# STATE OF WEST VIRGINIA
# SUPREME COURT OF APPEALS

George T. Crowe, Respondent Below,
Appellant

v.) No. 11-0589

Vivian P. Crowe, Norma Crowe and
Betty Lou Crowe Thompson,
Petitioners Below, Appellees

**FILED**
**May 10, 2012**
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

## MEMORANDUM DECISION

This appeal arises from an Order entered in the Circuit Court of Summers County on December 3, 2010, granting Appellees' Motion for Partial Summary Judgment[1] with regard to a real estate[2] dispute that arose in connection with a testamentary bequest. The trial court ruled that title to the subject real estate vested in the heirs of Maude Crowe *per stirpes.* After carefully reviewing the record provided, the briefs and oral arguments of the parties, and taking into consideration the relevant standard of review, the Court determines that the Circuit Court committed no error. Based on our decision that this case does not present a new question of law, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

At issue in this appeal is the trial court's grant of partial summary judgment to the Appellees/Petitioners below, ruling that Thomas Neighbors, who died in 1956, intended to devise his real estate to all of the heirs of Maude Crowe, his common law wife, per stirpes, and ruling against Appellant/Respondent below on his claim of adverse possession. At the

[1]While the record is unclear as to what remains at issue upon the trial court's award of partial summary judgment, it appears that there may be pending claims for alleged timber trespass; alleged waste by a cotenant; and an accounting for rents and profits from the land at issue.

[2]The subject real estate is comprised of two tracts of land–a fifty-one-acre parcel and a one-acre parcel located near Pence Springs, West Virginia. These tracts, collectively referred to as the "Homeplace," were purchased by Thomas Neighbors respectively in 1921 and 1954.

center of this dispute is the following language from Mr. Neighbors' will that was signed and dated on April 12, 1952:

> All my real estate, wheresoever situated, I give, devise, and bequeath unto Maude Crowe during her lifetime. Upon the death of the said Maude Crowe, I give, devise, and bequeath my said real estate to the child of Maude Crowe who supported me until my death; which child is to use, rent or sell my real estate as said child shall choose. If said child who supported me until my death is deceased at the time of Maude Crowe's death, then I give, devise and bequeath my said real estate to the child of the said Maude Crowe that supported the said Maude Crowe until her death.

In addressing the ownership of the subject real estate, the trial court considered the relevant factual and procedural history of this matter. While never married to each other, Thomas Neighbors and Maude Crowe began a relationship in the 1930's while living in Pence, West Virginia. Seven children were born of this relationship.[3] Before living in West Virginia with Mr. Neighbors as his common law wife, Maude Crowe lived in Virginia and was married to Early Crowe.[4] Appellant George Crowe was a child of that marriage.[5]

On July 13, 1956, four years after executing his last will and testament, Mr. Neighbors died. While Mr. Neighbors' will was recorded for probate purposes, the estate was never settled. Three years later, Maude Crowe died intestate and her estate was similarly never probated.

After Maude Crowe's death, her daughter Helen and Helen's husband Uyless, paid the property taxes on the real estate at issue until the mid-1960's. At that point, Appellant George Crowe took over paying the property taxes and continued to do so until

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[3]Those children were: John Crowe, Stella Crowe Pickeral, Kenneth Earl Crowe, Vivian P. "Scott" Crowe, Donald Crowe, Betty Lou Crowe Thompson, and Donald Crowe, who died in infancy.

[4]That marriage ended in divorce in 1934 or 1935.

[5]Other children born of that lawful marriage include Denton "Gordon" Crowe, Charles Crowe, William Crowe, Elmer Crowe, and Helen Crowe.

the mid-1970's.[6] When George Crowe failed to pay the property taxes, the property was sold for the tax lien. Upon discovering the tax sale, George Crowe redeemed the property,[7] but kept it registered as the Maude Crowe Estate.

During 2003 to 2005, George Crowe realized $42,000 for the sale of timber.[8] On June 28, 2007, George Crowe signed and recorded a quitclaim deed to himself in which he alleged that he cared for Thomas Neighbors and Maude Crowe prior to their deaths.[9] At this point, a dispute erupted between Appellant and Appellees regarding who the rightful owner of the property was in light of the language in Mr. Neighbors' will.

Appellees filed a Petition and Suit to Quiet Title on April 10, 2008. They later filed a Motion for Declaratory Judgment Regarding the Will of Thomas Neighbors and Partial Summary Judgment as to George Crowe's claim of adverse possession. By order entered on December 3, 2010,[10] the trial court rejected the adverse possession claim of George Crowe and granted partial summary judgment to Appellees, finding that all of the heirs of Maude Crowe had title to the subject real estate *per stirpes.*

"The cardinal principle in constructing a will is to ascertain the intent of the testator as expressed in the words of the will and codicils, giving consideration to all the surrounding circumstances." Syl. Pt. 1, *Claymore v. Wallace*, 146 W.Va. 379, 120 S.E.2d 241 (1961). Under the testamentary document at issue, Mr. Neighbors contemplated two scenarios for transferring his real estate upon the death of Maude Crowe. In the first instance, Mr. Neighbors expressed the intent to give his property "to the child of Maude Crowe who supported . . .[him] until my death." In the event that particular individual was no longer living at the time of Maude Crowe's death, then he intended for his property to pass to "the child of the said Maude Crowe that supported . . . [her] until her death."

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[6]John Crowe, George Crowe's brother, made one twenty dollar contribution toward the tax payments during this ten-year period.

[7]The record indicates that this occurred either in 1977 or 1979.

[8]George Crowe testified that $22,000 was attributable to timber located on the Homeplace property under discussion and the other $20,000 was realized from property adjacent to the Homeplace that he owns separately.

[9]The impetus for the quitclaim deed was Betty Lou Crowe Thompson's sale of her interest in the property to her siblings, the Appellees.

[10]The order was signed by the trial court November 17, 2010, but entered on December 3, 2010.

Seeking to follow Mr. Neighbors' instructions, the trial court examined the first scenario he contemplated and ruled that "[b]ased upon the evidence and testimony . . . it appears that Maude Crowe was Thomas Neighbors[']s primary caretaker until his death". Having determined that there was no child of Maude Crowe who fulfilled the initial condition contemplated by the testator (taking care of him), the trial court progressed to the second scenario envisioned by Mr. Neighbors – to give his property to the child of Maude Crowe who supported her until her death. Upon consideration of the testimony offered on this issue, the trial concluded: "The evidence is inconclusive on which child supported Maude Crowe during her lifetime and the testimony establishes that she was self-sufficient throughout most of her lifetime. There is evidence that each of the children provided some support for their mother."

Continuing its effort to identify how Mr. Neighbors had planned for his real estate to exchange hands after his death, the trial court reasoned:

> The Court finds that Thomas Neighbors' intention was to devise his property to the children of Maude Crowe who supported the two of them. Since there is evidence that each of the children provided some support, there is no standard set forth in the will which would allow this Court to award it to one or more children over the others, and his clearly expressed intent was to leave it to the children of Maude Crowe, this Court can only conclude it must pass to the children or their decedents equally, *per stirpes.*

It is axiomatic that "[t]he law favors testacy over intestacy." Syl. Pt. 8, *In re Estate of Teubert,* 171 W.Va. 226, 298 S.E.2d 456 (1982). Courts are charged to give effect to the words of a will "if any sensible meaning can be assigned to it not inconsistent with the general intention of the whole will taken together." Syl. Pt. 6, in part, *Painter v. Coleman*, 211 W.Va. 451, 566 S.E.2d 588 (2002). However, the intent of Mr. Neighbors was clear: Upon the death of Maude Crowe, his real estate should be given to the *individual* "child of Maude Crowe" who provided support to Mr. Neighbors prior to his death and if that *individual* "child of Maude Crowe" was no longer living, to the *individual* "child of the said Maude Crowe" who provided support to Maude Crowe prior to her death. When asked to determine which child of Maude Crowe took care of Mr. Neighbors prior to his death, the trial court concluded that this condition was not met as Maude Crowe herself was solely responsible for the care of Mr. Neighbors.

Because the first condition of the subject devise was unmet–there was no child of Maude Crowe who took care of Mr. Neighbors prior to his death–there was no basis for proceeding to the second condition. That condition was expressly tied to the fulfillment of the first condition as it not only assumed that there had been a child of Maude Crowe who took care of Mr. Neighbors prior to his death but that this individual had then pre-deceased Maude Crowe. Given that the conditions for the bequest of Mr. Neighbors' real estate were unmet, the devise fails and the property must pass through the laws of intestacy. *See* W.Va. Code § 41-3-4 (2010). In ruling that the real estate should be awarded *per stirpes* to the heirs of Maude Crowe, the trial court reached the right result but for the wrong reason.

Based on the foregoing reasons, we conclude that the trial court did not commit error in awarding title to the subject real estate to the heirs of Maude Crowe *per stirpes*. We further find that the trial court did not commit error in determining that George Crowe failed to prove that he gained title to the subject property by means of adverse possession.

Affirmed.

**ISSUED: May 10, 2012**

**CONCURRED IN BY:**
Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh