STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the Estate of
LEONARD C. JAQUES, Deceased.

SYBIL JAQUES,

Petitioner-Appellee,

v

JEFFREY T. NEILSON, Special Fiduciary,

Respondent-Appellant.

UNPUBLISHED
March 26, 2002

No. 227529
Wayne Probate Court
LC No. 98-592568-SE

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Respondent, special fiduciary for the estate of Leonard C. Jaques, appeals as of right an order of the probate court granting homestead, exempt property, and family allowances to petitioner, the surviving spouse of Leonard Jaques. We affirm.

The facts in this case are essentially undisputed. Jaques and petitioner were married on October 8, 1965. Jaques was an attorney and owned most of the shares in The Jaques Admiralty Law Firm, P.C. Petitioner did not work outside of the home for most of the marriage and Jaques financially supported the family. In January 1997, petitioner moved into another marital home purchased by the parties and filed for divorce. Petitioner claimed that Jaques was involved in an adulterous affair and that his abusive behavior and continued harassment forced her to move into their other home. Jaques died before their divorce was finalized.

During the probate proceedings, petitioner asked the probate court for an exempt property allowance of $3,500, a homestead allowance of $10,000, and a family allowance of $25,000 a month for twelve months. The probate court granted petitioner's petition, but reduced the requested family allowance to $10,000 a month.

On appeal, respondent challenges petitioner's claims for the homestead allowance, MCL 700.285,[1] the exempt property allowance, MCL 700.286,[2] and the family allowance, MCL 700.287.[3] Specifically, respondent argues that petitioner was wilfully absent from Jaques for more than one year before his death and that MCL 700.290[4] bars petitioner's requests. We disagree. We review a trial court's interpretation of a statute de novo. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 468; 633 NW2d 418 (2001).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Hinkle v Wayne Co Clerk*, 245 Mich App 405, 414; 631 NW2d 27 (2001). The Legislature is presumed to intend the meaning it plainly expressed. *Guardian Photo, Inc v Dep't of Treasury*, 243 Mich App 270, 276-277; 621 NW2d 233 (2000). "In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory." *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001).

MCL 700.290 provides, in relevant part:

> A surviving spouse does not have a right of election against the will of the deceased spouse or a right under sections 285 to 288 if the surviving spouse did any of the following for 1 year or more previous to the death of the deceased spouse:
>
> (a) Was wilfully absent from the decedent spouse.
>
> (b) Deserted the decedent spouse.
>
> (c) Wilfully neglected or refused to provide support for the decedent spouse if so required by law.

This Court interpreted MCL 700.290 in *In re Estate of Harris*, 151 Mich App 780; 391 NW2d 487 (1986). In *Harris*, Norvel petitioned the court for the homestead and exempt property allowances from his deceased wife's estate. *Id*. at 782. Norvel resided at his wife's house for only short periods of time during the year prior to her death and had refused to pay for her medical treatment. However, the probate court excluded evidence about their relationship, stating that the issue was "whether the surviving spouse was physically absent, physically deserted the other, or willfully neglected to provide legally required support . . . ." *Id*. at 783. The Court of Appeals affirmed the trial court's interpretation of the statute and concluded that evidence of physical absence or an intent to cause permanent separation was required for the

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[1] Repealed by 1998 PA 386, § 8102, effective April 1, 2000.

[2] Repealed by 1998 PA 386, § 8102, effective April 1, 2000.

[3] Repealed by 1998 PA 386, § 8102, effective April 1, 2000.

[4] Repealed by 1998 PA 386, § 8102, effective April 1, 2000.

statute to apply. *Id*. at 785. In this regard, *Harris* noted that "[p]hysical presence in the marital home is strong evidence that the party remains involved in the marriage to some degree and has not intentionally given up any rights thereof." *Id*. at 787.

In the instant case, petitioner and Jaques owned two marital homes. During the year preceding Jaques' death, petitioner continuously lived in one of these homes.[5] Moreover, petitioner indicated her continued involvement in the marriage by agreeing to mortgage both of the homes so that Jaques could obtain a supersedeas bond for a lawsuit that was filed against his law firm. Jaques also continued to financially support petitioner until his death. Further, there is evidence showing that petitioner left the one marital residence and filed for divorce because of Jaques' continued harassment and abuse. While respondent filed for divorce, the divorce was never finalized and there is no record of a formal property settlement.

Based on these facts, the probate court did not err in concluding that the statutory exclusion was inapplicable.

Respondent also alleges that the amount of the family allowance was unreasonable. We disagree. "The determination of the amount of a family allowance is left to the sound discretion of the probate court." *In re Herbach Estate*, 230 Mich App 276, 290; 583 NW2d 541 (1998). According to MCL 700.287, the family allowance awarded to a spouse or child must be reasonable according to their circumstances. We note that the allotted monthly family allowance in this case is less than half of what petitioner requested. In light of petitioner's documented monthly expenses, we do not believe that the awarded amount was unreasonable or so "grossly violative of fact and logic" that the probate court abused its discretion. See *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999).

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jessica R. Cooper

[5] We note that both marital homes were located on Lakeshore Drive in Grosse Pointe, Michigan.