

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, DIVISION 2

In re Barnhart's Estate, 37 Cal. Rptr. 909

In re Barnhart's Estate, 37 Cal. Rptr. 909, 226 Cal. App. 2d 289 (Cal. App. 1964) · No. Civ. 27796

SUMMARY

****Summary:**** This case construes a holographic will where the testator devised real and personal property to his daughter with instructions to "turn it over to the State of California as a museum" after her lifetime. The court held that the language created a fee simple devise to the daughter, not a life estate with remainder to the state, because the subsequent words were precatory recommendations rather than mandatory limitations. Regarding the residue from any lawsuit, the court found the testator intended to divide the balance equally among the eight previously named beneficiaries, rejecting the state's claim and the trial court's finding of partial intestacy. The opinion addresses will construction, the use of extrinsic evidence, the distinction between precatory and mandatory language, and the preference against intestacy.

CASE DETAILS

COURT	California Court of Appeal, Second District, Division 2
WRITING FOR THE COURT	Kincaid; Herndon, Acting P.J.; Roth, J.
JURISDICTION	California
DOCKET	Civ. 27796
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from judgment of the Superior Court of Los Angeles County in probate proceedings
STANDARD OF REVIEW	Construction of a will is a question of law; findings of fact based on extrinsic evidence are binding if conflicting, but here the evidence is generally without conflict, so the construction is a question of law.
PRECEDENTIAL VALUE	Published
PARTIES	Edward J. Cummings (as guardian and executor), Robert Cummings, William Harris (as guardian ad litem), State of California v. Patricia Chalgren, Joan Pengra

TOPICS

probate

probate procedure

estate administration

statutory interpretation

standard of review

appellate procedure

PRACTICE AREAS

Probate

Wills

Trusts

QUESTIONS PRESENTED

1. Whether paragraph 1 of the will created a life estate in Patricia Chalgren with remainder to the State of California, or a fee simple devise with a precatory request.
2. Whether paragraphs 7 and 8 of the will disposed of the balance of the net proceeds from any lawsuit, and if so, to whom.

HOLDINGS

1. Paragraph 1 of the will does not create a life estate with remainder to the state. Instead, it devises the real property and personal property (books, tools, machinery) to Patricia Chalgren in fee simple, with a precatory recommendation that she turn them over to the state as a museum upon her death. The bequest of 100 shares of McCord stock to Patricia is an outright gift.
2. The testator intended to bequeath 10% each to Oscar Watson and Glenn Ogg, and the remaining 80% of the net proceeds from any lawsuit to be divided equally among the eight previously named beneficiaries (Patricia Chalgren, Joan Pengra, Imogene Warner, Joanne Cummings, Ed Cummings, Robert Cummings, Wayne Cummings, and William Harris). The state is not entitled to any portion of that balance.

KEY QUOTATIONS

“I, George Edward Barnhart, being of Sound mind & I believe body, wish to make provision for the disposition of my property, if for any reason God should wish to call me.” (909)

“It is a fundamental and indisputable proposition that wherever doubt arises as to the meaning of a will, such doubt is resolved by construction, and that construction is one of law.” (913)

“While the desire of a testator for the disposition of his estate will be construed as a command when addressed to his executor, it will not when addressed to his legatee be construed as a limitation upon the estate or interest which he has given to him in absolute terms.” (915)

FACTUAL BACKGROUND

George Edward Barnhart died in 1962, leaving a holographic will. He had two daughters, Patricia and Joan. He was an inventor. The will devised real property to Patricia with a direction to turn it over to the State of California as a museum after her life, and bequeathed stock to various individuals. It also provided that 10% of the net proceeds from any lawsuit go to Oscar Watson and Glenn Ogg, with the balance equally divided. The trial court found the will ambiguous and that the residue passed by intestacy.

PROCEDURAL HISTORY

The decedent's holographic will was admitted to probate. A petition to determine interests in estate was filed by the daughters. The trial court entered findings and judgment, which the appellants challenged on appeal.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The superior court is directed to enter a new judgment in conformance with the views herein expressed.

CASES CITED

- Estate of Donnellan, 164 Cal. 14, 127 P. 166
- Estate of Jones, 55 Cal. 2d 531, 11 Cal. Rptr. 574, 360 P.2d 70
- Estate of Thompson, 50 Cal. 2d 613, 328 P.2d 1
- Estate of Axcelrod, 23 Cal. 2d 761, 147 P.2d 1
- Estate of Wilson, 184 Cal. 63, 193 P. 581
- Boggs v. Boggs, 63 Cal. App. 2d 576, 147 P.2d 116
- Estate of Collias, 37 Cal. 2d 587, 233 P.2d 554
- Estate of Richards, 154 Cal. 478, 98 P. 528
- Estate of Marti, 132 Cal. 666, 61 P. 964
- Estate of Kearns, 36 Cal. 2d 531, 225 P.2d 218
- Estate of Ford, 169 Cal. App. 2d 174, 336 P.2d 981
- Estate of Akeley, 35 Cal. 2d 26, 215 P.2d 921
- Estate of Blalock, 95 Cal. App. 2d 463, 213 P.2d 100
- Estate of Beldon, 11 Cal. 2d 108, 77 P.2d 1052
- Estate of Deacon, 172 Cal. App. 2d 319, 342 P.2d 261
- Estate of Swallow, 211 Cal. App. 2d 359, 27 Cal. Rptr. 235