

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, DIVISION THREE

Estate of Scott

217 Cal. App. 2d 111 (Cal. Ct. App. 1963) · No. Civ. No. 26649 · Decided June 11, 1963

SUMMARY

The California Court of Appeal considered whether charitable bequests exceeded the one-third limitation under former Probate Code section 41 and whether a beneficiary's claim for reduction of those bequests constituted a will contest under the will's forfeiture clause. The court held that the beneficiary could invoke section 41 despite assigning interests in the estate and that the charitable bequests were properly reduced pro rata. It also held that the cash bequest to the church was not a residuary legacy requiring abatement before the other charitable gifts.

CASE DETAILS

COURT	California Court of Appeal, Second District, Division Three
WRITING FOR THE COURT	Files, J.; Shinn, P. J.; Ford, J.
JURISDICTION	California
DECIDED	June 11, 1963
DOCKET	Civ. No. 26649
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by a charitable beneficiary from a probate decree of distribution and order settling the executrix's account, challenging the reduction and classification of charitable bequests under Probate Code section 41.
STANDARD OF REVIEW	The appellate court reviewed the probate court's construction of the will and its application of Probate Code section 41. A reasonable construction consistent with the record and the testator's intent would not be displaced on appeal merely because another interpretation was equally tenable.
PRECEDENTIAL VALUE	published California Court of Appeal opinion
PARTIES	Shriners Hospitals for Crippled Children v. Florence Hughes, as Executrix, Angeles Mesa Presbyterian Church

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Florence Hughes could invoke Probate Code section 41 to reduce the charitable bequests after Jessie Miller died before distribution.
2. Whether Hughes's assignment of part of her legacy to other persons altered her status as the person entitled to receive property that the charities could not take under section 41.
3. Whether Hughes's petition to reduce the charitable bequests constituted a contest of the will under the will's forfeiture clause.
4. Whether the cash bequest to Angeles Mesa Presbyterian Church was a residuary legacy that had to abate before the other charitable bequests.

HOLDINGS

1. Florence Hughes was entitled to request a pro rata reduction of the charitable bequests because, after Jessie Miller's death before distribution, Hughes was the person who would have taken the affected property but for the charitable bequests.
2. Hughes's assignment of two-thirds of her legacy to other persons did not alter her status under Probate Code section 41 or prevent her from seeking reduction of the charitable bequests.
3. Hughes's petition seeking reduction of charitable legacies under Probate Code section 41 was not a contest of the will within the meaning of the will's forfeiture clause.
4. The specified cash bequest to Angeles Mesa Presbyterian Church was not a residuary legacy and therefore did not have to abate in full before the other charitable bequests.

KEY QUOTATIONS

“On the other hand, in the Probate Code the term “contest” has a definite and limited meaning.” (217 Cal. App. 2d at 116)

“A residuary legacy embraces only that which remains after all the bequests of the will are discharged.” (217 Cal. App. 2d at 117)

FACTUAL BACKGROUND

Sidney C. Scott executed his will approximately two months before his death, leaving designated stocks and bonds to Shriners Hospitals, the Salvation Army, and Angeles Mesa Presbyterian Church. The will also gave Florence Hughes one-half of the residue, gave the Presbyterian church a specified cash amount plus interest, and gave the remaining residue to Jessie Miller if she survived distribution, otherwise to Florence Hughes. Scott was survived by a widow and two adult daughters; Miller died during administration, and the probate court reduced the charitable bequests pro rata under Probate Code section 41.

PROCEDURAL HISTORY

The will was admitted to probate and Florence Hughes qualified as executrix. The probate court approved an agreement among the surviving spouse and daughters, ordered payment of \$50,000 to the widow in satisfaction of her community-property interest, and later entered a decree reducing the charitable bequests pro rata so that they did not exceed one-third of the estate. Shriners Hospitals appealed from the decree and related order.

DISPOSITION

affirmed

CASES CITED

- Estate of Bunn, 33 Cal. 2d 897, 900-01, 206 P.2d 635 (1949)
- Estate of Lingg, 71 Cal. App. 2d 403, 162 P.2d 707 (1946)
- Estate of Hite, 155 Cal. 436, 444, 101 P. 443 (1909)
- Estate of Holtermann, 206 Cal. App. 2d 460, 470, 23 Cal. Rptr. 685 (1962)
- Estate of Howard, 68 Cal. App. 2d 9, 11, 155 P.2d 841 (1944)
- Estate of Miller, 212 Cal. App. 2d 284, 296, 27 Cal. Rptr. 909 (1963)
- Estate of Sloane, 171 Cal. 248, 152 P. 540 (1915)
- Estate of Hamilton, 181 Cal. 758, 762, 186 P. 587 (1919)
- Estate of Fitzgerald, 62 Cal. App. 744, 747, 217 P. 773 (1923)
- Estate of Williams, 112 Cal. 521, 526, 44 P. 808 (1896)
- Estate of Kimmis, 77 Cal. App. 2d 233, 235, 175 P.2d 53 (1947)
- Estate of Northcutt, 16 Cal. 2d 683, 690, 107 P.2d 607 (1940)
- Estate of Buck, 32 Cal. 2d 372, 374, 196 P.2d 769 (1948)

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