THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2017-0532

In re Teresa E. Craig Living Trust

RULE 9 INTERLOCUTORY TRANSFER WITHOUT RULING FROM THE
6TH CIRCUIT COURT-PROBATE DIVISION-CONCORD TRUST DOCKET

BRIEF *AMICUS CURIAE* OF THE NEW HAMPSHIRE TRUST COUNCILIN SUPPORT OF THE RESPONDENTS

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INTERESTS OF *AMICUS CURIAE*

Amicus curiae New Hampshire Trust Council ("Trust Council") seeks to present its view regarding the application of the pretermitted heir statute (RSA 551:10) to trusts. The Trust Council's interest in this matter is strictly limited to the question before the Court, and the impact the Court's holdings may have on the New Hampshire trust services sector as a whole.

The Trust Council is a New Hampshire nonprofit corporation based in Hampton, New Hampshire. The Trust Council's members include trust companies, law firms, and other persons who believe in the Trust Council's mission of promoting the interests of the trust services sector in New Hampshire.[1] Since its formation in 2010, the Trust Council has been actively involved in proposing and supporting legislation to modernize and enhance New Hampshire's laws governing trusts, trust companies, and family trust companies; educational activities; and, where appropriate, serving as an *amicus curiae*.

The Trust Council is committed to ensuring the proper application of the New Hampshire Trust Code (RSA 564-B) and related statutory provisions. A key tenet of the New Hampshire Trust Code is the promotion of certainty, which trustees and beneficiaries rely upon as trustees administer trusts and which trust practitioners rely upon when advising their clients and drafting trust instruments. The Trust Council believes that it is critical that the New Hampshire Trust Code's provisions are interpreted and applied by the courts accurately and consistent with well-established precedent and the intent of the legislature.

[1] Two members of the law firm McDonald & Kanyuk, which drafted the amended and restated trust at issue in the underlying matter, are directors and equity owners of a company that is a member of the Trust Council. That company is not a party in this matter, and neither attorney participated in the Trust Council's decision to file this brief, nor in the preparation of this brief.

STATEMENT OF THE CASE

Amicus adopts and incorporates by reference the Statement of Facts and Necessity of Transcript submitted by the Probate Court. See Interlocutory Transfer Statement at 3-6.

SUMMARY OF THE ARGUMENT

The question certified to this Court is: By enactment of the Uniform Trust Code in 2004, see Laws 2004, Ch. 130; RSA 564-B:1-112, did the New Hampshire legislature clearly indicate that the pretermitted heir statute (RSA 551:10) applies to trusts?

This Court must answer in the negative, because: (1) the pretermitted heir statute is not a rule of construction; (2) the legislature's enactment of RSA 564-B:1-112 was not clear indication of its intention to apply the pretermitted heir statute to trusts; and (3) construing RSA 564-B:1-112 to apply the pretermitted heir statute to trusts is contrary to the rule of statutory construction favoring the preservation of settlor intent.

ARGUMENT

In 2001, this Court held that the pretermitted heir statute (RSA 551:10) does not apply to trusts. Robbins v. Johnson, 147 N.H. 44 (2001). In Robbins, this Court stated that it would not extend the pretermitted heir statute to trusts absent clear indication of the legislature's intention to do so. Robbins, 147 N.H. 44 at 45-46. In 2004, the legislature enacted RSA 564-B:1-112, which provides that rules of construction applicable to wills generally apply to trusts. The Petitioners argue that RSA 564-B:1-112 applies the pretermitted heir statute to trusts (or at least some trusts). The Petitioners' argument, however, fails for three reasons. First, the pretermitted heir statute is not a rule of construction and thus, under RSA 564-B:1-112, is not applicable to trusts. Second, the legislature's enactment of RSA 564-B:1-112 was not clear indication of intention to apply the pretermitted heir statute to trusts. Third, construing RSA 564-B:1-112 to apply the pretermitted heir statute is contrary to the rule of statutory construction favoring the preservation of settlor intent.

The resolution of this matter requires this Court to engage in statutory construction. The principles of statutory construction are well-established. In matters of statutory construction, this Court is the final arbiter of the intent of the legislature as expressed in the words of the statutes considered as a whole. In re G.G., 166 N.H. 193, 195 (2014) (citation omitted). When construing statutes, this Court first examines the language used and, where possible, ascribes the plain and ordinary meaning to the words used. Shelton v. Tamposi, 164 N.H. 490, 499 (2013) (citation omitted). The court interprets statutes in the context of the overall statutory scheme and not in isolation. Id. By doing so, the court is better able to discern the legislature's intent and therefore better able to understand the statutory language in light of the policy sought to be advanced by the entire statutory scheme. Id.

This Court interprets legislative intent from the statute as written, and it will not consider what the legislature might have said or add language that the legislature did not see fit to include. In re G.G., 166 N.H. 193 at 195. This Court has a long tradition of respecting the legislature's role in setting public policy and declining to engage in policymaking where the legislature has not expressly done so. Consistent with this jurisprudence, this Court will not undertake the extraordinary step of creating legislation where none exists. In re Plaisted, 149 N.H. 522, 526 (2003) (citation omitted). Matters of public policy are reserved for the legislature. Id.

In addition, "[i]n applying and construing [RSA 564-B], primary consideration shall be given to the preservation of the settlor's intent as expressed in the terms of the trust." RSA 564-B:11-1101. This statutory prescription is consistent with well-established precedent. "[T]he intention of a settlor is paramount, and we determine that intent, whenever possible, from the express terms of the trust itself." Shelton v. Tamposi, 164 N.H. 490 at 495 (citation omitted).

This Court has previously construed the pretermitted heir statute and whether it applies to trusts. In Robbins, this Court held:

> The pretermitted heir statute, on its face, applies to "wills," not to trusts. The statute does not contemplate a settlor's failure to provide for his or her … children in a trust. We decline the plaintiff's invitation to construe the statute contrary to its plain meaning.

Robbins, 147 N.H. 44 at 45 (quotations and citation omitted). In declining to create legislation where none exists, this Court stated:

> We believe that the legislature should decide whether, as a matter of policy, it wishes to extend the pretermitted heir statute to will substitutes, such as the trust at issue. … Absent clear indication from the legislature that this is its intention, we decline to apply the statute to the trust.

Robbins, 147 N.H. 44 at 46.

Since this Court decided Robbins, the pretermitted heir statute has remained unchanged. The legislature has not amended the statute. On its face, the pretermitted heir statute still applies only to wills and does not apply to trusts.

What has changed since this Court decided Robbins is a significant codification of trust laws. Three years after this Court decided Robbins, the legislature enacted the Uniform Trust Code (RSA 564-B) (which has subsequently been renamed the New Hampshire Trust Code). The Uniform Trust Code included RSA 564-B:1-112, which, as enacted, provided:

> The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

This sentence has remained unchanged since the statute's enactment. The statute was amended in 2011 and 2015, but those amendments did not change or affect the relevant language. See Laws 2011, ch. 243:8 (adding a sentence that, "[f]or the purposes of determining the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust shall be paramount"), and Laws 2015, ch. 272:58 (adding a sentence that "[i]n interpreting or construing the terms of a trust, the settlor's intent shall be sovereign to the extent that the settlor's intent is lawful, not contrary to public policy, and possible to achieve").

I. The pretermitted heir statute is not a rule of construction and thus does not apply to trusts.

The enactment of RSA 564-B:1-112 did not extend the pretermitted heir statute to trusts, because the pretermitted heir statute is not a rule of construction. RSA 564-B:1-112 provides that "[t]he rules of *construction* that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property" (emphasis added). By its plain and ordinary meaning, the

pretermitted heir statute is not a rule of construction. According to Black's Law Dictionary (10th Ed. 2009), a "rule of construction" (which is the same as a "canon of construction") is "[a] rule used in construing legal instruments … a principle that guides the interpreter of a text." In In re Estate of Frolich, 112 N.H. 320 (1972), this Court discussed the application of rules of construction to wills:

> Arbitrary canons of construction always give way in this jurisdiction to a single broad rule of construction favoring the maximum validity of the testator's dispositive plan. The very purpose of constructional rules in the law of wills is to supply a probable "intent" where in fact the testator has failed to express one, similar to the function of statutes of descent and distribution. Rules of construction which defeat more often than they implement a testator's intent can hardly be said to serve their office and consequently are not enforced in this State. … *As all rules of construction, however, the rule will operate only in the absence of a contrary expression of intent by the testator.*

112 N.H. 320 at 326 (quotations and citations omitted, and emphasis added). The pretermitted heir statute is not a rule used in construing legal instruments. It is not a guide in interpreting a will or discerning the testator's intent. The pretermitted heir statute applies without regard to the testator's intent. See In re Estate of Rubert, 139 N.H. 273, 277 (1994) (citation omitted). Unlike a rule of construction, the pretermitted heir statute does not operate only in the absence of a contrary expression of intent by the testator. See In re Estate of Frolich, 112 N.H. 320 at 326.

This Court has consistently described the pretermitted heir statute as a "rule of law." For example, in Robbins, this Court stated that the pretermitted heir statute "creates a conclusive rule of law." Robbins, 147 N.H. 44 at 45. That echoes earlier cases and has been echoed in more recent cases. See Khabbaz v. Commissioner, 155 N.H. 798, 808 (2007) (special concurrence of Broderick, C.J.) ("rule of law"); In re Estate of Treloar, 151 N.H. 460, 462 (2004) ("rule of law") (citation omitted); In re Estate of Robbins, 145 N.H. 145 at 147 ("conclusive rule of law") (citation omitted); In re Estate of Laura, 141 N.H. 628, 634 (1997) ("rule of law") (citation omitted); In re Estate of Rubert, 139 N.H. 273 at 277 ("conclusive rule of law") (citation

omitted); In re Estate of Came, 129 N.H. 544, 547 (1987) ("conclusive rule of law") (citation omitted); In re Estate of MacKay, 121 N.H. 682, 684 (1981) ("rule of law") (citation omitted); In the Matter of Jackson, 117 N.H. 898, 903 (1977) ("rule of law") (citation omitted); Royce v. Estate of Elizabeth Denby, 117 N.H. 893, 896 (1977) ("rule of law") (citation omitted). This Court has never described the pretermitted heir statute as a "rule of construction." Based on this Court's consistent description of the pretermitted heir statute as a rule of law, the legislature would not have had any basis to know or intend that, by enacting RSA 564-B:1-112, it would cause the pretermitted heir statute to apply to trusts.

The Petitioners have cited the comments to the model Uniform Trust Code as the basis for their argument that the pretermitted heir statute is a rule of construction, which, with the enactment of RSA 564-B:1-112, applies to trusts. Petitioners' Brief at 14-15. The drafters of the model Uniform Trust Code were at best equivocal as to whether a pretermitted heir statute is a rule of construction. In the comment to model Uniform Trust Code § 112, the drafters stated:

> Instead of enacting this section, a jurisdiction enacting this [Uniform Trust] Code may wish to enact detailed rules on the construction of trusts, either in addition to its rules on the construction of wills or as part of one comprehensive statute applicable to both wills and trusts. For this reason and to encourage this alternative, the section has been made optional. For possible models, see Uniform Probate Code, Article 2, Parts 7 and 8, which was added to the UPC in 1990, and California Probate Code §§ 21101-21630, enacted in 1994.

The drafters of the model Uniform Trust Code thus suggested the model Uniform Probate Code as a possible source of statutory rules of constructions. The model Uniform Probate Code, however, does not include its pretermitted heir statute (§ 2-302.f) within its rules of constructions. The model Uniform Probate Code, Article 2, Parts 7 and 8, enumerates 15 rules of construction; the model Uniform Probate Code's pretermitted heir statute is not one of those rules of construction. The drafters of the model Uniform Trust Code also suggested the California Probate Code as a possible source of statutory rules of constructions. The California

statutes that the drafters of the model Uniform Trust Code cited include California's pretermitted heir statutes (Cal. Prob. Code §§ 21620-21623), but those statutes also include presumptions and operative provisions, including statutes concerning the rule against perpetuities, reformation, no-contest provisions, and trustee liability for making certain tax elections.

In support of their proposition that the pretermitted heir statute is a rule of construction, the Petitioners cite In re Trust under Deed of Kulig, 131 A.3d 494 (Pa. Super. Ct. 2016). Petitioners' Brief at 15-16. In Kulig, the Pennsylvania appellate court recognized Pennsylvania's pretermitted spouse statute as a "rule of construction" and, under that state's version of model Uniform Trust Code § 112, applied that statute to *inter vivos* trusts. The Pennsylvania Supreme Court, however, reversed the lower court decision. In re Trust under Deed of Kulig, 2017 Pa. LEXIS 3741 (December 19, 2017). In Kulig, the Pennsylvania Supreme Court held that the pretermitted spouse statute did not apply to trusts. The court closely examined the text and legislative history of Pennsylvania's version of model Uniform Trust Code § 112, which provides that "[t]he rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of *inter vivos* trusts." 20 Pa. Cons. Stat. § 7710.2. In deciding that the pretermitted spouse statute did not apply to trusts, the Pennsylvania Supreme Court stated that "[i]t is a necessary corollary of judicial reluctance to intrude upon legislative prerogatives that we will find legislative intent to effectuate a substantial change to time-honored legal principles only when it is expressed clearly and unmistakably or, at least, follows by necessary implication from the statutory text." In re Trust under Deed of Kulig, 2017 Pa. LEXIS 3741 (December 19, 2017); see also Bell v. Estate of Bell, 143 N.M. 716 (2008) (holding New Mexico's pretermitted spouse statute does not apply to trusts, but not discussing New Mexico's version of model Uniform Trust Code § 112).

II. RSA 564-B:1-112 is not a clear indication that the legislature intended to apply the pretermitted heir statute to trusts.

The legislature's enactment of RSA 564-B:1-112 is not a clear indication that, as a matter of policy, the legislature wished to extend the pretermitted heir statute to trusts. RSA 564-B:1-112 does not expressly refer to the pretermitted heir statute. It does not expressly refer to pretermitted children or issue. It does not state whether the pretermitted heir statute applies to all trusts or only trusts that are "will substitutes" and, if only the latter, how to differentiate between trusts that are will substitutes and those that are not. It does not state how to determine an omitted individual's intestate share of trust property. The legislature is presumed to know the meaning of words, and to have used the words of a statute advisedly. The legislative intent is not found in what the legislature might have said, but rather in the meaning of what it did say. Pennichuck Corp. v. City of Nashua, 152 N.H. 729, 735 (2005) (citation omitted). Given the significant policy implications of extending the pretermitted heir statute to trusts - including the significant impact on settlors and the attorneys drafting their trusts - a clear indication of legislative intent would be unequivocal.

The legislative history of the Uniform Trust Code is devoid of any reference to the extension of the pretermitted heir statute to trusts.[2] Representative John Hunt sponsored the bill (2004 N.H. House Bill 1224) to enact the Uniform Trust Code.[3] The bill was referred to the House Commerce Committee, which held a public hearing on January 21, 2004. See N.H.H.R.

[2] The legislative history for 2004 HB 1224 can be found at:
http://gencourt.state.nh.us/SofS_Archives/2004/house/HB1224H.pdf (House)
http://gencourt.state.nh.us/SofS_Archives/2004/senate/HB1224S.pdf (Senate)

[3] Notably, Representative Hunt also is a sponsor of 2018 SB 311. Encaptioned "[c]larifying the rules of construction under the New Hampshire Trust Code," SB 311 is currently under consideration by the legislature. SB 311 amends RSA 564-B:1-112 to provide that, "[f]or the purposes of this section, RSA 551:10 is not a rule of construction" and further provide that "RSA 551:10 shall not apply to any trust." If passed, this bill will resolve the issue before this Court by providing clear indication of the legislature's intent.

Jour. 1837 (2004). The minutes of that hearing do not contain any mention of applying the pretermitted heir statute to trusts. Minutes of the House Commerce Committee (January 21, 2004). A subcommittee subsequently held three work sessions at which the bill was reviewed. There are minutes for two of those work sessions; those minutes contain little detail, but do not make any mention of overturning Robbins. Minutes of the House Commerce Committee Subcommittee (February 10, 2004) and Minutes of the House Commerce Committee Subcommittee (February 17, 2004). The House Commerce Committee subsequently voted unanimously that the bill ought to pass with amendment. N.H. House Calendar No. 18, 756-777 (March 5, 2004). In its report on the bill, the committee stated:

> This bill is modeled after The Uniform Trust Code and provides New Hampshire with a comprehensive [and] consistent framework of trust laws. The bill is a result of an intense yearlong study by representatives of the legal community, banking industry; the Attorney General's Office-Charitable Trust Division and the Probate Court. The statutory framework will reduce legal fees and questions of interpretation, and makes New Hampshire an appealing domicile for trusts to be located.

Id. Again, no mention of the pretermitted heir statute. The House passed the bill. N.H.H.R. Jour. 887-907, 938 (2004).

After passing in the House, the bill was referred to the Senate Judiciary Committee. N.H.S. Jour. 178-79 (2004). The Senate Judiciary Committee held a public hearing on April 23, 2004. N.H. Senate Calendar No. 14 (April 23, 2004). The minutes of that hearing do not contain any mention of applying the pretermitted heir statute to trusts. Minutes of the Senate Judiciary Committee (January 21, 2004). In a "summary of testimony received," however, the minutes do describe the committee of practitioners who worked on the legislation and state that "[t]he working committee took the Uniform Trust Act and made it conform in New Hampshire." Id. In his testimony before the committee, Attorney John Ransmeier, who was a member of the working committee, stated "[t]he statute does substantially conform to the restatement and it

conforms to New Hampshire, to the extent that we needed to make adjustments because we have cross-references and so forth to other pieces, to other sections of the RSAs." Id. Notably, RSA 564-B:1-112 does not contain any cross-reference to the pretermitted heir statute. Neither Attorney Ransmeier nor any other person testifying before the committee mentioned the pretermitted heir statute. See id. The Senate subsequently passed an amended version of the bill, to which the House later concurred. N.H.S. Jour. 371 (2004); N.H.H.R. Jour. 1412 (2004). On May 19, 2004, Governor Craig Benson signed the bill, which became effective October 1, 2004.

Scholarly discussions of the Uniform Trust Code also are devoid of any reference to the extension of the pretermitted heir statute to trusts. In their brief, the Petitioners recognize "[t]he enactment of the [Uniform Trust Code] was a significant undertaking, resulting in a comprehensive body of law governing all aspects of trust law, including without limitation the establishment, modification, termination and administration of trusts, the duties of trust fiduciaries, and the rights of trust beneficiaries." Petitioners' Brief at 9. As would be expected in the wake of such a substantial updating and revision of law, the provisions and application of the Uniform Trust Code have been addressed in commentary and continuing legal education materials in the years since its adoption. If the Petitioners' assertion that adoption of the Uniform Trust Code led to the application of the pretermitted heir statute to trusts were correct, one would reasonably expect, at a minimum, some mention of this in the literature. However, none is to be found. See, e.g., Michelle M. Arruda, The Uniform Trust Code: A New Resource for Old (and New!) Trust Law, 47 N.H Bar J. 6 (Winter 2006); Leila Dal Pos, William Zorn, Maureen Dwyer, Amy Kanyuk, and Suzanne Weldon-Francke, Trust Administration, NHBA CLE (June 21, 2007) (in which there is no reference to even the possibility that the pretermitted heir statute might apply to trusts as a result of the adoption of RSA 564-B:1-112 by any of the presenting attorneys,

including within Amy Kanyuk's comprehensive review of the provisions of the Uniform Trust Code).

Likewise, indispensable reference texts, such as the New Hampshire Practice Series, while addressing the operation of the pretermitted heir statute with regard to wills, and reporting Robbins as controlling law, also make no reference to the possibility that the adoption of RSA 564-B:1-112 might have led to the application of the pretermitted heir statute to trusts. See 7 C. DeGrandpre, New Hampshire Practice: Wills, Trusts, and Gifts § 14.01-14.06 (2017). The lack of any discussion of the possible application of the pretermitted heir statute to trusts would affect how trust practitioners draft and administer trusts. Countless trusts have been drafted since 2004 without regard to the pretermitted heir statute. Likewise, countless trusts have terminated since 2004, and the trustees have distributed trust property without regard to the pretermitted heir statute. All of those trusts would be called into question if this Court rules that the pretermitted heir statute applies to trusts.

The Petitioners' argue that, in enacting RSA 564-B:1-112, the legislature *clearly indicated* its intent that the pretermitted heir statute would apply to *inter vivos* trusts serving as will substitutes. This argument, however, ignores the plain language of the statute, which provides no guidance as to which, if any, trusts the pretermitted heir statute might apply. In these circumstances, it is logically inconsistent to assert that the legislature clearly indicated its intent and simultaneously ask this Court to construe RSA 564-B:1-112 to apply to some, but not all, trusts. The Petitioners, in effect, are seeking a judicial determination of public policy. In accordance with its jurisprudence, however, this Court does not undertake the extraordinary step of creating legislation where none exists. In re Plaisted, 149 N.H. 522 at 526.

III. Construing RSA 564-B:1-112 to incorporate the pretermitted heir statute is inconsistent with the rule of statutory construction that requires the preservation of settlor intent to receive primary consideration.

Construing RSA 564-B:1-112 to extend the pretermitted heir statute to trusts would be inconsistent with the preservation of settlor intent. When construing the New Hampshire Trust Code, courts must give primary consideration to the preservation of settlor intent. RSA 564-B:11-1101. That is consistent with this Court's longstanding jurisprudence. "It is well established in this jurisdiction that our courts have shown a signal regard for the intention of a settlor of a trust." In re Pack Monadnock, 147 N.H. 419, 423 (2002) (quotation omitted). "Probably no jurisdiction has stood more steadfastly for giving effect to the intention of the testator rather than to arbitrary rules of law than New Hampshire." Burtman v. Butman, 97 N.H. 254, 258 (1952). This Court will "give effect to the settlor's intent unless that intent is contrary to statute or public policy." Bartlett v. Dumaine, 128 N.H. 497, 504 (1986) (citation omitted).

The pretermitted heir statute would undermine settlor intent. As this Court has observed, the pretermitted heir statute can operate to defeat testator intent:

> The effect of the [pretermitted heir] statute is to create a conclusive rule of law that pretermission of a child is accidental, unless the testator devises or bequeaths property to the child or names or refers to the child in the will. The statutory presumption will be upheld even if the testator's intent is defeated as a result.

In re Estate of Rubert, 139 N.H. 273 at 277 (quotation omitted). Applying the pretermitted heir statute to trusts would be antithetical to the preservation of settlor intent. The legislature knows well how to signal its intention to change prior law. See Condominiums at Lilac Lane Unit Owners' Association v. Monument Garden LLC, 170 N.H. 124, 129 (2017).

If a settlor unintentionally omits a child or other descendant from a trust, the courts have the means to fulfill the settlor's intent. For example, RSA 564-B:4-415 provides:

> The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that

> both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Thus, it is not the case that a would-be beneficiary of a trust would be left with no remedy at law unless this Court holds that the pretermitted heir statute applies to trusts.

The Petitioners argue that it is "appropriate" to apply the pretermitted heir statute to some trusts. Petitioners' Brief at 13-16. They base their argument on the clause in RSA 564-B:1-112 that provides that the rules of construction that apply to wills apply "as appropriate" to trusts. Even assuming for purposes of argument that the pretermitted heir statute is a rule of construction, it would be fundamentally inappropriate to apply it to trusts in face of the strong countervailing public policy favoring the preservation of settlor intent. Giving primary consideration to the preservation of settlor intent in the construction of RSA 564-B:1-112, it would not be appropriate to apply to trusts a rule that can operate to defeat settlor intent. See Burtman, 97 N.H. 254 at 258; see also In re Trust under Deed of Kulig, 2017 Pa. LEXIS 3741 (December 19, 2017)(considering and rejecting the argument that, under Pennsylvania's version of model Uniform Trust Code § 112, it is "appropriate" to apply Pennsylvania's pretermitted spouse statute to trusts).

CONCLUSION

For the reasons stated above, *amicus* New Hampshire Trust Council respectfully requests that this Court hold that (1) by enacting RSA 564-B:1-112, the legislature did not clearly indicate that the pretermitted heir statute applies to trusts; and (2) Robbins remains controlling law concerning the application of the pretermitted heir statute to trusts.

Respectfully submitted,

NEW HAMPSHIRE TRUST COUNCIL

By its attorneys:

January 17, 2018

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Certificate of Service

I hereby certify that two copies of the foregoing *Brief Amicus Curiae of the New Hampshire Trust Council In Support of the Respondents* were served this 17th day of January, 2018 by first class mail, postage prepaid, and electronic mail on counsel for the Petitioners Pamela J. Newkirk, Esq. and Laura T. Tetrault, Esq., and on counsel for the Respondents Ralph F. Holmes, Esq. and Jaqueline A. Botchman, Esq.

/s/
Glenn A. Perlow, Esq.