

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1402

SUCCESSION

OF

LEON LOVETT

Judgment Rendered: February 12, 2010

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court Number 8,765

Honorable Ernest G. Drake, Jr., Judge

Robert H. Harrison, Jr.
Watson, LA

Attorney for Appellant
Victor Lovett, Executor
of Leon Lovett Estate

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Carol Robertson

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

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WELCH, J.

Victor Lovett, the executor of the estate of Leon Lovett, appeals a judgment maintaining an objection filed by appellee, Carol Robertson, to the proposed tableau of distribution and a judgment decreeing that Carol Robertson is entitled to one-half of the proceeds of the sale of the primary succession asset. We affirm.

BACKGROUND

The facts forming the basis for this succession proceeding have largely been stipulated to by the parties and are thus not in dispute. On March 5, 1998, Leon Lovett (decedent) died. He was survived by his second wife, Lois Berne Lovett, and seven children born of his first marriage to Wilma Hood Lovett: Gwen Rawls, Ronnie Lovett, Berta Gay, Victor Lovett, Glenda Dubroc, Susan Corbitt, and Boyce Lovett. A daughter, Peggy Sibley, predeceased decedent. Decedent's first wife, Wilma Hood Lovett, died on November 11, 1962.

On August 31, 1988, decedent executed a "Statutory Last Will and Testament" in which he named Lois Berne Lovett as the testamentary executrix of his estate and as a legatee. On April 14, 1998, Lois Berne Lovett filed a petition to probate the will, but prior to probate, she died. In June of 1999, Victor Lovett, decedent's son, requested to be appointed as the dative testamentary executor of his father's estate and was so appointed by the court. On May 17, 2006, the executor petitioned the court for authority to sell the primary succession asset, a 16-acre tract of land in Livingston Parish owned by the decedent, for the sum of \$345,000.00. He also requested authority to pay from the proceeds of the sale legal fees in the amount of \$500.00 and court costs in the amount of \$250.00. The trial court issued an order authorizing the sale of the succession property, which was sold pursuant to

the court order for the sum of \$345,000.00.

Carol Robertson, the only child of Lois Berne Lovett and the sole heir to any of her mother's interest in the decedent's estate, filed a motion for an accounting and the status of administration and distribution of the assets of the estate. In response, on September 11, 2007, the executor filed a petition for homologation of the tableau of distribution. In the tableau of distribution, the executor listed, as funds in the hands of the administrator, the amount of \$159,542.81, representing the succession's undivided interest in the proceeds of the sale of the 16-acre tract. He listed as proposed disbursements attorney fees in the amount of \$10,350.00 and court costs in the amount of \$500.00. He also proposed to distribute the sum of \$148,692.81 to the decedent's seven surviving children for "expenses of last illness." Therein, the surviving children sought reimbursement for sitter services for their father for 1,825 days at a rate of \$100.00 per day, to be paid pro-rata at .08162345 percent.

Ms. Robertson objected to the proposed distribution of funds by the executor, asserting that the claims for expenses of last illness included in the tableau had prescribed and were thus time barred. The trial court agreed, maintaining Ms. Robertson's objection to the proposed distribution of funds and denying the executor's proposed tableau of distribution.

Thereafter, the trial court addressed the issue of the appropriate distribution of the funds from the proceeds of the sale of the 16-acre tract of land. In interpreting the statutory will, the court found it was the decedent's intent to leave his surviving spouse, Lois Berne Lovett, that portion of the property representing eight acres and the residence located thereon. Subject to the payment of claims, funeral, administration expenses, and estate taxes, the court placed decedent's surviving children and the children representing the interest of the decedent's daughter who predeceased him into possession

of one-half of the net proceeds of the sale of the 16-acre tract and placed Ms. Robertson into possession of the remaining one-half of the net proceeds. The court further ordered that Ms. Robertson be placed into possession of all movable property, all farm machinery, and all household goods and furniture. This appeal, in which the executor attacks the distribution determination and the denial of his proposed tableau of distribution, followed.

TABLEAU OF DISTRIBUTION

In the tableau of distribution filed in September of 2007, the executor proposed to pay the sum of \$148,692.81 to the decedent's surviving children, whom it is claimed, paid for sitters for their father from February 1994 through the date of his death on March 5, 1998. The executor categorizes these claims as reimbursements due the children for payment of necessary expenses for their ill father prior to his death, which, he claims, are personal actions subject to the ten- year liberative prescription period provided by La. C.C. art. 3499. Because the services were continuous to the time of the decedent's death, he argues, prescription began to run on the date of the death on March 5, 1998. Thus, he contends, the reimbursement claims, set forth in the proposed tableau of distribution filed in September of 2007, were asserted within the ten-year prescriptive period and are not prescribed.

In support of this argument, the executor relies on the case of **Succession of Catalinotto**, 144 So.2d 678 (La. App. 4th Cir. 1962). In that case, two of the decedent's children who cared for her for fifteen years made claims in her succession for services rendered to their mother during her lifetime. The trial court dismissed the claims on the basis of Article 229 of the Civil Code, which imposes reciprocal alimentary duties of children to care for their parents who are in need with respect to the basic necessities of life, including health care. The court of appeal reversed, stating that while it is

true that the law presumes services rendered by a child to his parent to be gratuitous, the law allows compensation to the child upon proof or a promise or expressed intention on the part of the parent to pay for the services. **Catalinotto**, 144 So.2d at 681. Such claims, the court concluded, are personal actions governed by the prescriptive period of ten years under article 3544 (the predecessor of article 3499), and where they are continuous up to the time of the death, prescription only begins to run at the date of the death. *Id.*

There is no evidence in the record before us of a promise to pay for the services provided by the children for which they seek payment and therefore, the children do not have a viable cause of action to recover for services rendered to a deceased parent under the **Catalinotto** case relied upon by the executor. The trial court correctly refused to classify the children's claims as such and properly classified those claims as seeking the recovery of compensation for services rendered, falling under La. C.C. art. 3494, which is subject to a liberative prescription of three years. The reimbursement claims, asserted over nine years after the date of the decedent's death, are all clearly prescribed. Accordingly, the trial court correctly granted Ms. Robertson's objection to the proposed tableau of distribution regarding these claims.

STATUTORY WILL

The executor contends that the court erred in finding that Lois Berne Lovett was entitled to a legacy under the terms of decedent's statutory will. He insists that the proper resolution of this case depends on two legal issues: the classification of the 16-acre tract as separate or community property and the interpretation of apparently conflicting provisions of the decedent's will.

The parties stipulated as to how decedent acquired the 16-acre tract. Decedent was one of six children born to James Monroe Lovett and Laura

Lovett, one of whom predeceased them and left no surviving heirs. The Lovetts owned a 45-acre tract of land which included the 16-acre tract at issue. Upon their death, no succession was opened and there is no document in the public record transferring their interest in the 45 acres. Their children, however, did execute documents transferring their interests in the 45-acre tract to their other siblings. In 1946, two of the children transferred their interest in the 45 acres to their brother, Elmo Lovett, and the remaining Lovett sibling, Ernest Lovett, Sr., transferred his interest in the 45-acre tract to the decedent. The document transferring the property states that at the time of the transfer, decedent was married to Wilma Lovett. The document does not state an amount of consideration for the transfer. Later that year, Elmo Lovett and decedent partitioned the 45-acre tract, with decedent receiving 16-acres of land and Elmo Lovett receiving the remaining 29 acres.

In his Statutory Last Will and Testament, decedent made the following bequests:

I give and bequeath outright in full ownership to my wife, Lois Berne Lovett, one-half of all of the separate property that I own at my death, after deducting the charges as aforesaid.

Subject to the foregoing, and to the payment of claims, funeral and administration expenses, and estate taxes, I bequeath all the rest and remainder of the property that I own at my death to my children, Gwen Rawls, Peggy Sibley, Timmy Sibley, Joseph Sibly [sic], Rhonda Sibley, Jacquelyn Sibley, Berta Elizabeth Gay, Ronald Wayne Lovett, Victor Lovett, Boyce Lovett, Glenda Dubroc, and Susa Corbitt, or per stirpes to the descendants of any of them who predecease me, conjointly.

In that I inherited eight acres from my parents on which my home is located, and purchased the eight acres adjoining this property, it is my desire that the above enumerated division of property be done as follows:

I desire that the eight acres I inherited, on which the residence is located, go to my wife, Lois Berne Lovett.

I desire that the eight acres that was community property with my former wife, Wilma Hood, be divided equally among

my children in accordance with the above expressed wish.

To be included in the property to my wife, Lois Berne Lovett, would be all moveable property, all farm machinery, and all household goods and furnishings.

The executor contends that the decedent's legacy to Lois Berne Lovett is legally invalid, and therefore, the entire 16-acre tract should pass to the decedent's children under the residuary legacy to his descendants. First, the executor insists that the entire 16-acre tract should be characterized as community property of the decedent's first marriage. If so characterized, he urges, there was no separate property as referred to in the decedent's will and his attempt to leave the "eight acres I inherited" to his wife is nonsensical. The executor also contends that the decedent attempted to leave his wife a legacy that did not exist and therefore that legacy is caduceus and an invalid bequest. Finally, the executor argues that the bequests are contradictory because the decedent tried to leave his children all of his community property, which he also left part of to his wife. The executor argues that the will should be construed according to La. C.C. art. 1723,¹ which states that when a person has ordered two things that are contradictory, that which is written last is presumed to be the will of the testator. Thus, he submits, because the legacy to Lois Berne Lovett is the first legacy contained in the will, and the legacy of the community property to the children is the last legacy in the will, the first legacy to the decedent's wife must be disregarded and the subsequent legacy to the Lovett children must be enforced, entitling the children to possession of the entire 16-acre tract. In short, the executor urges, the only thing clear about the testamentary dispositions is that the testator intended to leave his children the immovable property he acquired as a part of the community

¹ Chapter 6, consisting of C.C. arts. 1570 to 1723 of Title II, "Donations" of Book III of the Louisiana Civil Code of 1870, was revised by Acts 1997, No. 1421, § 1, eff. July 1, 1999, to consist of C.C. arts. 1570 to 1616.

between himself and their mother, which he insists is the entire 16-acre tract. We disagree.

The function of a court is to determine and carry out the intention of the testator if it can be ascertained from the language of the will. **Succession of Mydland**, 94-0501, p. 5 (La. App. 1st Cir. 3/3/95), 653 So.2d 8, 11. The first and natural impression conveyed to the mind on reading the will as a whole is entitled to great weight. **Succession of Barranco**, 94-1726, p. 8 (La. App. 1st Cir. 6/23/95), 657 So.2d 708, 713, writ denied, 95-1902 (La. 11/3/95), 662 So.2d 11. The testator is assumed to be conveying his ideas to the best of his ability so as to be correctly understood at first view. **Mydland**, 94-0501 at p. 5, 653 So.2d p. 12. The intention must be determined from the will as a whole, which includes all of the clauses of the will and its codicils. **Barranco**, 94-1726 at p. 8, 657 So.2d at 713.

At the outset, we reject the executor's claim, which is crucial to his attempt to invalidate the bequest to decedent's wife, that the entire 16-acre tract is community property. Even if the testator did purchase his brother's interest in this tract, his initial interest was derived by inheritance and was clearly his separate property. See La. C.C. art. 2341. The decedent's use of the terms "community property" and "separate property" in the will simply reflects an understanding that part of the property was community and part was his separate property. Regardless of the classification placed on the property in the will and the legal correctness of that classification, as the trial court correctly observed, the decedent made a simple, direct, and unequivocal bequest to leave his spouse eight acres of the 16-acre tract on which the residence was located. It is clear that the testator intended to leave his wife one-half of the 16-acre tract and the other one-half to his children. The trial court correctly enforced the will as written by finding that the decedent's

children are entitled to one-half of the net proceeds of the sale of the 16-acre tract and that Ms. Robertson, the sole heir of Lois Berne Lovett, is entitled to the remaining one-half of the net proceeds of the sale.

CONCLUSION

For the foregoing reasons, the judgment granting the objection to the proposed tableau of distribution and ordering that the decedent's heirs be placed into possession of one-half the net proceeds of the sale of the property and that Carol Robertson be placed into possession of the remaining one-half of the net proceeds of the sale is here affirmed. All costs of this appeal are assessed to appellant, Victor Lovett.

AFFIRMED.