

APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

Jiles v. Flegel

9 Ill. App. 3d 74 (Appellate Court of Illinois Fourth District 1972) · No. No. 11608 · Decided December 20, 1972

SUMMARY

The Illinois Appellate Court considered whether a will provision conditioning grandchildren's inheritance on their carrying the testator's family name was valid and enforceable. The court held that the plaintiffs could seek construction of the will before the contingency occurred, reversed the dismissal, and remanded for determination of the condition's validity, meaning, and effect. The court declined to resolve hypothetical issues that might never arise.

CASE DETAILS

COURT	Appellate Court of Illinois, Fourth District
WRITING FOR THE COURT	SMITH, Justice; CRAVEN, P.J.; TRAPP, J.
JURISDICTION	Illinois
DECIDED	December 20, 1972
DOCKET	No. 11608
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal of a complaint for want of equity in an action seeking construction of a will and declaration of the parties' rights under a condition attached to a testamentary gift.
STANDARD OF REVIEW	Review of the trial court's dismissal and the legal questions concerning construction and enforceability of the testamentary condition.
PRECEDENTIAL VALUE	published
PARTIES	Harry Lee JILES et al. v. Florence J. FLEGEL, Individually and as Executor and Trustee under the Last Will and Testament of Harry Flegel, Deceased, et al.

TOPICS

- probate procedure
- probate
- estate litigation
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiffs could maintain an action to construe the will and declare their rights before the condition's triggering events had occurred.
2. Whether the will's condition requiring the plaintiffs to carry the family name was valid under Illinois law and public policy.
3. Whether the word "carry" was sufficiently definite to make the condition enforceable.
4. What the condition's purport and effect were, including what the plaintiffs would take if they qualified.

HOLDINGS

1. An action to construe a will and declare rights may be maintained where doubt or uncertainty exists concerning the parties' rights and interests, even though the condition has not yet become operative, when the plaintiffs need present guidance concerning an important decision affecting their inheritance.
2. A testator may attach lawful conditions to a testamentary gift, and a name-and-arms condition is not automatically invalid; however, the condition is unenforceable if it violates public policy or societal interest. The validity of the particular condition had to be determined on remand.
3. In the context of the will's name-and-arms condition, the word "carry" is not inexact; it means "assume." The circuit court was required on remand to determine the precise purport and effect of the condition.

KEY QUOTATIONS

*"Both Section 50 of the Chancery Act and Sec. 57.1 of the Civil Practice Act authorize courts to 'hear and determine complaints to construe wills' and 'in cases of actual controversy, make binding declaration of rights, * * * of the construction of * * * any * * * will * * *'." (291 N.E.2d at 300-301)*

"They should not be left in the position of having to guess as to its validity and purport after having asked for a resolution of their doubts." (291 N.E.2d at 301)

"If there is one thing people are entitled to expect from courts, it is a statement as to the rules of law which will intelligently guide them in so important a decision as what they must do or not do to lose or gain an inheritance." (291 N.E.2d at 301)

"None of the various forms in which the condition may be drawn seems to be, Ipso facto, invalid, so that generally failure to comply with their terms results in forfeiture of the beneficiary's gift." (291 N.E.2d at 301-302)

"Of course, the 'catch' is in the word 'lawful'. Obviously, whimsicality cannot be carried to the extent of attaching conditions which are against public policy or in the phrase of the Restatement, against 'societal interest'." (291 N.E.2d at 302)

"To permit such a condition in a Will to be valid would be in effect permitting indirectly intrusion into the adoptive father's relationship by the family of the natural father and made pawns out of innocent children who

are told they must reject the name of their adoptive father, who has loved and raised them, if they desire to share in an inheritance given to them in someone else's Will.” (291 N.E.2d at 302)

“Of course, the transitive verb 'carry' is not inexact of meaning--in our context, it means to 'assume', the verb generally used in 'name and arms' clauses as the A.L.R.2d annotation makes clear.” (291 N.E.2d at 302-303)

FACTUAL BACKGROUND

The plaintiffs were originally named Flegel, but after their father died and their mother remarried, they were adopted by her new husband and took the surname Jiles. Their paternal grandfather, Harry Flegel, left a will providing that, after the death of his wife and upon reaching age 25, the plaintiffs would receive part of his stocks, bonds, and negotiable papers only if they carried the family name of their father, Harry Lee Flegel, subject to a marriage exception. Because the plaintiffs had not yet reached age 25 and their grandmother was still alive, they sought guidance concerning the validity and meaning of the condition before being required to make a decision about their names.

PROCEDURAL HISTORY

The plaintiffs filed a complaint seeking a determination of the validity and effect of a will provision conditioning their inheritance on carrying their grandfather's family name. After hearing the complaint, answer, reply, and evidence, the trial court dismissed the action for want of equity, reasoning that there was no present injury and that the relevant future events might never occur. The plaintiffs appealed, and the appellate court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to determine the validity of the name-and-arms condition under the public-policy and societal-interest standard, determine its purport and effect, and address what the plaintiffs would take if they qualified, including the meaning of "said bonds." Questions concerning what would happen if none of the plaintiffs qualified and whether other provisions violated the rule against perpetuities were not ripe and could be addressed later if they arose.

CASES CITED

- Jusko v. Grigas, 26 Ill. 2d 92, 186 N.E.2d 34
- National Bank of Commerce v. Greenberg, 195 Tenn. 217, 258 S.W.2d 765
- Cast v. National Bank of Commerce, 186 Neb. 385, 183 N.W.2d 485
- Smith v. Smith, 64 Neb. 563, 90 N.W. 560