

SUPREME COURT OF VERMONT

In re Estate of Carr

139 Vt. 111 (1980) · Decided November 5, 1980

SUMMARY

The Vermont Supreme Court considered whether the residue of Mabel Carr’s estate should pass to the descendants of Melville Owens under 14 V.S.A. § 558 after Owens predeceased the testatrix. The court held that the will did not require a different disposition and that the statute applied, entitling Owens’s issue to the share he would have received had he survived Carr. The court vacated the relevant portion of the probate court’s decree and remanded for distribution accordingly.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Per Curiam; Barney; Billings; Daley; Hill; Larrow
JURISDICTION	Vermont
DECIDED	November 5, 1980
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a probate court decree of distribution concerning distribution of the residue of Mabel Carr's estate.
STANDARD OF REVIEW	De novo interpretation of the will and application of the governing statute.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	The surviving children of Melville Owens, The surviving children of Melville Owens's deceased son v. The appellees supporting the decree of distribution

TOPICS

- probate procedure
- probate
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- Probate
- Wills and estates
- Statutory interpretation

QUESTIONS PRESENTED

1. Whether the probate court erred by failing to distribute the residue under 14 V.S.A. § 558 to the issue of Melville Owens, who was a devisee under Carr's will and died before Carr.

HOLDINGS

1. Section 558 applies because the will made an unconditional devise of the residue to Melville Owens, a kindred of the testatrix, and Owens died before the testatrix leaving issue who survived her. Owens's issue therefore take the estate Owens would have received had he survived the testatrix.

KEY QUOTATIONS

“The cardinal rule of interpreting wills ... is that from the language used that the meaning intended by the testator is to be ascertained and given effect, in so far as legally possible.” (113)

“The disposition to Martha Legary was expressly conditioned upon survival. The disposition to Melville Owens, a kindred of the deceased, was not.” (113)

FACTUAL BACKGROUND

Mabel Carr died on November 2, 1976, leaving an unrevoked will dated July 2, 1969. The will gave the residue equally to her sister, Martha H. Legary, if Legary survived Carr, and to her brother, Melville Owens; if Legary did not survive, the residue was given to Owens alone. Legary died before Carr without surviving issue, and Owens died before Carr, leaving three children and two grandchildren who were the children of a deceased son. The probate court distributed the residue by intestacy to twenty-five nieces and nephews of Carr rather than to Owens's issue under 14 V.S.A. § 558.

PROCEDURAL HISTORY

Mabel Carr's will was admitted to probate. The Washington District Probate Court treated the residue as passing by intestacy to the testatrix's nieces and nephews rather than applying 14 V.S.A. § 558 to the devise to Melville Owens. Owens's surviving children and the surviving children of his deceased son appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The portion of the Washington District Probate Court's amended decree distributing the residue is vacated. The cause is remanded for entry of a modified decree distributing the residue in accordance with 14 V.S.A. § 558.

CASES CITED

- In re Estate of Davis, 126 Vt. 19, 22, 220 A.2d 726, 729 (1966)

OPINION

PER CURIAM.

Per Curiam. This is an appeal from a decree of distribution in the estate of Mabel Carr entered by the Probate Court for the District of Washington. Mabel Carr died on November 2, 1976, leaving an unrevoked will dated July 2, 1969, which has been admitted to probate. Article XI of the will provides as follows: XI. If my sister, Martha H. Legary, survives me, all the rest and residue of my estate, wherever situate, I give, devise and bequeath to my sister, Martha H. *112Legary, and my brother, Melville Owens, in equal shares.

But if my said sister does not survive me, then and in such event, I give, devise and bequeath all the rest and residue of my estate, wherever situate, to my brother, Melville Owens. I recommend to him, but do not direct, that in such case he divide at least one half of his bequest among his then living children and the descendants of any of his children who may have deceased.

Martha Legary died on September 18, 1970, without surviving issue. Melville Owens died on July 1, 1976, leaving three children and two grandchildren, the children of a deceased son. The surviving children of Melville Owens requested the probate court to decree the entire residue to them in accordance with the provisions of 14 V.S.A. § 558.

The court, however, in its decree of distribution, as amended, apparently treated the residue as passing by intestacy under 14 V.S.A. § 551(4) to twenty-five nieces and nephews of the testatrix. The three surviving children of Melville Owens, joined by the two surviving children of Owens' deceased son, appeal to this Court.

The sole question raised on appeal is whether the probate court erred in failing to decree the residue of the testatrix's estate in accordance with 14 V.S.A. § 558. That provision reads as follows: When a devise or legacy is made to a child or other kindred of the testator, and such devisee or legatee dies before the testator, leaving issue who survive the testator, such issue shall take the estate so given as the devisee or legatee would have taken if he had survived the testator, unless a different disposition is required by the will.

The appellees, arguing in support of the decree, contend that the will, read as a whole, requires a different construction. We disagree. "The cardinal rule of interpreting wills... is that from the language used that the meaning intended by the testator is to be ascertained and given effect, in so far as legally possible." *In re Estate of Davis*, 126 Vt. 19, 22, 220 *113A.2d 726, 729 (1966).

The effect of the excerpted portion of the will is clear. The disposition to Martha Legary was expressly conditioned upon survival. The disposition to Melville Owens, a kindred of the deceased, was not. This brings 14 V.S.A. § 558 into operation, which, in turn, requires that the issue of Melville Owens take the estate that he would have received had he survived.

There is nothing in the will which would suggest that a different result was intended. So much of the decree of distribution of the Washington District Probate Court, dated January 30, 1980, as amended, as provides for distribution of the residue in the estate of Mabel Carr is vacated. Cause

remanded for the entry of a modified decree distributing the residue in accordance with the provisions of 14 V.S.A. § 558.

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