Schreiner v. Estate of Schreiner, et al., 356-8-06 Wmcv (Wesley, J., Mar. 15, 2007)

STATE OF VERMONT
WINDHAM COUNTY, SS.

HOPE B. SCHREINER,
Plaintiff,

v.

WINDHAM SUPERIOR COURT
DOCKET NO. 356-8-06Wmcv

ESTATE OF ROBERT L. SCHREINER, ROBERT SCOTT SCHREINER, CHRISTOPHER S. SCHREINER, STEFANIE STRAIT, DEBORAH L. BUDGE, GARY B. SCHREINER, TIMOTHY J. SCHREINER, JAMES A. SCHREINER, and STEPHEN P. SCHREINER,
Defendants.

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Robert L. Schreiner died testate on June 2, 2004, and his wife Hope was convicted of second degree murder in connection with his death. Conceding that, by operation of 14 V.S.A. § 551(6), she has forfeited her right to inherit from her husband, Hope seeks a declaratory judgment that she now holds a half share of the beneficial interests in three properties formerly held as tenants by the entirety with Robert in constructive trust, a determination of the beneficiaries of that trust, and the terms of its existence.[1] Robert Scott Schreiner, Executor of the Estate of Robert L. Schreiner, moves for summary judgment declaring the existence of the constructive trust, naming Hope as its trustee, declaring the Estate as its beneficiary, and

[1]At this time Hope's conviction is not final and an appeal is pending in the Vermont Supreme Court. Hope reserves the right to reassert her claim to the entire property formerly held with her husband if that appeal succeeds.

directing that the trust continue only until such time as Hope is without the ability to appeal her conviction. A cross motion is pending on behalf of James A. Schreiner, Stephen P. Shreiner, and Timothy J. Schreiner (hereafter "Contestants"), who contend that the constructive trust should benefit Robert L.'s heirs-at-law rather than the Estate. The parties agree that the critical issue is the interpretation of 14 V.S.A. § 551(6). Summary judgment is appropriate because, for purposes of this motion, the essential facts are undisputed and the central issue is clearly a question of law.[2] V.R.C.P. 56(c)(3); *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).

The subjects of this action for declaratory judgment are three real estate parcels located in West Townshend, Vermont: (1) a 1.3 acre, more or less, parcel conveyed to the Schreiners by Warranty Deed of Edward L. McKay and Joyce G. McKay dated 6/15/98 and recorded at Book 67, Page 452 of the Townshend Land Records; (2) a 1.0 acre, more or less, parcel conveyed by deed of Edward L. McKay and Joyce G. McKay dated 11/13/92 and recorded at Book 57, Page 487 of the Townshend Land Records; and (3) a 7.66 acre, more or less, parcel originally consisting of 17.36 acres, more or less, as described in the Warranty Deed of Walter Boyd Oliver, Jr. dated 10/29/92 and recorded at Book 57, Page 480 of the Townshend Land Records, less and excepting 9.7 acres, more or less, conveyed by Robert and Hope Schreiner to Robert Gerda Silver by Warranty Deed dated March 3, 2004. According to the complaint, on or about January 23, 2006, Hope signed a contract for the sale of the 7.66 acre parcel to a buyer who

[2] Hope neither disputes the material facts nor takes a position as to who the proper beneficiaries of the constructive trust are. The Contestants dispute a description of Estate assets, specifically with regard to the omission of life insurance benefits, but agree that it has no relevance to the controlling issue.

remains willing and able to purchase but requires either a license to sell or a court order declaring the existence of the trust and the identity of the beneficiaries thereof in order to proceed.

Robert L.'s will was admitted to probate by the Westminster Probate Court on December 1, 2005. The beneficiaries named in the will differ significantly, in both identity and quantity, from those who would take as a matter of intestate succession. The beneficiaries named in the will include Hope, some of Robert L.'s children (but not including the Contestants), his grandchildren, and his brother. Under Vermont's general laws of descent, all of Robert L.'s children would take in equal shares but his brother and grandchildren would be excluded.

Section 551 sets out specific rules for the real and personal property of a decedent which are "not devised nor bequeathed and not otherwise appropriated and distributed in pursuance of law"; in other words, this statute comprises the chief outline of intestate succession. Subsection 551(6) states an exception to those rules and reads in its entirety:

> (6) Notwithstanding the foregoing rules or provisions otherwise made in any case where a person is entitled to inherit, including a devisee or legatee under the last will of a decedent, such person's share in the decedent's estate shall be forfeited and shall pass ***to the remaining heirs*** of the decedent if such person stands convicted in any court of the United States or of any of the individual states of the United States of intentionally and unlawfully killing the decedent. In any proceedings to contest the right of a person to inherit, the record of such person's conviction of intentionally and unlawfully killing the decedent shall be admissible evidence and may be taken as sufficient proof that such person did intentionally kill the decedent.

14 V.S.A. § 551(6)(emphasis added.) The identity of those remaining heirs who are entitled to receive the forfeited share presents the root of the parties' dispute.

The term "heir" is not specifically defined in this, nor in any related statute, but the Court must determine and give effect to the legislature's intended meaning. *Brennan v. Town of*

Colchester, 169 Vt. 175, 177(1999)(court obliged to give effect to intent of legislature). Contestants urge that the legislature's intent is revealed by the plain and commonly accepted meaning of the word "heir". *Id.*(first step in finding legislative intent is to look at language and to presume legislature intended its plain and ordinary meaning). It is their position, moreover, that the term denotes both a legal term of art and a commonly understood reference to intestate succession, easily distinguished from devisees and legatees who, in the same fashion, are understood only to profit from a legal will. If this is the case, only those who would take under the intestacy provisions would share in Hope's forfeited interest.

While the court does not disagree that "heir" is sometimes used as a precise legal term that distinguishes a class of beneficiaries who take under the laws of intestate descent from those beneficiaries identified in a legal will, it does not find that the term necessarily or always is limited to this meaning. A review of standard dictionary sources reveals multiple meanings. For example, Black's Law Dictionary gives four sometimes contradictory definitions for "heir". Only the first clearly supports the Contestants' claim, while the second and fourth clearly contradict it.

> 1. A person who, under the laws of intestacy, is entitled to receive an intestate decedent's property.... 2. Loosely (in common law jurisdictions), a person who inherits real or personal property, whether by will or by intestate succession. 3. Popularly, a person who has inherited or is in line to inherit great wealth. 4. *Civil law.* A person who succeeds to the rights and occupies the place of, or is entitled to succeed to the estate of, a decedent, whether by an act of the decedent or by operation of law....

Black's Law Dictionary 740(8th ed. 2004). According to Webster's Ninth New Collegiate Dictionary, "heir" is defined by reference to the word "inherit", as in "one who inherits or is entitled to inherit property." Webster's Ninth New Collegiate Dictionary 562(1985). "Inherit",

in its most relevant application, is in turn defined as "2 a: to receive as a right or title descendible by law from an ancestor at his death b: to receive as a devise or legacy." *Id*.at 622. As in the previous example, while the Webster's definition includes the one urged by Contestants, it does not do so to the exclusion of definitions which contradict it. Rather than establishing the narrow and specific meaning urged by Contestants, these examples show that "heir" reasonably means different things in different contexts. Therefore, the Court is not persuaded that the identity of the remaining heirs can be determined conclusively from the plain meaning of the word.

Fortunately, a careful reading of subsection 551(6) supplies vital context which clarifies the legislature's intended meaning. See *In re Cartmell's Estate*, 120 Vt. 228, 230(1958)(true meaning ascertained, not from a literal sense of the words used, but from consideration of the whole and every part of the statute). The statute defines the group of persons who are subject to forfeiture as any person who "is entitled to inherit, including a devisee or legatee under the last will of a decedent." By invoking devisees and legatees, the statute expressly relies on the broader definition for "heir" that includes beneficiaries named in a will along with those who stand to inherit if no valid or complete will is produced in any particular case. By limiting the group to those who are "entitled" to inherit, only those individuals who stand to take in a particular case before the forfeiture is considered are included. Although "heir" is used only once within the statute, it appears as part of the phrase "the remaining heirs of the decedent", referring back to that original group from which the individual subject to forfeiture is drawn. Logically, the sharing of the forfeited share among "the remaining heirs" must also refer back to the original group of beneficiaries, who can be identified with particularity based on their entitlement under specific facts, including having been named as beneficiary in the decedent's

will.

This reading is consistent with common law precedent before the enactment of the forfeiture statute. Prior to adoption of Public Law No. 165 and the addition of subsection 551(6) in 1972, Vermont had no statutory provision which prevented a convicted killer from taking by descent or distribution from the estate of his or her victim. See *In re Estate of Mahoney*, 126 Vt. 31, 32(1966). However, the issue was considered as a matter of first impression in *Estate of Mahoney*.[3] The Court described three possible lines of decision adopted in other states that had no statute to prevent a killer from taking either by descent or distribution from the person she or he had killed. Under the first, legal title passed to the slayer and was retained in spite of the crime because "the devolution of the property of a decedent is controlled entirely by the statutes of descent and distribution." *Id.* at 33. Under the second, legal title did not pass to the slayer because equity would not permit the wrongdoer to profit by his crime. *Id*. (citations omitted.) The Court noted that this option had been faulted because it imposed a judicial "exception on the statute(sic) of descent and distribution." *Id.* (citations omitted.) The third, and the one adopted by our Supreme Court, worked a compromise between avoiding judicial law-making and the compelling requirements of equity by passing legal title to the slayer but forcing him or her to

[3] The property at issue in *In re Mahoney* was owned by Howard Mahoney and would have passed under intestate provisions to his wife pursuant to the then current version of 14 V.S.A. § 551(2). Since his wife was convicted of voluntary manslaughter in connection with her husband's death, however, the Supreme Court held that her right to inherit was subject to equitable forfeiture if the chancellor found that "appellant willfully killed her late husband", together with "all other equitable considerations as may be offered in evidence." Yet, the Court concluded that the homicide conviction alone did not "dispense with the necessity of proof of the murder in a proceedings in equity to charge him as a constructive trustee. *Id*. at 36. In his concurring opinion, Justice Shangraw lamented the "impractical aspects of the constructive trust doctrine applied in this case," suggesting that the litigation burden was akin to "digging a hole to get the dirt to fill another hole". He used the concurrence to suggest the need for "suitable legislation", and the legislature responded with P.L. No. 165.

hold the title as a constructive trustee "for the heirs ***or*** next of kin of the decedent". *Id*. (emphasis added).

Although the opinion's repeated references to the laws of "descent and distribution" indicate an apparent desire not to interfere unduly with either system, Contestants argue that the reference to" heirs" in the text of the holding signals the intention to benefit only those who take according to the rules of intestate succession, excluding beneficiaries whose distributions are established by a valid will. Since Mr Mahoney died intestate and the only candidates to receive his wife's forfeited share were his parents, the Court was not directly confronted with the question presented here. Still, Contestants' reading represents a strained construction of the Court's descriptive, " heirs ***or*** next of kin", which is couched in the alternative. Since the term "next of kin" plainly refers to that group standing to benefit under the rules of intestacy, it is more reasonable that the reference to "heirs" ***or*** "next-of-kin" was meant to invoke separate groups potentially benefitted by any forfeiture, rather than to state a redundancy. Thus, the most compelling interpretation of the *Mahoney* ruling supports the proposition that a forfeiture would benefit, first, those claimants established by the decedent's valid will, and, only in its absence, those established by operation of the intestate succession laws.

This interpretation is supported by the total absence of any analysis that explains why equity or public policy might require the forfeited portion to be shared among a specific class of beneficiaries as defined by the intestacy statute, rather than in a fashion consistent with the deceased's testamentary plans. Neither the right to make testamentary dispositions nor the right to inherit property as next-of-kin are inherent; both depend entirely upon legislative action. *In re Clark's Estate*, 100 Vt. 217, 225(1927)(citations omitted). Both equitable and public policy

implications associated with forfeiture arise from this backdrop of a well-developed scheme that permits individuals to leave their testamentary wishes in a prescribed format with reasonable expectations that they will be honored, or to avoid the exercise altogether knowing that, by the intestacy statute, any property owned at the time of death will be distributed in a clearly delineated path. First at equity, and later at law, the primary purpose of the forfeiture rule was to prevent the killer from receiving an inappropriate benefit, and it seems apparent that concerns over the passing of the forfeited share have always been ancillary to the imperative of preventing the one who killed the deceased from taking it. As a matter of fairness or policy, the forfeiture statute discloses no basis for understanding why the "heirs" benefitting from a forfeiture ought to be next-of-kin, to the exclusion of those selected by the decedent at the time he was of sound mind to form an estate plan.[4] Without such a basis, and given the likelihood that the common law rule expressed a preference for those named by will over next-of-kin, the Court interprets "heirs" consistently with that preference.

For the reasons set out herein, the Court concludes that the proper beneficiary of Hope's forfeited interest is the Estate itself. Where the three properties are concerned, some additional

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[4] By way of instructive contrast, 14 V.S.A. §§ 1491 and 1492 create a scheme for compensation in wrongful death cases that reveals a well crafted legislative intention to benefit a specially defined class regardless of either testamentary dispositions or the right to inherit as next-of-kin. 14 V.S.A. § 1492 (b) and (c). For example, this specialized scheme takes into account the persons most likely to suffer loss from the wrongful death, see 24 V.S.A. § 1492(b); as well as the potential beneficiary's conduct in the deceased's life, see 14 V.S.A. § 1492(c)(2)(parent or spouse who abandoned decedent does not recover). This attentive detail is evidence that the legislature was concerned not only with imposing liability on the wrong doer, but also with specifying the party or parties most entitled to assistance. Where the forfeiture statute is concerned, the legislature was less clear as to the beneficiaries of its lawmaking. The only discernible focus is on preventing improper gain to a convicted killer and the forfeited share is not treated as compensation for a particular victim. In such a circumstance, for the reasons explained above, logic dictates the choice of those selected through the exercise of testamentary intent over statutory next-of-kin.

analysis is necessary to deconstruct what had been created as tenancies by the entirety. A tenancy by the entirety arises from a kind of legal fiction by which each spouse possesses title to the whole, although, during their lifetimes, neither has a share which can be disposed of without the other joining in the conveyance. *Preston v. Chabot*, 138 Vt. 170(1980). Ordinarily, upon the death of either tenant, the survivor's interest in the whole of the property is complete without the necessity of probate. *Town of Corinth v. Emery*, 63 Vt. 505, 506-07(1891). However, *Preston* involved the forfeiture of an interest in an tenancy by the entirety occasioned by the murder of Norma Chabot at the hands of her husband, Edward. Although *Preston* was decided after the forfeiture provision was enacted, when the issue as to Norma's interest arose in connection with the distribution of the property upon Edward's death, the Court applied the common law standard adopted in *In re Mahoney* because Norma died intestate before the amendment. 138 Vt. at 173. Reasoning that the tenancy by the entirety had been severed by the unlawful killing, the Court concluded that, upon the murder of his wife, Edward retained only a half interest in the property. It further held that during his long occupancy of the home thereafter, he had been holding the remainder in constructive trust for Norma's heirs-at-law, notwithstanding his attempt to create a new tenancy by the entirety with a subsequent spouse. *Id*. at 174-75; see also *In re Fitzgerald*, 169 Vt. 588, 588-89 (1999)(remanded for additional findings in probate dispute over personalty between murderer and heirs of his deceased wife, specifying application of *Preston* rule for distributing property held in tenancy by the entirety). The method adopted in *Preston* regarding the distribution of shares held previously by the entirety is consistent with 14 V.S.A. § 551(6) and the Court applies it to the property interests in this case.

Accordingly, **IT IS HEREBY ORDERED**:

Summary judgment is **GRANTED** to Robert Scott Schreiner, Executor of the Estate of Robert L. Schreiner according to these terms:

A one half interest in each of the three properties formerly owned by Hope Schreiner and Robert L. Schreiner as tenants by the entirety and described herein is decreed to the Estate of Robert L. Schreiner, as tenant in common with Hope Schreiner, the owner of the other one half interest in each of the three properties; provided that, pending the determination of Hope Schreiner's appeal from her conviction of the murder of Robert Schreiner, the interests so decreed shall be held in constructive trust by Hope Schreiner for the benefit of the Estate of Robert L. Schreiner; and further providing that, in the event Hope Schreiner's conviction shall be upheld after all appellate rights have been exhausted, the one half interests so decreed shall irrevocably vest in the Estate of Robert L. Schreiner, but that, in the event Hope Schreiner's conviction shall be overturned, the interests so decreed shall be null and void.

The Contestants motion for summary judgment is **DENIED**.

Dated at Newfane, Vermont, this ___ day of February, 2007.

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John P. Wesley
Superior Court Judge