University of Miami Law Review

Volume 13 | Number 1 Article 11

10-1-1958

# Wills: Satisfaction of Debt by a Legacy to Creditors

Myron S. Krasny

result might be reached, in a proper case, as to any storekeeper."[61] Finally, the court's criterion that the plaintiff must allege that "the words were intended to have real meaning or serious effect"[62] is both vague and misleading. How is one to show that another intended any meaning? What on the other hand shows a "serious effect" better than severe emotional illness accompanied by physical injury? Surely the plaintiff's allegations that the defendant's conduct was either malicious or grossly reckless or done "with intent to inflict great mental and emotional disutrbance . . . ."[63] should be sufficient under recent decisions holding responsible those who exercise extreme disregard for others and cause such injuries through reckless or outrageous conduct. The court's prescription for recovery is unrealistic in that the claims stem from such multifarious situations. The more enlightened of the recent cases have turned upon the following factors: (a) The conduct in general should at least approach outrageousness or recklessness; (b) the emotional illness should be severe and reasonable under all the circumstances; and (c) if there is also physical injury, then recovery is all the more indicated. The court failed to consider these factors sufficiently, particularly the last one, in its first opportunity to recognize a right of recovery for intentionally caused emotional distress.

JOHN P. CORRIGAN, JR.

## WILLS: SATISFACTION OF DEBT BY A LEGACY TO CREDITORS

The testator, petitioners' father, collected income belonging to the petitioners, which over a period of time, he allegedly commingled with his own assets. No accounting was ever made by the father of the affairs which he handled on behalf of his sons. He bequeathed stocks and securities and devised real estate of unascertained value to the petitioners. The circuit court presumed the legacy was given in satisfaction of the indebtedness, and ordered an election between the legacy and the satisfaction of the debt by an action of accounting.[1] *Held*, on certiorari, no presumption arises that a legacy to a creditor satisfies the creditor's claim. *Lopez v. Lopez*, 96 So.2d 463 Fla. 1957).

The general rule of construction, or the doctrine of satisfaction,[2] as it is sometimes called, states that where a legacy is given to a creditor in an

61. Prosser, *Intentional Infliction of Mental Suffering: A New Tort*, 37 Mich. L. Rev. 874, 883 (1939).
62. Slocum v. Food Fair Stores, 100 So.2d 396, 398 (Fla. 1958).
63. *Id.*, at 397.

1. The choice is compulsory between two inconsistent rights or claims where there is a clear intention by the testator that the beneficiary shall not enjoy both. 2 STORY, EQUITY JURISPRUDENCE § 1451 (14th ed. 1918).

2. A distinction must be made between the doctrine of satisfaction which is employed with reference to legacies to creditors and the doctrine of satisfaction used in other phases of will construction. ATKINSON, WILLS § 133 (2nd ed. 1953).

amount equal to or greater than the debt, a presumption arises that the legacy was given in satisfaction of the debt.[3] The courts applied this rule to cases involving legacies to creditors as early as 1705.[4] Although the doctrine is well established and often quoted,[5] the courts rarely presume satisfaction on the basis of the doctrine alone.[6] When a legacy is devised to a creditor and the testamentary intent is not expressed, the courts resort to one of two rules of construction to determine whether the legacy is given in satisfaction of the debt.[7] The courts admit that the presumption is provided by law and may not be the real intention of the testator,[8] but since no other intention is apparent from the will, the fiction is deemed a necessity.[9] For this reason, the presumption is easily rebutted by slight circumstances which may show that the testator intended to devise the legacy and also to allow satisfaction of the debt from the other assets of the estate.[10] Many courts reason that the presumption of satisfaction imposes a hardship on the creditor-legatee because the benefit of the doubt created in the absence of express intention is resolved in favor of the estate.[11] If the creditor-legatee seeks to enforce his claim as a creditor, he cannot receive the legacy since the requirement of election deprives him of the right to the legacy.[12] The jurisdictions which apply the general rule give few reasons for justifying its application. The classical argument is that a testator is presumed to be just

---

3. "If one being indebted to another in a sum of money, does by his will give him as great or greater sum of money than the debt amounts to, without taking notice at all of the debt, that this shall be in satisfaction of the debt, so that he shall not receive both the debt and the legacy. . . ." Talbot v. Duke of Shrewsbury, 4 Ch. 394, 24 Eng. Rep. 177 (1714).

4. Brown v. Dawson, 4 Ch. 240, 24 Eng. Rep. 116 (1705). *But see* Herzog, *Legacies to Creditors and Satisfaction of Debt in Jewish Law*, 6 TEMP. L. Q. 87 (1931).

5. *U. S.*: Glover v. Patten, 165 U.S. 394 (1897); *Ill.*: Fetrow v. Krause, 61 Ill. App. 238 (1895); *Ind.*: Allen v. Etter, 92 Ind. App. 297, 175 N.E. 286 (1931); *Ky.*: Cloud v. Clinkinbeard, 47 Ky. (8 B. Mon.) 397 (1848); *Md.*: Addison v. Bowie, 36 Md. 606 (1829); *Mass.*: Strong v. Williams, 12 Mass. 391 (1815); *Miss.*: Gilliam v. Brown, 43 Miss. 641 (1871); *N. J.*: Patsoukaros v. Koliotis, 132 N.J. Eq. 87, '26, A.2d 882 (1942), *aff'd*, 133 N.J. Eq. 37, 30 A.2d 27 (1942); *N.Y.*: Gilliam Crary, 71 N.Y. 368 (1826); *N.C.*: Ward v. Coffield, 16 N.C. 108 (1827); *Ohio*: Bowen v. Bowen, 34 Ohio St. 164 (1877); *Pa.*: Byrne v. Byrne, 3 S. & R. 52 (Pa. 1817); *R. I.*: Harris v. Rhode Island Trust Co., 10 R.I. 313 (1872); *S.C.*: Sullivan v. Latimer, 38 S.C. 158, 17 S.E. 701 (1893); *Tex.*: Pitt v. Van Orden, 158 S.W. 1043 (Tex. Civ. App. 1913); *Vt.*: Newell v. Keith, 11 Vt. 214 (1839); *Va.*: Swan v. Swan, 136 Va. 496, 117 S.E. 858 (1923); *Wash.*: Doty v. Spokane & Eastern Trust Co., 146 Wash. 95, 261 Pac. 788 (1927); *Wis.*: Graves v. Mitchell, 90 Wis. 306, 63 N.W. 271 (1895).

6. See Cases Cited note 17 *infra*.

7. The rule produces the same effect as if the testator's intention had been expressed. *In re* Blanch, 126 Misc. 421, 214 N.Y. Supp. 565 (Surr. Ct. 1926); Perry v. Maxwell, 17 N.C. 488 (1834); *Re* Fletcher, 38 Ch. D. 373 (1888).

8. *Ibid.*

9. The doctrine is merely a rule of construction and yields to the intention of the testator when such is ascertainable. Glover v. Patten, 165 U.S. 394 (1897); Mitchell v. Vest, 157 Iowa 336, 136 N.W. 1054 (1912); Williams v. Crary, 21 N.Y. 444 (1830).

10. *Ibid.*

11. Gilliam v. Brown, 43 Miss. 641 (1871).

12. See note 1 *supra*.

(by paying his debts) before being generous (and devising legacies).[13] This argument has been answered by the suggestion that a testator could be presumed to be both just and generous,[14] and some courts, therefore, allow both a satisfaction of a debt and the legacy.[15]

Historically, the courts ignored the factor of relationship between the testator and the creditor-legatee when applying the presumption of satisfaction.[16] In cases where the courts presumed satisfaction, however, in addition to the testator's failure to express his intention, certain facts as to the relationship between the testator and the creditor-legatee made it obvious that the testator had no intention to allow both a legacy and a satisfaction of the debt.[17] In *Swan* v. *Swan*,[18] the testator entered into an ante-nuptial contract promising certain money and property to his future spouse. The parties were married, and later divorced. The testator remarried and shortly before his death, he devised money and property to his first wife in terms and in amounts closely resembling the terms of the ante-nuptial agreement. The court held that the legacy was presumed to satisfy the debt. When the relationship of the parties is close, the courts have greater difficulty in trying to construe the testator's intention. The general rule, however, presumed satisfaction to blood relations as impersonally as it did to strangers.[19] Many times a deserving legatee would be precluded from receiving his legacy because he sought to enforce a creditor's claim against the estate.[20] The courts recognized the harshness of the general rule, and found ways to pre-

13. Annot., 86 A.L.R. 6 (1933).

14. "The rule itself is not founded in reason and often tends to defeat the bounty of testators . . . able chancellors have thought is more agreeable to equity to construe the testator to be both just and generous. . . ." Byrne v. Byrne, 3 S. & R. 54 (Pa. 1817).

15. See note 24 *infra*.

16. Annot. 86 A.L.R. 6, at 12 (1933).

17. *Ky.*: Whitaker v. Whitaker, 166 Ky. 632, 179 S.W. 584 (1915); *Mass.*: Allen v. Merwin, 121 Mass. 378 (1876); *N.J.*: Petrie v. Voorhees, 18 N.J. Eq. 285, (1867); *N.Y.*: *In re* Seeley, 67 Misc. 358, 124 N.Y. Supp. 831 (Surr. Ct. 1910); *In re* Pergament's Estate, 204 Misc. 384, 123 N.Y.S. 2d 150 (Surr. Ct. 1953), *aff'd*, 283 App. Div. 869, 129 N.Y.S. 2d 918 (1954); Herb's Estate, 163 Misc. 441, 296 N.Y. Supp. 491 (Surr. Ct. 1937); *N.C.*: Ward v. Coffield, 16 N.C. 108 (1827); *Va.*: Swan v. Swan, 136 Va. 496, 117 S.E. 858 (1923); *Wis.*: Graves v. Mitchell, 90 Wis. 306, 63 N.W. 271 (1895); *Eng.*: Brown v. Dawson, 4 Ch. 240, 24 Eng. Rep. 116 (1705).

18. 136 Va. 496, 117 S.E. 858 (1923).

19. See note 16 *supra*.

20. See note 1 *supra*.

vent its application.[21] The general rule has been conditioned by so many exceptions,[22] that few cases could fall within the scope of the doctrine.[23]

Dissatisfaction with the general rule resulted in its complete abandonment in some jurisdictions,[24] where a diametrically opposite view was adopted.[25] These jurisdictions hold that had the testator wanted the creditor-legatee to make an election, such intent could have been easily incorporated in the will.[26] The burden is placed upon the estate to produce the manifested intention in the will which would require the beneficiary to make the election.[27] The other jurisdictions which do not like the general rule, but have not gone so far as to adopt the modern rule, reach the same result by applying one or more of the exceptions to the general rule.[28] Since the Florida Supreme Court has never ruled on this point before, the opinion discussed the general rule and alluded to its shortcomings. It preferred, however, to follow the minority and declared that no presumption should arise that a legacy to a creditor was intended as a satisfaction of a debt, unless the testator stated such an intention in the will.[29] It noted that application of the general rule would have led to the same result, since the amount of the legacy and the amount of the debt were unliquidated,[30] the legacy and the debt were of a different nature,[31] the testator directed that his just debts

---

21. See note 13 *supra.*

22. *E.g.*, the doctrine was rebutted by proof of one or more of the following circumstances: When the legacy and the demt are of a different nature, *i.e.*, a legacy of property where the debt was for the payment of money. Fetrow v. Krause, 61 Ill. App. 238 (1895); Huston v. Huston, 37 Iowa 668 (1873); Buckner v. Martin, 92 Ky. 304, 165 S.W. 665 (1914): When the purpose of the legacy is expressed by the testator. Thompson v. Williams, 82 Ill. App. 29 (1899); Strong v. Williams, 12 Mass. 391 (1815). When the testator directs that his just debts be paid. Hollister v. Old Colony Trust Co., 328 Mass. 225, 102 N.E. 2d 770 (1952); Re Hill's Estate, 230 Iowa 189, 297 N.W. 278 (1941); Van Riper v. Van Riper, 2 N.J. Eq. 1 (1838). When the amount of the debt is uncertain. Allen v. Etter, 92 Ind. App. 297, 175 N.E. 286 (1931); Cloud v. Clinkinbeard, 47 Ky. (8 B.Mon.) 397 (1848). When the debt is contracted after the will is made. Arkansas Nat'l Bank v. Aughenbaugh, 210 Ark. 749, 197 S.W. 2d 463 (1946); Delaureal v. Roguet's Succession, 177 La. 815, 149 So. 464 (1941). When the legacy is smaller than the debt or less beneficial. Mitchell v. Vest, 157 Iowa 336, 136 N.W. 1054 (1912); Winner v. Shucart, 202 Mo. App. 176, 215 S.W. 905 (1919). When the debt arises from property which the testator held in a trust capacity for the legatee. Fetrow v. Krause, *supra;* Van Riper v. Van Riper, *supra;* Buckner v. Martin, *supra.* For an extensive discussion of the exceptions to the doctrine of satisfaction see Annots, 86 A.L.R. 6 (1933), 47 A.L.R. 2d 1140 (1956).

23. *Ibid.*

24. White v. Deering, 38 Cal. App. 433, 177 Pac. 516 (1918); Morris v. Morris, 8 Del. 568 (1868); Smith v. Smith, 83 Mass. 129 (1861); German v. German, 47 Tenn. 180 (1869).

25. No presumption arises that a legacy to a creditor is intended as a satisfaction of the debt.

26. Young v. McKinnie, 5 Fla. 542 (1854). While not referring to legacies to creditors specifically, this court stated, "The intention of the testator . . . imposing upon the legatee the obligation to elect, must be expressed or clearly implied in the will."

27. See note 1 *supra.*

28. See note 22 *supra.*

29. See Cases cited note 24 *supra.*

30. See Cases cited and accompanying text note 22 *supra.*

31. *Ibid.*

be paid,[32] and that the testator was holding the income for the petitioners in a trust capacity.[33] In its reasons for departing from the weight of authority, the court merely stated that the modern rule was more realistic, and that by applying the modern rule, the necessity for the many exceptions to the general rule would be eliminated.[34]

The modern rule appears to be the more equitable of the two rules of construction. In most cases involving legacies to creditors, the creditor-legatee is either a member of the household, a spouse, or a person who has performed services for the testator during the testator's lifetime. For the court to presume satisfaction of the debt by the legacy would in many cases defeat the testator's desire to make a gift. The general rule was impartial[35] and none but the estate could benefit by the testator's silent intentions. It seems that the Florida Supreme Court recognized the relationship of the petitioners to the testator, and reasoned that the father would most probably intend that his sons should receive a larger portion of his estate than his wife whom he had married a relatively short time prior to his death. Although the court did not comment upon this factor, it appears to the writer that in this case and in most other cases where a close relationship between the testator and the creditor-legatee exists, most courts will have a tendency to resolve the dispute in favor of the litigant whose relationship is one of blood or close friendship. Where both parties in interest are related by blood, it is the writer's opinion that there is a tendency to favor the one with whom the testator is more closely associated. If the courts were to allow such a factor to be taken into consideration, the modern rule of construction would be the more reasonable to apply, in view of the fact that the general rule does not recognize privity as a factor in construing the testator's intent.

MYRON S. KRASNY

32. *Ibid.*
33. *Ibid.*
34. 96 So. 2d 463 (Fla. 1957).
35. See note 16 *supra.*