Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-341

FEBRUARY TERM, 2005

In re Estate of Catherine Williams	}	APPEALED FROM:
	}	
	}	
	}	Lamoille Superior Court
	}	
	}	
	}	DOCKET NO. 9-1-04 Lecv

Trial Judge: Edward J. Cashman

In the above-entitled cause, the Clerk will enter:

Laura Brueckner appeals from a superior court order dismissing her appeal from an order of the Lamoille Probate Court. The superior court dismissed the appeal on the ground that the underlying probate court order was not a final judgment. Although Brueckner raises numerous claims on appeal relating to the underlying merits of the probate court order, we conclude that the superior court's dismissal for lack of jurisdiction was incorrect, and reverse on that basis.

The factual and procedural background may be summarized as follows. In October 1999, Brueckner and Catherine Williams entered into a lease as joint tenants for a safe deposit box with the Union Bank in Morrisville. The lease provided that upon the death of one of the joint tenants, the bank

> may refuse access to the Safe, except to list its contents for tax purposes or for any other purpose required or permitted by law; and may refuse to allow withdrawal of any contents thereof . . . until the Institution is satisfied that all requirements, Federal, State or local, relative to notice, access to the Safe, and withdrawal of its contents, have been met.

The lease further provided that, as to two or more renters, the lease created a joint tenancy as to the lease itself but did not "affect the title to any contents of the Safe."

Williams died in November 2002. Jane Lohmann was appointed executor of the estate, and both she and Brueckner subsequently sought access to the safe deposit box. Brueckner apparently claimed that she was entitled to open the box without being observed and to distribute the contents as she saw fit. The bank denied both requests for access, and thereafter moved to intervene in the pending probate proceedings for a judicial determination concerning access to the box and the disposition of its contents. In April 2003, the probate court issued an order appointing a commissioner to open the box in the presence of both Lohmann and Brueckner and to distribute the contents. In July 2003, the commissioner opened the box, which included various stock certificates and five certificates of deposit, one of which named Brueckner as beneficiary. The commissioner filed an inventory of the contents of the box with the probate court. Brueckner did not dispute that all of the materials in the box belonged to the estate, and they were distributed accordingly.

In September 2003, the bank filed with the probate court a request for reimbursement of costs and attorney's fees, allegedly totaling $4,995.75, incurred in connection with the motion for intervention. The bank relied on a provision of the lease in which the renter agreed to hold the institution harmless for all costs and expenses in any suit relating to the contents of the safe deposit box. In December 2003, the probate court issued an interim order, finding that Brueckner's

"unreasonable demands" had necessitated all of the expenses incurred by the bank and the commissioner; that it would be unfair to charge the estate for those expenses; and that Brueckner was therefore required to pay the bank's reasonable expenses, reduced by the court to $3,449.78, and the commissioner's expenses of $785.59. It is not entirely clear whether the order was based on the lease agreement or some other ground, although the court—citing In re Gadhue, 149 Vt. 322 (1988)—observed that in "unusual cases" it may award attorney's fees "as justice requires." See 149 Vt. at 329-30 (noting narrow exception to "American Rule" where dominating reasons of justice are present to preclude award of attorney's fees absent statute or agreement).

Brueckner appealed the interim order to the superior court, which issued a brief entry order dismissing the appeal on the ground that it was "premature" as there was no "final order" in the underlying probate proceeding. This pro se appeal followed.

Although Brueckner raises numerous claims concerning the probate orders granting the bank leave to intervene, appointing the commissioner, and apportioning costs and legal fees to Brueckner, we decline to address these claims. We conclude, rather, that the trial court erred at the threshold in dismissing Brueckner's appeal for lack of jurisdiction. Accordingly, we reverse the judgment, and remand to the superior court for consideration of these claims.

The superior court's jurisdiction to hear appeals from probate court is set forth in 12 V.S.A. § 2555, which provides: "Except as otherwise provided, a person interested in an order, sentence, decree or denial of a probate court, who considers himself injured thereby, may appeal therefrom to the superior court." We have interpreted this provision to hold that, "an interested party may only take an appeal from the probate court if the order appealed from is final as to the subject matter before the court." In re Estate of Seward, 139 Vt. 623, 624 (1981). An order is final if it "disposed of all matters that should or could properly be settled at the time and in the proceeding then before the court." In re Estate of Webster, 117 Vt. 550, 552 (1953); accord State v. CNA Ins. Cos., 172 Vt. 318, 322 (2001); Morrisseau v. Fayette, 164 Vt. 358, 367 (1995).

Apart from general pronouncements defining finality in terms of the "subject matter before the court" or "all matters . . . in the proceeding then before the court," the subject of what actually constitutes a final judgment for purposes of appeal from a probate court order under § 1225 has received little detailed discussion. Nevertheless, for many years, decisions of this Court according final-judgment status to a variety of probate-court orders short of a final disposition of the entire probate proceeding have tacitly recognized that probate proceedings often entail a series of decisions concerning discrete issues over a lengthy period of the guardianship or administration of the estate. See, e.g., In re Estate of Flynn, 158 Vt. 268, 270-71 (1992) (accepting jurisdiction of appeal from probate court orders granting motion to intervene and replace trustee of estate); In re Cary's Estate, 81 Vt. 112, 121 (1908) (noting that probate court order denying remaindermen's petition to compel accounting by trustee of life estate "was final as to the petitioners and one from which they could appeal"); Hilliard v. McDaniel's Adm'r, 48 Vt. 122, 126 (1874) (addressing appeal by administratrix of estate from probate court orders extinguishing her authority and appointing administrator as replacement); State v. McKown, 21 Vt. 503, 507 (1849) (addressing guardian's immediate appeal from probate court order removing him as guardian and replacing him with another).

Here, we note that the discrete purpose of the initial order granting the bank leave to intervene had been accomplished; the court had appointed a commissioner and provided for the opening and distribution of the contents of the safe deposit box. The probate court's subsequent order apportioning the bank's attorney's fees and costs to Brueckner effectively concluded that portion of the proceeding then before the court, and effectively dismissed the bank from any further involvement. Accordingly, we conclude that the order "disposed of all matters that should or could properly be settled at the time," Estate of Webster, 117 Vt. at 552, and thus constituted an appealable final judgment. See, e.g., Taliaferro v. Tex. Commerce Bank, 660 S.W.2d 151, 155 (Tex. Ct. App. 1983) (designating probate court order, granting bank's interpleader request as "disinterested stakeholder" of contested funds and granting bank attorney's fees, as final judgment for purposes of appeal); Lafayette-South Side Bank & Trust Co. v. Siefert, 18 S.W.2d 572, 574 (Mo. Ct. App. 1929) (order allowing bank to interplead to determine status of funds and awarding bank attorney's fees was final appealable judgment).

We also note that declaring the order here to be a final judgment makes the most practical sense. It both enables

an interested party to appeal and allows the opposing parties to enforce the judgment without further delay if no appeal is filed or the appeal is rejected.

We conclude, therefore, that the superior court order dismissing the appeal must be reversed, and the matter remanded to that court to address Brueckner's claims concerning the probate court orders granting the bank leave to intervene, appointing a commissioner, and apportioning costs and legal fees to Brueckner.

Superior court's dismissal is reversed and the matter is remanded for further proceedings consistent with the views expressed herein.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned