

# Roger Williams University Law Review

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Volume 7 | Issue 2

Article 26

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Spring 2002

## 2001 Survey of Rhode Island Law: Cases: Trusts and Estates

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### Recommended Citation

Lawson, Joe H. II (2002) "2001 Survey of Rhode Island Law: Cases: Trusts and Estates," *Roger Williams University Law Review*: Vol. 7: Iss. 2, Article 26.

Available at: [http://docs.rwu.edu/rwu\\_LR/vol7/iss2/26](http://docs.rwu.edu/rwu_LR/vol7/iss2/26)

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**Trusts and Estates.** *In re Estate of Gervais*, 770 A.2d 877 (R.I. 2001). The surviving spouse has a right to vacate and rent a premises inherited from decedent in which he or she claims a life estate and by doing so, the surviving spouse does not abandon his or her life estate.

#### FACTS AND TRAVEL

In 1998, Maurice A. Gervais (the decedent) died and his daughter, Jeanette, was named executrix to his will.<sup>1</sup> The decedent's widow, Lillian Gervais (Lillian), elected to waive the devise made to her in the decedent's will and instead chose to claim her right to a life estate in the decedent's real estate, the marital domicile (the property).<sup>2</sup> Upon the grant of her claim, Lillian vacated and leased the property to a third party.<sup>3</sup>

Upon learning of the lease, Jeanette asserted that Lillian had "abandoned" the property when she vacated it and Jeanette filed a motion in the probate court to "Enjoin and Restrain Widow from Leasing Premises."<sup>4</sup> In April, 1999, the probate court granted Jeanette's motion and ordered that the value of the property be paid to Lillian in lieu of her interest, which was a life estate, in the property.<sup>5</sup> Lillian then timely appealed to the superior court for a de novo review.<sup>6</sup>

The superior court reversed the decision of the probate court.<sup>7</sup> The justice determined that "the common law rule permitting the holder of a life estate to rent his or her property is applicable because Lillian's statutory right to elect a life estate in the decedent's real estate was not conditioned upon her continued occupancy of the property."<sup>8</sup> The trial justice also found that the probate court exceeded its statutory authority by ordering the termination of Lillian's life estate and that the value of the life estate be paid to her instead.<sup>9</sup> Jeanette appealed the superior court's order.<sup>10</sup>

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1. *In re Estate of Gervais*, 770 A.2d 877, 879 (R.I. 2001).

2. *Id.* (citing R.I. Gen. Laws § 33-25-4 (1995)).

3. *Id.* at 879.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 879-80.

10. *Id.* at 880.

## BACKGROUND

Common law and statutory rights to dower and curtesy were abolished in Rhode Island in 1978.<sup>11</sup> In place of dower and curtesy rights, a decedent's real estate shall pass to the spouse vesting a life estate.<sup>12</sup> In addition, if an estate is devised to a surviving spouse, the devise will bar the life estate unless the surviving spouse waives his or her devise and claims his or her life estate in the real estate of the decedent.<sup>13</sup>

## ANALYSIS AND HOLDING

On appeal, Jeanette argued that a widows right to elect a life estate was provided to ensure the widow a place to live after their spouse had died.<sup>14</sup> She also argued that the statutory life estate replaced rights of dower and curtesy as they previously existed.<sup>15</sup> She cited no authority to support her position, she only pointed out that the legislature did not specifically convey the right to vacate and rent a premises in which a spouse has claimed a life estate.<sup>16</sup> From this observation, she asserted that Lillian abandoned the property upon vacating and leasing it to a third party.<sup>17</sup> The Rhode Island Supreme Court disagreed with Jeanette's assertion and found that "[s]uch an interpretation . . . , would produce an absurd result."<sup>18</sup>

The supreme court held that even though section 33-25-4 does not specifically give the surviving spouse the right to vacate and rent her real estate, a plain reading of the statute concludes that such a right exists.<sup>19</sup> The court explained that although the legis-

11. *Id.* (citing R.I. Gen. Laws § 33-25-1 (1995)).

12. *Id.* The statute reads in part:

Whenever any person shall die leaving a husband or wife surviving, the real estate owned by the decedent in fee simple at his or her death shall descend and pass to the husband or wife for his or her natural life subject, however, to any encumbrances existing at death; provided that the liability, if any, of the decedent to discharge the . . . encumbrances shall not be impaired.

R.I. Gen. Laws § 33-25-2 (2001).

13. *Gervais*, 770 A.2d at 880.

14. *Id.* at 880.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

lature abolished the common law rights of dower and curtesy, there is no suggestion that they ever abolished the common law rights associated with life estates.<sup>20</sup>

The court went on to point out that section 33-25-4 grants the surviving spouse the right to waive any devise granted to him or her by the decedent and to claim a life estate in all real estate owned in fee simple by the decedent.<sup>21</sup> The court then noted that "the term 'real estate' embraces every type and amount of real property."<sup>22</sup> Thus, the court held that the legislature did not limit the right to a life estate only to the marital domicile, but the surviving spouse has the right to a life estate in all of the decedent's real estate held in fee simple, residential and non-residential.<sup>23</sup> The court reasoned "[c]onsequently, it would be absurd to read into section 33-25-4 a requirement that the surviving spouse simultaneously must reside on all the decedent's property to preserve his or her life estate interest."<sup>24</sup> Thus, the court held that a surviving spouse does not abandon his or her life estate in decedent's real estate upon vacating the property.<sup>25</sup>

Likewise, under common law, the holder of a life estate is entitled to the possession and use of his or her property free of interference from the remainderman, this includes the right of the life estate holder to the rents generated by the property during the life estate holder's lifetime.<sup>26</sup> Because the legislature did not abolish the common law rights of the holder of a life estate, Lillian did not "abandon" her life estate when she entered into a lease with a third party.<sup>27</sup> Since Lillian had a right to claim a life estate in all of her deceased husband's property owned by him in fee simple, including any rental properties he may have owned, the court held that it would be absurd to prohibit her from leasing to a third party.<sup>28</sup>

Finally, the supreme court agreed with the trial justice's ruling that the probate court exceeded its procedural and substantive jurisdiction by sua sponte ordering that Lillian's life estate be val-

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20. *Id.* at 881.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

ued and paid to her in lieu of her interest.<sup>29</sup> The probate judge made the order without the property being sold or taken and without any request or petition by Lillian as required by Rhode Island General Laws section 33-25-5.<sup>30</sup>

#### CONCLUSION

In *In re Estate of Gervais*, the supreme court affirmed the trial court's ruling that he surviving spouse has a right to vacate and lease a premises inherited from the decedent in which he or she claims a life estate and by doing so, the surviving spouse does not abandon his or her life estate. Also, because the surviving spouse did not petition the court to do so as required under Rhode Island General Laws section 33-25-5, the probate court exceeded its procedural and substantive jurisdiction by sua sponte ordering a valuation of the surviving spouse's life estate interest in the property and the payment to her of the value of that interest.

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29. *Id.* at 882.

30. *Id.*