

SUPREME COURT OF GEORGIA

Stewart v. Ray, 289 Ga. 679

715 S.E.2d 79 (2011) · No. S11A0777 · Decided September 12, 2011

SUMMARY

The Supreme Court of Georgia affirmed a probate court's interpretation of a decedent's will as requiring equal distribution of personal property and the residuary estate among his eight children. The court held that the phrase "to my eight children, per stirpes" identified the children as primary legatees entitled to equal shares, while the executor's discretion concerned the manner of distributing property rather than the ability to distribute the estate unequally. The court also upheld the determination that the executrix exceeded her discretion by directing annuity payments and estate assets to herself to the exclusion of her siblings.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	September 12, 2011
DOCKET	S11A0777
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Fulton County Probate Court declaratory judgment interpreting the decedent's will.
PRECEDENTIAL VALUE	precedential
PARTIES	Opal Ray Stewart v. Brenda Ray

TOPICS

- probate
- estate planning
- probate procedure
- appellate procedure

PRACTICE AREAS

- Probate
- Estate Planning
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the phrases "to my eight (8) children, per stirpes" and related provisions in the will required equal distribution of the decedent's personal property and residuary estate among his eight children.
2. Whether the probate court erred in determining that Stewart acted beyond her discretion by distributing the bulk of the estate to herself to the exclusion of her siblings.

HOLDINGS

1. The will required each of the decedent's eight children to receive an equal share of the relevant personal property and residuary estate; descendants of a deceased primary legatee would take that legatee's representative share.
2. Stewart did not have discretion under Items III and IV to distribute the bulk of the estate to herself while excluding her seven siblings.

KEY QUOTATIONS

"The court must look first to the 'four corners' of the will," and "[w]here the language of a will is clear. . . and can be given legal effect as it stands, the court will not, by construction, give the will a different effect." (680)

"Here, Ray Sr. used nearly identical language, 'to my eight (8) children, per stirpes,' to identify his children as the primary legatees." (680)

FACTUAL BACKGROUND

Willie Ray, Sr. received a settlement that included monthly annuity payments after a truck accident and later appointed his daughter, Opal Ray Stewart, as his conservator and executrix. After Ray Sr. died testate, Stewart directed the annuity payments into her personal account, excluding her seven siblings. Brenda Ray sought a declaratory judgment interpreting will provisions that left personal property and the residuary estate to Ray Sr.'s eight children "per stirpes," and the probate court concluded that the provisions required equal distribution.

PROCEDURAL HISTORY

Brenda Ray filed an action in the Fulton County Probate Court seeking a declaratory judgment concerning the meaning of Items III and IV of her father's will and moved to suspend annuity payments. After a non-evidentiary hearing, the probate court ruled that the will required the decedent's eight children to share the personal property and residuary estate equally and suspended the annuity payments pending further order. Opal Ray Stewart appealed, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Ray v. Stewart, 287 Ga. 789, 700 S.E.2d 367 (2010)
- Hood v. Todd, 287 Ga. 164, 166, 695 S.E.2d 31 (2010)

- Bennett v. Lloyd, 245 Ga. 706, 707, 267 S.E.2d 3 (1980)
- MacGregor v. Roux, 198 Ga. 520, 521, 32 S.E.2d 289 (1944)
- Tucker v. Black, 253 Ga. 46, 46-47, 315 S.E.2d 910 (1984)

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