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Wills - Legacies - Stock Splits

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must be said to continue committment to preservation of fundamental rights represented by ascertainable legal concepts. More important, the contemporary "compelling interests" doctrine has the salutary advantage of leaving vast areas of social policy determination in the presumably more expert hands of the legislature.

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WILLS—LEGACIES—STOCK SPLITS—The Supreme Court of Pennsylvania has held that a legatee is entitled to shares resulting from a stock split which occurred after the execution of a will and codicil but prior to death of testator where testator had disposed of all such stock owned by him at time he wrote the will and codicil.

Marks Will, 435 Pa. 155, 255 A.2d 512 (1969).

The testator executed a codicil on April 19, 1963, in which he provided that "[c]ontrary to anything in my will I direct that the two certificates attached covering 104 shares of Sears and Roebuck shall be paid over to Dale Wayne Satterfield as a legacy in addition to any sum bequeathed to him in my will."[1] At that time 104 shares were the total number of shares that he owned. The testator died on October 25, 1967. Two years and seven months prior to his death Sears and Roebuck split two-for-one and issued to each stockholder certificates representing the additional shares. No change was made in either his will or in the codicil after the split. The certificates were found in an envelope together with the codicil. The certificate representing the shares resulting from the split were not attached to those representing the original 104 shares.

The Orphan's Court of Philadelphia County awarded the additional shares to the residuary legatee. This decision was reversed by the Supreme Court of Pennsylvania.[2] The shares that resulted from the split were awarded to Satterfield, the named legatee. Justice Jones,[3] speaking for the majority, ruled that the testator's intent was to give

1. Marks Will, 435 Pa. 155, 157, 255 A.2d 512, 513 (1969).
2. 435 Pa. 155, 255 A.2d 512 (1969).
3. Chief Justice Bell filed a dissenting opinion in which Justice O'Brien joined.

the legatee all of the stock that he owned at the time the codicil was executed. The court reasoned that since the split was "a change in form and not in substance"[4] the legatee was entitled to the extra shares.

The issue presented by this case is whether or not the additional shares resulting from a stock split should be awraded to the named legatee. In order to resolve this issue the court had to construe the codicil in light of the relevant statute.[5] Two determinations had to be made.[6] First the intent of the testator had to be ascertained.

When interpreting a will it is settled law that the testator's intention is to prevail.[7] In doing this the court may consider ". . . the condition of his family, the natural objects of his bounty and the amount and character of his property. . . ."[8] All the circumstances surrounding the testator when he made the will may be looked to as aids in determining his intent.[9] After the court has made this determination it must square this intent with the statute.

The statute provides that "[i]n the absence of a contrary intent appearing therein, wills shall be construed as . . . if executed immediately before death."[10] The court must determine whether or not there exists such a "contrary intent." If the court finds that there was not sufficient evidence to overcome this presumption then the codicil must be construed as having been executed immediately prior to death. The result of this determination would be the awarding of the exact number of shares provided for in the instrument. If the requisite "contrary intent" is found to exist then testator can be considered to have awarded the legatee a proportional interest in his stock at the time the

4. Marks Will, 435 Pa. 155, 161, 255 A.2d 512, 515 (1969).

5. PA. STAT. ANN. tit. 20, § 180.14 (1947). It provides:

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

(1) Wills construed as if executed immediately before death. Every will shall be construed, with reference to the testator's real and personal estate, to speak and take effect as if it had been executed immediately before the death of the testator.

6. 6 DUQ. L. REV. 400 (1968). The considerations involved in these determinations were discussed at length in this article.

7. Saunders Estate, 393 Pa. 527, 529, 143 A.2d 367, 368 (1958):

The testator's intention is the pole star in the construction of every will and that intention must be ascertained from the language and scheme of his will; it is not what the Court thinks he might or would or should have said in the existing circumstances, or even what the Court thinks he meant to say, but what is the meaning of his words.

8. Newlin Estate, 367 Pa. 527, 529, 80 A.2d 819, 821 (1951).

9. *Id.*

10. PA. STAT. ANN. tit. 20, § 180.14(1) (1947).

instrument was executed. Any subsequent stock splits[11] could be considered only to be changes in form of that interest. It is obvious that some objective standards would be helpful in order to ascertain whether the "contrary intent" is present.

The manner in which the court has dealt with the instant case and the significance that it has placed on the fact that all of the testator's stock was disposed of indicates the court's acceptance of the standard set forth in *McFerren Estate*.[12]

In *McFerren Estate* the court was presented with a problem similar in nature to that of the instant case. There a stock split occurred prior to the death of the testatrix but subsequent to the execution of a will. In that will the testatrix had disposed of all her shares by bequeathing 50 shares each to two legatees. The court held that it was the clear intent of the testatrix to give each legatee one-half of her stock. The split which more than doubled the number of shares benefited the legatees named in the instrument. They were found to be entitled to "the stock or its value as contemplated at the date of the will."[13]

An opposite result was obtained in *Woodward Estate*.[14] In that case the exact number of shares set forth in the will were awarded to the legatees. The will was construed as if executed immediately prior to death. Therefore, the legatees could not benefit from a split. Since *Woodward Estate* was distinguishable from *McFerren Estate* in that only a part of the total shares were bequeathed, it appeared that the court had recognized this distinction as controlling. The intent of the testator was in both of these cases determined on the basis of whether or not the testator had disposed of all of his holdings. Confusion arose when the Court did not follow this test for determining testator's intent the next time it faced the problem.

Greathead Estate[15] clearly deviated from the standard for determin-

11. 11 W. FLETCHER, CYCLOPEDIA CORPORATIONS, § 5362.1 (1958) provides:
A stock split-up of par value shares is brought about by an amendment of the articles of incorporation, dividing shares of a particular class into more share units, that is, the existing shares may be split two for one or three for one, or in any number of units desired, without calling it a dividend or capitalizing surplus or increasing capital. This reduces the market price of the units and increases the marketability of the new share units, but oftentimes increases their aggregate market price.
12. McFerren Estate, 365 Pa. 490, 76 A.2d 759 (1950).
13. *Id.* at 496, A.2d at 763.
14. Woodward Estate, 407 Pa. 638, 182 A.2d 732 (1962).
15. Greathead Estate, 428 Pa. 553, 236 A.2d 224 (1967).

ing what was the testator's intent. An evenly divided court affirmed a lower court ruling awarding additional shares resulting from a stock split to the residuary legatee. The inconsistency of this ruling with the previous ones in the same area was noted at that time.[16] Since in *Greathead* the testator had disposed of all of his stock, to be in conformity with its previous rulings, the court should have let the additional stock benefit the named legatees. The balance of the court in this decision[17] as well as a marked division in the lower courts[18] made it difficult to know what to expect in future decisions.

In the instant case the court adopts the rule that was disregarded in *Greathead Estate*. The result obtained by following this rule is clearly in line with the decisions of a substantial number of state courts.[19] In an area that is controlled by the testator's intent the need for objective guides for determining that intent is obvious.[20] The standard adopted by this case is a simple one to apply. Where no other method of ascertaining the testator's intent appears in the instrument then the rule followed in the instant case must apply. That rule is that where a testator has disposed of all his stock in a will the court will interpret that will so as to award additional stocks resulting from a split to legatees designated in the instrument.

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16. 6 DUQ. L. REV. 400 (1968).
17. The court was evenly divided. Chief Justice Bell, Justices Musmanno, and O'Brien concurred while Justices Jones, Egan, and Roberts dissented.
18. In Rempp Estate, 33 Pa. D. & C.2d 426 (1964) followed the rule while Fetters Estate, 16 Fiduc. Rep. 518 (1964) did not.
19. Heinneman v. Colorado College, 150 Colo. 515, 374 P.2d 695 (1962), Helfman's Estate, 193 Cal. App. 2d 652, 14 Cal. Rptr. 482 (1961), Rees' Estate, 210 Or. 429, 311 P.2d 438 (1957), Annot., 7 A.L.R.2d 281 (1949).
20. 6 W. BOWE & D. PARKER, PAGE ON THE LAW OF WILLS, § 59.18 (1968).