

SUPREME COURT OF OKLAHOMA

Lucas v. Tayrien, 207 Okla. 401

250 P.2d 16 (1952) · No. No. 35606 · Decided November 5, 1952

SUMMARY

The Oklahoma Supreme Court held that an alleged heir's petition for distribution was premature because it was filed before the executrix's final account and petition for distribution. Because the heirship claim was disputed, the county court lacked authority to make a final determination of heirship during partial distribution; the order was therefore nonfinal and nonappealable, and the appeal was dismissed.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Bingaman, J.; Halley, V.C.J.; Welch, J.; Gibson, J.; Davison, J.; O'Neal, J.
JURISDICTION	Oklahoma
DECIDED	November 5, 1952
DOCKET	No. 35606
DISPOSITION	dismissed
PROCEDURAL POSTURE	Emma Lucas appealed from an order sustaining the executrix's motion for judgment on the pleadings, which operated as a motion to dismiss her petition seeking distribution as an allegedly omitted heir. The county court sustained the motion, and the district court affirmed.
STANDARD OF REVIEW	The court reviewed whether the order constituted a final, appealable judgment and whether the county court had authority to determine disputed heirship in a partial-distribution proceeding.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion
PARTIES	Emma Lucas v. Tayrien, executrix of the estate of Charles A. Tayrien

TOPICS

- probate procedure
- appellate procedure
- final judgment rule
- estate administration
- motion for judgment on the pleadings

PRACTICE AREAS

Probate

Appellate procedure

Civil procedure

QUESTIONS PRESENTED

1. Whether Emma Lucas's petition asserting an omitted-heir right to distribution was premature because it was filed before the final account and petition for distribution.
2. Whether a county court may finally determine disputed heirship in a proceeding for partial distribution.
3. Whether the county court's order sustaining the motion to dismiss was a final, appealable judgment.

HOLDINGS

1. The petition was premature because it was filed before the executrix's final account and petition for distribution and did not comply with the statutory provisions governing an omitted heir's claim.
2. When the right of an alleged heir to inherit is disputed, the county court may not determine heirship in a partial-distribution proceeding because such a determination would not be final.
3. The order was not a final judgment or an appealable order because the purported determination of heirship was void and did not affect a substantial right of the parties.

KEY QUOTATIONS

“A determination of heirship upon partial distribution in the nature of things would not be final, and as we interpret the statute, it could not be made at all if the heirship to the estate was disputed.” (402)

FACTUAL BACKGROUND

Charles A. Tayrien's will was admitted to probate on April 6, 1951, and the executrix began administering the estate. Emma Lucas, who was not named in the will, alleged that she was Tayrien's daughter and had been unintentionally omitted, entitling her to an undivided one-third interest. She filed her petition before the executrix's final report and before proceedings to determine heirship or distribute the estate, and the executrix disputed Lucas's right to inherit.

PROCEDURAL HISTORY

Charles A. Tayrien's will was admitted to probate in the Washington County Court. Before the executrix filed a final report and before heirship or distribution proceedings began, Emma Lucas filed a petition for distribution alleging that she was the decedent's daughter and had been unintentionally omitted from the will. The county court dismissed the petition, the district court affirmed, and the Supreme Court of Oklahoma dismissed the appeal because the order was not final or appealable.

DISPOSITION

dismissed

CASES CITED

- Boyes' Estate v. Boyes, 184 Okla. 438, 87 P.2d 1102
- In re Coyne's Estate, 103 Okla. 279, 229 P. 630

OPINION

PER CURIAM.

207 Okla. 401 (1952) 250 P.2d 16 In re TAYRIEN'S ESTATE. LUCAS v. TAYRIEN. No. 35606. Supreme Court of Oklahoma. November 5, 1952. Fred B. Woodward and E.E. Heyl, Bartlesville, for plaintiff in error. Chas. W. Pennel and A.O. Harrison, Bartlesville, for defendant in error. *402 BINGAMAN, J. The last will and testament of Charles A. Tayrien, deceased, was admitted to probate in the county court of Washington county, on April 6, 1951.

The executrix qualified and proceeded with the administration of the estate. On the 2nd day of November, 1951, prior to the filing of the final report of the executrix and prior to any proceedings to determine the heirship or distribute the estate, Emma Lucas, who was not named in the will, filed in said proceedings a pleading styled, "Petition for Distribution by Heir".

In this pleading she alleged she was the daughter of the decedent, that she had been unintentionally omitted from mention in the will, and that she was therefore entitled to receive an undivided one-third interest in said estate, and that such interest be awarded to and then distributed to her.

The executrix responded by a pleading styled, "A Motion for Judgment on the Pleadings". This was in effect a motion to dismiss. The county court sustained the motion of the executrix. On appeal the district court affirmed the judgment of the county court.

The petition filed by the said Emma Lucas does not attempt to comply with the provisions of 84 Ohio St. 1951 §§ 251 and 252. It was filed prior to the filing of the final account and petition for distribution by the executrix and is premature for an assertion of her rights for distribution under the general probate statutes, 58 Ohio St. 1951 §§ 631 and 632.

In Boyes' Estate v. Boyes, 184 Okla. 438, 87 P.2d 1102, we held that no pleading was necessary for the assertion of rights by an alleged heir on determination of heirship under the general probate statute. Apparently, therefore, the petition filed by Emma Lucas is a petition for partial distribution under 58 Ohio St. 1951 §§ 621 to 625, inclusive.

The motion filed by the executrix disputes the right of the said Emma Lucas to share in this estate, and, there existing a contest as to her right to inherit, partial distribution to her would be improper and any attempted determination of heirship at that time would not be final. "A determination of heirship upon partial distribution in the nature of things would not be final, and as we interpret the statute, it could not be made at all if the heirship to the estate was disputed."

In re Coyne's Estate, 103 Okla. 279, 229 P. 630. Since under the authority above quoted the county court was without power to determine heirship upon the filing of the petition for partial distribution, it follows that that portion of the judgment which purported to do so is void and does not deprive Emma Lucas of her right to re-assert her claim upon final distribution of the estate.

The judgment is therefore not a final judgment, nor does it affect any substantial right of the parties. It was therefore not an appealable order or judgment. 58 Ohio St. 1951 § 721. Appeal dismissed. HALLEY, V.C.J., and WELCH, GIBSON, DAVISON, and O'NEAL, JJ., concur.