021 Wills were actually signed in a car, on the side of Third Avenue, with Defendant Anton Sr. present the entire time. (Pa0450 at ¶¶122-124; Pa0518 at 191:8-18.)

elide the issue of whether Plaintiffs have standing. They do. Francisco is aggrieved by the probate of the 2021 and 2022 Wills because he would inherit if *any* other known prior will of Decedents were instead admitted to probate. In re Maxson's Will, 90 N.J. Super. 346, 348 (App. Div. 1966). And, Anton Jr. would inherit under the only two Draft Wills the Trial Court actually found to be validly executed at the limited issue trial, from 2007 and 2011. See id.

Defendants' position that Plaintiffs, upon learning of the Draft Wills, were required to "elect" one will, to the exclusion of all others, as a basis for standing is not supported by any case law. To the contrary, the Appellate Division in In re Hand's Will expressly endorsed the proposition that a court can consider the validity of multiple wills simultaneously in assessing standing. 95 N.J. Super. 182, 189 (App. Div. 1967) ("There is ample authority for a probate court to determine at one hearing the validity or invalidity of all existing wills of a testator."). Nothing in Hand's Will supports Defendants' view that Plaintiffs had to choose a single, prior will as a basis for standing or that Plaintiffs should lose their standing for choosing the "wrong" will, when at least Francisco has standing under any of them.³

³ Defendants' hollow argument that Hand's Will cites out-of-state case law (Db15-16) misses the mark. The court in Hand's Will clearly adopted the rulings and logic of those out-of-state cases in ordering a remand so that the trial court could consider the validity of multiple wills at issue in a single proceeding. Id. at 189-91.

Defendants' theory that a plaintiff has to elect one will out of potentially many to have standing also makes it disturbingly easy to get away with undue influence, as this case illustrates. After Plaintiffs came forward with the 2006 Wills, Mr. Zimmerman, who by this time had already submitted a certification in support of Defendants' motion to dismiss, came forward with the trove of Draft Wills, all naming Francisco and most naming both Plaintiffs. Whatever impact these Draft Wills have on the merits of this dispute, they should have had no impact on standing. But, the Trial Court ultimately held that Plaintiffs needed to pick one, and if they picked wrong, they lacked standing. This is precisely the concern flagged by the Court of Errors and Appeals more than 75 years ago, when it recognized that intermediate wills could be used by "unscrupulous fortune seekers" to immunize a later will from challenge. In re Lent, 142 N.J. Eq. 21, 22-23 (Ct. Err. & App. 1948).

There is also no merit to Defendants' argument that none of the Draft Wills can be probated (and thus Plaintiffs lack standing) because Plaintiffs disputed the Draft Wills were executed. The Trial Court must ultimately determine *Decedents'* probable intent in deciding whether a prior will should be probated. In re Prob. of Will & Codicil of Macool, 416 N.J. Super. 298, 307 (App. Div. 2010). The fact that *Plaintiffs* were skeptical of the validity of the unsigned, Word document format Draft Wills does not bear on whether

Decedents intended one of the Draft Wills to be their last will and testament, before succumbing to Defendants' undue influence and executing the challenged 2021 and 2022 Wills. As noted above, that the Trial Court *might* conclude that there is no pre-2021 Will that reflects Decedents' testamentary intent (Db20) is a merits issue, not a basis to conclude that Plaintiffs lack standing.

III. No Theory of Estoppel Deprived Plaintiffs of Standing.

Estoppel does not deprive Plaintiffs of standing. Plaintiffs start with judicial estoppel, in part because it highlights the egregiousness of the Appellate Division decision. The Trial Court never once mentioned judicial estoppel, nor did it ever suggest that the facts of this case rise to the extreme level necessary to invoke the doctrine—*i.e.*, Plaintiffs took contrary or inconsistent positions resulting in a *miscarriage of justice*. Hacker v. Jaime-Valdez, 482 N.J. Super. 169, 181-82 (App. Div. 2025).

The only reason judicial estoppel was even before the Appellate Division was because Plaintiffs addressed it preemptively in their opening Appellate Division brief. (PADb28-31).⁴ They did so because it was unclear how the Trial Court came to its unexplained estoppel ruling (3T7-8), and Plaintiffs felt compelled to address it as a *possible* basis. That said, it is far-fetched that the

⁴ Plaintiffs' Appellate Division Brief.

Trial Court intended to impose the draconian remedy of judicial estoppel, with no explanation, and baffling that the Appellate Division affirmed on this basis.

Defendants misconstrue the facts and procedural history of this case in an attempt to backfill a basis for judicial estoppel by suggesting that Plaintiffs asserted “contradictory or inconsistent position[s] at trial.” (Db17.) They did not. At the motion to dismiss stage, the Trial Court properly recognized that Plaintiffs had standing both under the 2006 Wills that they asserted should be probated, as well as the subsequent Draft Wills. (Pa1237 at 24:25-25:23.)

Believing the issue of their standing to be settled, Plaintiffs never took *any* further position on the issue of standing until the summary judgment stage,⁵ when Defendants revived the issue.⁶ As soon as Defendants argued that the

⁵ Defendants repeatedly conflate Plaintiffs’ requested relief (probate of the 2006 Wills) with the issue of standing. That Plaintiffs stated they were seeking probate of the 2006 Wills did not foreclose any other available relief. By Defendants’ logic, a personal injury plaintiff claiming \$1 million in damages is judicially estopped from obtaining any relief and lacks standing if the defendant can show damages are actually \$999,999.

⁶ The lack of any intermediate motion practice distinguishes this case from Hacker. There, the plaintiff filed a motion before a federal bankruptcy court to lift the automatic stay on the grounds that it was only seeking damages up to the defendant’s available insurance policy limits, and thus no property at issue in the bankruptcy estate would be impacted by the plaintiff’s personal injury suit in the Law Division. 482 N.J. Super. at 174-75. The bankruptcy court agreed and issued an order lifting the stay so that the plaintiff could pursue the policy limit of \$200,000. Id. at 176. When a jury then awarded the plaintiff \$1.6 million, the plaintiff insisted that the defendant was responsible for the excess,

2006 Wills were revoked and thus Plaintiffs lacked standing, Plaintiffs pointed out that at least Francisco would have standing under any of the Draft Wills and Anton Jr. would have standing under most of them. (1T5, 9, 11-12.) There was no change in position on summary judgment, and thus no basis for judicial estoppel—Plaintiffs merely argued the very point the Trial Court had recognized at the outset: they had standing under multiple wills.

Defendants' contention that Plaintiffs tried to invalidate the Draft Wills at the limited issue trial and then claimed to have standing under them as a basis for estoppel is completely circular. (Db17-19.) The Trial Court had already ruled, pre-trial, that the only way Plaintiffs would have standing is if they could prove the 2006 Wills were the last validly executed wills of Decedents; *i.e.*, all of the Draft Wills were invalid. (3T7-8.) The Trial Court's pre-trial estoppel ruling thus forced Plaintiffs to abandon the alternative argument that Plaintiffs had standing under the Draft Wills and to instead seek to invalidate them.

Equitable estoppel should have been rejected for similar reasons—there was no change in position or conduct by Plaintiffs that would justify application of the doctrine. (See Db18 (complaining of Plaintiffs' "shifting position").) Moreover, Defendants' decision to base their case strategy on Plaintiffs'

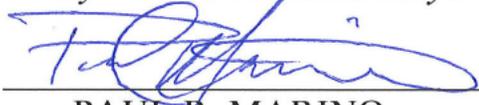
despite having gotten around the bankruptcy stay by voluntarily limiting its damages. Id. Nothing of the sort occurred here.

statements that they were seeking to probate the 2006 Wills was unreasonable, because it was based on an erroneous view of the law. Again, there is no support for the principle that for standing purposes, Plaintiffs were required to elect one prior will of Decedents to the exclusion of all others (despite at least Francisco being named in all of them). Plaintiffs should not have been estopped based on *Defendants'* unjustified beliefs regarding standing. And if, as Defendants suggest, the Trial Court's estoppel ruling was really an expression of doubt regarding Plaintiffs' ability to prove that any of the Draft Wills reflected Decedents' testamentary intent (Db20), the Trial Court was not permitted to apply equitable estoppel simply to avoid a trial it thought Plaintiffs might lose.

CONCLUSION

For the reasons stated above, and in Plaintiffs' Petition for Certification, Plaintiffs respectfully request that the Court grant their Petition for Certification, reverse the decision of the courts below, and remand this matter to the Trial Court for a trial on the merits of Plaintiffs' undue influence claims.

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Dated: November 24, 2025