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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
PROBATE PART  
MONMOUTH COUNTY  
DOCKET NO. MON-P-422-24

IN THE MATTER OF THE  
ESTATE

OF

LOIS FOSTER,

Deceased.

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**OPINION**

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Decided: February 27, 2026.

Law Offices of Barry E. Janay, PC (Max J. Roseman,  
Esq., appearing), attorneys for plaintiff Harold Walker.

Davison Eastman Munoz Paone PA (Christopher D.  
Olszak, Esq., appearing), attorneys for defendant Lisa  
Walker.

FISHER, P.J.A.D. (t/a, retired on recall)

Defendant's dismissal motion poses an unusual standing question: does a  
plaintiff have standing to contest a will if he is only the next-of-kin of a person,

now deceased, who would have benefited if the will were invalidated? Considering the low and generous bar for standing in a will contest, the court answers that question in the affirmative.

Lois Foster died on August 11, 2022; a few months earlier, she purportedly executed a Will which favored one granddaughter, defendant Lisa Walker, and disinherited Lois's only daughter, Rose L. Phelps, as well as Lois's other three grandchildren. The Will was admitted to probate on May 26, 2024, twenty months after Lois's death. But for this Will, it appears Lois would have died intestate,<sup>1</sup> and the laws of intestacy would cause her estate to pass to Rose. Rose died on June 27, 2023, ten months after Lois's death and eleven months before Lois's Will was admitted to probate. So, if Lois's Will is invalidated, Lois will likely be deemed to have died intestate,<sup>2</sup> and Rose alone would inherit from her. Since Rose appears to have died intestate, her next of kin would have inherited from Rose whatever Rose inherited from Lois.

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<sup>1</sup> Our intestacy laws declare that if there is no surviving spouse, as here, an intestate estate passes to the decedent's surviving "descendants by representation." N.J.S.A. 3B:5-4(a).

<sup>2</sup> While, during argument on this motion, the court was provided with some earlier anecdotal information about another Will having been seen ten years earlier, no sworn statement or evidence was offered by anyone to support or suggest that.

One of Rose’s descendants, plaintiff Harold Walker, alone commenced this action, alleging among other things that Lois lacked capacity or was unduly influenced in the execution of her June 2022 Will. Lisa – the named executrix and sole beneficiary of Lois’s Will – now moves to dismiss this action, arguing Harold lacks standing. She contends that if, as Harold asserts, Lois’s Will were to be invalidated, then it wouldn’t be Harold who would benefit but Rose (or, with Rose’s intervening death, her estate) because Rose was Lois’s only next of kin. From those facts Lisa argues that Rose’s estate is the only interested party, not Harold.

Lisa is not wrong that Rose’s estate has standing to sue.<sup>3</sup> But that doesn’t mean the beneficiaries of Rose’s estate, like Harold, don’t. In arguing to the contrary, Lisa contends Harold is not the “real party in interest,” invoking Rule 4:26-1. The question of standing in this instance, however, is governed by Rule 4:85-1, which allows a will contest to be asserted and prosecuted by “any person aggrieved by” the probating of a will, thus suggesting a broader scope of claimants than what Lisa contends. Cases hold that Rule 4:85-1’s “aggrieved” standard coincides with the class of persons entitled to lodge a caveat; that class includes anyone “who would be injured” by the probate of a will. See In re

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<sup>3</sup> It appears letters of administration of Rose’s estate were never sought.

Myers' Will, 20 N.J. 228, 235 (1955); In re Holibaugh, 18 N.J. 229, 232 (1955); In re Probate of Alleged Will of Landsman, 319 N.J. Super. 252, 262 (App. Div. 1999); In re Probate of Alleged Will of Hughes, 244 N.J. Super. 322, 325 (App. Div. 1990). Judge Alfred C. Clapp, author of the influential multi-volume Wills and Administration in New Jersey,<sup>4</sup> explained in In re Coleman's Will that an “aggrieved” person is, in this context, no different than a “person in interest” and that aggrievement has long been the test for standing to contest a will, citing New Jersey opinions,<sup>5</sup> as well as out-of-state decisions, from an even earlier generation of judges. 27 N.J. Super. 532, 535-36 (App. Div. 1953). This seems broader than the “real” party in interest requirement of Rule 4:26-1.

But Rule 4:26-1, upon which Lisa relies, also presents a low bar for standing. As a general matter, the Supreme Court has held that standing exists whenever a claimant has “a sufficient stake” in the matter, relying for that broad view on how our 1947 Constitution intended a “sweeping[] reject[ion] [of] procedural frustrations in favor of ‘just and expeditious determinations on the

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<sup>4</sup> First written by Judge Clapp in 1937, the most recent edition can now be found in volumes five through nine of the New Jersey Practice series.

<sup>5</sup> In re Estate of Myers, 69 N.J. Eq. 793 (E. & A. 1906), Middleditch v. Williams, 47 N.J. Eq. 585 (E. & A. 1890); In re Van Doren's Estate, 119 N.J. Eq. 80 (Prerog. Ct. 1935).

ultimate merits.” Crescent Park Tenants Assoc. v. Realty Equities Corp., 58 N.J. 98, 107-08 (1971) (quoting Tumarkin v. Friedman, 17 N.J. Super. 20, 21 (App. Div. 1951)). Nothing has since changed. Our courts “always have employed ‘liberal rules of standing.’” Jen Elec., Inc. v. Cnty. of Essex, 197 N.J. 627, 645 (2009); N.J. Builders Assoc. v. Bernards Twp., 108 N.J. 223, 227 (1987). In short, the standing requirement in any case presents a rather slim threshold and claims of standing should be broadly indulged in most cases. See In re New Jersey State Contract A71188, 422 N.J. Super. 275, 289 (App. Div. 2011) (recognizing our courts “have traditionally taken a generous view of standing in most contexts”); see also Tully v. Mirz, 457 N.J. Super. 114, 123 (App. Div. 2018); Slutsky v. Slutsky, 451 N.J. Super. 332, 370 (App. Div. 2017).

And so, considering both the specific standing test in probate matters as well as the “generous” approach to standing in general, Lisa’s motion to dismiss may be granted only if it is clear Harold would not be injured by Lois’s Will. There is no question Harold will suffer harm if Lois’s Will is not set aside. While it is true that the harm to Harold is indirect – or, to be precise, that the benefits obtained from a successful challenge to the Will must first pass to Rose’s estate before Harold may inherit from Rose – the harm is nevertheless real and in no way illusory. Harold is not an interloper, In re Quinlan, 70 N.J. 10, 35 (1976), nor is he a stranger to this dispute, N.J. State Chamber of Commerce v. N.J.

Elec. Law Enforcement Comm., 82 N.J. 57, 68 (App. Div. 1980). His mother Rose was Lois's only next-of-kin, and he is Rose's next-of-kin; that's enough of a stake to confer standing. Unless we are to turn the clock back to the pre-1947 days of "procedural frustrations," Harold's action shouldn't be barred because his entitlement to a portion of Lois's estate – if his action proves successful – must first pass through Rose's estate.

Motion denied.<sup>6</sup>

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<sup>6</sup> While it might be better for the efficient administration of justice and otherwise behoove the parties to bring all others with an interest into this action to avoid later disputes or suits, and in that regard it would make sense for there to be an application for letters of administration of Rose's estate so that such an administrator might then be joined as a party to this action, the court concludes that Harold has standing to challenge Lois's Will.