Duquesne Law Review

Volume 9
Number 3 *Symposium on Cipolla v. Shaposka*

Article 21

1971

Estate Law - Testamentary Rights of an Adopted Grandchild Adopted After the Death of the Testator

Walter J. Orze

The public policy argument denying recovery appears to be compelling. The insured was committing a burglary when the damage occurred. Recovery on the policy relieved the wrongdoer of financial responsibility entirely. Despite the burglary, an insurer has no recourse against its insured because it is precluded from subrogating against itself.[23] If recovery is permitted, are we not allowing a wrongdoer to benefit from his act?

Absent a "violation of law" clause in the policy, the fact insured was in the course of a crime is immaterial. Premiums are paid for the sole purpose to indemnify the insured for damages, as defined by the policy. Once it is determined the insured's act is within the scope of the policy it is not necessary to look further. By analogy, automobile insurance would never be purchased if insurers retained a right of subrogation. In allowing recovery, the court properly directed itself to the terms of the policy finding no evil consequences. Having written the policy, the insurance company could have protected itself by including a violation of law clause. Courts will not take the liberty to rewrite insurance contracts, particularly when the party seeking greater protection is the insurer.

James L. Ross

ESTATE LAW—TESTAMENTARY RIGHTS OF AN ADOPTED GRANDCHILD ADOPTED AFTER THE DEATH OF THE TESTATOR—The Pennsylvania Supreme Court has held that a testator's grandchild, who was adopted after the testator's death, was entitled to share in a testamentary disposition of trust income to his daughter's children, if any, after her death. The Court allowed this distribution where it was clearly shown that the testator knew at the time he executed his will that his daughter could have no children and already had adopted one, who subsequently died.

Chambers Estate, 438 Pa. 22, 263 A.2d 746 (1970).

The testator, James B. Chambers, died on May 6, 1933, leaving a will that created a trust, the income derived therefrom to be delivered semi-annually to Hazel G. McGill, his daughter, during her life. At

23. J. APPLEMAN & J. APPLEMAN, INSURANCE LAW AND PRACTICE § 4932 (1962).

her death, the income was to be paid to her children, if any, and for and during their lives. The corpus of the trust consisting of fifty-thousand dollars was to be paid to the James B. Chambers Memorial Association upon the death of Hazel's children. The testator executed his will on December 12, 1930.

Hazel G. McGill was physically incapable of bearing children and because of this fact, she adopted a son, Paul, on December 12, 1930. Her father, James B. Chambers, was then alive and was quite fond of Paul, his adopted grandson. Paul McGill died in an accident in September, 1931, and the testator, James B. Chambers, died on May 6, 1933, without making any change in his will. The appellant, William McGill, was adopted by Hazel G. McGill on October 19, 1937, almost four and one-half years after the death of the testator. Hazel G. McGill died on May 2, 1966, and William McGill obtained a citation from the orphans' court requiring the trustee to show cause why the future trust income should not be paid to him. His petition was dismissed, and William McGill appealed to the Pennsylvania Supreme Court. The James B. Chambers Memorial Association presented briefs to the State Supreme Court in an attempt to defeat William McGill's contention that he should take under the trust provisions of the will.[1]

At common law, adopted children had no rights of inheritance from their adopting parents and all such rights were purely statutory.[2] Pennsylvania statutes now govern in any controversy arising over the testamentary rights of adopted children in this commonwealth. The Pennsylvania Wills Act of 1947 provides that the will of any person who died prior to January 7, 1948 is governed by the Wills Act of 1917.[3] The pertinent section of the Wills Act of 1917 dealing with adopted children provides that:

> Whenever in any will a bequest or devise shall be made to the child or children of any person other than the testator, without naming such child or children, such bequest or devise shall be construed to include any adopted child or children of such person who were adopted *before* the date of the will, *unless a contrary intention shall appear by the will.*[4] (Emphasis added.)

The words "unless a contrary intention shall appear by the will" limit the scope of the entire provision, which (without this phrase)

1. Chambers Estate, 438 Pa. 22, 263 A.2d 746 (1970).
2. Collins Estate, 393 Pa. 195, 142 A.2d 178 (1958).
3. Act of April 24, 1947, P.L. 89, § 22, PURDON'S PA. STAT. ANN. tit. 20, § 180.22 (1950).
4. Act of June 7, 1917, P.L. 403, § 16(b), PURDON'S PA. STAT. ANN. tit. 20, § 228 (now Wills Act of 1947, PURDON'S PA. STAT. ANN. tit. 20, § 180.14).

would clearly defeat William's contention because he was adopted *after* the date of will. The interpretation of this phrase, therefore, became an important issue in the proceedings.

Earlier Pennsylvania cases had established a precedent that a court is limited in the interpretation of a will by the content of the document.[5] This was due to the literal interpretation which the courts had given to the words in the Wills Act of 1917 stating that "a contrary intention shall appear by the will."[6] The Court stated in *Provident Trust Company of Philadelphia v. Scott* that, "[t]he presumption created by the Wills Act of June 7, 1917, may be overcome only by the presence in the will of language clearly indicative of a contrary dispositive intent or of a form or method of disposition inconsistent with an exercise of the power. Such contrary intent must appear from the will, itself, not from extraneous circumstances."[7] The intent of the testator has always been of primary importance in the interpretation of any will. In *Benedum Estate,* the court stated that "[t]he testator's intention is the polestar in the construction of every will and that intention must be ascertained from the language and scheme of his (entire will) together with the surrounding facts and circumstances; it is not what the court thinks he might, or would or should have said in the existing circumstances, or even what the court thinks he meant to say, but what is the meaning of his words."[8] It should be noted that the court had somewhat liberalized its approach by considering the facts and circumstances surrounding the execution of the will in its attempt to discover the testator's intent. Previously, the Supreme Court of Pennsylvania stated that, "contrary intent must appear from the will, itself, not from extraneous circumstances."[9] The court in *Jaekel Estate* also stated that the lower court had erred in allowing such extrinsic evidence to be introduced as an aid in interpreting the written document.[10]

A similar situation dealing with adopted children had arisen about ten years prior to *Chambers Estate* in the decision in *Holton Estate.*[11] In *Holton,* the supreme court ruled that children adopted after

5. Provident Trust Co. of Philadelphia v. Scott, 335 Pa. 231, 6 A.2d 814 (1939); Thomson v. Wanamaker's Trustee, 268 Pa. 203, 110 A. 770 (1920).
6. Act of June 7, 1917, P.L. 403, § 16(b), PURDON'S PA. STAT. ANN. tit. 20, § 228 (now Wills Act of 1947, PURDON'S PA. STAT. ANN. tit. 20, § 180.14).
7. 335 Pa. 231, 6 A.2d 814 (1939).
8. Benedum Estate, 427 Pa. 408, 235 A.2d 129 (1967).
9. Jaekel Estate, 424 Pa. 433, 227 A.2d 851 (1967).
10. *Id.* at 440, 227 A.2d at 857.
11. Holton Estate, 399 Pa. 241, 247, 159 A.2d 883, 886 (1960).

the death of the testator were not entitled to a trust fund income as the testator's son's "children." The court could find nothing within the will itself which stated that the testator intended that his son's adopted children should be included or excluded from the word children as used in the devise, and therefore could not include these adopted children without the necessary words.[12] The court would not rewrite the will to include the word "adopted."

Mister Justice Musmanno's dissent in *Holton* is noteworthy because he reached the same conclusion relating to the rights of adopted children as the majority reached in *Chambers* but for different reasons. He failed to see the reasons for the distinctions which had been made by the Pennsylvania courts on the rights of natural children in comparison with those same rights exercised by adopted children. He states that there is no real difference between the lives lead by adopted children in comparison with the lives of their natural born comrades. His dissent is based primarily on public policy reasons. The majority in *Chambers,* however, approached the problem of interpretation as one of understanding the written words of the document itself in the circumstances in which they were written without using a public policy argument. Thus, the majority was able to reach a sound public policy decision without specifically overruling any of its previous decisions.

Because the decision of the court in *Holton* was contrary to the majority holding in *Chambers,* the court managed to distinguish *Holton* on factual grounds. The fact that it was possible for the testator's son in *Holton* to remarry and subsequently to have natural children, whereas it was impossible for the testator's daughter in *Chambers* to have natural children regardless of her marital situation was the major distinction between the two cases.

In *Collins Estate,*[13] a will executed in 1912 provided that upon the death of the children of the testatrix leaving descendants surviving, the principal of the trust estate was to be paid to such descendants. The Pennsylvania Supreme Court found that the principal would descend to the two adopted children who survived the daughter of the testatrix, even though these two children were adopted nine years after the death of the testatrix. In allowing such disposition, the court found that the word descendants as used by the testatrix was meant to include her adopted grandchildren. The court reasoned that at the time of the

12. *Id.* at 245, 159 A.2d at 885.
13. 393 Pa. 195, 142 A.2d 178 (1958).

testatrix's death in 1921, the Intestate Act of 1917,[14] and the amended Wills Act of 1917[15] clearly erased any distinction between the rights of an adopted child and the rights of a natural child, thus an adopted child had all of the testamentary rights of a natural child.[16] This was the state of the law in 1921.

The court also stated that the testatrix "knew that her children could and actually might adopt children before the event of the taking,"[17] and that there was a sound public policy, historically and socially, supporting its decision. The court for the first time looked beyond the written words of the document and used the circumstances surrounding the execution of the will to ascertain the testator's true intent. This type of rationale, guided by sound public policy reasons, produced an enlightened decision which further extended the rights of adopted children in Pennsylvania and set the stage for the decision in the *Chambers* case.

The Pennsylvania State Supreme Court in *Chambers* permitted the use of extrinsic evidence as a guide in ascertaining the testator's intent. The entire opinion is based on the amount and sufficiency of extrinsic evidence regarding the testator's knowledge of his daughter's physical condition. The court permitted admission of evidence that the community at large as well as the testator knew of Hazel G. McGill's incapability to bear natural children. Though the appellee foundation objected to the evidence on hearsay grounds, the court found no merit to these objections because the testimony given was merely stating a matter of common knowledge in the community.[18]

The court was searching for the testator's intent when he wrote the word *children,* a word contained within the four corners of the will. In this sense, therefore, the court was following previous Pennsylvania precedent. It was seeking to interpret a word clearly stated within the will. However, the meaning of the word children, a central issue in the case, was determined by examining evidence not contained in the document. The majority, therefore, went beyond the confining "four corners" doctrine espoused in previous Pennsylvania cases.

14. Act of June 7, 1917, P.L. 429, § 16(a), PURDON'S PA. STAT. ANN. tit. 20, § 101 (now Intestate Act of 1947, PURDON'S PA. STAT. ANN. tit. 20, § 1.7).
15. Act of June 7, 1917, P.L. 403, § 21, PURDON'S PA. STAT. ANN. tit. 20, § 273 (now Wills Act of 1947, PURDON'S PA. STAT. ANN. tit. 20, § 180.7); Act of May 20, 1921, P.L. 937, § 1, PURDON'S PA. STAT. ANN. tit. 20, § 273 (now Wills Act of 1947, PURDON'S PA. STAT. ANN. tit. 20, § 180.7).
16. 393 Pa. 195, 142 A.2d 178 (1958).
17. *Id.* at 211, 142 A.2d at 186.
18. 438 Pa. at 25, 263 A.2d at 748.

It is clear that the testator could have added the word "adopted" to the disputed passages of the will after the adoption of Paul or prior to his death. The fact that he did not do this, is not conclusive proof that he intended to exclude any disposition of his estate to his adopted grandchildren, regardless of whether he knew of them or not.

After the adoption of Paul, the testator knew that any additional children of Hazel would have to be adopted. This knowledge on the part of the testator was proven by the extrinsic evidence. It is very likely that the testator intended to include Paul in the devise to the children of Hazel because of the close relationship between the testator and Paul. This close relationship was also proven by extrinsic evidence.

Once these facts are established, it is a logical inference that the testator could not possibly have meant to exclude the adopted William when he meant to include the adopted Paul. The court draws this inference as the last step in its step-by-step analysis of the testator's words and the circumstances under which they were written.

The court in *Chambers* is giving the word children an expanded legal definition and is thus opening an entire legal class to adopted children which heretofore had been closed to them by the Courts of Pennsylvania. This position is clearly the result of sound public policy and is thoroughly justified by the status of adopted children today.

In reaching this position, the Pennsylvania Supreme Court has greatly extended the scope of its inquiry into the testator's intent; from the restricting *four corners* theory to one of almost unlimited proportions. The use of extrinsic evidence in ascertaining the testator's intent, especially in cases where adopted descendants are involved, will now be limited only by the court's discretion.

Unless this case can be limited to its rather unique factual situation, the written words of the testator, where adopted descendants are involved will be interpreted in the light of another's testimony as to what the testator thought or believed. What this will do to the stability of the written word as a means of determining dispositive intent remains to be seen. The prudent draftsman, therefore, should make an effort to be even more specific in order to avoid any questionable testamentary provisions, especially where adopted descendants are involved.

Walter J. Orze