Michigan Law Review

Volume 46 | Issue 4

1948

WILLS-INTERPRETATION-REVOKED WILL AS ADMISSIBLE EXTRINSIC EVIDENCE

Daniel W. Reddin, III
University of Michigan Law School

WILLS—INTERPRETATION—REVOKED WILL AS ADMISSIBLE EXTRINSIC EVIDENCE—Two nonprofit organizations, Meadville Volunteer Fireman's Relief Association and Paid Firemen's Relief and Pension Association of Meadville, Pennsylvania, claimed a legacy under the will of L. F. Williamson, deceased, "unto the Meadville Firemen's Relief Association, Division No. 43," and at the request of the corporate executor, the court below appointed an auditor to hear testimony to determine which organization was entitled to the legacy. The auditor awarded the legacy to the Volunteer Association after admitting testimony of the attorney who drew the will that wills executed by the testator before the existence of the Paid Association contained a similarly worded bequest. Exceptions to the report were dismissed and the distribution ordered. Upon appeal by the Paid Association to the Superior Court of Pennsylvania, *held*, affirmed. Where a will contains a latent ambiguity, former wills executed by the testator may be considered to determine his intention. *In re Williams Estate*, (Pa. Super. 1947) 53 A. (2d) 869 (1947).

When presented with a latent ambiguity—an ambiguity not apparent on the face of the will—a court must either admit available extrinsic evidence to clarify the meaning on one theory or another, or let the legacy lapse for indefiniteness.[1] The admission of the testimony as to the contents of a prior will in the principal case can be justified by ample authority on one of several theories. The testimony could have been admitted as part of the evidence of surrounding circumstances which is commonly admitted to put the court in the position of the

[1] For an exhaustive annotation on admissibility of extrinsic evidence to aid interpretation of wills see 94 A.L.R. 26 (1935). It may be observed that latent ambiguity is a broader term than equivocation and while most equivocations are latent ambiguities, latent ambiguities are not necessarily equivocations. 4 PAGE, WILLS, 2d. ed., § 1625 (1941).

testator.[2] Some American courts have admitted revoked wills apparently for this purpose, although without much discussion of the point.[3] Professor Warren suggests that such evidence could be admitted to show the testator's dictionary of terms.[4] Thus the disputed evidence in the principal case could have been admitted to show that the testator customarily referred to the volunteer association as the Meadville Firemen's Relief Association. The main objection to the admission of such evidence is that it may be considered direct evidence of the testator's testamentary intention which is usually inadmissible except in cases of equivocation.[5] Professor Warren [6] believes that revoked wills should not be considered direct statements of intention since by nature they do not refer to the present document. However, even if the disputed evidence is classified as a direct statement of the testator's intention, it should be admissible to explain the equivocation presented by a bequest to Meadville Firemen's Relief Association which applied equally to the two organizations. It would seem that there are three types of ambiguity in which any extrinsic evidence including direct evidence of intention may conceivably be received.[7] The first is where the description in the will applies equally and precisely to two or more persons or objects, as for example, a bequest to John Jones when in fact there are two persons named John Jones.[8] Courts generally consider this an equivocation, and admit all kinds of extrinsic evidence. The second type is like the first except that the description in the will applies equally but not precisely to two or more objects or persons,[9] as a bequest to Findlay Children's Home when there are two organizations, Findlay Catholic Children's Home, and Findlay Protestant Children's Home. This also is considered an equivocation by many courts, and direct evidence of intention is admissible. The third type of ambiguity arises where the description of the will applies in part to one claimant and in part to another as a gift to my cousin, John, where the testator has no cousin, John, but a son, John, and a cousin, James. This latter case is really not an equivocation at all, but a misdescription, and most courts exclude the direct evidence of intention, though Dean Wigmore suggests that the better view is otherwise.[10] The ambiguity in the principal case is apparently an equivocation of the second kind. Upon exactly what theory the court did admit the testimony is not clear, but the decision seems consistent with other Pennsylvania decisions. The rule in

[2] ATKINSON, WILLS, § 265 (1937); 9 WIGMORE, EVIDENCE, 3d ed., § 2470 (1940); 4 PAGE, WILLS, 3d ed., § 1624 (1941) and cases therein cited.

[3] Bulkley v. Moss, 109 Conn. 170, 145 A. 882 (1929); In re Warmbier's Estate, 262 Mich. 160, 247 N.W. 140 (1933); In re Miner's Will, 146 N.Y. 121, 40 N.E. 788 (1895); Hirst's Appeal, 92 Pa. 491 (1880).

[4] Warren, "Interpretation of Wills," 49 HARV. L. REV. 689 at 708 (1936); See also 4 PAGE, WILLS, 3d ed., § 1624 (1941).

[5] 9 WIGMORE, EVIDENCE, 3d ed., § 2471 (1940); 4 PAGE, WILLS, 3d ed., § 1625 (1941) and cases therein cited; 3 PROPERTY RESTATEMENT, comment 242 j (1940).

[6] Warren, "Interpretation of Wills," 49 HARV. L. REV. 689 at 708 (1936).

[7] 9 WIGMORE, EVIDENCE, 3d ed., §§ 2472, 2474 (1940) and cases therein cited; ATKINSON, WILLS, § 241-4 (1937).

[8] 9 WIGMORE, EVIDENCE, 3d ed., §2472 (1940).

[9] Ibid.

[10] Id., § 2472; ATKINSON, WILLS, § 241-2 (1937).

that state appears to be that if there is a latent ambiguity in the will as to the devisee or legatee, or as to the property given, whether it is an equivocation or not, the court will admit extrinsic evidence of all kinds to resolve it, including direct evidence of the testator's intent.[11] Pennsylvania courts have been rather willing to find ambiguities which permit the admission of direct evidence of testator's intention.[12] It is submitted, however, that the evidence was properly allowed in the principal case.

Daniel W. Reddin, III

[11] Gerety Estate, 354 Pa. 14, 46 A. (2d) 250 (1946); Brownfield v. Brownfield, 12 Pa. 136 (1849); Newell's Appeal, 24 Pa. 197 (1855); Miller's Estate, 26 Pa. Super. 443 (1904); Byrne's Estate, 121 Pa. Super. 550, 184 A. 303 (1936); Shand's Estate, 275 Pa. 77, 118 A. 623 (1922); Worstall's Estate, 125 Pa. Super. 133, 190 A. 162 (1937).

[12] In Gerety Estate, 354 Pa. 14, 46 A. (2d) 250 (1946), the will gave a bequest to Mary McCarty. A Mary McCarty and a Margaret McCarty claimed the bequest and the court found latent ambiguity and admitted evidence of testator's instructions to the scrivener. See also Miller's Estate, 26 Pa. Super. 443 (1904).