

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**RALF SIEGEMUND, SPECIAL)
ADMINISTRATOR FOR THE ESTATE OF)
JOAN L. SIEGEMUND, ET AL.,)
)
 PLAINTIFFS)
)
v.)
)
PETER SHAPLAND, ET AL.,)
)
 DEFENDANTS)**

CIVIL No. 01-277-P-H

ORDER ON MOTION FOR RECONSIDERATION

The motion for reconsideration asks me to revisit the conclusions in my previous ruling that claim preclusion (as distinguished from issue preclusion) does not result from either the Maine or Massachusetts Probate Court proceedings.

MAINE PROBATE PROCEEDINGS

In my original decision, I noted that Rule 42(a) of the Maine Rules of Probate Procedure allows consolidation of proceedings only “if they are all formal probate or all civil” and concluded that Siegemund could have not pursued her claim for money damages in her Maine (Washington County) probate action seeking appointment of a temporary guardian for her mother. Applying Restatement principles, I concluded that the Maine probate proceedings, therefore, did not generate claim preclusion against the plaintiffs’ current lawsuit for money damages. The motion for reconsideration calls this “a hyper-technical argument

which goes far beyond the letter or the spirit of the jurisdictional competence exception.” Defs.’ Mem. Supp. Mot. Recons. at 8-9 (Docket No. 72).

According to the Restatement (Second) of Judgments § 26(1)(c), claim preclusion does *not* apply when:

The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief *in a single action*, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.

(emphasis added). The commentary states that claim preclusion is premised on the assumption that there were no barriers to “presenting to a court *in one action* the entire claim.” Restatement (Second) of Judgments § 26 cmt. c (1982) (emphasis added). Where such barriers exist “in the first action, it is unfair to preclude [the plaintiff] from a second action. . . .” *Id.* This is so regardless of the reasons for the barrier, including “vestigial procedural doctrines.” *Id.* In other words, my conclusion follows directly the letter and spirit of claim preclusion, which is based upon what a party can do in a single lawsuit.¹

MASSACHUSETTS PROBATE PROCEEDINGS

In my original decision I observed that the Massachusetts Supreme Court had made clear that tort damages cannot be recovered in probate proceedings. See, e.g., Heacock v. Heacock, 520 N.E.2d 151, 153 (Mass. 1988) (“[T]he Probate

¹ Accord Restatement (Second) of Judgments § 25 cmt. f (1982) (emphasis added): “Preclusion is narrower when a procedural system in fact does not permit the plaintiff to claim all possible remedies *in one action*.”

Court does not have jurisdiction to hear tort actions and award damages.”). I ruled, therefore, that the Massachusetts probate proceedings did not create claim preclusion for the plaintiffs’ current lawsuit, because the plaintiffs could not have brought all their claims in the probate proceedings. The executor and guardian of the person accurately point out that the Massachusetts cases I cited did not involve lawsuits against a guardian, and they argue that the cases’ restrictive language should not apply in probate proceedings against a guardian. Instead, they argue, tort damages can be recovered in Massachusetts probate proceedings by suing the guardian on his bond.

Massachusetts statutes do permit lawsuits in probate court upon a bond and authorize the recovery of “all damages caused by . . . neglect or maladministration.” Mass. Gen. Laws. Ann. ch. 205, § 31. If those damages include the tort recovery the plaintiff seeks here (such as negligent and intentional infliction of emotional distress), and if she could have combined all her claims in a single action (the lawyers have not described for me Massachusetts probate procedures for presenting such a claim), then claim preclusion would apply. After consulting the treatises on Massachusetts probate procedures, see 1-2 T.H. Belknap, *Newhall’s Settlement of Estate and Fiduciary Law in Massachusetts* (5th ed. 1994 & Supp. 2002); S.M. Dunphy, *Probate Law and Practice* (2d ed. 1997 & Supp. 2002), however, I have been unable to find any cases awarding tort damages in a suit upon a bond, and the lawyers have referred me to none. One case suggests that “consequential damages” may be available, Chase v. Faulkner, 30 N.E.2d 239, 241 (Mass. 1940), but those damages were merely the legal fees

and expenses caused by the guardian's failure to account, not tort damages.² The defendants have made thoughtful and lawyerly arguments as to why tort damages on a guardian's bond might be distinguished from other tort lawsuits, but I am left with the Massachusetts Supreme Court's broad language and no rulings drawing the distinction they propose. As a federal judge applying state law, therefore, I decline to rule that the Massachusetts court would step back from its language and allow tort recovery in a lawsuit on a bond. See Ryan v. Royal Ins. Co. of America, 916 F.2d 731, 744 (1st Cir. 1990).

The motion for rehearing is **DENIED**.

The schedule for motion practice on issue preclusion is amended as follows: any motions shall be filed by March 26, 2003; all responses by April 16, 2003; and any reply briefs by April 23, 2003.

SO ORDERED.

DATED THIS 5TH DAY OF MARCH, 2003.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

² Another case mentioning damages refers to the availability of "special damages." Chapin v. Waters, 110 Mass. 195, 199 (1872). I cannot tell from the case in what sense the court is using that term.

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 01-CV-277

RALPH SIEGEMUND,
Special Administrator for the
Estate of JOAN L. SIEGEMUND
plaintiff

THOMAS F. HALLETT, ESQ.
P.O. BOX 7508
PORTLAND, ME 04112
(207) 775-4255

RALF SIEGEMUND
plaintiff

THOMAS F. HALLETT, ESQ.
(See above)

v.

PETER SHAPLAND
defendant

JOHN S. WHITMAN, ESQ.
RICHARDSON, WHITMAN, LARGE &
BADGER
P.O. BOX 9545
PORTLAND, ME 04112-9545
(207) 774-7474

PEABODY & ARNOLD LLP
defendant and

JOHN S. WHITMAN, ESQ.
(see above)

STEPHEN HOWE
defendant

STEPHEN HOWE, ESQ.
DANE & HOWE
45 SCHOOL STREET
BOSTON, MA 02108
(617) 227-3600

DANE & HOWE
defendant

MARSHA WEEKS TRAILL, ESQ.
31 MAIN STREET
GORHAM, ME 04038
(207) 839-7771

IRA NAGEL
defendant

PETER J. DETROY, III, ESQ.
RUSSELL PIERCE, ESQ.
NORMAN, HANSON & DETROY
P. O. BOX 4600
PORTLAND, ME 04112
(207) 774-7000

GREENBAUM NAGEL FISHER &
HAMELBURG
defendant

PETER J. DETROY, III, ESQ.
RUSSELL PIERCE, ESQ.
(See above)

