

SUPREME COURT OF FLORIDA

Lewis v. Gaillard

70 Fla. 172 (Fla. 1915) · Decided July 13, 1915

SUMMARY

The Florida Supreme Court held that heirs who unsuccessfully sought to terminate a testamentary trust were not entitled to recover their attorney fees from the trust estate. Although the litigation incidentally clarified the trust's status and beneficiary, the heirs' interests were adverse to the trustee and cestui que trust, so only taxable costs could be allowed.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Taylor, C. J.; Shackelford, J.; Cockrell, J.
JURISDICTION	Florida
DECIDED	July 13, 1915
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a decree awarding the appellee heirs counsel fees payable from a charitable trust estate.
STANDARD OF REVIEW	Review of the propriety of an equitable decree awarding attorney fees from trust funds.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Florida; precedential.
PARTIES	George Lewis, executor and trustee, Co-defendants v. The Gaillards

TOPICS

- charitable trusts
- trusts
- trust administration
- beneficiary litigation
- remedies

PRACTICE AREAS

- Trusts and estates
- Charitable trusts
- Equitable remedies

QUESTIONS PRESENTED

1. Whether heirs who unsuccessfully litigated to terminate a charitable trust and recover its corpus may obtain attorney fees from the trust estate when their interests were adverse to the trustee and beneficiaries.

2. Whether the Gaillards were entitled to more than their taxable costs after failing to establish any right to the trust funds.

HOLDINGS

1. Counsel fees may be paid from a fund when counsel successfully obtains or creates the fund for the joint benefit of the parties, but when the litigants' interests are adverse, only taxable costs may be allowed. Because the Gaillards' litigation sought to destroy the trust and recover the entire corpus for themselves, and they failed to establish any entitlement to it, they were not entitled to counsel fees from the trust estate.

KEY QUOTATIONS

“Where the counsel has been employed to obtain or create a fund for the joint benefit of both parties, his fees if he prevails, not if he loses, may be paid out of the funds; but where the interests of the parties are adverse only the legal taxable costs can be allowed.” (176)

“It follows from what has been said that the decree or order of the court below appealed from herein must be, and is hereby reversed, with directions to enter in its stead a decree disallowing any recovery of counsel fees out of said trust funds and estate to the appellees, the Gaillards, but allowing them only their taxable costs in the case.” (177)

FACTUAL BACKGROUND

James D. Westcott's will placed most of his estate in trust for the West Florida Seminary, with annual interest dedicated in part to Leon County students. After the Legislature abolished the Seminary by Chapter 5384 in 1905 and a successor state institution was established, the Gaillards, as Westcott's heirs, sued to recover the trust corpus. They lost on the merits because the trust continued for the successor institution, but the circuit court nevertheless awarded them counsel fees from the trust funds.

PROCEDURAL HISTORY

The Gaillards, heirs of James D. Westcott, sued in equity claiming that legislative abolition of the West Florida Seminary terminated the charitable trust and entitled them to the entire trust estate. The Supreme Court of Florida previously held that the trust had not failed and continued for the benefit of the successor institution, the Florida State College for Women. On remand or further proceedings, the circuit court awarded the Gaillards \$2,500 in counsel fees from the trust funds, while also awarding the trustee the same amount. Lewis and the co-defendants appealed the award to the Gaillards.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter a decree disallowing any recovery of counsel fees from the trust funds or estate to the Gaillards, while allowing them only their taxable costs in the case.

CASES CITED

- Lewis v. Gaillard, 61 Fla. 819, 56 South. Rep. 281
- State v. Florida Central R. R. Co., 16 Fla. 703
- Ryckman v. Parkins, 5 Paige 545
- Downing v. Marshall, 37 N.Y. 380
- Stevens v. Stevens, 37 N.J. Eq. 3
- Grimball v. Cruse, 70 Ala. 534
- Rose v. Rose Association, 28 N.Y. 184
- Atty. Gen. v. Dublin, 41 N.H. 91

OPINION

TAYLOR, J.

Taylor, C. J. The late James D. Westcott of Leon county by his last will and testament left the major part of his estate in trust in the hands of his executor George Lewis for the use and benefit of the West Florida Sem¹⁷⁴inary, a State educational institution located at Tallahassee, in Leon county. By the terms of the will only the interest upon the principal sum was to be used yearly; one-half of the annual interest to be expended for the benefit of students of Leon county, under the direction of the managing officers of the institution.

For several years this interest was paid over annually to the institution according to the terms of the will, until June 5th, 1905, when the Legislature of Florida enacted Chapter 5384, whereby in terms the said West Florida Seminary was abolished eo nomine, but provision was made in the law whereby another institution for higher education could take its place, and another State institution for higher education now called the Florida State College for Women was promptly established in its stead at Tallahassee and has ever since been there conducted.

The appellees, the Gaillards, as heirs at law of the said James D. Westcott, deceased, conceiving that the legislative abolishment of the West Florida Seminary brought the said trust donation to that institution to an end, and that the whole estate so held in trust reverted to them absolutely as the heirs at law of the testator, promptly notified the executor and trustee of their claims, and forbade him from paying over any part of said estate or the interest therefrom to any others than the said heirs at law, and on June 28th, 1906, they filed their bill in equity in the Circuit Court of Leon County against the appellants herein in which they set up their said claim as heirs at law to the whole of said trust estate, and prayed therein, not for directions to the executor and trustee, as to what disposition he should make of said estate, but that the whole thereof should be turned over

and delivered to them as the parties rightfully entitled thereto as the heirs *175at law of the said testator.

In this litigation they ultimately failed. The court holding that the said trust had not failed and' come to an end by the enactment of said Chapter 5384 Laws of Florida, but that it still held in force in favor of and for the benefit of the institution that took the place under said act of the abolished West Florida Seminary. See *Lewis v. Gaillard*, 61 Fla. 819, 56 South.

Rep. 281. Since the decision of this court in the cause the appellees therein the Gaillards have filed a petition in the same court and cause praying for a decree adjudging to them out of said trust fund their costs an'd counsel fees in the litigation, basing their claim to such counsel fees upon the ground, in brief, that the litigation instituted by them resulted in directing and legally settling for the executor and trustee where and to whom the estate in his hands belonged and could by him with safety to himself be legally paid.

The appellant George Lewis as executor and trustee also applied by petition in the same cause for an allowance for his costs, expenses and counsel fees in defending the litigation instituted against him as such executor and trustee, to be paid out of the funds of said estate in his hands. These applications for costs and counsel fees as between attorney and client, were referred to a master who reported the testimony taken upon the question of what would be a_ reasonable allowance for counsel fees therein, and on the coming in of the report of the master the court below rendered a. decree adjudging to the complainants the Gaillards for their counsel fees in the conduct of the litigation the sum of two thousand five hundred dollars to be paid by the said defendant executor and trustee out of the trust funds in his hands, and allowing the same amount to the defendant executor and trustee out of the trust funds in *176his hands.

From this order and decree in so far as it adjudges to the complainants, the Gaillards, the said sum for their counsel fees to be paid by him out of said trust estate the appellants George Lewis as executor and trustee and his co-defendants have again appealed to this court assigning the said feature of said decree for counsel fees to the appellees to be error.

This court in the case of *State v. Florida Central R. R. Co.*, 16 Fla. 703, has said: "Where the counsel has been employed to obtain or create a fund for the joint benefit of both pwties, his fees if he prevails, not if he loses, may be paid out of the funds; but where the interests of the parties are adverse only the legal taxable costs can be allowed." In support of this utterance the case of *Ryckman v. Parkins*, 5 Paige 545, is cited in the opinion —thus adopting the holding of the New York court on the subject of allowances of counsel fees, *Downing v. Marshall*, 37 N. Y. 380, a very full and exhaustive discussion of the whole subject.

Stevens v. Stevens, 37 N. J. Eq. 3; *Grimball v. Cruse*, 70 Ala. 534; *Rose v. Rose Association*, 28 N. Y. 184; *Atty. Gen. v. Dublin*, 41 N. H. 91. It is quite true that the result of the litigation instituted

by the appellees as the heirs at law of James D. Westcott, deceased, incidentally settled the status of the trust estate, and incidentally determined to whom it should go, but this was not the purpose of that litigation, its main object was 'to destroy the trust created by the testator's will, and to recover for themselves, contrary to the provisions of such will, the entire corpus of the property in the hands of the executor trustee.

Their status and interest in the litigation instituted by them was essentially adverse to the interests of the executor trustee, adverse *177to the interests of the cestui que trust, and adverse to the provisions of the testator's will.

In this adverse litigation they wholly failed to establish their claim, the court deciding in effect that they were not entitled, as they claimed to be, to the said trust funds or estate or to any part thereof, but that it should remain in the hands of the executor trustee under the provisions of the testator's will for the use and benefit of the cestui que trust the Florida State College for Women, the successor to the West Florida Seminary.

The funds so lavishly dealt with in the decree appealed from herein, it must be remembered, are trust funds devoted by their deceased donor to the noble cause of education, we fail to appreciate any equitable right that the appellees, the Gaillards, have to assert a claim to have their counsel fees paid out of said funds for conducting a litigation instituted by them in which they sought to recover for themselves the entire trust estate, adversely to the interests of all other parties concerned therein, in which litigation they wholly failed in their effort to show themselves to be entitled to any part or portion thereof.

It follows from what has been said that the decree or order of the court below appealed from herein must be, and is hereby reversed, with directions to enter in its stead a decree disallowing any recovery of counsel fees out of said trust funds and estate to the appellees, the Gaillards, but allowing them only their taxable costs in the case. Shackleford and Cockrell, J J., concur; Whitfield, J., absent; Ellis, J., disqualified.