

State of New Hampshire
Supreme Court

NO. 2007-0720

2008 TERM

AUGUST SESSION

In re Estate of Edward James Goudreault

RULE 7 APPEAL OF FINAL DECISION OF
ROCKINGHAM COUNTY PROBATE COURT

REPLY BRIEF OF PETITIONER LUANN GOULD

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ARGUMENT

In his brief Eddie Goudreault relies on the recently-decided *Estate of Bourassa*, Slip. Op. 2007-435, __ N.H. __, 949 A.2d 704 (June 3, 2008). Because the facts of *Bourassa* are so different from Eddie and Luann Gould's case, it is not useful authority.

In *Bourassa*, both the deceased man shortly before his death, and the living co-habitee not long before she filed suit, emphatically expressed their disavowal of a marriage to each other – indeed both expressed their ideological objections to the institution of marriage itself. Mr. Bourassa did not give the woman a ring, did not call her wife among friends, and did not care for her child as a family. His will, made *during the relationship*, did not mention her.

Bourassa stands in contrast to Eddie's and Luann's situation. Eddie gave Luann a ring that could only be understood as for engagement, routinely acknowledged her as his wife, disavowed marriage among his family only in a comment they regarded as a joke, and cared for Luann's daughter as a family man. Unlike *Bourassa*, except for car insurance, the documents drawn by Eddie all long pre-date his relationship with Luann.

Accordingly, *Bourassa* is not analogous to Eddie and Luann's relationship. Rather it demonstrates that in a fairly obvious case, probate courts should not stretch to find a post-death husband-and-wife relationship. *Bourassa* is at the outside edge of what might make a plausible spousal-share claim, which correctly failed in the face of such glaring disavowals.

As noted in Luann's brief on the other hand, *Estate of Buttrick*, 134 N.H. 675 (1991), lends guidance. In *Buttrick*, like in Eddie's and Luann's case, there was conflicting evidence. This Court made clear that truth is best discerned by evidence from unconnected observers who were not in a position to *know* the couple was legally unhitched. The woman in *Bourassa* did not

offer any outside observers, but both *Buttrick* and Luann here did. The *Buttrick* court gave them the elevated credence those outsiders deserved, and the probate court here should have as well.

CONCLUSION

In accord with the foregoing, Luann Gould requests that this Court find, based on the record, that she was a statutory common-law wife and should share in the couple's resulting marital estate.

Respectfully submitted,

Luann Gould
By her Attorney,

Law Office of Joshua L. Gordon

Dated: August 17, 2008

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CERTIFICATION

I hereby certify that on August 17, 2008, copies of the foregoing will be forwarded to Thomas K. MacMillan, Esq., and to Joseph J. Tropicano, Esq., Special Administrator.

Dated: August 17, 2008

Joshua L. Gordon, Esq.