COURT OF APPEALS
DECISION
DATED AND RELEASED

April 10, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 96-1324 and 96-1325

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NO. 96-1324

IN RE THE ESTATE OF HATTIE CARPENTER, DECEASED:

JAMES L. GRATZ AND THERESE GRATZ,

APPELLANTS,

V.

HAROLD E. GRATZ, EDWIN GRATZ, KERRY GRATZ, CHARLES E. GRATZ, CHRISTINE GRATZ, SHARON OHNSTAD, AND DAVID OHNSTAD,

RESPONDENTS.

NO. 96-1325

EDWIN GRATZ, KERRY GRATZ, AND HAROLD E. GRATZ,

PLAINTIFFS-RESPONDENTS,

V.

JAMES L. GRATZ AND THERESE GRATZ,

DEFENDANTS-APPELLANTS,

CHARLES E. GRATZ, CHRISTINE GRATZ, SHARON OHNSTAD, AND DAVID A. OHNSTAD,

DEFENDANTS.

APPEAL from judgments of the circuit court for Lafayette County: WILLIAM D. JOHNSTON, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

ROGGENSACK, J. In this consolidated appeal, James Gratz and his wife, Therese, appeal two judgments: 1) one declaring that Harold, Edwin and Kerry Gratz hold title to the Carpenter farm, and 2) a second judgment[1] denying James' objection to the inventory filed in the estate of his grandmother, Hattie Carpenter, because the Carpenter farm was not listed. James claims title to the Carpenter farm should have passed to Hattie through the laws of intestacy because his mother, Nellie Gratz, predeceased Hattie. However, because we conclude that Nellie's ownership of the farm had vested before her death and that the final judgment in the probate of her estate barred relitigation of the legality of Nellie's

[1] The judgment in the probate case was based on the summary judgment granted in the action for declaration of interests.

ownership and that of her distributees of the Carpenter farm, we affirm the trial court on both judgments.

BACKGROUND

The chain of title to the Carpenter farm worked its way through a tangled web of wills and quit claim deeds. Its tortuous course began when Charles Carpenter died on January 20, 1971. Charles and Hattie Carpenter had one daughter, Nellie. She and her husband, Harold Gratz, worked the Carpenter farm at the time of Charles' death. They had four children: Charles, James, Sharon and Edwin. Charles' will bequeathed the Carpenter farm to Hattie and Nellie under the following terms:

> IV. All the rest, residue and remainder of my estate, I give, devise and bequeath unto my wife, Hattie L. Carpenter, so long as she remains my widow, and if she does not remarry, then for her natural lifetime. And in case she does not remarry, then upon her death unto my daughter, Nellie L. Gratz, her heirs and assigns forever.
>
> V. But in case my widow should remarry, then upon such remarriage, I give, devise and bequeath said rest, residue and remainder equally unto my said widow and daughter absolutely and forever, in fee simple absolute. And if my daughter should then be dead, then her one-half (1/2) share of the rest, residue and remainder of my said estate, I give, devise and bequeath one-third (1/3) thereof to my son-in-law, Harold Gratz, and the remaining two-thirds (2/3) of said one-half (1/2) to the children of my daughter, in equal shares.

The will also provided that Hattie could not sell or mortgage the real estate which comprised the Carpenter farm during her lifetime. However, it was silent about the disposition of Charles' property in the event that Hattie remained unmarried and Nellie predeceased her.

In 1972, as soon as Charles' estate had been settled, Hattie quit claimed all of her interests in the Carpenter farm to Nellie.[2] On November 7, 1984, Nellie quit claimed her interest in the Carpenter farm to herself and Harold, as tenants in common. Nellie died on November 21, 1987, predeceasing her mother, Hattie. Nellie's will devised her interest in the Carpenter farm to Harold for life, with the remainder to their son, Edwin, who was then farming the Carpenter farm. James was also a successor in interest to Nellie's estate and received the remainder interest in the Miller farm, the farm James worked and in which Nellie also held an interest. On February 1, 1990, James waived, consented and approved the final account and entry of the final judgment in Nellie's estate. The judgment described Nellie's interest in the Carpenter farm as an undivided one-half interest as tenant in common, and transferred it to Edwin, with a life estate reserved to Harold.

Hattie died on July 22, 1994, without remarrying. Hattie's will provided in relevant part:

> All of the property which I own at my death is hereby given to my four grandchildren, namely: Charles Gratz, James Gratz, Sharon Ohnstad and Edwin Gratz, in equal shares, share and share alike.

When Hattie's personal representatives filed an inventory of estate in probate court, James objected because the Carpenter farm was not included.

On January 6, 1995, Harold quit claimed one-half of his interest in the Carpenter farm to Edwin and Kerry, reserving a life estate for himself. Harold,

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[2] Quit claim deeds may be used to transfer both present and future interests. *See* ***First Wisconsin Trust Company v. Taylor***, 242 Wis. 127, 129, 7 N.W.2d 707, 708 (1943); § 706.10(4), STATS. Here Hattie quit claimed her life estate and the right to receive a fee interest in the farm if she remarried.

Edwin and Kerry then filed an action to declare their interests in the Carpenter farm.[3] The trial court granted summary judgment to them, declaring Harold has an undivided one-fourth interest and a life estate in the remaining three-quarters interest in which Edwin and Kerry are remaindermen. In Hattie's probate proceeding, the trial court also dismissed James' objection to the inventory, concluding Hattie held no interest in the Carpenter farm at her death. James and Therese appeal both judgments.

DISCUSSION

Standard of Review.

We review a decision to grant summary judgment *de novo*, applying the same standards employed by the trial court. ***Brownelli v. McCaughtry***, 182 Wis.2d 367, 372, 514 N.W.2d 48, 49 (Ct. App. 1994). These standards have been repeated in many cases, so we need not repeat them here.

When we construe a statute, our aim is to ascertain the intent of the legislature; and, in doing so, our first resort is to the language of the statute itself. ***State v. Eichman***, 155 Wis.2d 552, 556, 456 N.W.2d 143, 149 (1990). When the language of the statute is unambiguous, we will not look beyond the statute's plain language to determine legislative intent. ***In re Jamie L.***, 172 Wis.2d 218, 225, 493 N.W.2d 56, 59 (1992).

[3] Although all of the children of Nellie and Harold, and their spouses, were named, only James and Therese contested Harold, Edwin and Kerry's claim of ownership.

Summary Judgment.

The material facts are not in dispute. It is the legal consequences which flow from those facts which are contested. Our examination of the complaint and the answer in the declaration of interests action demonstrates that a claim for relief has been stated and issue has been joined. Harold, Edwin and Kerry's submissions in support of their motion for declaratory relief make a *prima facie* case for summary judgment, if they are correct in their interpretation of the law. They argue that it is undisputed that Nellie conveyed her interest in the Carpenter farm when the judgment in the probate of her estate was entered on April 2, 1990. James argues that she had only a contingent interest which lapsed when she predeceased Hattie, so the probate judgment passed no interest in the farm.

Wisconsin law favors early vesting of interests received from a decedent. *See* ***Estate of James***, 273 Wis. 50, 54, 76 N.W.2d 553, 555 (1956). Unless a contrary intent of the testator is proven, interests that are contingent vest on the death of the testator, subject to being defeated by a condition set by the testator. *See* ***Will of Roth***, 191 Wis. 366, 374, 210 N.W. 826, 828 (1926); ***Weymouth v. Weymouth***, 165 Wis. 455, 460, 161 N.W. 373, 375 (1917). Additionally, § 700.05, STATS., provides that a remainder interest is vested subject to defeasance if it is created in favor of an ascertainable person and would become a present interest after the expiration of a certain other interest.

Charles' will, which was incorporated into the probate judgment, evinced his clear intent to leave all of his property to his wife and their only child. Under the final judgment, Nellie received a remainder interest that would become a present interest when Hattie's life estate terminated at her death. Therefore,

because Nellie was an ascertainable person who had received an interest that would become a present interest at a later date, also through the operation of § 700.05, STATS., Nellie's remainder interest vested when Charles died.

Additionally, it is undisputed that Hattie never remarried and that in 1972 she quit claimed to Nellie all interest, of any type, which she had in the Carpenter farm. When a remainderman receives the present interest in the real property, merger occurs. *See* ***Bailey v. Wells***, 8 Wis. 141 (1857); ***Wagner v. Maskey***, 353 N.W.2d 891, 893 (Iowa App. 1984). Therefore, we conclude that the remainderman's interest in the Carpenter farm, which Nellie received from Charles, merged with the interests of Hattie, creating a fee simple interest in Nellie, due to Hattie's quit claim deed.

We next examine what happened to the Carpenter farm at Nellie's probate. Title to real estate passes by a duly probated will. ***Malzahn v. Teagar***, 235 Wis. 631, 638, 294 N.W. 36, 39 (1940). The preclusive effect of a judgment in probate is established by statute in § 863.31(1), STATS. It provides:

> The final judgment [of the probate court] is a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interests therein, subject only to the right of appeal and the right to reopen the judgment. It operates as an assignment or final adjudication of the transfer of the right, title and interest of the decedent to the distributees therein designated.

The probate court determines the testator's intent and construes the will to assign the estate in accordance with that intent. ***Estate of Yates***, 259 Wis. 263, 270-71, 48 N.W.2d 601, 604 (1951); § 861.31(1). If the testator's words are repeated in the assignment clause of the final judgment, and any ambiguity remains, evidence of the

testator's intent may be used to clarify the meaning of the judgment in a subsequent proceeding. ***Estate of Yates***, 259 Wis. at 271-72, 48 N.W.2d at 605.

To begin our analysis, we note that the probate court which settled Nellie's estate was one of competent jurisdiction under § 856.01, STATS., and no allegations of fraud were made in connection with its final judgment. Furthermore, Therese is the only party in this appeal who was not an interested party in Nellie's probate proceedings. However, because her interest in the Carpenter farm is only derivative of any interest James may have a right to claim, he was her privy in the probate of Nellie's estate. *See* ***Hernke v. Coronet Ins. Co.***, 72 Wis.2d 170, 175, 240 N.W.2d 382, 385 (1972). Therefore, our conclusions about James' rights and obligations in Nellie's probate apply to Therese as well.

The final judgment of the probate of Nellie's estate was entered April 2, 1990. It specifically described her interest in the Carpenter farm and transferred it to James' brother, Edwin, and his father, Harold. Additionally, the judgment was consented to in writing by James. James does not contend that the judgment is ambiguous. Rather, he now claims the right to look behind the judgment because, as he asserts, Nellie had no interest in the Carpenter farm at her death. He contends she had only the interest of a life tenant[4] measured by the life of Hattie, which reverted to her father's estate when she died. As set forth above, we disagree with James' legal analysis of the interest Nellie held at her death.

And, even if James' contentions were correct, he had the opportunity to raise them during the course of the probate of his mother's estate. Because he

[4] James ignores the remainderman interest Nellie received directly from her father's estate and the right to receive Hattie's one-half interest in fee, if Hattie remarried. The later interest Hattie quit claimed to Nellie in 1972, together with her life estate.

chose not to do so, it does not follow that he may collaterally attack that judgment by objecting to the inventory in the probate of his grandmother's estate or by contesting the issue of his mother's ownership of the Carpenter farm in Harold, Edwin and Kerry's action for declaratory relief. *See* ***Estate of Yates***, 259 Wis. at 270, 48 N.W.2d at 604.

Additionally, § 863.31, STATS., is a clear expression of legislative intent that probate judgments are final in regard to the interests in property those judgments purport to convey. Subsection (1) states that the probate judgment makes a "conclusive determination" of the property the successors in interest to the estate receive. James, Harold and Edwin were all successors in interest to the estate of Nellie. Subsection (2) establishes that those who purchase from distributees of estate property "may rely on the final judgment as conclusive insofar as it purports to transfer to the distributees any title which the decedent held in the real estate at the time of the decedent's death." Were that not the case, every property interest which had been part of an estate would be rendered uncertain. Therefore, we conclude that James cannot now claim that his mother's interest in the Carpenter farm was other than as described in the final judgment of her estate. Any right to do so was relinquished when the time for appealing or setting aside the judgment in Nellie's probate expired.

In light of our decision, we decline to address Harold, Edwin and Kerry's alternate claim that they acquired title to the Carpenter farm by adverse possession.

CONCLUSION

We conclude that because Nellie had a fully vested interest in the Carpenter farm at the time of her death and because James had notice of and waived

any right to object to the inclusion of the Carpenter farm in the final judgment of his mother's estate, he is now barred by § 863.31, STATS., from arguing that she conveyed no interest in the farm to Edwin and Harold. Title to the farm is vested in Harold, Edwin and Kerry, as determined by the trial court. Based upon that decision, Hattie had no interest in the Carpenter farm at her death and the trial court properly dismissed James' objection to the inventory.

By the Court.—Judgments affirmed.

Not recommended for publication in the official reports.