IN RE: SUCCESSION OF MARY JEAN FRANK NEFF	*	**NO. 2000-CA-1270**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 94-11199, DIVISION "K-14"
HONORABLE RICHARD J. GANUCHEAU, JUDGE
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JAMES F. MC KAY, III
JUDGE
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(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Max N. Tobias, Jr.)

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AFFIRMED IN PART AND REMANDED

Mary Jean Frank Neff died testate on March 10, 1994. She was survived by her two daughters, Katherine Neff Brand (Brand) and Karen Neff Sanches (Sanches). Both daughters were forced heirs under the law in existence on the date of decedent's death. In an earlier opinion, this Court held that Mrs. Neff's will was ambiguous as a whole and relied upon extrinsic evidence to determine that the intent of the testatrix was to leave the disposable portion of her estate to Sanches and the balance of the estate to Sanches and Brand to share and share alike. Succession of Neff, 98-0123 (La. App. 4 Cir. 6/24/98) 716 So.2d 410, writ denied, 98-2002 (La. 10/30/98) 728 So.2d 386.

During the last years of her life, the decedent made numerous donations *inter vivos*. To Sanches, she donated $88,766.66 from a non-IRA Paine Weber account, $67,774.17 from her Paine Weber IRA account, and immovable property located at 5600 Berkley Drive in New Orleans (valued at $105,000.00). The decedent also paid various living expenses for Sanches

in the amount of $4,436.19 and loaned Sanches $2,500.00. For the benefit of Sanches' children, the decedent donated $20,000.00 while she made one donation to Brand in the amount of $250.00. Each daughter also received $50,000.00 in proceeds from their mother's life insurance policy.

On August 17, 1994, Brand filed a petition for reduction of excessive donations or collation. A hearing was held on this petition on November 3, 1999 and on January 4, 2000, the trial court granted in part and denied in part Brand's petition. Specifically, the trial court calculated the active mass of the decedent's estate to be $246,697.61. Based on this figure and the fact that Civil Code article 1495, in effect at the time of decedent's death, sets the disposable portion of an estate with two or more descendants at one-half of the entire estate, the trial court determined that the disposable portion of Neff's estate was $123,348.81. Therefore, each daughter's forced portion would be $61,674.40. Because Brand had already received a donation *inter vivos* of $250.00 and life insurance proceeds of $50,000.00, the trial court reasoned that Brand was only entitled to $11,424.40 on her reduction claim. Brand now appeals from this judgment and Sanches has answered the appeal.

At issue before this Court is: 1) whether the trial court erred in not ordering actual collation by Sanches of the *inter vivos* donations received by her from the decedent; 2) whether the trial court erred in not requiring Sanches to sign a promissory note in favor of Brand for the amount due her under actual collation; 3) whether the trial court erred in finding that the decedent received the distributions in the amounts of $28,570.70 and $39,203.47 respectively from her Paine Weber IRA account and that these amounts were then transferred to the account of Sanches; and 4) whether the trial court erred in including the distributions from the decedent's IRA account in the calculation of the active mass.

COLLATION

The collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. La. C.C. art. 1227. Generally, children are required to collate to the succession of their parents any property which they have received from those parents through donation *inter vivos*, unless they can prove that the donation was made for the purpose of

providing them an advantage over their siblings. Succession of Franz, 627 So.2d 715 (La. App. 4 Cir. 1993).

The Louisiana Supreme Court has specifically stated that, in order for a testator to dispense with collation in his last will and testament, "it is not necessary for the language of the will to include a direct reference to **collation**." Succession of Fakier, 541 So.2d 1372, 1380 (La. 1988). All that is necessary is that the intent to give an advantage to some heirs over others be set forth "in some unequivocal manner." Id. (citing Article 1233). In Jordan v. Filmore, 167 La. 725, 120 So. 275 (1929), the decedent left her entire estate to only one of her two children. The excluded child claimed not just her forced portion, but a full half of the estate, on the grounds that the decedent's will did not specifically exempt the legacy from collation. The Supreme Court rejected this claim, explaining that the legacy of all the estate to one child was itself a sufficient expression of the decedent's intention to dispense with collation. Our Court has referred to Jordan as "a time honored case". Succession of Degelos, 446 So.2d 412 (La. App. 4 Cir. 1984). The First Circuit has also approvingly cited Jordan. Succession of Odum, 98-2647 (La. App. 1 Cir. 3/31/00), 760 So.2d 435, writ denied, 2000-2008 (La.

10/13/00), 771 So.2d 649.

In the instant case, the donations *inter vivos* made by Mrs. Neff to Sanches far exceeded those that she made to Brand. Paragraph 5 of Mrs. Neff's testamentary will states: "I hereby bequeath the disposable portion of my estate to my beloved daughter, Karen Neff Sanches, the remaining portion of my estate." Paragraph 6 of the will states: "I further bequeath my entire estate to my beloved daughters, KATHERINE NEFF BRAND and KAREN NEFF SANCHES, to share and share alike." In its earlier opinion, this Court determined that "[t]he testator clearly intended to leave the disposable portion to Sanches and 'further bequeath' the entire balance of the estate to both heirs. The word 'further' clearly expresses the intent that the remainder of the estate was an additional bequest after the legacy of the disposable portion." Succession of Neff, 98-0123 (La.App. 4 Cir. 6/24/98) 716 So.2d 410, writ denied, 98-2002 (La. 10/30/98) 728 So.2d 386. Based on the rationale of Jordan, Mrs. Neff's legacy of the disposable portion of the estate to Sanches was a sufficient expression of Mrs. Neff's intention to dispense with collation. Therefore, we find no error in the trial court's finding that collation had already been dealt with and reducing the amount

of excessive donations only to the point that Brand would receive her legitime.

IRA PROCEEDS

Sanches contends that the trial court erred in calculating the active mass of the decedent's estate by including $67,774.17 that had formerly been in the decedent's IRA account. It is Sanches' contention that because these funds were from IRA contributions they should have been exempt from the calculation of the active mass of the estate pursuant to Louisiana Civil Code article 1505 (D).

According to Louisiana Civil Code article 1505 (D):

> Employer and employee contributions under any plan of deferred compensation adopted by any public or governmental employer or any plan qualified under Sections 401 or 408 of the Internal Revenue Code, and any benefits payable by reason of death, disability, retirement, or termination of employment under any of such plans, shall not be included in the above calculation, nor shall any of such contributions or benefits be subject to the claims of forced heirs. However, the value of such benefits paid or payable to a forced heir, or for the benefit of a forced heir, shall be deemed applied and credited in satisfaction of his forced share.

In the instant case, the amounts of $28,570.70 and $39,203.47 were transferred from Mrs. Neff's Paine Weber IRA account to Sanches' Paine Weber account. These transfers took place between September and

November of 1993. Mrs. Neff did not die until March 10, 1994, well after these amounts had been transferred. These transfers were not benefits payable by reason of death, disability, retirement, or termination of employment as envisaged under La. C.C. art. 1505 (D) but rather distributions taken by the decedent from her IRA while she was still alive and then donated to Sanches. The fact that the amounts were transferred directly from the decedent's IRA account into the account of Sanches' account is irrelevant. Furthermore, Sanches' reliance on Succession of Durabb, 93-1004 (La. App. 4 Cir. 1/27/94) 631 So.2d 1324, is misplaced. The distributions from the IRA in that case did not take place until after the decedent had died. Accordingly, the cases are factually distinct. Therefore, we find no error in the trial court's including the amounts transferred from the from the decedent's Paine Weber IRA account in its calculation of the active mass of Mrs. Neff's estate.

CONCLUSION

We agree with the trial court in its calculation of the active mass, in its determinations regarding the intent of the testatrix, and its determination regarding Brand's claim for reduction. However, we must remand the case

for the limited purpose of allowing Sanches to formally elect how she wishes to collate the $11,424.40 she owes to Brand on the reduction claim. Because Mrs. Neff donated immovable property to Sanches, Civil Code article 1255 gives Sanches the option to collate the immovable "in kind" or "by taking less." In all other respects, we affirm the judgment of the trial court.

AFFIRMED IN PART AND REMANDED