

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of PAUL APPLING, Deceased.

TORA APPLING,

Petitioner-Appellant,

v

DORIS APPLING,

Respondent-Appellee.

UNPUBLISHED

October 23, 2001

No. 222505

Monroe Probate Court

LC No. 96-006139-SE

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right a probate court order holding that respondent's dower interest was not subject to the administration costs of the decedent's estate. We affirm.

Pursuant to MCL 558.1, respondent was entitled to a life estate in one-third of the real estate owned by the decedent at the time of his death. The parties agreed that respondent's dower interest would be distributed in cash. The probate court determined that respondent's one-third share was to be calculated on the value of the real estate at the time of the decedent's death, without deduction for administration expenses or other charges against the estate.¹ Petitioner argues on appeal that, pursuant to MCL 700.192(1), respondent's dower interest was subject to administration costs as a "claim" against the estate and that the probate court misinterpreted MCL 700.192(1) and MCL 700.282(1)(c).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999); *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first step in that determination is to review the language of the statute itself. *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). If the statute is

¹ Petitioner's argument that respondent waived her right to elect dower because she did not file an appropriate Petition for Assignment of Dower was not raised in the probate court and is not preserved for appeal. Further, the parties agreed that there would not be an actual assignment of realty.

unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permitted. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). Should a statute be ambiguous on its face, however, so that reasonable minds could differ with respect to its meaning, judicial construction is appropriate to determine the meaning. *In re MCI, supra* at 411.

MCL 700.282(1) provides that a surviving spouse of a testate decedent can elect to abide by the terms of the will, take one-half of the share that would have passed to the spouse had the testator died intestate reduced by one-half of the value of property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death, or, if a widow, take her dower right pursuant to MCL 558.1.

MCL 700.157(1) provides:

The estate given by will to any devisee shall be held liable for the payment of:

- (a) All charges against the estate.
- (b) The share of the surviving spouse in the event that the spouse elects to take against the will and the will does not provide for the estate to be used for that purpose.
- (c) The share of a child born after the execution of the will, a child or of the issue of a child omitted in the will, or of a spouse omitted in the will.

MCL 700.192(1) establishes the priority for payment of charges against an estate:

- (1) The charges against an estate shall be paid in the following order of priority:
- (a) Expenses of administration.
 - (b) Funeral and burial expenses for the deceased. Burial expenses include expenses of cremation.
 - (c) Family allowances made for spouse and minor children pursuant to section 287.
 - (d) Homestead provisions for spouse and minor children pursuant to section 285.
 - (e) Allowances made for spouse and minor children pursuant to section 286.
 - (f) Claims allowed against the estate.

The statutes are plainly worded and are not ambiguous on their face. The Legislature is therefore presumed to have intended the meaning expressed. *Lorencz, supra* at 376. Because

statutes concerning the right of dower are intended primarily for the protection of the decedent's widow, the statutes should be liberally construed. *In re Stroh Estate*, 151 Mich App 513, 517; 392 NW2d 192 (1986).

Petitioner, the decedent's great-granddaughter, was the only devisee. The decedent's will granted her the residuary of his estate. Pursuant to MCL 700.157, upon which the probate court based its order, petitioner's share of the estate is liable for payment of all charges against the estate, including the administration charges and respondent's dower interest. MCL 700.192(1), upon which petitioner bases much of her argument, simply provides the priority for payments in those instances where the estate is not large enough to pay all expenses, debts, and statutory allowances. This statute does not require that administration expenses be taken from the statutory family allowances, or dower, but merely states that administration expenses are to be paid first when an estate is too small to cover all charges and claims against it.

Petitioner cites cases from other jurisdictions that hold that the dower interest is liable for the payment of administration expenses. The cases cited, however, do not aid petitioner's argument because they were all decided on the basis of state statutes that differ from the controlling statutes at issue in this case.

Affirmed.

/s/ Jessica R. Cooper

/s/ David H. Sawyer

/s/ Donald S. Owens