IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF JOSE CELIS CAMACHO,
Deceased,

FRANCISCO O. CAMACHO,
Administrator-Appellant.

SUPREME COURT NO. 2009-SCC-0012-CIV
SUPERIOR COURT NO. 80-0029

OPINION

Cite as: 2012 MP 8

Decided July 18, 2012

Brien Sers Nicholas, Saipan, MP for Administrator-Appellant.
BEFORE: ALEXANDRO C. CASTRO, Acting Chief Justice; JESUS C. BORJA, Justice Pro Tem; EDWARD MANIBUSAN, Justice Pro Tem.

CASTRO, A.C.J.:

¶ 1 Francisco Omar Camacho ("Francisco"), as administrator for the estate of Jose Celis Camacho ("Estate"), appeals the probate court's order directing him to distribute a share of the Estate to Simion Omar Camacho ("Simion"). For the reasons set forth herein, we find that Simion is an heir and is therefore entitled to an equal share of the decedent's estate *per stirpes*. The Superior Court's judgment is therefore AFFIRMED.

I

¶ 2 Jose Celis Camacho ("Decedent") died intestate in 1977. Decedent's probate initially opened in 1980 and was closed in 1982. The probate court found that Decedent's heirs were his four sons: Simion, Antonio, Francisco, and Jose. *In re Estate of Jose Celis Camacho*, No. 80-29 (NMI Trial Ct. Feb. 5, 1982)

(Order for Final Distribution at 1) ("Order for Final Distribution"). The probate court distributed the Estate, both money and real property, to each heir in equal shares.

¶ 3 Twenty-three years later, Francisco, asserting that some of Decedent's real property had been misidentified by the Order for Final Distribution, moved to reopen the probate "to enable the successor administrator to bring a lawsuit on behalf of the Estate."[1] *In re Estate of Jose Celis Camacho*, No. 80-29 (NMI Super. Ct. Jan. 28, 2009) (Amended Decree of Final Distribution at 2) ("Amended Decree"). The probate court granted Francisco's motion over Simion's objections and appointed Francisco as the administrator of the Estate. In response, Simion dismissed his attorney and has refused to respond to or take part in all subsequent proceedings, including this appeal.

¶ 4 Subsequently, the Estate filed a quiet title action naming Simion and a number of other parties. One of the defendants to that suit paid the Estate $145,000 pursuant to a settlement agreement. In March 2008, the probate court ordered the administrator to release three-fourths of the settlement equally between Francisco, Antonio, and Jose. It ordered the remaining one quarter be held in a savings account pending further orders from the court.

¶ 5 In January 2009, the probate court found Simion entitled to an equal share of the Estate and ordered the administrator to release the remaining one quarter share, including interest, to Simion. This appeal followed.

II

¶ 6 The Supreme Court has appellate jurisdiction over "orders, final decisions, [and] judgments of probate matters," 8 CMC § 2205, and over all other final judgments and orders of the Superior Court of the Commonwealth. 1 CMC § 3102(a).

III

¶ 7 Francisco raises two issues on appeal. First, he asserts that the probate court erred when it declared that each heir holds an equal undivided share in the Estate *per stirpes*. Second, he argues that the probate court abused its discretion when it declined to use principals of equity in distributing the Estate.

A. Per stirpes Distribution of the Estate

¶ 8 Pursuant to 8 CMC §§ 2901-27, the probate court divided the Estate into four equal parts, one portion for each of Decedent's heirs, including Simion. It then ordered Francisco as the administrator to distribute the shares to each heir. Francisco argues that Simion should not receive an equal share of the

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[1] Three years before his death, the Decedent conveyed a parcel of real property to Simion based on what appears to be a faulty survey map. Subsequent to the initial probate, Simion conveyed the property to his children who then leased the property for over three million dollars to Nansay Micronesia and sold the reversionary rights to a third party. Francisco notes in his brief that the lease and sale are a source of tension between Simion and his brothers. Francisco's Opening Br. at 5-6.

Estate. Whether each heir holds an equal undivided share in the Estate *per stirpes* is a question of law that is reviewed de novo. *In re Estate of Cabrera*, 2 NMI 195, 202-03 (1991).

¶ 9 "Probate matters, including heirship determinations, are generally governed by the Northern Mariana Islands Probate Law, 8 CMC §§ 2101-2927." *In re Estate of Kaipat*, 2010 MP 17 ¶ 6. However, under 8 CMC § 2102, "'property of persons who die before February 15, 1984, shall pass according to Title 13 of the Trust Territory Code and other applicable law.'" *Id.* (quoting 8 CMC § 2102). Because Decedent died in 1977, "distribution of his estate is governed by Title 13 of the Trust Territory Code," which "does not provide any procedural or substantive law governing intestate succession." *Id.* (citation and internal quotations omitted); *see also In re Estate of Barcinas*, 4 NMI 149, 152 (1994) ("Title 13 of the Trust Territory Code, which applies, has no provision on intestate succession.") (citation omitted); *Estate of Cabrera*, 2 NMI at 204 ("Title 13 . . . relates only to wills. It does not provide any procedural or substantive law governing intestate succession."). Francisco does not argue and the record does not contain any information suggesting that customary law should play a role in how the Estate should be distributed. We therefore rely upon the common law pursuant to 1 TTC § 103.[2] *In re Estate of Kaipat*, 2010 MP 17 ¶ 13; *see also In re Estate of Barcinas*, 4 NMI at 153 (applying the common law in the absence of applicable customary law).

¶ 10 "Since Trust Territory times, a decedent's property has passed *per stirpes* — to the heirs in equal shares." *In re Estate of Kaipat*, 2010 MP 17 ¶ 15 (citing *In re Estate of Taitano*, 8 TTR 325, 327 (High Ct. App. Div. 1983)); *see also In re Estate of De Castro*, 2009 MP 3 ¶ 30 ("De Castro died intestate. Thus, by default, her property passed to all her heirs in equal shares . . . ."). "Under *per stirpes* distribution, 'the estate is divided into shares equal to the number of children of the decedent . . . .'" *Estate of Kaipat*, 2010 MP 17 ¶ 15 (quoting *In re Estate of Imamura*, 1997 MP 7 ¶ 27 (Taylor, C.J., dissenting)). Decedent left four heirs: Simion, Francisco, Antonio, and Jose. Consequently, under the common law the Estate is divided into four equal shares and distributed to each heir.[3]

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[2] The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in applicable cases, in the absence of written law applicable under section 101 of this chapter or local customary law applicable under section 102 of this chapter to the contrary and except as otherwise provided in section 105 of this chapter; provided, that no person shall be subject to criminal prosecution except under the written law of the Trust Territory or recognized local customary law not inconsistent therewith.

1 TTC § 103.

[3] Although the probate court was incorrect when it used the Commonwealth Probate Code, the result is the same. Each brother is entitled to receive an equal one-quarter share of the Estate.

¶ 11 Francisco argues that Simion waived his rights to his share of the Estate by refusing to respond to any and all notices of proceedings related to the Estate.[4] The Trust Territory did not have a statute that provided for waiver or renunciation of an estate received through intestacy, so again we look to the common law. While a devisee under a will may renounce or disclaim his or her right under the common law, that option is not available to an heir who takes by intestacy.[5] *Estate of Meyer v. McGrath*, 238 P.2d 597, 605 (Cal. Ct. App. 1951). "The estate [that passes without a will] vests in the heir *eo instanti* upon the death of the ancestor; and no act of [the heir] is required to perfect title." *Id.*; *see also Estate of Kaipat*, 2010 MP 17 ¶ 17 ("The general rule is that real estate becomes vested on the death of the owner in his heirs and devisees . . . ." (quoting *Muna v. Camacho*, 2 CR 10, 12-13 (Trial Ct. 1984))). "No assent or acceptance is necessary . . . [and the heir] cannot, by any renunciation or disclaimer, prevent the passage of title to himself [or herself]." *Estate of Meyer*, 238 P.2d at 605. Or, as stated by an early treatise at common law:

> 'An heir-at-law is the only person who, by the common law, becomes the owner of land without his own agency or assent. A title by deed or devise requires the assent of the grantee or devisee before it can take effect. But in the case of descent, the law casts the title upon the heir, without any regard to his wishes or election. He cannot disclaim it if he would.'

Perkins v. Isley, 32 S.E.2d 588, 591 (N.C. 1945) (quoting 3 Emory Washburn et al., A Treatise on the American Law of Real Property § 2 (5th ed. 1887)). In that regard, "[t]he only way an heir may lose or part with his title to property, acquired by descent, is by prescription, adverse possession, estoppel, gift, contract, conveyance, intestacy, testamentary disposition, and perhaps other ways, but not by renunciation." *Bostian v. Milens*, 193 S.W.2d 797, 801 (Mo. Ct. App. 1946) (citation omitted). Therefore, Simion did not waive his right to, or otherwise disclaim his share of the Estate when he failed to appear before the probate court.[6]

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[4] We decline Francisco's invitation to treat probate proceedings as adversarial. Unlike other claims, probate is not intended as an adversarial proceeding although some proceedings may devolve into such contests. *Cf. Piteg v. Piteg*, 2000 MP 3 ¶ 11 ("In [these] probate cases . . . the parties were not adversaries, rather they were perfecting their title."). Instead, probate is intended to "discover and make effective the intent of a decedent in distribution of his property" and to "promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors." 8 CMC § 2104. For that reason, a known heir is not generally required to take an adversarial stance and hire an attorney to retain the share of an estate to which that heir is entitled.

[5] Although not before us today, because it would directly affect how property of the Decedent would pass, we note that 8 CMC § 2315 governs the steps necessary for an heir to renounce a property interest under the probate code.

[6] To the extent Francisco alleges Simion is the appellee in this matter, the doctrine of waiver does not apply. "[I]t is for the Court to evaluate the issues presented by the appellant or petitioner." *Commonwealth v. Minto*, 2011 MP 14 ¶ 14 (quoting *Leslie v. Att'y Gen. of the United States*, 611 F.3d 171, 175 n.2 (3d Cir. 2010)). NMI Supreme Court Rule 31(c) provides that "[a]n appellee who fails to file a brief will not be heard at oral argument unless the Court grants permission." NMI Sup. Ct. R. 31(c). Thus, at most, Simion would have waived oral argument.

¶ 12 Accordingly, each heir – including Simion – is entitled to receive an equal share of the Estate under *per stirpes* distribution.

B. Power to Act in Equity

¶ 13 Francisco also argues that the probate court should have used its powers in equity to deny Simion the share of the Estate to which he is entitled. He asserts that it is unfair to award a one-quarter share of the Estate to Simion after Simion received so much property from Decedent inter vivos.[7] While citing generally to the Commonwealth Probate Code, 8 CMC §§ 2901-27, the probate court found that "the law of intestate succession does not allow the [trial court] to substitute or avoid the entitlement of an heir on the basis of equity, and the Administrator's arguments and grounds set forth in the petition are not adequate to divest Simion of this rightful share as an heir to the Estate." Amended Decree at 5. Whether the probate court correctly interpreted and applied a statute is a question of law reviewed de novo. *See Commonwealth v. Taisacan*, 1999 MP 8 ¶ 2 ("Whether the trial court correctly interpreted and applied a statute is a question of law reviewed *de novo*." (citing *Commonwealth v. Kaipat*, 2 NMI 322, 327-28 (1991))).[8] Likewise, whether jurisdiction exists is a question of law reviewed de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 291-92 (1992); *Commonwealth v. Repeki*, 2004 MP 19 ¶ 9.

¶ 14 The Commonwealth Probate Code states that "[t]o the full extent permitted by the Northern Mariana Islands Constitution . . . , the Commonwealth [Superior] Court *shall* have jurisdiction over *all subject matter* relating to estates of decedents . . . ." 8 CMC § 2202(a) (emphasis added).[9] Hence, we have held that Section 2202 "grants the trial court the broadest possible authority to entertain any relevant

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[7] We note that Francisco does not cite any law supporting his position, nor does he address the probate court's assertion that the law does not allow it to substitute or avoid the entitlement of an heir on the basis of equity. Francisco and his attorney are reminded that "[o]ur adversarial system relies on advocates to inform the discussion." *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 50 (quoting *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929-30 (9th Cir. 2003)). It is Francisco's "burden on appeal to present the court with legal arguments to support [his] claims" and failure to do so ordinarily amounts to waiver of that argument. *Minto*, 2011 MP 14 ¶ 46 n.8 (citation and internal quotations omitted). We decline to apply waiver in this particular instance because we consider this a valuable opportunity to "guide future courts and litigants faced with similar issues." *Malite v. Superior Court*, 2007 MP 3 ¶ 11.

[8] The NMI Reporter contains a clerical error that incorrectly continues numbering sequentially from the last paragraph in the previous case, 1999 MP 7. We cite to the correct paragraph number.

[9] Section 2202 states:

> (a) To the full extent permitted by the Northern Mariana Islands Constitution and the Schedule on Transitional Matters, the Commonwealth Trial Court shall have jurisdiction over all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents.
> (b) The Commonwealth Trial Court shall have full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

8 CMC § 2202.

matters that may come before it in a probate matter." *In re Estate of Rofag*, 2 NMI 18, 24 (1991); *see also Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶17 ("Under 8 CMC § 2202, [the Commonwealth Superior Court, sitting as a] probate court, has wide discretion in probate proceedings to entertain any relevant matters that may come before it in a probate matter." (citing *In re Estate of Tudela*, 4 NMI 1, 4 (1993))).

¶ 15 To that effect, "Section 2202(b) states that the [Superior Court] '*shall have full power* to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters [that] come before it.'" *Malite*, 2007 MP 3 ¶ 30 (quoting 8 CMC §2202(b)) (emphasis added). "A basic principle of statutory construction is that language must be given its plain meaning." *Estate of Rofag*, 2 NMI at 29 (citation omitted). In plain terms, Section 2202(b) provides the Superior Court with the complete set of powers that are necessary for it to hear and decide probate matters. This broad mandate is inclusive and does not contain restrictions on the court's powers. Furthermore, the Probate Code mandates that it "*shall* be liberally construed and applied to promote its underlying purposes and policies," 8 CMC § 2104(a) (emphasis added), one of which is "[t]o promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors." 8 CMC § 2104(b)(3). Thus, the Commonwealth Legislature clearly intended to promote judicial economy, which would be well served by the Superior Court exercising its normal powers as a court of general jurisdiction pursuant to 1 CMC § 3202 while sitting in probate.[10]

¶ 16 This interpretation comports with our past directives to the Superior Court that, while sitting in probate, it may employ commonly used judicial tools derived from its powers as a court of general jurisdiction. For example, in *Estate of Malite*, 2010 MP 20, we expressly held that "[t]he probate court was permitted to employ commonly used judicial tools, such as interpleading of disputed funds, to carry out this Court's mandate [ordering attorneys to disgorge fees not approved by the probate court]." *Id.* ¶ 37. Interpleader of funds is an equitable doctrine not found in the Commonwealth Rules of Probate Practice:

> Before the Constitution was adopted a familiar basis for the exercise of the extraordinary powers of courts of equity was the avoidance of the risk of loss ensuing from the demands in separate suits of rival claimants to the same debt or legal duty. Since, without the interposition of equity, each claimant in pursuing his remedy in an independent suit might succeed and thus subject . . . the fund pursued to multiple liability, equity gave a remedy by way of bill of interpleader, upon the prosecution of which it required the rival claimants to litigate in a single suit their ownership of the asserted claim.

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[10] "The Superior Court has original jurisdiction over all civil actions, in law and in equity, and over all criminal actions, and has the power to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs and orders necessary and appropriate to the full exercise of its jurisdiction." 1 CMC § 3202.

Texas v. Florida, 306 U.S. 398, 405-06 (1939) (internal citations omitted); *see also* 4 John Norton Pomeroy, Jr., A Treatise on Equity Jurisprudence §§ 1319-29 (4th ed. 1919).

¶ 17 The equitable principle of hotchpot is a second judicial tool available to the probate court when distributing an estate. *In re Estate of Barcinas*, 4 NMI at 154 (holding that advancements made to three heirs did not preclude them from sharing in some portion of the estate "so long as they bring the value of their advancements into 'hotchpot.'"); *see also Laughlin Estate*, 46 A.2d 477, 479-80 (Pa. 1946) ("The doctrine of hotchpot is of ancient origin . . . . It has for its object the furtherance of that maxim of equity which declares that equality is equity."); *cf. Nelson's Heirs v. Bush's Adm'r*, 39 Ky. 104, 105-06 (Ky. 1839) ("[T]he principle of hotchpot had prevailed in the English and American law, long before the enactment of [Kentucky's probate] statute . . . ."). In hotchpot, an heir who receives an advancement may elect to share equally in the value of the estate by returning the estimated value of the advancement to the estate. *In re Estate of Barcinas*, 4 NMI at 154. Putting the value of the advancement into the estate allows the probate court to divide the whole estate pursuant to the applicable statute of descents. *Id.*

¶ 18 Injunctive relief is a third judicial tool available to the probate court based upon the Superior Court's equity jurisdiction. In *Malite*, we held that the probate court erred when it denied its own jurisdiction to issue a temporary restraining order that required attorneys to disgorge fees that had been inappropriately paid. 2007 MP 3 ¶¶ 25-26. Such relief would have allowed the court to conduct an independent review of the attorney fees and properly satisfy due process owed to the heirs of the estate at issue. *Id.* ¶ 37. Temporary restraining orders and other injunctive relief are equitable in nature. *Consumers Gas & Oil, Inc. v. Farmland Indus.*, 84 F.3d 367, 370 (10th Cir. 1996) ("The term 'injunction' . . . includes all equitable decrees compelling obedience under the threat of contempt." (quoting 11A Wright, Miller & Kane, Federal Practice and Procedure § 2955, at 309 (1995)); 4 John Norton Pomeroy, Jr., A Treatise on Equity Jurisprudence § 1338 (4th ed. 1919) ("The restraining power of equity extends . . . through the whole range of rights and duties which are recognized by the law . . . .").

¶ 19 Accordingly, we conclude that the Superior Court is a court of general jurisdiction while presiding over matters in probate and may bring to its aid the full equitable and legal powers it has been granted by the Commonwealth Constitution and statutes while determining any questions that may arise during the administration of an estate.[11] "Such broad authority is necessary to ensure that the probate

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[11] Article IV, section 2 of the Commonwealth Constitution states:

> The Commonwealth superior court shall have original jurisdiction in all cases in equity and at law. The court shall also have original jurisdiction in all criminal actions. The superior court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under this constitution and the laws of the Commonwealth.

court is able to effectuate the 'efficient probate of an estate . . . [and] a fair and proper distribution . . . ." *Malite*, 2007 MP 3 ¶ 30 (quoting NMI R. Prob. P. 1).

¶ 20 Furthermore, although our conclusion is based entirely upon the plain text of Section 2202, we note agreement by courts in jurisdictions that adopted the Uniform Probate Code ("UPC"). The Commonwealth Probate Code is largely based on the UPC, including Section 2202, which closely tracks UPC § 1-302 with regard to jurisdiction over estates.[12] 8 CMC § 2101 (Commission cmt.); *Tudela v. Tudela*, 2009 MP 9 ¶ 18. Consequently, "in the absence of expressed legislative intent to the contrary, the UPC reasoning should be given effect." *Tudela*, 2009 MP 9 ¶ 18. Accordingly, where the Commonwealth and another jurisdiction both have adopted a particular UPC provision, interpretations of that provision by the other court of last resort can be persuasive. *See id.* at ¶ 8 ("The Commonwealth's exemption statute is based on an analogous section of the Uniform Probate Code. There are at least three jurisdictions with similar UPC-based statutes which have considered the extent of the estate granted." (citation omitted)); *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16 (Slip Opinion, June 28, 2012) ("When there is no dispositive Commonwealth authority on an issue, we may look to persuasive authority from other jurisdictions."); *cf. Tudela v. Superior Court*, 2010 MP 6 ¶ 19 ("[T]his Court 'may . . . look to federal cases interpreting the equivalent provisions of federal law to determine the issues raised' in a given case." (quoting *Saipan Lau Lau Dev., Inc. v. Superior Court*, 2000 MP 12 ¶ 3)); *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 42 (looking to other jurisdictions with similar statutes for "guidance," when existence of private right of action could not be determined from statutory interpretation).

¶ 21 The UPC is designed to allow each state-level jurisdiction "to create separate and inferior probate courts or to place probate jurisdiction within a court of general jurisdiction." *In re Estate of Fields*, 219 P.3d 995, 1005 (Alaska 2009). Like the Commonwealth, several other UPC jurisdictions have chosen the latter course and assigned subject matter jurisdiction for probate matters with their court of general jurisdiction.[13] The majority of those courts, when faced with a similar question, have concluded that

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NMI Const. art IV, § 2.

[12] In relevant part, Section 1-302 states:

> (a) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to . . . estates of decedents, including construction of will and determination of heirs and successors of decedents, and estates of protected persons . . . ;
> (b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Unif. Probate Code § 1-302 (amended 1982), 8 U.L.A. 38 (1983).

[13] Several other states assign probate cases to courts of limited jurisdiction. *See, e.g., Voisine v. Tomlinson*, 955 A.2d 748, 750 (Me. 2008) ("[T]he Probate Court lacks jurisdiction to address the claims for money damages.") (citation omitted); *Doe v. Sex Offender Registry Bd.*, 927 N.E.2d 455, 459 (Mass. 2010) (citing *Konstantopoulos v.*

assignments to sit in probate do not deprive ordinary subject matter jurisdiction from the court of general jurisdiction. *See In re Estate of Fields*, 219 P.3d at 1006 ("Nothing in the probate statutes or rules suggests that a superior court exercising probate jurisdiction is an inferior court without authority to decide questions of a decedent's interest in property or to issue equitable relief."); *Gonzalez v. Superior Court*, 570 P.2d 1077, 1079 (Ariz. 1977) ("[W]e conclude that by enacting the new probate code the legislature intended to confer upon the Superior Court sitting in probate its full constitutional jurisdiction in matters which might arise affecting estates."); *In re Estate of Kam*, 129 P.3d 511, 523 (Haw. 2006) ("A circuit court . . . is a court of general jurisdiction that happens to have included within its jurisdictional authority probate jurisdiction."); *Olson v. Kirkham*, 720 P.2d 217, 219 (Idaho Ct. App. 1986) ("[S]uch assignments [to sit in probate] do not deprive the district judges of their subject matter jurisdiction."); *Ohnstad Twichell, P.C. v. Treitline*, 574 N.W.2d 194, 197 (N.D. 1998) (holding that the court of general jurisdiction has jurisdiction over probate matters and that the UPC, as adopted by North Dakota, does not make a distinction between the probate and original jurisdiction of the district court.).

¶ 22 Montana is the only UPC jurisdiction in which the courts have found the reverse true. While Montana's probate code adopts the UPC and assigns probate cases to its court of general jurisdiction, the Montana Supreme Court continues to use pre-UPC case law to limit the jurisdiction and powers of the court sitting in probate. Without expressly analyzing the plain text of the UPC as adopted by Montana, that court concluded that "the code was not designed to replace all principles of probate law in effect prior to adoption of the code." *In re Estate of Pegg*, 680 P.2d 316, 322 (Mont. 1984). Thus, Montana's superior court equivalent "sitting in probate has only the special and limited powers conferred by statute, and has no power to hear and determine any matters other than those which come within the purview of the statute or which are implied as necessary to a complete exercise of those expressly conferred." *In re Estate of Haugen*, 192 P.3d 1132, 1134 (Mont. 2008) (quoting *In re Graff's Estate*, 174 P.2d 216, 218 (Mont. 1946)); *see also In re Estate of Thomas*, 699 P.2d 1046, 1048 (Mont. 1985) (holding that the Montana district court, a court of general jurisdiction, is a court of limited jurisdiction while sitting in probate by citing to cases that pre-date the passage of the UPC to support its holding). We consider the majority position more persuasive than Montana's.

Whately, 424 N.E.2d 210 (Mass. 1981) for the proposition that "despite breadth of this jurisdictional grant [of general equity jurisdiction], the Probate Courts remain courts of limited jurisdiction"); *Noble v. McNerney*, 419 N.W.2d 424, 427 (Mich. Ct. App. 1988) ("Even though the scope of the probate court's jurisdiction was expanded by the enactment of the Revised Probate Code, the probate court has not become a court of general jurisdiction."); *Iodence v. Potmesil*, 476 N.W.2d 554, 556 (Neb. 1991) ("The Legislature has the power to confer subject matter jurisdiction on the county courts. To date, save for the county court probate powers and the county courts' limited jurisdiction in granting temporary restraining orders, jurisdiction in equity actions remains in the district courts."); *In re Estate of Harrington*, 5 P.3d 1070, 1074 (N.M. Ct. App. 2000) ("Probate proceedings are special proceedings and, as a result, district courts sitting in probate possess only the jurisdiction conferred upon them by statute.").

¶ 23 Accordingly, the Superior Court may exercise its equitable powers while sitting in probate if doing so makes it better able to effectuate the "efficient probate of an estate . . . [and] a fair and proper distribution . . . ." NMI R. Prob. P. 1.[14]

¶ 24 Although Francisco is correct that equity can be considered by the probate court, that court needs a basis on which it can act in equity. It is a longstanding maxim that "equity follows the law" to the extent that equity obeys the law and conforms "to its general rules and policies whether contained in common law or statute." *Guy Dean's Lake Shore Marina v. Ramey*, 518 N.W.2d 129, 133 (Neb. 1994); 1 John Norton Pomeroy, Jr., A Treatise on Equity Jurisprudence § 425 (3d ed. 1905); *see also Hedges v. Dixon Cnty.*, 150 U.S. 182, 192 (1893) ("The established rule . . . is that equity follows the law, or, as stated in *Magniac v. Thomson*, [56 U.S. 281, 299 (1854)], 'that wherever the rights or the situation of parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation, but in all such instances the maxim *equitas sequitur legem* is strictly applicable.'"). Accordingly, "[a] court of equity cannot . . . create a remedy in violation of law, or even without the authority of law." *Seguros Banvenez, S.A. v. S/S Oliver Drescher*, 761 F.2d 855, 863 (2d Cir. 1985) (quoting *Rees v. City of Watertown*, 86 U.S. 107, 122 (1874)). As discussed above, the law relevant to this case is well settled — the Estate is distributed *per stirpes*. There are no overriding legal or equitable principles relevant to the instant case that override or otherwise abrogate property distribution *per stirpes*. Moreover, beyond Francisco's generalized grievance of unfairness that he directs at his father's inter vivos gift to Simion, Francisco does not provide a basis for the probate court to use a maxim of equity to terminate Simion's inheritance as a rightful heir. Therefore, the probate court did not abuse its discretion when it chose not to act in equity to avoid the entitlement of an heir and Francisco's appeal fails on this point.

IV

¶ 25 For the foregoing reasons, the judgment of the probate court is AFFIRMED. As an heir, Simion is entitled to an equal share of the Estate *per stirpes*.

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[14] While it may appear that our holding is expansive and gives the Superior Court complete jurisdiction to hear all matters while sitting in probate, it does not. Such "power is . . . 'incidental,' investing the probate court with 'incidental jurisdiction where necessary to carry out its express powers' in matters over which it has jurisdiction." *Estate of Heigho v. Heigho*, 9 Cal. Rptr. 196, 204 (Cal. Ct. App. 1960) (internal quotations omitted). The probate court has discretion to decline jurisdiction over or sever an incidental matter from a probate proceeding to prevent disruption of either matter or to better maintain control over the proceedings.

SO ORDERED this 18th day of July, 2012.

/s/
ALEXANDRO C. CASTRO
Acting Chief Justice

/s/
JESUS C. BORJA
Justice Pro Tem

/s/
EDWARD MANIBUSAN
Justice Pro Tem