Denver Law Review

Volume 35 | Issue 1 Article 10

May 2021

One Year Review of Wills, Estates and Trusts

William P. Cantwell

ONE YEAR REVIEW OF WILLS, ESTATES AND TRUSTS

BY WILLIAM P. CANTWELL
Member of the Denver firm Holland and Hart, and Instructor in the University of Denver College of Law

The case law developments of the last year[1] in the field of wills, estates and trusts have been typical of the gradual, paced growth of decisions in these fields. The leading decision[2] arose under such unusual facts that it probably establishes good law, but offers highly restricted utility to any but the successful litigants in the case. The remaining decisions were few and relied on principles announced in earlier years.

For practitioners in the field, however, the year did see the addition of an excellent tool to their practice in the form of the Rocky Mountain Law Review's Symposium Issue on Wills and Estates,[3] collecting articles on a variety of subjects in the field from ten practitioners or educators from throughout the state.

Quintrall v. Goldsmith[4] involved a will contest between a caveatrix who had been adopted by two successive sets of parents and the takers under the will of the survivor of the first set of parents. The will had left nothing to the caveatrix, notwithstanding an understanding made part of the first adoption decree that the first adopting parents would not "disinherit" caveatrix. The supreme court found that this was a valid condition of the original decree of adoption, on the peculiar facts of this case, although such conditions are now void by statute.[5] The court expressly refrained from determining whether such statutory provision was retroactive. The result turned on the caveatrix' second adoption, the court holding that this divested the first adoptive parents, one of whom was the decedent, of all rights and obligations under the first decree, including the undertaking regarding inheritance by the caveatrix.

Aligning itself with the minority but "better reasoned" cases the supreme court followed the lead of Michigan, Oklahoma, and, most recently, Illinois,[6] in holding, as a matter of law, that in the absence of a valid undertaking or a statutory provision, a twice adopted child cannot inherit from its first adoptive parents unless such parents have died prior to the second adoption, or *unless* re-adopted by its own parents.

A classic pass-book-delivery case occupied the court in *Coxwell v. Forster*,[7] which resulted in a restatement of some of the cardinal principles of inter-vivos gifts. The decedent had delivered a savings and loan pass-book to a third party under circumstances which amounted to a gift to the plaintiff, according to her allegations. While the evidence showed some intent to make a gift, there was an absence of any definitive actual or constructive delivery. The third party held the pass-book for some time after the original intent was manifest, and throughout this period deceased was fully able to complete delivery of the money but did not. Since the court found that the money and not the pass-book was the intended *res*, the gift failed because the money was never unqualifiedly delivered.

Examination of the presumptions raised by a fiduciary relationship

---

1 This article covers cases decided by the Colorado Supreme Court from January 1 to December 31, 1957.
2 Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (Colo. 1957).
3 29 Rocky Mt. L. Rev. No. 4 (1957).
4 See note 2 supra.
5 Colo. Rev. Stat. Ann. § 152-2-4 (1953).
6 In re Leichtenberg's Estate, 7 Ill. 2d 545, 131 N.E. 2d 487 (1956).
7 314 P.2d 302 (Colo. 1957).
8 134 Colo. 573, 307 P.2d 1106 (Colo. 1957).

occurred in *Arnold v. Abernathy*.[8] The claimant against the decedent's estate under a series of promissory notes and for certain other items was successful below. On appeal the fiduciary relationship between the claimant and the decedent was carefully scrutinized by the supreme court, resulting in a reversal and remand with instructions to dismiss the claims. The fiduciary relationship arose as a result of a course of conduct between the claimant and the decedent in which the claimant was "taking care of her affairs," acting as attorney in fact for her, and otherwise unquestionably acting with the decedent's full confidence. Under such circumstances, the court found that a presumption was raised that the notes were obtained by undue influence or fraud, which was never overcome by the claimant throughout the voluminous record. Since the claimant and the estate each had contended that the other had the burden of proof, the court followed its prevailing practice of remanding with instructions to dismiss after finding a complete absence of proof to carry the claimant's burden of overcoming the presumption.

In *Forster v. Franklin Life Insurance Co.*[9] a suit arose between an executrix and an insurance company and certain named beneficiaries. On behalf of the estate the executrix claimed portions of the proceeds of the policies payable to creditors and others having no relationship to the insured. The assertion was denied since it appeared that the decedent-insured had acted voluntarily and was in no way restricted from choosing the beneficiaries of his policies, regardless of the lack of relationship of a beneficiary to him or that beneficiary's status as a creditor. The assertion that a creditor can be a beneficiary only to the extent of her claim was rejected, in the absence of any language to this effect in the beneficiary endorsement itself.

[9] 311 P.2d 700 (Colo. 1957).

☆

Classified Advertising

DICTA MAGAZINE accepts classified advertising at the rate of 50 cents per line. Replies to ads may be sent to Dicta's post office box, if desired, and will be forwarded to the advertiser.

OFFICE: Singles or suite; City and County Building one block; off-street parking; conference room. 314 W. 13th Ave., AC 2-1681.

☆