

PALM BEACH COUNTY JUDGE'S COURT

In re Wight's Estate

15 Fla. Supp. 156 (1959) · Decided December 15, 1959

SUMMARY

The court determines whether a guardian's court-approved sale of an automobile specifically bequeathed in the ward's will constituted an ademption of the specific legacy. Applying Florida's statutory adoption of the common law of England as of July 4, 1776, the court concludes that a guardian's sale does not adeem the legacy when the testator was competent when the will was made, incompetent when the sale occurred, and never regained competency. The legatee's interest is therefore adjudicated under that rule.

CASE DETAILS

COURT	Palm Beach County Judge's Court
WRITING FOR THE COURT	Richard P. Robbins
JURISDICTION	Florida
DECIDED	December 15, 1959
DISPOSITION	other
PROCEDURAL POSTURE	Petition for determination of the petitioner's interest in the estate of a deceased testator whose specifically bequeathed automobile had been sold by a guardian during the testator's incompetency.
PRECEDENTIAL VALUE	limited

TOPICS

- probate procedure
- probate
- estate administration
- guardianship procedure
- estate planning

PRACTICE AREAS

- probate
- estate planning
- guardianships

QUESTIONS PRESENTED

1. Whether a guardian's court-approved sale of personal property specifically bequeathed in the will of a testator who was competent when the will was made, but incompetent at the time of the sale and until death, causes an ademption of the specific bequest.

2. Whether Florida's statutory adoption of the common law of England as of July 4, 1776 requires application of the pre-Ashburner English rule that a guardian's sale of specifically bequeathed property does not adeem the legacy absent testamentary intent.

HOLDINGS

1. A guardian's sale or other court-approved transfer of property specifically bequeathed by a testator who was competent when the will was made, but incompetent at the time of the sale and until death, does not adeem the specific bequest.
2. Mary C. McGovern's interest in the estate was adjudicated under the rule that the guardian's sale did not adeem the specific bequest.

KEY QUOTATIONS

"I am of the opinion that this was the common law of England at the time of its adoption by statute in Florida and is now the rule in this state." (159)

FACTUAL BACKGROUND

Lucy Trowbridge Wight executed a valid will on October 15, 1954, specifically bequeathing any automobile she owned at death to Mary C. McGovern. After Wight was adjudicated mentally incompetent because of a coma resulting from an automobile accident, her guardian sold her 1955 Ford automobile for \$1,300; the court confirmed the sale because the automobile was deteriorating and the proceeds were needed for Wight's care. Wight died without regaining competency, and her will was admitted to probate.

PROCEDURAL HISTORY

Lucy Trowbridge Wight executed a valid will in 1954 specifically bequeathing any automobile she owned at death to Mary C. McGovern. After Wight became mentally incompetent, her guardian sold her automobile, and the county court confirmed the sale. Wight later died without regaining competency, and the will was admitted to probate. McGovern petitioned for a determination of whether the guardian's sale adeemed the specific bequest.

DISPOSITION

other

CASES CITED

- Ashburner v. Macquire, 2 Bro. Ch. C. 108 (1786)
- Walsh v. Gillespie, 154 N.E. 2d 906 (Mass.)