

Supreme Court of Louisiana

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NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 25th day of March, 2022 are as follows:

PER CURIAM:

2021-C-01159

SUCCESSION OF DEAN ALLEN BRADLEY (Parish of Jefferson)

RULING OF THE COURT OF APPEAL REVERSED. TRIAL COURT JUDGMENT REINSTATED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

No. 2021-C-01159

SUCCESSION OF DEAN ALLEN BRADLEY

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

PER CURIAM

We granted certiorari in this case to address whether the law in effect at the time this testamentary trust came into existence allowed the settlor of the trust to provide for substitution of beneficiaries when the original beneficiary dies testate, but without descendants. We conclude the law permits such substitution.

FACTS AND PROCEDURAL HISTORY

Donald R. Bradley, Sr. (“Donald, Sr.”) had two sons: Donald R. Bradley, Jr. (“Donald, Jr.”) and Dean Allen Bradley (“Dean”). On April 19, 2002, Donald, Sr. executed a will. The will established two separate trusts, with equal shares of his remaining estate left for the principal benefit of Donald, Jr. and Dean. The provision of Donald, Sr.’s will creating the trusts contained the following language:

5. Upon any termination of a trust, the principal of the trust and all accumulated income, and all investments and reinvestments thereof, shall be delivered by the trustee in full ownership and free of trust as follows:

(a) if the termination occurs during the beneficiary’s life, then to the beneficiary; or

(b) if the principal beneficiary dies before termination of the trust, that beneficiary’s interest vests in the heirs or legatees of the deceased beneficiary subject to this trust and, for a legitime interest subject to the provision of La. R.S. § 9:1841. However, if the principal beneficiary dies without descendants, to the maximum extent permitted under Louisiana law, that interest shall vest in the principal beneficiary’s spouse, provided that the principal beneficiary is married at the time of his death and that no divorce proceedings are pending between the principal beneficiary and his spouse at the time of the principal beneficiary’s

death. If, at that time, the principal beneficiary has no spouse or divorce proceedings are pending, that interest shall vest in the remaining trusts created therein per stirpes. [emphasis added]

Donald, Sr. died in 2013. The trust came into existence upon his death.

In 2015, Dean executed his own will. Dean's will bequeathed his entire estate, including his trust property, to his fiancée, Vicky Ann Ladner.¹

Dean died on March 1, 2017. At the time of his death, Dean was not married, and he left no descendants.²

After Dean's will was presented for probate, Donald, Jr. filed a petition for intervention. He argued that under the express language of Donald, Sr.'s will, his trust had a vested interest in Dean's trust because Dean died without a spouse or descendants. Ms. Ladner answered the intervention, contending Dean's testament determined who inherited his portion of the trust. The parties then filed cross motions for partial summary judgment.

In his motion for partial summary judgment, Donald, Jr. alleged that Dean's beneficiary interest in the Dean Trust reverted to Donald, Jr.'s Trust because Dean died without a spouse or descendants. He argued Ms. Ladner's contention she was entitled to receive Dean's interest in the Dean Trust because she was Dean's legatee was contrary to the language of Donald, Sr.'s will. Donald, Jr. further argued the

¹ The will provided:

I declare that Vicky Ann Ladner is my universal legatee. I bequeath my entire estate, immovable and movable, real and personal, and trust property to Vicky Ann Ladner ... as may be described in the Judgment of Possession of the Succession of Donald R. Bradley ... If Vicky Ann Ladner predeceases me, my estate shall devolve under the rules of intestacy. Pursuant to La. Civ. Code art. 1521, I specifically provide that if Vicky Ann Ladner does not survive me by a period of ninety (90) days, then all of my property must devolve as if she had predeceased me.

² Dean's ex-wife, Melinda Elmer Bradley, filed a petition for intervention on November 2, 2017, alleging that Dean was the presumed father of her son, Michael Blanchard. Dean's will specifically disavowed Michael, and Dean filed a disavowal proceeding. Mrs. Bradley's intervention is not pertinent to the resolution of the instant case and need not be discussed further.

language of Donald, Sr.'s will clarified that the terms "heirs" and "legatees" were limited solely to Dean's descendants or spouse, and any other interpretation of those terms would render the contingency provisions contained in paragraph 5(b) of the will meaningless.

In her motion for partial summary judgment, Ms. Ladner alleged the language of Donald, Sr.'s will purposely contained the terms "heirs" or "legatees" with the intention of allowing the beneficiaries to bequeath the beneficiary interest to a testate successor. Because Dean designated her as his universal legatee, Ms. Ladner contends she should inherit Dean's beneficiary interest in the Dean Trust, to the exclusion of all others.

After a hearing, the district court granted Donald, Jr.'s motion for partial summary judgment and denied Ms. Ladner's motion for partial summary judgment.

In written reasons for judgment, the district court stated, in pertinent part:

The Court concludes that in order to give effect to the testator's intent in Donald Bradley, Sr.'s will, the Court must give effect to the language in the sentence beginning with "however" and the following sentence. This language indicates that the trust created for Dean Bradley would go to Dean Bradley's heirs – spouse or children. But because Dean Bradley had none, the property must devolve to the other trust created in the will, which is the Donald Bradley Jr. Trust. If the Court were to adopt Ms. Ladner's interpretation, these provisions of the will would have no effect, which would result in the Court's ignoring the testator's intent.

Accordingly, the Court entered judgment (1) granting the motion for summary judgment filed by Donald R. Bradley, Jr., and (2) denying the motion for summary judgment filed by Vicky Ladner, and (3) ordering that decedent's Dean Bradley's trust interest in the Dean Allen Bradley Testamentary trust, created in the will of Donald Bradley, Sr., reverts to the Donald R. Bradley, Jr. Testamentary trust.

Ms. Ladner appealed. The court of appeal reversed, granted Ms. Ladner's motion for partial summary judgment, and remanded the case for further

proceedings. *Succession of Bradley*, 2020-308 (La. App. 5 Cir. 3/31/21), ___ So.3d ____.

We granted certiorari to consider the correctness of this decision. *In re Succession of Bradley*, 2021-01159 (La. 11/17/21), 327 So.3d 508.

DISCUSSION

We begin our analysis from the well-settled principle that in interpreting testaments, courts should principally seek to ascertain the intention of the testator, without departing from the proper signification of the testamentary terms. *Succession of Goode*, 425 So.2d 673, 676 (La. 1982). This intention must be ascertained from the whole will, and effect must be given to every part of the will as far as the law will permit. No part of a will should be rejected, except what the law makes it necessary to reject. Where it is a question of the choice between two interpretations, one which will effectuate, and the other that will defeat, a testator's intention, the court will carry out the intention of the testator. *Carter v. Succession of Carter*, 332 So.2d 439, 441 (La. 1976) (quoting from *Succession of La Barre*, 179 La. 45, 48, 153 So. 15, 16 (1934)).

The relevant provision of Donald, Sr.'s will provides:

b) if the principal beneficiary dies before termination of the trust, that beneficiary's interest vests in the **heirs or legatees of the deceased beneficiary** subject to this trust and, for a legitime interest subject to the provision of La. R.S. § 9:1841. **However, if the principal beneficiary dies without descendants, to the maximum extent permitted under Louisiana law, that interest shall vest in the principal beneficiary's spouse**, provided that the principal beneficiary is married at the time of his death and that no divorce proceedings are pending between the principal beneficiary and his spouse at the time of the principal beneficiary's death. **If, at that time, the principal beneficiary has no spouse or divorce proceedings are pending, that interest shall vest in the remaining trusts created therein per stirpes.** [emphasis added]

Ms. Ladner urges us to find that the testator used the terms “heirs” or “legatees” with the intention of providing the trust beneficiaries with an option to bequeath their interests to a testate successor. Thus, because Dean designated her as his universal legatee, Ms. Ladner contends that she should inherit Dean’s beneficiary interest in the trust, to the exclusion of all others.

This argument would require us to ignore the fundamental rule that “[t]o determine the intention of the testator the whole will is to be taken into consideration.” *Succession of Kamlade*, 232 La. 275, 285, 94 So.2d 257, 261 (1957). Although Donald, Sr.’s will refers to the “heirs or legatees of the deceased beneficiary,” it goes on to provide an exception for a situation in which the principal beneficiary dies without descendants, in which case the interest vests in the principal beneficiary’s spouse. The will then provides a further exception where the principal beneficiary has no spouse (or divorce proceedings are pending), in which case the interest “shall vest in the remaining trusts. . . .”

The latter situation is presented in this case. It is undisputed Dean was unmarried and without descendants at the time of his death. Therefore, under Donald, Sr.’s will, Dean’s trust interest vests in the remaining trust belonging to Donald, Jr.

Having determined the intent of the testator, we must now determine if the law permits this disposition.

Pursuant to La. R.S. 9:2252,³ trusts are governed by the law in effect at the time of their creation. La. R.S. 9:1821 provides, “[a] testamentary trust is created at the moment of the settlor's death.”

³ La. R.S. 9:2252 provides:

Trusts heretofore created and any provisions or dispositions therein made shall be governed by the laws in effect at the time of their creation. Unless otherwise provided in the trust instrument, trusts created prior to the effective date of this Code shall be governed in all administrative and procedural matters by the provisions of this

At the time the trust in this case was created in 2013, La. R.S. 9:1973 provided, in pertinent part:

A. The trust instrument may provide that the interest of either an original or a substitute principal beneficiary who **dies intestate and without descendants** during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary.

B. **Except as to the legitime in trust**, the trust instrument may provide that the interest of either an original or a substitute principal beneficiary **who dies without descendants** during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary. [emphasis added]

The dispute between the parties focuses on the interplay between paragraph A and paragraph B of the statute. Ms. Ladner relies on paragraph A for the proposition that a substitution is only allowed when the beneficiary dies both intestate and without descendants. Because Dean died testate, she contends a substitution is not permitted.

However, Donald, Jr. takes the position that paragraph B applies in cases such as the instant one where the trust does not impact the legitime. In such cases, the only requirement for substitution is that the beneficiary die without descendants.

When the provision is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect, and its provisions must be construed so as to give effect to the purpose indicated by a fair interpretation of the language used. La. Civ. Code art. 9; La. R.S 1:4; *Oubre v. Louisiana Citizens Fair Plan*, 2011-0097 (La. 12/16/11), 79 So.3d 987, 997. The plain language of paragraph B supports the conclusion that in cases where the legitime is not in trust, the sole requirement for a substitution is that the principal beneficiary die without descendants.

Code and not by laws in effect at the time of creation of such trusts, and trusts created prior to the adoption of any amendment to this Code shall be governed in administrative and procedural matters by the provisions of the amendment.

This interpretation is reinforced by the official comments accompanying this statute. Although the comments are not the law, they can be useful in determining legislative intent. *Central Properties v. Fairway Gardenhomes, LLC*, 2016-1855 (La. 6/27/17), 225 So.3d 441, 448; *Arabie v. CITGO Petroleum Corp.*, 2010-2605 (La. 3/13/12), 89 So.3d 307, 312.

Paragraph B was added to La. R.S. 9:1973 in 1997 by La. Acts 1997, No. 254, § 1, as part of a package of amendments.⁴ The official comments to La. R.S. 9:1973 reference the comments to La. R.S. 9:1978, which provide, in pertinent part:

a) The Trust Code provides that as a general rule the interest of the principal beneficiary must be vested at the creation of the trust and must be heritable. La. R.S. 9:1971, 1972; Martin, Louisiana's Law of Trusts 25 Years After Adoption of the Trust Code, 50 La. L. Rev. 501, 512 (1990). The only exceptions prior to these amendments were the substitutions permitted by R.S. 9:1973, 1978, and 1895, and the survivorship condition permitted by Civil Code Article 1521(A)(2).

The amendments to R.S. 9:1895(A), 1973, and 1978 allow the settlor to name a substitute principal beneficiary **in the event the original principal beneficiary has no descendants**. Under previous law, the interest of a principal beneficiary with no descendants would go to the legatee under the principal beneficiary's will. Under the Sections as amended, the designation by the settlor of a substitute principal beneficiary will override the original principal beneficiary's will with respect to his interest in the trust **if he has no descendants**.

(b) The **new substitution** permitted by **R.S. 9:1973(B)** and by R.S. 9:1985(A) is inapplicable to the legitime. The

⁴ La. R.S. 9:1973 was first enacted in 1974 and provided:

The trust instrument may provide that the interest of a principal beneficiary who dies intestate and without descendants during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary.

In 1989, it was amended and reenacted as follows:

The trust instrument may provide that the interest of either an original or a substitute principal beneficiary who dies intestate and without descendants during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary.

substitution permitted by R.S. 9:1973(A) is applicable to the legitime via R.S. 9:1841. [emphasis added].

These comments reveal that the legislature intended to create a distinction between the substitutions permitted by paragraphs A and B of La. R.S. 9:1973 based on whether the trust impacted the legitime. Paragraph A applied to the legitime in trust, while Paragraph B created a new substitution procedure where the legitime was not in trust. In this latter instance, the only requirement is that the beneficiary die without descendants.

Although not applicable to the instant case, we also find it helpful to briefly review the 2016 amendment to La. R.S. 9:1973, which provides, in pertinent part:

A.(1) **Except as to the legitime in trust**, the trust instrument may provide that the interest of an original or a substitute principal beneficiary of an irrevocable trust vests in one or more of his descendants upon the death of the beneficiary either during the term of the trust or at its termination. The trust instrument may provide that the interest vests in another person if the beneficiary dies **without descendants**.

(2) **With respect to the legitime in trust**, the trust instrument may provide that the interest of an original or a substitute principal beneficiary vests in another person upon the death of the beneficiary either during the term of the trust or at its termination, **only if a beneficiary dies intestate and without descendants**. [emphasis added]

The 2016 amendment explicitly provides that when the legitime is in trust, the substitution is only allowed when the beneficiary dies intestate and without descendants. In cases where the legitime is not in trust, the only requirement for substitution is that the beneficiary die without descendants.

Official comment (a) to the revision provides:

(a) This revision **reorganizes, modifies, and clarifies prior law**. It expands prior law by enlarging the category of allowable parties to whom a principal interest can be shifted at the death of an original or substitute principal beneficiary. It allows for a settlor to provide that if a principal beneficiary dies with descendants his interest passes to one or more of the beneficiary's descendants. **As under prior law, a settlor can shift to any other person**

the principal interest of a beneficiary who dies without descendants. If the legitime is affected, however, the shifting of principal is allowed only if the beneficiary dies intestate and without descendants. [emphasis added].

As explained in the comment, the 2016 amendment does not change the law but merely “reorganizes, modifies, and clarifies prior law.” The comment explicitly recognizes the prior law, in effect at the time of the instant case, permitted shifting the interest of a beneficiary who dies without descendants, as long as the legitime is not affected.

The principle of separation of powers does not exclude the authority of the legislature to enact clearly interpretive laws, clarifying the meaning of previously enacted texts outside the context of litigation. *St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809, 819 (La. 1992) (quoting *Yiannopoulos, Validity of Patents Covering Navigable Waterbottoms—Act 62 of 1912, Price, Carter, and All That*, 32 La.L.Rev. 1, 16 (1971)).⁵ While the 2016 amendment is not applicable in this case, the legislature’s clarification of its intent, both in the text and comments, demonstrates that the law in effect at the time this trust came into existence allowed substitution when a beneficiary dies without descendants, as long as the legitime is not affected.

The trust in this case did not affect the legitime. Dean died without descendants. Therefore, the law permitted Donald, Sr. to shift Dean’s interest to the remaining trust belonging to Donald, Jr.

DECREE

For the reasons assigned, the judgment of the court of appeal is reversed. The judgment of the district court granting partial summary judgment in favor of Donald

⁵ Of course, we have also recognized that even interpretive legislation cannot operate retroactively to disturb vested rights. *See Terrebonne v. South Lafourche Tidal Control Levee Dist.*, 445 So.2d 1221, 1225 (La. 1984) (“[t]he Legislature cannot retroactively affect, under the guise of interpretive legislation, substantive rights vested under earlier unambiguous legislation.”).

R. Bradley, Jr. and denying the motion for partial summary judgment filed by Vicky Ann Ladner is reinstated. The case is remanded to the district court for further proceedings.