

CORPORATION COURT FOR THE CITY OF RADFORD, VIRGINIA

Howe v. Howe

3 Va. Cir. 400 (1953) · Decided March 10, 1953

SUMMARY

A Virginia circuit court held that an adopted child born and adopted after execution of the testator's will qualified as a pretermitted child under Virginia law. The court concluded that the adoption statutes placed the adopted child in the same position as a natural child and entitled him to participate in the decedent's estate.

CASE DETAILS

COURT	Corporation Court for the City of Radford, Virginia
WRITING FOR THE COURT	F. L. Hoback
JURISDICTION	Virginia
DECIDED	March 10, 1953
DISPOSITION	other
PROCEDURAL POSTURE	A probate proceeding concerning whether an adopted child omitted from his adoptive father's will was entitled to participate in the estate as a pretermitted child.
PRECEDENTIAL VALUE	Published Virginia circuit court opinion

TOPICS

- probate procedure
- probate
- estate administration
- statutory interpretation

PRACTICE AREAS

- probate
- estate administration
- wills and estates
- adoption

QUESTIONS PRESENTED

- Whether an adopted child born and adopted after execution of the testator's will is a pretermitted child under Virginia law and therefore entitled to participate in the estate.

HOLDINGS

- An adopted child who was born and adopted after execution of the testator's will is embraced within Virginia's statutes concerning pretermitted children and is entitled to participate in the testator's estate

under Code § 64-69.

KEY QUOTATIONS

“The Court, after carefully examining all of said authorities, including the Code Sections referred to therein, is of the opinion that the said William Kent Howe is a pretermitted child under the Laws of Virginia, and as such is entitled to participate in the Estate of Charles Kent Howe, Jr.” (401)

“Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock.” (401-402)

“There can be no doubt that a natural child of the Testator born subsequent to the execution of his Will would be pretermitted under the Virginia Laws; an adopted child, having been placed upon the same basis as a natural child, is, therefore, entitled to the same rights and privileges.” (402)

FACTUAL BACKGROUND

Charles Kent Howe, Jr. died testate on May 6, 1951, leaving his wife, Helen M. Howe, and his adopted son, William Kent Howe. His will, dated December 14, 1941, left all of his property to Helen. William was born on February 14, 1943, and was adopted by Charles and Helen pursuant to a final adoption order entered on May 14, 1945, after the will was executed.

PROCEDURAL HISTORY

Charles Kent Howe, Jr.'s will was probated in the Clerk's Office of the Corporation Court for the City of Radford. The court considered whether William Kent Howe, who was born and adopted after execution of the will, qualified as a pretermitted child and concluded that he did.

DISPOSITION

other

CASES CITED

- Dickenson v. Buck, 169 Va. 39, 192 S.E. 748 (1937)
- McFadden v. McNorton, 193 Va. 455 (1952)
- Fletcher v. Flanary, 185 Va. 409, 38 S.E.2d 433 (1946)