UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 40 | Number 2 Article 5

2-1-1962

Statutory Comment

North Carolina Law Review

STATUTORY COMMENT

Intestate Succession—Recent Statutory Changes

INTESTATE SUCCESSION

The 1959 General Assembly of North Carolina enacted a completely new and up to date Intestate Succession Act[1] for the benefit of the citizens of this state. This act, effective as of July 1, 1960, is now embodied in new chapter 29 of the General Statutes. The new law has generally been well-received by lawyers and laymen alike. However, its scope was such and the changes it wrought in the old, medievalistic inheritance laws of North Carolina were so drastic it could reasonably be anticipated that during a period of adjustment after its enactment some flaws and discrepancies and unanswered questions should appear. This proved to be the case, and the 1961 legislature moved immediately to remedy these defects—few in number and of relatively minor importance—as they were brought to its attention. The amendments to the act will now be discussed.

G.S. § 29-2(1) concerning the definition of an advancement was amended[2] by providing that a writing designating a gift to a spouse as an advancement must be *signed* by the donor at the time of the gift. Before the amendment the statute required a writing in such case but did not require that it be signed. This minor amendment merely serves the purpose of clarification.

G.S. § 29-10 which permits an heir to renounce his intestate share of a decedent's estate was rewritten in fairly extensive fashion.[3] Subsection (a) of G.S. § 29-10 has been amended so as to make it clear that either the heir in person or his duly authorized attorney, guardian or next friend (when approved by the clerk of the superior court and resident judge of the superior court) may execute the renunciation in writing. The amendment also confined the right of renunciation to the *entire* share of the heir, thus removing any complications that could arise under the old law which permitted renunciation of the heir's share, either in whole or in part.

[1] N.C. GEN. STAT. §§ 29-1 to -30 (Supp. 1959). For a detailed discussion of the new law, see McCall, Bolich & Wiggins, *North Carolina's New Intestate Succession Act*, 39 N.C.L. REV. 1 (1960).

[2] N.C. GEN. STAT. § 29-2(1) (Adv. Leg. Serv. Supp. No. 6, 1961).

[3] N.C. GEN. STAT. § 29-10 (Adv. Leg. Serv. Supp. No. 6, 1961).

The statute as rewritten also changes G.S. § 29-10(b) with reference to the time within which an effective renunciation should be filed. Under the prior law a renunciation to be effective had to occur within one year after the death of the intestate. As a result of the feeling that the one-year limitation was perhaps too arbitrary and not sufficiently broad to cover the various situations which might actually arise in the administration of the average estate, amendments were made which have the effect of providing more flexible time limitations for the filing of the renunciation. New subsection (b) provides that:

> Such renunciation must be filed within four months after the death of the intestate if letters of administration are not issued within that period; or if letters of administration are issued during that period, then within two months after the date of such issuance; or if litigation that affects the share of the heir in the estate is pending at the expiration of such period for filing the renunciation, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The new law amends old subsection (c) of G.S. § 29-10 by adding a proviso thereto to the effect that where an heir has renounced his intestate share "in no event shall the persons who inherit by representation in place of the renouncer receive from the renouncement a greater share of the estate than the renouncer would have received." Under the method of distributing property, as set forth in G.S. § 29-16, and under old G.S. § 29-10(c), it formerly was possible for an heir to renounce his interest and thereby put his representatives in a position to receive a larger share of the estate than the heir himself could have received. For example, if *P* owning an estate worth $90,000 should die intestate leaving no spouse but survived by a living son *B* and one grandchild, *E*, son of *P's* deceased child *A*, and also by grandchildren *J* and *K*, children of *P*'s deceased daughter *C*, *B* the living son of *P* would take one-third of the estate or $30,000 and the other two-thirds or $60,000 would be divided equally among the grandchildren *E*, *J* and *K*. But, if *B* should renounce his intestate share of $30,000, he would be considered to have died immediately prior to the intestate *P*, and if *B* had four children, *F*, *G*, *H* and *I*, they in effect would represent him,

and, under G.S. § 29-16,[4] would share equally with *P*'s other grandchildren, *E, J* and *K,* in *P*'s estate. In other words, each grandchild would get one-seventh of *P*'s estate or $12,857.14. This would mean that *B*'s four children, *F, G, H* and *I,* would, as a result of *B*'s renunciation, together get a total of $51,428.56—considerably more than *B*'s original $30,000 share. To discourage such action on the part of the heir, the amendment provides that those who take by representation in place of the renouncer shall never receive a greater share of the intestate's estate than the renouncer would have received had he not exercised his right to renounce. This would be $30,000 in the case just discussed.

New subsection (d) of the amending act is to the effect that: "If no renunciation is made in the manner and within the time provided for in subsections (a) and (b) hereof, the heir shall be conclusively deemed to have waived his or her right to renounce." This amendment merely states positively what was already the law by implication. It makes it clear that the provisions of the statute are mandatory and must be complied with if the heir is to exercise his rights as given under the statute.

Former subsection (b) of G.S. § 29-10 is rewritten by new subsection (e) so as to guard against the heir or expectant heir executing an encumbrance or transfer of his share of the property and later renouncing his rights to his share of the estate. Under the amendment, if the heir exercises any dominion over the property by executing a mortgage, deed of trust, other encumbrance, or conveyance or contract to convey either the property or any interest therein during the period allowed for renunciation, he waives his right to renounce such property. To be effective against the decedent's personal representative written notice of the waiver must be filed by any interested party with the superior court clerk of the county in which the renunciation could have been filed.

In order to facilitate both the administration of estates and title examination, new subsection (f) of the amending act requires that every renunciation or waiver of renunciation, provided for by law, shall be filed with the clerk of the superior court and cross-indexed by him in a record entitled "Renunciation" and kept by him pursuant to G.S. § 2-42(33).[5]

Finally, new subsection (g) makes the provisions of section

[4] N.C. GEN. STAT. § 29-16 (Supp. 1959).
[5] N.C. GEN. STAT. § 2-42(33) (Adv. Leg. Serv. Supp. No. 6, 1961).

29-10, as rewritten, applicable also to any *portion* of an estate with reference to which a person may die intestate.

ADVANCEMENTS

G.S. § 29-27 was rewritten with reference to the accounting for an advancement by the heir of an advancee when the advancee has died before the intestate donor.[6] The second sentence of old G.S. § 29-27, which provided for a difficult and involved accounting procedure, has been deleted. The first sentence of the section, left virtually intact, provides for a simpler method of accounting.

ELECTION TO TAKE LIFE ESTATE IN LIEU OF INTESTATE SHARE

G.S. § 29-30, relating to the surviving spouse's election to take a life estate in lieu of an intestate share in the decedent spouse's estate was amended in several respects.[7]

Under the 1959 law it was mandatory that the life estate, provided for in subsection (a) of G.S. § 29-30, include a "life estate in the usual dwelling house occupied by the suriving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death. . . ." It was seen that this inflexible requirement might impose an intolerable burden upon the surviving spouse. The house might be too large or too small or too expensive to keep in a good state of repair, and there seemed to be no good reason why the surviving spouse should not be allowed to select his or her one-third life interest in improved real estate instead of being forced to take over and maintain a dwelling house whatever its condition might be. As a consequence, G.S. § 29-30(b) was amended to make the inclusion of the dwelling house be "at the election of the surviving spouse."

Subsection (c) of G.S. § 29-30, with reference to the filing of notice of the election provided for in subsection (a), was amended and rewritten as to the first thirteen lines of subsection (c). This was done in order to make it dovetail more consistently with the dissent statute, G.S. § 30-2.[8]

G.S. § 29-30(c), as it was formerly written, required that the election of the life estate be made within six months of the decedent's death. A dissent under G.S. § 30-2(a), as amended in 1961, must occur within six months after the issuance of letters testamentary or

[6] N.C. GEN. STAT. § 29-27 (Adv. Leg. Serv. Supp. No. 6, 1961).
[7] N.C. GEN. STAT. § 29-30 (Adv. Leg. Serv. Supp. No. 6, 1961).
[8] N.C. GEN. STAT. § 30-2 (Adv. Leg. Serv. Supp. No. 6, 1961).

of administration with the will annexed, or if there is litigation that affects the share of the surviving spouse pending at the expiration of the time allowed for filing the dissent, then within such reasonable time as may be allowed by written order of the clerk of the superior court in the county of the will's probate. The election provided for in G.S. § 29-30 is not available to the spouse of one who dies testate unless he or she dissents from the will. Therefore the right to elect must be co-ordinated as to time with the right to dissent lest the surviving spouse should exercise his right to dissent only to find that his right of election to take a life estate has already expired. (A dissent under old G.S. § 30-2(a) must have been filed within six months after the *probate* of the will.) To effectuate this co-ordination and hence to prevent the suggested unseemly result, the amendment to G.S. § 29-30(c) provides a one month period after the expiration of the time for the filing of the dissent within which the surviving spouse may exercise his right of election as provided in G.S. § 30-2.

Prior to the 1961 amendment thereto, hereinafter discussed, subsection (g) of G.S. § 29-30 provided that "life estates taken by election under this section shall not be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by a purchase money mortgage or purchase money deed of trust." Under the law as it was thus written it was not quite clear: (1) whether household furnishings in which ownership is said to be acquired in fee should be subject to the payment of the decedent spouse's debts, or (2) whether, if prior to marriage, a person obtained a loan giving a mortgage on his house to secure the debt and subsequently married and died leaving a spouse surviving, the mortgagee could foreclose on the property. In order to make clear just what property interests are protected by G.S. § 29-30(g), and to leave as little as possible to conjecture, subsection (g) was rewritten to read as follows:

> Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:
>
> (1) By a mortgage or deed of trust in which the sur-

viving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

Finally, subsection (h) of G.S. § 29-30 was amended to make it comply with the changes as to the time limits within which notice of election may be filed, set forth in subsection (c) as noted above.

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