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In re Emily Dunn

In re Estate of Rich

Franklin Supreme Court (1996)

Harry Dawson, a legatee under the will of Michael Rich, and the Estate of Tom Rich appeal the judgment of the Franklin Probate Court approving the final accounting of the executor of the Estate of Michael Rich.

Decedent, Michael Rich, died on April 15, 1994, a domiciliary of Parklane, Franklin, leaving a Last Will dated February 4, 1991. Under the terms of this will, decedent bequeathed:

1. All of my household goods to my daughter, Sylvia Rich Yankow;

2. My summer home on Lake Forest, State of Franklin to my best friend, Harry Dawson;

3. 100 shares of New Pioneer, Inc. common stock to my aunt, Nancy Rich, if she survives me;

4. $50,000 to my friend, Ellen Gray, if she survives me; and

5. The residue of my estate to my daughter, Sylvia Rich Yankow, and my son, Tom Rich, in equal shares.

Other than his son, Tom Rich, who died during the Gulf War, all of decedent's named beneficiaries survived him.

Decedent died leaving an estate of over $1,000,000, including his summer home on Lake Forest. Two months following decedent's death, the summer home was totally destroyed by fire. Home Casualty Insurance Company, which had issued the fire insurance policy on this home, immediately paid $150,000, the value of the home, to the executor.

In the final accounting for the estate, the executor determined that the insurance proceeds and all of the other residuary assets of the estate should be paid to Sylvia Rich as the sole surviving residuary legatee under the will. Both Harry Dawson, the legatee of the summer home, and the Estate of Tom Rich appeal.

Harry Dawson claims that, as the specific legatee of the summer home, all insurance proceeds payable thereon as a result of its destruction following the decedent's death are payable to him rather than to the residuary legatee under the decedent's will. The Estate of Tom Rich claims that one-half of the residuary estate should have been distributed to it under the terms of the residuary clause in the will.

Walker on Wills, one of the country's leading treatises on wills, notes that all bequests under wills are classified as either (1) general, (2) specific, (3) demonstrative, or (4) residuary.

A *general* legacy (typically a gift of money) is defined as a "bequest payable out of general estate assets or to be purchased for a beneficiary out of general estate assets." Walker on Wills, § 501.

A *specific* legacy is defined as a "bequest of a specific asset." Id. at § 502(a).

A *demonstrative* legacy is a bequest of a "specific sum of money payable from a designated account. Such legacy is specific as to the funds available in the account to pay the bequested amount and general as to the balance" Id. at § 502(b).

Lastly, Walker states that a *residuary* bequest is a "bequest that is neither general, specific or demonstrative and includes bequests that purport to dispose of the whole estate." Id. at § 503.

The bequest to Harry Dawson is of specific property, the summer home of the testator. If the identical thing bequeathed is not in a decedent's probate estate, the legacy is "adeemed" and the legatee's rights are gone. Walker on Wills, § 600. In this case, the summer home was in existence at the time of the decedent's death, so the bequest to Harry Dawson did not adeem. On the other hand, it was totally destroyed by fire following the decedent's death. The question raised is whether the specific legatee is entitled to receive the casualty insurance proceeds payable as a result of the fire. In resolving this question, the court, as it does in construing wills generally, must consider the testator's intent. Here, testator's will is completely silent regarding who should receive the insurance proceeds under the facts as they occurred. Thus, we are unable to ascertain the testator's intent. As such, the insurance policy must be treated like any other estate asset that is not the subject of a specific bequest. While there are cases in other jurisdictions to the contrary, we believe that the insurance policy insuring the summer home is merely another asset of the decedent's estate and forms part of the residuary estate because it was not specifically bequeathed to any other legatee. Accordingly, the Franklin Probate Court correctly upheld the decision of the executor to distribute such proceeds as part of the residuary estate.

Having determined that the insurance proceeds were part of the residuary estate, we turn to the claim of the Estate of Tom Rich.

Section 331 of the Franklin Probate Code ("Lapse Statute") provides that: "If a legatee or devisee predeceases the testator, the bequest or devise that would have passed to the deceased legatee or devisee passes to his issue that survive the testator, unless the will otherwise provides." Cases in this jurisdiction have repeatedly held that unless a decedent's will *expressly* conditions a residuary or other bequest on survivorship, the bequest passes to the estate of a deceased legatee unless the legatee dies leaving issue who survive the testator.

Unlike the specific bequest of the stock and the general bequest of cash, decedent's will does not expressly condition the residuary bequests to Sylvia Rich Yankow and Tom Rich on survivorship, and Tom Rich predeceased the testator leaving no surviving issue. In light of the statute and relevant cases, the probate court erred in holding that the Estate of Tom Rich was not entitled to one-half of the decedent's residuary estate.

Order of the Franklin Probate Court affirmed in part and reversed in part

In re Estate of Young

Franklin Supreme Court (1978)

Decedent, Harry Young, died on March 12, 1974, a resident of Jackson City, Franklin. Mr. Young was a successful businessman in Jackson City and by the time of his death had accumulated a substantial fortune.

Two provisions of Mr. Young's will were called into question by the residuary legatees under his will. The first reads: "I give 100 shares of Gemet Corporation stock to my nephew, Ron Winky." Gemet Corporation stock is publicly traded on the New York Stock Exchange. Mr. Young did not own any Gemet Corporation stock at the time of his death and there is no evidence whether he ever owned any such stock. Mr. Winky argues that the bequest of stock was a general bequest to be purchased for his benefit with assets of Mr. Young's estate. The residuary legatees argue it is a specific bequest that adeemed because no such stock was in the decedent's probate estate at the time of his death.

Generally, whether a gift of specific shares of stock is a specific or general bequest depends on the intent of the testator. Gifts of specific stock are presumptively specific. If the stock was not owned at the time the will was signed, the bequest is more likely general. See generally, Walker on Wills, § 10320. If the stock was owned by testator at the time the will was executed or was stock in a closely held corporation—or if there is language in the will evidencing such ownership at the time the will was signed, such as "my stock"—the bequest is specific and, if such stock is not in the estate when testator dies, the bequest adeems. In the absence of evidence to the contrary and given the presumption of classification as specific, we affirm the Probate Court's finding that the gift to Ron Winky adeemed.

The second contested provision of the will reads: "I give $100,000 to my friend, Phil Darby, or if Phil predeceases me, to his children." Phil Darby predeceased decedent. While none of Darby's children survived the decedent, he had two grandchildren who did. One of these grandchildren had been adopted by Mr. Darby's deceased child. The grandchildren claim to be entitled to the $100,000 as alternate beneficiaries under the will. The residuary legatees claim the bequest lapsed under § 331 of the Franklin Probate Code.

The question on appeal is what the decedent meant or intended when he used the word "children." Mr. Darby's grandchildren argue that, when Mr. Young signed his will, Mr. Darby's children had already been dead for five years and that his grandchildren who lived with him were known to the decedent. Thus, they argue, it is reasonable to believe that, when decedent referred to "Mr. Darby's children," he was thinking of these grandchildren. We find this argument persuasive and hold that, for *purposes of this case,* the word "children" means *issue.*

We hold that the $100,000 passes to the grandchildren of Mr. Darby and affirm the judgment of the Probate Court.

§ 11200: In construing wills, all courts adhere to the principle that testator's intent controls in the interpretation of the language in the will. For this reason, there is a very high premium on drafting wills in which the language is clear and unambiguous. Attorneys who draft wills also must be aware of governing rules of law that can affect how wills might be construed if the language is not clear.

For example, suppose a testator bequeaths "my 100 shares of X Corporation stock to B" but at the time of the testator's death, she owns 200 shares of X Corporation stock. Is B entitled to only 100 shares of the X Corporation stock or to the 200 shares of that stock that testator owns at death? The answer to this question often depends on how testator acquired the additional 100 shares of stock.

If the additional shares were acquired either as a stock split or stock (as distinguished from cash) dividend, most courts hold that they pass to the specific legatee because they represent the stated gift in its current form. However, since this matter is not always free of doubt, if a testator intends that result, a will construction proceeding to resolve the question could be avoided if, for example, the will had read: "I give my 100 shares of X Corporation stock to B, including any additional shares I receive between the date of the execution of this will and the date of my death as either a stock split or as a dividend paid to me by X Corporation in its own shares."

* * * *

§ 14920: There had been much confusion surrounding how property should be distributed among class members where the class gift is limited to persons potentially of different generational levels to the named ancestor, such as a gift to "issue." Fortunately, the matter has been universally resolved in all states by their adoption of the Uniform Act on Per Capita and Per Stirpes Distributions. This act provides that:

1. If property is distributed "per capita" to the "issue" or "descendants" of a named ancestor, each person who is an issue or descendant of the named ancestor takes an equal share.

2. If property is distributed "per stirpes" to the "issue" or "descendants" of a testator, the property is distributed among the issue or descendants most closely related to the testator. However, if there would have been other issue or descendants at the same generational level who, had they survived, would have participated in the gift, then their issue or descendants, if any, take the share these deceased persons would have taken. The following example illustrates distribution "per stirpes":

(1) Testator (T) had three children, A, B, and C.

- A dies before T and had 7 children.
- B dies before T and had 1 child.

- C survives T and has 1 child.

(2) A's children each take 1/7 of the 1/3 share A would have received had he lived.

(3) B's child gets the entire 1/3 share B would have received had he lived.

(4) C takes a 1/3 share and C's child takes nothing.

As can be seen, in a "per stirpes" distribution, grandchildren with dead parents get a proportionate share of what their parents would have gotten.

3. If property is distributed "per stirpes but per capita at each generation" to the "issue" or "descendants" of a testator, the outcome is quite different. The following example, using the same facts that were used to illustrate "per stirpes" distribution, illustrates distribution "per stirpes but per capita at each generation":

(1) Testator (T) had three children, A, B, and C.

- A dies before T and had 7 children.
- B dies before T and had 1 child.
- C survives T and has 1 child.

(2) A and B's children each take 1/8 of the 2/3 share A and B would have received had they lived.

(3) C takes a 1/3 share and C's child takes nothing.

As opposed to a pure "per stirpes" distribution, in this case the grandchildren with dead parents each get an equal share of what all the dead parents would have gotten. In this example, B's child gets much less. Instead of a 1/3 share, B's child shares equally with all the grandchildren whose parents have died.