

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA

In re Estate of Haber

1 Fla. Supp. 2d 39 (1981) · Decided July 28, 1981

SUMMARY

The court grants summary judgment against all claims by Betty Lou Haber to property from her deceased husband’s estate after her conviction for his murder. It holds that Florida’s murderer’s statute bars her inheritance, dower, homestead, and will-based claims, and that equitable principles bar her contractual claims under an ante-nuptial agreement. The court also relies on the criminal conviction, of which it took judicial notice, and concludes that the purported unilateral amendment to the agreement cannot support her claims.

CASE DETAILS

COURT	Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida
WRITING FOR THE COURT	Benjamin C. Sidwell
JURISDICTION	Florida
DECIDED	July 28, 1981
DISPOSITION	other
PROCEDURAL POSTURE	The personal representative moved for summary judgment against Betty Lou Haber's claims to the decedent's property. Haber requested judicial notice of portions of the criminal-trial record. The court granted summary judgment on every count.
STANDARD OF REVIEW	Summary judgment is appropriate where the material facts are undisputed and the movant is entitled to judgment as a matter of law; the court treated the affirmed murder conviction as conclusively establishing Haber's responsibility for the killing.
PRECEDENTIAL VALUE	Published Florida circuit court opinion; persuasive authority outside the issuing circuit and not a statewide appellate precedent.
PARTIES	Betty Lou Haber v. Estate of Albert Haber, Personal representative of Albert Haber, Heirs of Albert Haber

TOPICS

slayer statute

probate procedure

probate

contracts

summary judgment

PRACTICE AREAS

probate

estate litigation

contracts

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether an affirmed conviction for murdering a decedent bars the murderer from asserting dower, homestead, will-based life-estate, and other probate-law rights in the decedent's estate.
2. Whether the equitable principle that no person may profit from his or her own wrong bars a murderer's claims founded on an ante-nuptial agreement.
3. Whether judicial notice of the criminal conviction eliminates the need to relitigate the murderer's guilt in the probate proceeding.
4. Whether the personal representative was entitled to summary judgment on all of Haber's claims.

HOLDINGS

1. A person convicted of murdering a decedent is barred by Florida's murder statute from inheriting from the decedent or taking as a legatee or devisee, and the statute also bars Haber's dower, homestead life-estate, and will-based life-estate claims because those rights arise from Florida's probate and succession laws and depend on an inheritable interest or surviving-spouse status.
2. The equitable maxim that no wrongdoer should profit from his or her own wrong bars Haber's claims for benefits under the ante-nuptial agreement because she feloniously caused the condition involving the continuation of the marriage until Albert's death.
3. Even assuming the purported amendment to the ante-nuptial agreement was valid, the equitable rule against profiting from one's own wrong would bar Haber's asserted rights under it.
4. Judicial notice of the affirmed criminal conviction dispensed with the need to relitigate Haber's guilt in the probate proceeding.

KEY QUOTATIONS

"The Court grants summary judgment against all claims by Betty Haber to the property of Albert Haber because she feloniously killed him." (42)

"The claims founded in contract — the ante-nuptial agreement providing that she should receive \$1,000.00 per year for each year the marriage endured, provided they were still living together as husband and wife at his death, are barred by the equitable maxim that no wrongdoer should profit by his wrong." (43)

"ORDERED AND ADJUDGED that the Motion for Summary Judgment is granted as to each and every count of the petition of Betty Lou Haber." (44)

FACTUAL BACKGROUND

Betty Lou Haber arranged the murder of her husband, Albert Haber, by hiring two killers and leaving a door unlocked so they could enter while she was away. She was convicted of first-degree murder, and the conviction was affirmed. She sought property and contract benefits from Albert's estate, including dower, homestead and will-based life-estate rights, and payments under an ante-nuptial agreement and a purported unilateral amendment.

PROCEDURAL HISTORY

After Albert Haber was murdered, Betty Lou Haber was convicted of first-degree murder, and the conviction was affirmed on appeal. In the probate proceeding, she asserted dower, homestead, will-based life-estate, and ante-nuptial-agreement claims. The circuit court took judicial notice of specified criminal-record materials and granted the personal representative's motion for summary judgment.

DISPOSITION

other

CASES CITED

- Sikora v. Sikora, 499 P. 2d 808 (Mont. 1972)
- Hill v. Morris, 85 So. 2d 847 (Fla. 1956)
- Carter v. Carter, 88 So. 2d 153 (Fla.)
- Ashwood v. Patterson, 49 So. 2d 848 (Fla.)
- Peebles v. Corbett, 157 So. 510 (Fla.)
- Estate of Max Kravitz, 211 A. 2d 443 (Pa. 1965)
- Travelers Insurance Co. v. Thompson, 163 N.W. 2d 289 (Minn. 1968)
- In re Estate of Yanowsky, 2d DCA, opinion dated May 30, 1980

OPINION

SIDWELL, J.

BENJAMIN C. SIDWELL, Circuit Judge. Can a cold-blooded killer of her spouse, convicted of first degree murder, lay claim to a substantial portion of her husband's estate and use the processes of the law of Florida to enforce her "rights" thereto? Maybe.

In 1975, Betty Lou Haber hired two killers to murder her husband, Albert. She left a side door unlocked so they could enter, ambush and kill him, while she went to the beach. After learning of his death this bereft widow went to his safe deposit box and got his will. Finding it unwitnessed, she proceeded to have her sister and another sign as attesting witnesses, posthumously, and presented it for admission to probate.

It was later set aside. She and her two co-killers were convicted of first degree murder. Appeals have affirmed the conviction. She and her son languish in prison. The actual trigger man, one

Brandt, was killed in prison shortly thereafter.

Before marriage, the parties had entered into an ante-nuptial agreement. Albert later signed a purported amendment thereto, changing some of its terms, but Betty never agreed to it or signed it, though she now asserts its unilateral validity. She now asserts in this Court that she is entitled to (1) dower, (2) a life estate in his home under his will admitted to probate, (3) a life estate in his home, as homestead under the probate laws, and (4) dower under an alleged amendment to the ante-nuptial agreement, (5) contract rights under the ante-nuptial agreement (\$1,000.00 per year for each year of marriage if parties living together when he died).

The personal representative and Haber's heirs have filed separate defenses asserting (1) the Murderer's Statute, Chapter 731.31 — now 732.802, (2) the equitable maxim allowing no one to profit by his wrong, (3) the ante-nuptial agreement wherein she waived dower, homestead and widow's rights and inheritance, (4) invalidity of the amendment thereto for failure of Betty to agree to it, plus the invalidation of all her rights thereunder due to murdering him. *41The personal representative has filed Motion for Summary Judgment.

Petitioner herself has requested the Court to take judicial notice of portions of the record of the criminal trial, under Chapter 90, the Evidence Code. The Court has obliged. Parts of those proceedings have been certified and attached as exhibits to various pleadings in these proceedings.

Having been requested to take judicial notice of portions of the criminal record, the Court has taken judicial notice of additional matters therein. *Sikora v. Sikora*, Montana, 1972, 499 P. 2d 808. These include the Indictment and Judgment of Conviction of Murder, the affirmance thereof; the ante-nuptial agreement; the purported amendment thereto, and the decedent's will.

The Court grants summary judgment against all claims by Betty Haber to the property of Albert Haber because she feloniously killed him. She was convicted thereof beyond any reasonable doubt by a jury of her peers, which judgment has been reviewed and affirmed by the trial and appellate courts. No question in the law is in a greater state of confusion and legal disarray.

This is true nationally as well as in Florida. There is no discernible weight of authority. Some states have no statute on the subject of a murderer's rights in the property of his victim. They generally rely on the equitable maxim denying the right to profit from wrongdoing, applying it in all cases. Some, like Florida, have such a statute, and apply it only to bar the right to "inherit." This leaves unanswered the claim for dower, homestead and other "non-inheritance" but statutory claims.

Florida has at least three different rules, depending on the nature of the claim, or the character of the property right asserted. First, the Murder Statute, Chapter 731.31 (1973) "Murderer. — Any person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any portion of his estate as a legatee or devisee.

The portion of the decedent's estate to which such murderer would otherwise be entitled shall pass to the persons entitled thereto as though such murderer had died during the lifetime of the decedent." This statute clearly applies to prevent a murderer from inheriting, either by the law of intestate succession, or as a legatee or devisee under a will. It is not at all clear whether it applies to bar non-inheritable rights such as dower, homestead, family allowance or other statutorily conferred claims.

Our Supreme Court passed up the opportunity to *42 apply it to these rights in *Hill v. Morris, etc.*, Fla., 85 So.2d 847, 1956, decided on other grounds. It is clear that this statute, a part of the probate law, applies only in those cases in which the rights sought have their origin in the probate law (generically). It is equally clear that the equitable maxim does not apply in such cases.

Carter v. Carter, 88 So.2d 153. Secondly, the insurance cases, and other cases founded upon contractual rights. It is clear that the murder statute does not apply in these cases. They are controlled by application of the equitable maxim, estoppel and other equitable principles. *Carter v. Carter*, 88 So.2d 153. Thirdly, Joint Ownership. Our Supreme Court has refused to apply either the murder statute or the maxim to these cases.

Instead, they have fashioned the rule that a murdering spouse has, by his act, feloniously terminated the marital relationship and thereby converted the entireties estate into a tenancy in common, simultaneously denying the murdering spouse the right to inherit his dead spouse's half interest. It passes to the decedent's heirs as if the murderer had predeceased his victim.

Ashwood v. Patterson, 49 So.2d 848. The instant case involves aspects of all three of these categories. The claims for dower and homestead life estate arise wholly under probate law, yet they are not inheritances per se.

The claim for inheritance rights and homestead life estate rights under the ante-nuptial agreements are clearly contractual in origin. All of them arise from the husband-wife relationship, as does the estate by entireties rule. Procedurally, having taken judicial notice of the criminal conviction pursuant to petitioner's request to notice other portions of that proceedings, the Court holds that this dispenses with any necessity to relitigate the question of her guilt in his murder.

Peeples v. Corbett, Fla., 157 So. 510, *Estate of Max Kravitz*, Pa. (1965), 211 A. 2d 443, *Travelers Ins. v. Thompson*, Minn. (1968), 163 N.W. 2d 289. The Court further holds that petitioner's claim to dower, homestead life estate, or alternatively, a life estate in his home under his will are barred by Chapter 731.31, 1973, the murderer's statute. These are statutorily conferred rights arising wholly from the probate laws, and as such, while not strictly speaking "inheritances," they *43 clearly arise from the law of succession, and depend in part on a husband-wife relationship existing at death.

The Dower Statute then in effect, Chapter 731.34, stated in part— “Whenever the surviving spouse — shall not be satisfied with the portion of the estate of the deceased spouse to which (she) is entitled under the law of descent and distribution or under the will, or both, (she) may elect — dower.” Which shall be one third of — realty & personalty, free from debts and costs of administration.

Clearly, this contemplates a claim by a surviving spouse who is entitled to inherit from decedent. Being dissatisfied with the amount of her inheritance rights under the will or law of descent is a condition precedent to her right to elect dower.

Here, the murder statute bars the first right — that to inherit — by its clear terms. Since Betty Haber had no right of inheritance under law or will, she did not have the remaining option — to elect dower. Additionally, the right to claim dower and homestead life estate require standing as a “surviving spouse.” *Ashwood v. Patterson*, *supra*, held that a spouse killing is a felonious termination of the marital relationship, and that the victim’s property not passing under the probate laws should descend as though the killer predeceased the victim.

I see no reason why this rule should not apply with equal force to those other property rights of the victim not passing under the law of descent and distribution, e.g., dower, homestead, etc. The claims founded in contract — the ante-nuptial agreement providing that she should receive \$1,000.00 per year for each year the marriage endured, provided they were still living together as husband and wife at his death, are barred by the equitable maxim that no wrongdoer should profit by his wrong.

Carter v. Carter, *supra*; *In Re Estate of Yanowsky*, 2nd DCA, Opinion May 30, 1980. The same rule would apply to the purported amendment to the ante-nuptial agreement and the rights to dower asserted thereunder, if the amendment were held valid at all. It purports to amend the original bilateral agreement, changing the rights and obligations of both parties— yet only Albert signed the purported amendment.

Betty never agreed to it, although now asserting its validity. Upon consideration of the foregoing, it is thereupon ***44ORDERED AND ADJUDGED** that the Motion for Summary Judgment is granted as to each and every count of the petition of Betty Lou Haber.