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Removal of Administrator Because of Conflicting Interests - Talbert v. Reeves

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Removal Of Administrator Because Of Conflicting Interests

Talbert v. Reeves[1]

The wife of an intestate, after qualifying as his administratrix,[2] filed her personal claim against the estate for services rendered to the intestate's business for the sixteen years prior to the decedent's death. The two surviving sisters of the intestate thereupon filed exceptions demanding due proof of this claim and further alleged that a substantial portion of this claim was barred by the statute of limitations.[3] Counsel for the administratrix made a motion to strike out these exceptions on the grounds that the defense of limitations was not available to the exceptants, and that they were not entitled to call for full proof since that was a matter solely between the court and the adminis-

[1] 211 Md. 275, 127 A. 2d 533 (1956), *dis. op.* 283.
[2] MD. CODE (1951) Art. 93, Sec. 22.
[3] MD. CODE (1951) Art. 57, Sec. 1.

tratrix. Upon this the sisters filed a petition to remove the administratrix on the ground that he was not acting for the best interests of the estate, but was advancing her own individual interests. The Orphan's Court revoked her letters and from this she appealed.

The Court of Appeals, in reversing the lower court's decision, held: that in view of the fact that the administratrix had a legal right to file a claim against the estate in her charge,[4] the mere fact that she was unable to raise the defense of limitations against her own claim did not furnish a ground for her removal. From this holding there was a vigorous dissent by Special Judge George Henderson.

This case is one of first impression in Maryland to the extent that the *sole* ground upon which removal was sought was that of the conflicting interest of the administratrix. Certainly the court was aware that such a conflict of interest did exist. Reference was made to the Maryland statute wherein the pleading of limitations against a just claim upon the estate is left solely within the honesty and discretion of the administratrix.[5] The purpose behind this type of statute is to put the administrator in the shoes of the deceased and permit him to plead or waive limitations against a just claim exactly as the deceased could have done had he been alive.[6] In the majority of states which have this type of statute, the courts have held that the administrator's right to waive limitations applies only to the claims of third persons against the estate and such waiver is not permitted as to the administrator's own personal claim against the estate in his charge.[7] By such hold-

[4] MD. CODE (1951) Art. 93, Sec. 102.

[5] MD. CODE (1951) Art. 93, Sec. 105.

"It shall not be considered as the duty of an administrator or executor, to avail himself of the act of limitations to bar what he supposes to be a just claim, but the same shall be left to his honesty and discretion."

[6] The underlying, legal philosophy supporting such a statute is well stated in McGowan v. Miles, 167 Tenn. 554, 72 S. W. 2d 553, 554 (1934), where the court said:

"The reason that an administrator is permitted to exercise his discretion about pleading the statute of limitations against a claim of a third person is that he may know that the debt is a just one, and, the administrator being bound morally and legally for the protection of the estate 'and having no interest in the debt sued for, there can be no reasonable supposition that he will collude with the creditor to defraud it, and, therefore, it is considered perfectly safe, to let him rely upon the statute of limitations or not, at his own discretion, as the deceased himself could have done had he been alive'."

[7] In Batson v. Murrel, 10 Humph (Tenn.) 301 (1849), it was said that, although it is safe to let the personal representative use his discretion as to whether he should waive the statute as to barred claims of creditors, it is very different when he himself seeks to charge the estate with his own claim which is barred by the statute, as his position is then antagonistic to

ings, these courts have avoided the conflict of interest problem since the defense of limitations cannot be waived against the administrator's own claim should such a defense be raised by those interested parties disputing such a claim.

The majority of the Maryland Court, in referring to this statute, merely stated that "[t]his section is not strictly applicable because the administratrix and the claimant are the same person, and she is simply not in a position to resist her own claim on any ground". They then cite in support of this *Semmes v. Young* where it was merely held that since an administrator cannot sue himself, limitations do not continue to run while he occupies the dual position.[8] Hence, the majority was aware of the existence of this conflict of interest, but they failed to provide any remedy to alleviate such a conflict. Certainly the sisters had a right to have the claim of the administratrix rest upon the same footing as that of any other creditor and be barred by limitations which had already run at the date of the administratrix's appointment if the administratrix chose to plead it.[9] But, under the ruling of this case, limitations cannot be raised by those disputing the claim of the administratrix. Thus, the only available remedy for the sisters would be to have the issue of the validity of the claim sent to a court of law, or, should the Orphan's Court allow the widow's claim, then to appeal to the Court of Appeals.[10] But, in either event, the statute of limitations obviously would not be pleaded by the widow against herself, and, thus the problem of this conflicting interest still remains.

It is a well settled rule in many jurisdictions that the fact that an administrator or executor claims a personal interest in the assets of his decedent's estate, adverse to or conflicting with the claims of other persons interested in such estate, may be grounds for his removal or the revocation of his letters.[11] In many states, in order to avoid this adverse interest problem, the statutes provide that the claim of the administrator be submitted to arbitrators or

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the estate, and that the other interested parties should then judge as to the propriety of waiving the statute as to his claim. See also 8 A. L. R. 2d 660.

[8] *Supra*, n. 1, 281; 10 Md. 242 (1856).

[9] *Ibid*, 247. See MD. CODE (1951) Art. 93, Sec. 103.

[10] Sullivan v. Doyle, 193 Md. 421, 429, 67 A. 2d 246 (1949); Bell v. Funk, 75 Md. 368, 372, 23 A. 958 (1892).

[11] See Carpenter v. Planck, 304 Ky. 644, 201 S. W. 2d 908 (1947); Price's Adm'r. v. Price, 291 Ky. 211, 163 S. W. 2d 463 (1942); In Re Guzzetta's Estate, 97 Cal. App. 2d 169, 217 P. 2d 460 (1950); In Re Palm's Estate, 68 Cal. App. 2d 204, 156 P. 2d 62 (1945); Raleigh v. Raleigh, 153 Ohio St. 160, 91 N. E. 2d 241 (1950); In Re Stauffer's Estate, 57 N. E. 2d 145 (Ohio 1943); In Re Koretzky's Estate, 8 N. J. 506, 86 A. 2d 238 (1951).

that an administrator *ad litem* be appointed for the sole purpose of resisting the claim.[12] However, in Maryland there are no such statutes. Instead, "if any creditor, legatee or next of kin desires to resist passage of such a claim, he may have issues sent to a court of law, or if the claim has been passed by the Orphans' Court and his rights are impaired thereby, he may appeal to the Court of Appeals".[13] Normally, this procedure would be sufficient to avoid the adverse interest problem as to the claim's validity, since the claim could be litigated in a proper judicial manner without allowing the administrator to take undue advantage of the contesting party as a result of his fiduciary position. This would necessarily follow in the normal case since the Court has recognized that an administrator, in making his claim against the estate, is not acting in his representative capacity, but is acting in his own individual capacity.[14] In the usual case, the administrator stands upon the same footing as any other creditor in regards to his claim against the estate. But such a procedure does not put the administrator's claim upon the same footing with other creditors when limitations are involved, and this procedure does not avoid the conflicting interest element in such a case. Thus, in Maryland, there seems to be no way of eliminating this problem of the adverse interest of the administrator, when limitations are raised against his claim, other than to require his removal.

The majority opinion indicated that the Maryland statutes do not provide in express language for the removal of an administrator where an adverse interest is shown to exist. This, to a certain extent, is true. However, only three jurisdictions have statutes in which there is such express terminology.[15] Yet, even in those jurisdictions where the statutes lack this precise language, the courts have construed the statutes as contemplating that there shall be an administrator who is suitable to represent the interests involved and then have ruled that an adverse interest is sufficient to render him unsuitable and to require his removal.[16] Furthermore, the language of the Maryland statute could also be construed to give the Orphan's Court a sufficiently broad power to grant removal solely because of an adverse

[12] See 2 WOERNER, AMERICAN LAW OF ADMINISTRATION (3rd Ed. 1923), Sec. 395.

[13] Sullivan v. Doyle, *supra*, n. 10, 429.

[14] Hayden v. Stevens, 179 Md. 16, 16 A. 2d 922 (1940).

[15] 41 FLA. STAT. (1955) Ch. 734, §734.11 (10); 4 COMP. LAWS MICH. (1948) §704.48; ANDERSEN'S OH. REV. CODE (1953), Sec. 2113.18.

[16] Putney v. Fletcher, 148 Mass. 247, 19 N. E. 370 (1889); Barnett's Adm'r. v. Pittman, 282 Ky. 162, 137 S. W. 2d 1098, 1100 (1940).

interest.[17] In *Carey v. Reed*,[18] the Court quoted the following passage from Schouler's work on Executors and Administrators:[19]

> " 'It is perceived that statutes of this character confer upon the Court, and most appropriately too, a broad discretion as to the various instances which may justify removal. Whenever, from any cause, the executor or administrator becomes unable to perform properly the substantial duties of his office, he may be regarded as *evidently unsuitable*'."

and continued:

> "The Legislature, by the language of Code Art. 93, Section 230,[20] which declares that: 'The Court shall have full power * * * to secure the rights of orphans and legatees, and administer justice in all matters relative to the affairs of deceased persons', meant to enlarge its discretion and relieve it of a too narrow construction of its powers."

Thus, though the Court has previously held that an administrator may be removed only for legal and specific causes,[21] it would seem to be within the Court's discretion to determine just what that legal and specific cause shall be. Furthermore, as the dissenting opinion has pointed out, the power of the Orphan's Court to remove an administrator solely because of conflicting interests has been recognized by way of *dicta* in a number of Maryland cases and may be considered as a sufficient legal and specific cause justifying removal.[22]

The majority opinion also refers to the Maryland statute's provision that a creditor may administer an estate in the absence of blood relatives[23] as indicating that an adverse interest is not in itself a ground for removal. This

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[17] MD. CODE (1951) Art. 93, Sec. 254:
"The Court shall have full power to . . . secure the rights of orphans and legatees and administer justice in all matters relating to the affairs of the deceased persons . . ."

[18] 82 Md. 383, 395, 396, 33 A. 633 (1896).

[19] Sec. 154, fn. 1 of 1910 ed.

[20] Now MD. CODE (1951) Art. 93, Sec. 254.

[21] Fulford v. Fulford, 153 Md. 81, 92, 137 A. 487 (1927).

[22] See the following cases discussed in the dissenting opinion of the principal cases, at pages 287 to 290; Owings v. Bates, 9 Gill 463 (1851); Cox v. Chalk, 57 Md. 569 (1882); Bates v. Revell, 116 Md. 691, 82 A. 986 (1911); Wingert v. Albert, 127 Md. 80, 95 A. 1055 (1915); Haas v. Reimers, 177 Md. 567, 10 A. 2d 705 (1940).

[23] MD. CODE (1951) Art. 93, Sec. 33: — "If there be no relations administration shall be granted to the largest creditor . . ."

does not necessarily follow. Blood relatives are always given the preference to administer the decedent's estate since they would have some interest in conserving the decedent's assets. Certainly they would have a beneficial interest in the estate to the extent that they would be entitled to the residue of the estate after all prior claims are satisfied. Along these same lines it would seem that, in the absence of blood relatives, it would be more beneficial to allow a creditor to administer the estate than it would be to allow a total stranger to be administrator. At least a creditor has an interest in conserving the assets of the intestate debtor for the purpose of paying his own claim.[24] So, in this respect, it cannot be said that a creditor's interest in administering the estate is any more adverse than would be that of a blood relative. As to this creditor's own claim, issues could always be sent to a court of law should other interested parties desire to resist it. It is only when limitations face this creditor's claim that the Maryland procedure fails to eliminate this adverse interest problem, and in such a case, it would be immaterial whether the administrator pressing his claim was a creditor or a blood relative.

In conclusion, it seems clear that the unavailability of limitations to the parties resisting the administrator's claim creates an adverse interest problem. Since, in such a situation, the Maryland procedure is not adequate to eliminate such a conflict, and in view of the broad discretionary power given the Orphan's Court by the Maryland statute and of the practice in the majority of jurisdictions under similar statutes, it would seem fair to all parties concerned that such an administrator be removed because of the conflict of interests and a new one appointed.

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[24] Barton v. Tabler, 183 Md. 227, 37 A. 2d 266 (1944). See also 33 C. J. S. 938, Executors and Administrators, Sec. 41.