

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 709-12-13 Wrcv

In Re: Trust of Virginia B. Newman

DECISION RE: ROGER LAMSON'S MOTION TO AMEND JUDGMENT

This matter is before the court on Roger Lamson's ("Roger's") Motion to Amend Judgment, filed March 4, 2014.

BACKGROUND

This appeal concerns the Trust of Virginia B. Newman (the "Trust"), a revocable trust established for Virginia Newman's benefit while she was living, and, thereafter, to be terminated and distributed equally between her two sons, Frank Lamson ("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. By an order dated February 20, 2014, the court determined that Frank was entitled to summary affirmance based on Roger's lack of standing.

Subsequently, on March 4, 2014, Roger filed the instant motion, asserting that he had standing because Virginia Newman had died on February 13, 2014. Frank objected to this motion on March 10, 2014, claiming that the Probate Decision and this court's February 20, 2014 order established that once Virginia Newman died, Roger would have standing to bring his claims in the Probate Division and, accordingly, Roger could now bring his claims without this court amending its previous order. In a reply, filed March 18, 2014, Roger reasserted that the court should amend its February 20, 2014 order because Roger had standing to bring this action after Virginia Newman's death.

DISCUSSION

"The narrow purpose of [a motion to amend judgment] is to allow the superior court to fix its mistakes immediately following the entry of judgment." *Gregory v.*

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Poulin Auto Sales, Inc., 2012 VT 28, ¶ 19, 191 Vt. 611. “Disposition of [such] a... motion is committed to the trial court’s discretion.” *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591.

Here, Roger argues that the court’s February 20, 2014 order was incorrect because he always had standing to bring this action. This argument is essentially the same one advanced by Roger in his opposition to Frank’s motion for summary affirmance. The only difference is that now Roger highlights that Virginia Newman died on February 13, 2014, making him a current beneficiary of the Trust at the time of the court’s February 20, 2014 order.

The court rejects Roger’s argument and declines to amend its judgment because it was correct when issued. It is undisputed that because of Virginia Newman’s death, Roger now has standing to bring his claims against Frank. Indeed, the parties have stipulated to this reality. *See* Stipulation and Joint Req. to Enter Order, ¶ 1. However, the fact that Roger has standing at this point does not mean that the court must amend its previous order. *See Drumheller v. Drumheller*, 2009 VT 23, ¶ 28, 185 Vt. 417 (noting that a motion to amend judgment “allows the trial court to revise its initial judgment if necessary to relieve a party against the unjust operation of a record **resulting from the mistake or inadvertence of the court** and not the fault or neglect of a party” (internal quotation omitted) (emphasis added)).

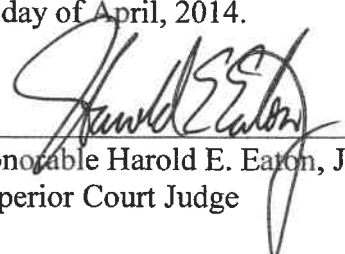
Roger has failed to identify any mistake in the court’s February 20, 2014 order. The fact of the death of Mrs. Newman was not made known to the court until March 4, 2014, well after the summary affirmance was issued. Accordingly, his motion must be denied.

ORDER

Roger’s Motion to Amend Judgment is hereby DENIED.

As per the parties’ Stipulation and Joint Request to Enter Order, dated March 6, 2014, Roger now has standing to bring certain claims against Frank in the Probate Division because he is a beneficiary of the Trust.

Dated at Woodstock, Vermont, this 8 day of April, 2014.


Honorable Harold E. Eaton, Jr.
Superior Court Judge

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