

NOT DESIGNATED FOR PUBLICATION

| | | |
|--------------------------------------|---|---------------------------|
| SUCCESSION OF MAUDE MOORE | * | NO. 2001-CA-1504 |
| | * | COURT OF APPEAL |
| | * | FOURTH CIRCUIT |
| | * | STATE OF LOUISIANA |
| | * | |
| | * | |
| | * | |
| | * | |
| | * | |
| | * | |

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-13284, DIVISION “L-15”
Honorable Mickey P. Landry, Pro Tempore

Judge Dennis R. Bagneris, Sr.

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, and Judge Dennis R. Bagneris, Sr.)

George G. Angelus
700 Camp Street
New Orleans, LA 70130
COUNSEL FOR APPELLANT

William C. Ellison
BORDELON, HAMLIN & THERIOT
701 South Peters Street
Suite 100
New Orleans, LA 70130
COUNSEL FOR APPELLEE

AFFIRMED

Appellant Dorothy D. Allen (“Allen”) seeks to reverse the trial court’s judgment rendered against her and in favor of Elzie Britton. Allen contends the trial court erred as a matter of law by granting a judgment to a creditor of a renounced legacy. Allen argues that there was no pleading or evidence presented to prove that the renunciation was a result of fraud and that the renunciation causes injury to the creditor. For the following reasons, we affirm.

STATEMENT OF THE CASE

Maude Moore was interdicted in April of 1996. She died on April 27, 1997. She died testate and her will was probated on January 28, 1997. During Moore’s interdiction, Bertile Britton was the named provisional curator. Andrea Baquet was appointed under curator during Moore’s interdiction. Under Moore’s will Bertile Moore was named a particular legatee of immovable property located at 2000-2000 1/2 St. Maurice Ave. in New Orleans, Louisiana.

Bertile Britton moved to Nevada and later died survived by his wife, Elzie Britton. After Moore’s death Andrea Baquet was granted power of attorney over the administration of Moore’s Succession and agent for Bertile Britton.

Allen was appointed as dative testamentary executrix upon the death of Bertile Britton. On May 12, 1999, Allen filed a petition for authority to sell immovable property at a private sale. The trial court granted the petition to sell the immovable property on August 13, 1999. The property located at 2000-2000 ½ St. Maurice St. was sold on August 13, 1999 to Linda T. Gibson for \$35,000.00 dollars. On September 22, 1999, Allen filed her annual report and listed the sale of the immovable, the proceeds of the sale, an investment account and a certificate of deposit. On January 3, 2000, Elzie Britton, surviving spouse of Bertile Britton, filed a petition for possession of the immovable property located at 2000-2000 ½ St. Maurice Street. Allen filed a separate action against Bertile Britton and Andrea Baquet for conversion of succession assets, breach of fiduciary duties and general malfeasance, docket number 97-01589. This case was consolidated with Moore's succession, docket number 96-13284.

On April 26, 2000, Allen, and Elzie Britton filed a settlement agreement and release in the trial court. Pursuant to that agreement, Elzie Britton was to be placed in immediate possession of the proceeds from the sale of the property located at 2000-2000 ½ St. Maurice Street. Also, Allen filed a petition to compromise a claim on April 26, 2000. Pursuant to the compromise, litigation would be dismissed and the specific legatees would

be placed in possession of their inheritance from Moore's estate. On June 26, 2000, Allen filed a final motion to dismiss Andrea Baquet from the tort lawsuit filed on behalf of Moore's estate.

On July 14, 2000, Allen filed a motion to file renunciation into the court record. Andrea Baquet renounced her interest in Moore's succession. The trial court granted the motion and the act of renunciation was placed into the trial court's record. On July 28, 2000, Elzie Britton filed a petition for authority to accept a renunciated legacy and/or other payment due for services rendered on behalf of the Succession of Moore. Elzie Britton in her pleadings contends she obtained a judgment in Nevada against Andrea Baquet for \$ 62,598.84 dollars.

On August 1, 2000, Allen filed a petition for possession along with all supporting documents. The trial court granted the petition and signed the judgment of possession. Allen filed a final accounting for Moore's Succession. A joint motion to dismiss was filed and granted. A motion to withdraw was filed by Allen's counsel and granted. On September 27, 2000, Allen filed a declinatory exception of service of process with supporting memorandum.

The trial court rendered judgment on the petition for authority to accept the renunciated legacy on October 18, 2000. The trial court granted

the petition and ordered Allen to pay Elzie Britton the \$500 legacy that had been bequeathed to Andrea Baquet. Specifically, the trial court stated in its Reasons for Judgment the following:

This cause came on to be heard on the 13th day of October, 2000, pursuant to Petition of Elzie Britton for Authority to Accept Legacy of Andrea Baquet, said petition having been filed on July 28, 2000, prior to the entry of a Judgment of Possession signed on August 2, 2000, service of the Rule having been had on counsel for the Succession on August 3, 2000, as evidenced by the print-out from the Civil Sheriff attached as Exhibit A, service of the Rule and any objection to the request having been waived by Andrea Baquet, as evidenced by the letter from Ms. Baquet's counsel attached as Exhibit B, request from counsel for the Succession that this matter be set on any Friday in October, 2000, due to his unavailability on the original setting in September of 2000, as evidenced by counsel's letter of August 15, 2000 attached as Exhibit C; Exception filed by George Angelus; Opposition to Exception filed on behalf of Britton; George Angelus letter of October 11, 2000 to Britton's counsel requesting Britton's counsel to "fully explain [Angelus] position on service to the Court", a copy of which is attached as Exhibit D; argument of counsel for Britton; and the record as a whole. It appearing to the Court that Britton's claim is well-founded, that the exception should be denied in that service was proper and that the claim for acceptance of the legacy of Andrea Baquet should be approved in favor of Britton, having been filed prior to the filing of the Louisiana inheritance tax return and Petition for Possession and entry of the Judgment of Possession;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petition for Authority to Accept Legacy is hereby granted and the Succession of Maude Moore, through its executrix Dorothy Allen is hereby ordered to pay over to Elzie Britton the legacy bequeathed to Andrea Baquet of \$500.00 immediately. Each party to bear its own costs.

On November 2, 2000, Allen filed a motion for new trial in which she contended the trial court erred as a matter of law and that the judgment was null and void for a lack of proper service. Allen, in the supporting memorandum for the motion for new trial, argues that at the hearing on the petition no testimony was taken and the judgment was based on Britton's pleading and Britton's counsel's argument alone. Allen cites *Succession of Nuehauser*, 579 So.2d 437 (La. 1991), as the controlling authority and argues that this case outlines the creditor's burden of proof.

On December 14, 2000, the trial court rendered and signed a judgment on the declinatory exception of insufficient service of process and the motion for new trial filed by Allen. The trial court denied both the declinatory exception and motion for new trial. Allen now appeals the trial court's judgment.

On appeal, Allen contends the trial court erred as a matter of law by granting a judgment to a creditor of a renounced legacy. Allen argues that there was no pleading or evidence presented to prove that the renunciation was a result of fraud or that the renunciation caused injury to the creditor.

DISCUSSION

We first note that this judgment is not void due to lack of service. The pleading was filed on July 28, 2001, before the succession was closed, and

proper service was made, albeit after the succession closed. Pleadings are effective when filed. La. C.C.P. art 421.

With regard to the merits of this case, Civil Code article 967 authorizes a creditor to seek judicial authorization to accept a renounced legacy. Specifically, La. C.C. art. 967 states:

A creditor of a successor may, with judicial authorization, accept succession rights in the successor's name if the successor has renounced them in whole or in part to the prejudice of his creditor's rights. In such a case, the renunciation may be annulled in favor of the creditor to the extent of his claim against the successor, but it remains effective against the successor.

In the instant case, the renunciation of Baquet's legacy occurred on April 26, 2000, as part of a compromise of the succession rights. The petition by the creditor, Britton, to accept the renounced legacy was filed in 2001. After a review of the record, we find that the trial court was correct in its judgment to allow the creditor, Elzie Britton, to accept the \$500 renounced legacy.

Allen relies on *Succession of Neuhauser*, 570 So.2d 437 (La. 1991) to argue that the creditor has the burden to affirmatively prove that the debtor: (1) acted fraudulently, and (2) that renunciation caused injury to the creditor. However, *Succession of Neuhauser*, decided in 1991 is based on now-repealed C.C. arts. 1021 and 1071. Article 967, the new Code revision

stated above, took effect on July 1, 1999, and merely states that the creditor may accept a renounced legacy “with judicial authorization”...” if the successor has renounced them in whole or in part of his creditor’s rights.” Thus, it is questionable whether or not the requirement of *Succession of Neuhauser* that the creditor must prove fraudulent renouncement survives under the new law. Nonetheless, even if it does, it would not apply in the instant case because unlike in *Neuhauser*, the party objecting herein is not the legatee who renounced, but the executrix. In fact, in the instant case, one of the exhibits is a letter from the renouncing legatee (Baquet) stating she has no objection to the creditor’s petition.

Accordingly, we affirm the judgment of the trial court, which correctly determined that the renounced legacy of Baquet must be awarded to her creditor, Elzie Britton in the amount of \$500.00.

AFFIRMED