

No.

IN THE  
SUPREME COURT OF THE UNITED STATES

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Misop Baynun — Petitioner

VS.

Bruce Hiltunen, et al. — Respondents

APPLICATION TO EXTEND THE TIME TO FILE

A WRIT OF CERTIORARI TO

THE COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

APPLICATION TO EXTEND THE TIME TO FILE WRIT OF  
CERTIORARI

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# APPLICATION TO EXTEND THE TIME TO FILE WRIT OF CERTIORARI

By United States Supreme Court Rule 13(5), Petitioner Misop Baynun requests this Court to extend the time to file a writ of certiorari for 60 days or at least 30 days due to the following two reasons:

1. The Petitioner was not notified via mail, email, or otherwise by the Massachusetts Appeals Court about the denial of his Motion For Further Consideration when the Appeals Court made its Decision on this on November 6, 2023, but instead on January 19, 2024, after Petitioner called the Appeals Court Clerk's office about this. The Notice Of Denial Of Application For Further Appellate Review by the Massachusetts Supreme Judicial Court, which typically begins the 90-day countdown until the writ of certiorari is due, occurred on December 15, 2023. However, Misop was still waiting to receive word from the Appeals Court regarding his Motion For Further Consideration before starting to draft his writ of certiorari, having not been told that the Appeals Court had already made its Decision. Such resulted in a delay of 36 days before Petitioner knew that a petition for a writ of certiorari would be necessary for further review of this case by the United States Supreme Court.

2. The Petitioner is a disabled veteran with an extreme case of brittle Type 1 Diabetes with hypoglycemic unawareness that he acquired while on active duty with the Marine Corps during the First Gulf War. He has suffered many recent hypoglycemic episodes due to his diabetes that not only inhibited him from working on the writ of certiorari during such hypoglycemic events but also, afterward, often left him with brain fog that also inhibited his work of completing the writ of certiorari.

## LIST OF PARTIES

All parties do not appear on the caption of the case on the cover page.

A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Petitioner: Misop Baynun

Respondents: Bruce Hiltunen and Robert Hiltunen

Other Parties Of Interest, who are also considered Respondents by Supreme Court Rule 12 which states “All parties other than the petitioner are considered respondents....”:

Jeff Miller and Sandra Miller

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IN THE  
SUPREME COURT OF THE UNITED STATES  
APPLICATION TO EXTEND THE TIME TO FILE WRIT OF  
CERTIORARI

Petitioner respectfully prays that this application to extend the time to file a writ of certiorari be granted.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the application and is reported at 103 Mass. App. Ct. 1110.

The opinion of the lower court appears at Appendix B to the application and is unpublished.

Appendix A: Appeals Court Summary Decision | Entry Date: October 19, 2023

Appendix B: Lower Court Memorandum Of Decision And Order—  
Decision Text Not Included With Application To Extend The time To  
File | Entry Date: August 11, 2020

Appendix C: Notice Of Denial Of Application For Further Appellate  
Review | Entry Date: December 15, 2023

Appendix D: Denial Of Motion For Reconsideration | Entry Date:

November 6, 2023 (yet not delivered to Petitioner until January 19, 2024)

## JURISDICTION

The date on which the highest state court decided my case was October 19, 2023. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: December 15, 2023, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONCLUSION

By United States Supreme Court Rule 13(5), please grant the Petitioner Misop Baynun an extension of time to file a writ of certiorari of 60 days, with a new due date of on or about May 15, 2024, or for at least 30 days, with a new due date of on or about April 15, 2024. Thank you.

Respectfully submitted,

/s/ Misop Baynun

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Date: 2/29/2024



## APPENDIX

APPENDIX A: APPEALS COURT SUMMARY DECISION  
[COMMONWEALTH OF MASSACHUSETTS APPEALS COURT, IN  
THE MATTER OF THE ESTATE OF BRUCE F. MILLER (Docket  
Number 2022-P-0901), October 19, 2023, MEMORANDUM AND  
ORDER PURSUANT TO RULE 23.0, Page 1 of 8]

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NOTICE: Summary decisions issued by the Appeals Court pursuant to  
M.A.C. Rule

23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known  
as rule 1:28,

as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed  
to the parties

and, therefore, may not fully address the facts of the case or the panel's  
decisional rationale. Moreover, such decisions are not circulated to the  
entire

court and, therefore, represent only the views of the panel that decided  
the case.

A summary decision pursuant to rule 23.0 or rule 1:28 issued after  
February 25,

2008, may be cited for its persuasive value but, because of the  
limitations noted

above, not as binding precedent. See *Chace v. Curran*, 71 Mass. App.  
Ct. 258, 260

n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-P-901

IN THE MATTER OF THE ESTATE OF BRUCE F. MILLER.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Misop Baynun appeals from a decree and order of formal probate,  
arguing that the judge erred in allowing the motion by the petitioners  
to (1) strike Baynun's three notices of appearance and objection dated  
January 27, 2020, February 7, 2020, and August 10, 2020, and (2)  
appoint the petitioners as personal representatives.<sup>1</sup> We affirm.

Baynun's father, Bruce Miller, died on November 28, 2019. Following  
Miller's death, a copy of his will dated January 24, 2006, was found  
among his personal effects. The will appointed Miller's two nephews,

Bruce Hiltunen and Robert Hiltunen (the petitioners), as executors, and left Miller's estate to his two sons as follows:

"1. I give all such property to my children, Jeffrey Martin Miller and Scott Douglas Miller a.k.a. Misop Baynum

1 Although Baynum states in his brief that his appeal is joined by his mother, Sandra Miller, Miller did not file a notice of appeal and is not a party to this appeal.

[Page 2 of 8 of Massachusetts Appeals Court Memorandum and Order Pursuant To Rule 23.0]

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[sic], in equal shares, however all such property shall be held in TRUST, in accordance with the provisions herein.

"A. It is my desire to provide for and/or assist in my children's retirement, and hereby appoint my nephews, Bruce Hiltunen and Robert Hiltunen, JOINTLY as trustees. Said TRUSTEES shall hold, manage, invest, reinvest, administer, and eventually terminate and distribute the proceeds in accordance with my wishes as stated above. The TRUSTEES shall be paid from the trust \$200.00 (Two Hundred Dollars) each, per year.

"B. Distributions under the TRUST shall be made to my children, equally, beginning on March 8, 2023 and shall be made at a rate of 10% (Ten Percent) per annum based upon the total assets held in trust."

On January 9, 2020, the petitioners filed a petition to admit the will to formal probate and for appointment as personal representatives of the estate. The petitioners also sought authority to conduct a search of Miller's safe deposit box to locate the original will. On January 27, 2020, Baynum filed a motion to have himself appointed special personal representative for purposes of accessing Miller's safe deposit box to search for an original will.

Also on January 27, 2020, Baynum filed a notice of appearance and objection, together with an affidavit asserting that the copy of the will found among Miller's personal effects was an "invalid will."<sup>2</sup> More specifically, Baynum claimed that the copy of the will was invalid because (1) it was not an original; (2) the witnesses' attestation clause was not written

<sup>2</sup> This was not docketed by the Register until February 5, 2020.

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in the first person; (3) it was "fraudulent" because "will" was misspelled as "wil1" in the attestation; and (4) there was a double space in the attestation clause. Baynum also claimed that although Miller "was very intelligent and often very sociably pleasant, he was regarded to not be of sound mind as his depressive paranoia affected

his judgment severely, possibly up until the last three weeks of his life, when it is believed his eyes were open[]ed."

Publication pursuant to the citation on petition for formal adjudication was made on January 30, 2020, in the Quincy Sun, and was mailed on January 22, 2020, to (among others) Miller's two sons. The return date on the citation was February 12, 2020. A judge of the Probate and Family Court appointed one of Miller's nephews, Robert Hiltunen, as special personal representative with authority limited to conducting a search of Miller's safe deposit box to search for the original will, in the presence of his attorney and Miller's two sons. That search located the original will, which was the same as the copy previously filed with the court. The original will was filed with the court on February 13, 2020. On February 7, 2020, Baynun filed another notice of appearance and objection, identical to his previous filing.<sup>3</sup>

<sup>3</sup> This second appearance and objection was docketed on February 11, 2020.

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Thereafter, on August 10, 2020, Baynun filed a third notice of appearance and objection.

<sup>4</sup> The third notice of appearance and objection was untimely because it was filed more than thirty days after the return date. See G. L. c. 190B, § 1-401 (e).

On April 23, 2020, the petitioners moved to strike Baynun's notices of appearance and objection. After hearing, the motion was allowed on August 11, 2020, and the petitioners were appointed as personal representatives of the estate. It is these rulings that are before us now. Baynun makes several arguments on appeal. First, he argues that his right to religious freedom is infringed by appointment of executors who may not hold his same religious beliefs or invest the estate's assets in a way that is consistent with his religious beliefs. Second, he argues that the attestation provisions of the will did not sufficiently track the language for self-proved wills contained in G. L. c. 192, § 2, as in effect prior to St. 2008, c. 521, § 12, nor was the will executed under seal as required under that statute. Third, Baynun argues his father lacked testamentary capacity. Fourth, Baynun argues that his father was under undue influence by the petitioners, as demonstrated by deviation from the requirements of G. L. c. 192, § 2. Fifth, Baynun argues that the petitioners

<sup>4</sup> This was docketed on August 17, 2020.

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have mismanaged the estate by not timely delivering title to an automobile, by not providing a full accounting, and by not disclosing to him before his father's death that they were named as executors in the

will. Finally, Baynun argues that the judge should have exercised "authority in this case to encourage the development of maximum self-reliance and independence of the [d]ecedent's two sons who are also beneficiaries."

We begin by noting that many of Baynun's arguments on appeal were not raised in either of his two timely notices of appearance and objection. We do not consider any issue raised for the first time on appeal, as any such issues have been waived. See *Carey v. New England Organ Bank*, 446 Mass. 270, 285 (2006) ("issue not raised or argued below may not be argued for the first time on appeal" [citation omitted]). Nor do we consider any issue raised for the first time in Baynun's third notice of appearance and objection, since it was properly struck as untimely. With these caveats, we turn to Baynun's objections as presented in his first two notices of appearance and objection, which we review de novo. See *Matter of the Estate of Nevers*, 100 Mass. App. Ct. 861, 869 (2022).

First, Baynun objected that the copy of the will found among Miller's personal effects was not the original and therefore should not be admitted to probate. As the judge correctly noted, this objection was mooted by the discovery of

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the original will in Miller's safe deposit box and its subsequent filing with the court.

Second, Baynun objected to the will as "invalid" or "fraudulent" on the grounds that the witnesses' attestation clause was not written in the first person, the word "will" was spelled "wil1" in the attestation, and there was a double space in the attestation clause. Together, Baynun argues that these irregularities mean that the will did not satisfy G. L. c. 192, § 2, in effect in 2006 when the will was executed.<sup>5</sup> To begin with, we note that Baynun conflates the concepts of the validity of a will with the question whether the will is self-proved. A will may be valid even if not self-proved. Indeed, to be properly executed in 2006, a will needed only to meet the requirement of G. L. c. 191, § 1, as in effect prior to St. 2008, c. 521, § 10, that it be signed before two competent attesting and subscribing witnesses.<sup>6</sup> Baynun did not, and does not, allege that the requirement was not met.

<sup>5</sup> Baynun did not cite to G. L. c. 192, § 2, below, but pointed instead to the requirements for self-proved wills contained in G. L. c. 190B, § 2-504, which was not enacted until 2008 as part of the Massachusetts Uniform Probate Code.

<sup>6</sup> The statute provided, "Every person eighteen years of age or older and of sound mind may by his last will in writing, signed by him or by a person in his presence and by his express direction, and attested and

subscribed in his presence by two or more competent witnesses, dispose of his property, real and personal, except an estate tail, and except as is provided in this chapter and in chapters one hundred and eighty-eight and

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In any event, none of the three supposed irregularities raised by Baynun has any merit. As to the use of the third person in the attestation, we note that the attestation language of the will tracks in all pertinent respects that contained in G. L. c. 192, § 2, which, as the statute itself stated, needed only be "substantially" tracked. As to the presence of an extra space and a mistyped letter "l," we need note only that neither rises to the level of stating a ground for contesting a will offered for probate. See *Matter of the Estate of Nevers*, 100 Mass. App. Ct. at 868 ("In ruling on a motion to strike an affidavit of objections, the motion judge must take the sworn assertions made in the affidavits of objection as true and determine whether they aver 'allegations, in verified form, of specific subsidiary facts that, if proved by a preponderance of the evidence, state grounds for contesting the will offered for probate'" [citation omitted]).

Finally, Baynun's naked assertion that Miller suffered from depressive paranoia was not sufficient to raise a question that Miller lacked testamentary capacity at the time he executed his will. See *Haddad v. Haddad*, 99 Mass. App. Ct. 59, 68-69 (2021) (elements of testamentary capacity). There was nothing to indicate that Miller did not understand the will or that he did

one hundred and eighty-nine and in section one of chapter two hundred and nine."

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not know the natural objects of his bounty. Indeed, the will itself demonstrates the contrary in that Miller left his estate to his two sons equally.

For these reasons, we affirm the August 11, 2020, decree and order of formal probate allowing the petitioners' motion to strike Baynun's notices of appearance and objection and to appoint them as personal representatives of Miller's estate. In addition, we allow the petitioners' request for attorney's fees and costs on appeal. In accordance with the procedure specified in *Fabre v. Walton*, 441 Mass. 9, 10-11 (2004), the petitioners may, within fourteen days of the issuance of the rescript of this decision, submit an application for appellate attorney's fees and costs with the appropriate supporting materials. Baynun shall have fourteen days thereafter to respond.

So ordered.

By the Court (Wolohojian, Shin & Ditkoff, JJ.7),



Clerk

Entered: October 19, 2023.

7 The panelists are listed in order of seniority.

APPENDIX B: LOWER COURT MEMORANDUM OF DECISION AND ORDER—  
DECISION TEXT NOT INCLUDED WITH APPLICATION TO EXTEND THE  
TIME TO FILE

[COMMONWEALTH OF MASSACHUSETTS NORFOLK DIVISION,  
IN RE ESTATE OF BRUCE F. MILLER (Docket Number  
NO20P0037EA), August 11, 2020, MEMORANDUM OF DECISION  
AND ORDER, Page 1 of 4]

[App pages (1 of 4) of Memorandum of Decision and Order not included  
with Application To Extend The Time To File]

APPENDIX C: NOTICE OF DENIAL OF APPLICATION FOR FURTHER  
APPELLATE REVIEW

[Supreme Judicial Court for the Commonwealth of Massachusetts, IN  
THE MATTER OF THE ESTATE OF BRUCE F. MILLER (Docket No.  
FAR-29572), December 15, 2023, NOTICE OF DENIAL OF  
APPLICATION FOR FURTHER APPELLATE REVIEW, Page 1 of 1]  
Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. FAR-29572

IN THE MATTER OF THE ESTATE OF BRUCE F. MILLER

Norfolk Probate & Family No. NO20P0037EA  
A.C. No. 2022-P-0901

NOTICE OF DENIAL OF APPLICATION FOR FURTHER  
APPELLATE REVIEW

Please take note that on December 15, 2023, the application for further  
appellate review was denied.

Francis V. Kenneally Clerk

Dated: December 15, 2023

To: Elizabeth Ann Caruso, Esquire  
Paul N. Barbadoro, Esquire

Susan M. Molinari, Esquire  
Misop Baynun  
Sandra Miller

APPENDIX D: DENIAL OF MOTION FOR RECONSIDERATION  
[Massachusetts Appeals Court, BRUCE HILTUNEN & another vs.  
MISOP BAYNUN (Docket Number: 2022-P-0901), November 6, 2023,  
Denial of Petitioner's Motion for Reconsideration, Yet not delivered to  
Petitioner until January 19, 2024, Page 1 of 1]  
--COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

Dated: January 19, 2024

RE: No. 2022-P-0901  
Lower Court No: NO20P0037EA

BRUCE HILTUNEN & another vs. MISOP BAYNUN

NOTICE OF DOCKET ENTRY

Please take note that, with respect to the Motion for Reconsideration or modification of decision filed by Misop Baynun. (Paper #22), on November 6, 2023, the following order was entered on the docket:

RE#22: After consideration, the motion filed pursuant to Rule 27 is denied. (Wolohojian, Shin, Ditkoff, JJ.) \*Notice

No.

IN THE

SUPREME COURT OF THE UNITED STATES

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Misop Baynun — Petitioner

VS.

Bruce Hiltunen, et al. — Respondents

PROOF OF SERVICE

I, Misop Baynun, do declare that on this date, February 29, 2024, as required by Supreme Court Rule 29, I have served and enclosed this MOTION FOR LEAVE TO PROCEED AS A VETERAN, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, and APPLICATION TO EXTEND THE TIME TO FILE WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days, by email, or in person.

The names and addresses of those served are as follows:

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I declare under the penalty of perjury that the forgoing is true and correct.

Executed on February 29, 2024

s/ Misop Baynun

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