

SUPREME COURT OF ARKANSAS

Craig v. Carrigo

353 Ark. 761 (2003) (Ark. 2003) · No. No. 01-1408 · Decided June 26, 2003

SUMMARY

The Arkansas Supreme Court held that Arkansas law governs the interpretation and effect of a foreign will devising Arkansas real property, including application of the pretermitted-heir statute. The court affirmed the determination that the decedent’s children were pretermitted heirs and upheld the finding that the purported common-law spouse had not proven marital status under Alberta law. The court dismissed the challenge to attorney’s fees because no timely notice of appeal was filed from the fee orders.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	W.H. "Dub" Arnold, Chief Justice
JURISDICTION	Arkansas
DECIDED	June 26, 2003
DOCKET	No. 01-1408
DISPOSITION	dismissed
PROCEDURAL POSTURE	Second appeal from a Pulaski County Circuit Court order determining that the decedent's children were pretermitted heirs entitled to inherit Arkansas real property, rejecting a claimed common-law marriage, and awarding attorney's fees and costs from the estate.
STANDARD OF REVIEW	Probate proceedings are reviewed de novo on the record, but the circuit court's decision will not be reversed unless clearly erroneous; due regard is given to the trial judge's superior position to assess witness credibility.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sharlett Craig, personal representative of the Estate of Earle L. Berrell, deceased, Erika Arndt v. Bonita Berrell Carrigo, Edward James Berrell

TOPICS

- ancillary probate
- probate procedure
- statutory interpretation
- appellate jurisdiction
- real estate

PRACTICE AREAS

probate

appellate procedure

conflicts of law

family law

real estate

QUESTIONS PRESENTED

1. Whether Arkansas or Alberta law governed the interpretation and effect of the will as to real property located in Arkansas.
2. Whether the evidence established that Erika Arndt was Berrell's common-law spouse under Alberta law and therefore entitled to a dower interest in the Arkansas real property.
3. Whether the decedent's expressed intent to leave all property to Arndt overcame Arkansas's pretermitted-children statute.
4. Whether the Supreme Court of Arkansas had jurisdiction to review the attorney's-fee and cost award when the appellants filed no notice of appeal from either fee order.

HOLDINGS

1. Arkansas law, as the law of the situs, governs the effect and interpretation of a will purporting to devise real property located in Arkansas, even when the will was executed in a foreign jurisdiction and the proceeding is ancillary probate.
2. The appellants failed to prove by a preponderance of the evidence that Arndt was recognized as Berrell's common-law spouse under Alberta law; therefore, the circuit court did not clearly err in denying her a dower interest.
3. When a will fails to mention or provide for a child and does not itself explain the omission, the child is entitled to inherit as if the decedent had died intestate, regardless of the testator's otherwise expressed intent.
4. A challenge to an attorney's-fee order entered after the judgment must be taken by a separate notice of appeal; absent a timely notice of appeal from the fee order, the appellate court lacks jurisdiction and must dismiss that part of the appeal.

KEY QUOTATIONS

"The great weight of authority in this country "holds that the law of situs governs the interpretation and effect of a will of realty." (158)

"In sum, Arkansas law has consistently followed the rule that the law of the situs of real property governs the effect and interpretation of wills purporting to devise such land." (159)

"Thus, unless the will itself explains the omission of the children, it will be presumed that such omission was unintentional, regardless of the testator's intent." (163)

"Accordingly, in order to preserve any challenge to the issue of attorney's fees, it was incumbent upon Appellants to file a separate notice of appeal from the fee orders." (164)

FACTUAL BACKGROUND

Earle Berrell lived with Erika Arndt in Alberta, Canada, beginning in 1992, while both were married to other people. After their respective divorces, Berrell executed a holographic will in Alberta leaving all of his property, including Arkansas property, to Arndt without mentioning his two children; he died in 1997. The Arkansas estate included real property, an escrow account, and a certificate of deposit, and the children contested the will's omission of them as pretermitted heirs. Arndt relied on Canadian pension records and probate documents describing her as Berrell's common-law spouse, but the evidence did not establish that Alberta law recognized such a marriage for inheritance purposes.

PROCEDURAL HISTORY

After the decedent's death, ancillary probate proceedings were initiated in Arkansas concerning property located there. The circuit court ruled that the decedent's children were pretermitted heirs, initially found that Erika Arndt was the decedent's common-law spouse, later reversed that finding and denied her a dower interest, and awarded the children attorney's fees and costs. The appellants filed a notice of appeal from the heirship order but did not file a notice of appeal from either fee order. The Supreme Court of Arkansas affirmed the rulings concerning applicable law, common-law marriage, and pretermitted heirs, and dismissed the challenge to attorney's fees for lack of appellate jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Craig v. Carrigo, 340 Ark. 624, 12 S.W.3d 229 (2000)
- Holmes v. McClendon, 349 Ark. 162, 76 S.W.3d 836 (2002)
- Bank of Oak Grove v. Wilmot State Bank, 279 Ark. 107, 648 S.W.2d 802 (1983)
- Layman v. Hodnett, 205 Ark. 367, 168 S.W.2d 819 (1943)
- Bowen v. Frank, 179 Ark. 1004, 18 S.W.2d 1037 (1929)
- Crossett Lumber Co. v. Files, 104 Ark. 600, 149 S.W. 908 (1912)
- Brissett v. Sykes, 313 Ark. 515, 855 S.W.2d 330 (1993)
- Allen v. Wallis, 279 Ark. 149, 650 S.W.2d 225 (1983)
- Pauliuk v. Pauluik, 48 Alta. L.R.2d 25 (Q.B. 1986)
- Armstrong v. McLaughlin Estate, 112 D.L.R. 4th 745 (Alta. Q.B. 1994)
- Armstrong v. McLaughlin Estate, 130 D.L.R. 4th 766 (Alta. C.A. 1995)
- Taylor v. Rossu, 44 Alta. L.R.3d 388 (Q.B. 1996)
- Rossu v. Taylor, 216 A. 348 (Alta. C.A. 1998)
- Armstrong v. Butler, 262 Ark. 31, 553 S.W.2d 453 (1977)
- Lewis v. Bowlin, 237 Ark. 947, 377 S.W.2d 608 (1964)
- Alexander v. Estate of Alexander, 351 Ark. 359, 93 S.W.3d 688 (2002)
- Robinson v. Mays, 271 Ark. 818, 610 S.W.2d 885 (1981)

- Dodge v. Lee, 350 Ark. 480, 88 S.W.3d 843 (2002)
- Weems v. Garth, 338 Ark. 437, 993 S.W.2d 926 (1999)
- Nettleton School District v. Owens, 329 Ark. 367, 948 S.W.2d 94 (1997)
- Mason v. Jackson, 323 Ark. 252, 914 S.W.2d 728 (1996)
- Harold Ives Trucking Co. v. Pro Transportation, Inc., 341 Ark. 735, 19 S.W.3d 600 (2000) (per curiam)

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