

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-048

FEBRUARY TERM, 2002

In re Estate of Gregory K. Chiang	}	APPEALED FROM:
	}	
	}	Addison Superior Court
	}	
	}	DOCKET NO. 173-8-01 Ancv
	}	
	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Appellee Yingyu Chiang's motion to reconsider this Court's order of February 14, 2002, providing that her motion to dismiss would be considered with the merits of the above appeal, is granted. Appellant John Chiang, executor of the Estate of Gregory K. Chiang, has joined in the motion to reconsider, requesting a decision on the motion to dismiss prior to briefing in the appeal. Having considered Yingyu Chiang's motion to dismiss the appeal filed by John Chiang in his capacity as the executor of the Estate of Gregory K. Chiang, the motion is granted.

As appellee points out, the long-standing rule in Vermont has been that an executor or administrator lacks standing and therefore cannot pursue an appeal on behalf of an estate. See In re Estate of Gaskell, 123 Vt. 57, 58, 181 A.2d 67, 68 (1962) (noting the long-standing rule that executor cannot qualify as an interested person by virtue of his office for purposes of appeal); In re Estate of Simonds, 96 Vt. 110, 110-11, 117 A. 103, 103-04 (1922) (dismissing portion of appeal taken by individual in his capacity as administrator of the estate, but considering the merits of his appeal taken in his individual capacity as an interested party); In re Estate of Vincent, 84 Vt. 89, 89-90, 78 A. 714, 715 (1911). The cases cited are interpreting 12 V.S.A. 2555, which provides "[e]xcept 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 county court." Although the Reporter's Notes to V.R.C.P. 72 indicate that the rule now supersedes sections 2555-2571 of Title 12, 2555 has not been formally repealed. Nor do we discern an intent in Rule 72 to abrogate the rule established in the above cases that executors lack standing to appeal. See V.R.C.P. 72 ("Any party entitled thereto by law may appeal to a superior court from a decision of a probate court . . .").

John Chiang has not filed a notice of appeal or a notice of appearance in this Court in his personal capacity as an interested person. The notice of appeal in this case purports to be filed directly by the estate itself. His citation to V.R.P.P. 18(a)(5) is unavailing as it does not change those facts, nor does it create an exception to the above rule. Rule 18(a)(5) simply allows an executor to represent persons with an interest in the undistributed assets of an estate in actions in which the estate is properly a party. But the estate itself is not a proper party to a direct appeal from the probate of that estate. Cf. In re Estate of Gaskell, 123 Vt. at 59, 181 A.2d at 68 (noting that there are policy considerations in favor of allowing an executor to appeal as a representative of the estate in the context of disallowance of a will, but concluding that such considerations are better left to Legislature given the previously established rule that executor is not an interested party under statute providing for appeal).

Appellant also argues that 2555 applies only to appeals to the superior court, thus his appeal as executor to this Court should not be dismissed; and he further argues that as a matter of policy we should allow an executor to pursue an

appeal in this Court, where the executor did not initiate the original appeal to the superior court. Appellee contends that it would be "unfair to beneficiaries" to prevent an executor or administrator from appealing a superior court's reversal of a probate order. The rule preventing appeals by an administrator, however, has been applied to appeals to this Court as well. See In re Estate of Simonds, 96 Vt. at 110-11, 117 A. at 103. Furthermore, beneficiaries, as interested persons, are free to appeal a superior court judgment reversing that of a probate court. Thus, allowing an executor to appeal to this Court is not necessary to insure that their interests are protected. Additionally, to do so, we would have to overrule In re Estate of Simonds. We decline to do so.

Appellee's request that the costs of the appeal be charged to John Chiang individually is denied.

Appeal dismissed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice