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Surviving Spouse's Statutory Share - Legislative Change - Marriott v. Marriott, et al.

SURVIVING SPOUSE'S STATUTORY SHARE—LEGISLATIVE CHANGE

Marriott v. Marriott, et al.[1]

The testator died on July 13, 1937, leaving a will and codicils thereto which were admitted to probate and letters testamentary granted thereon to the executor named in the will. The deceased left both real and personal property. The latter, after payment of taxes, debts and administration expenses, amounted to a net personal estate of approximately $20,000.00. The decedent was survived by his widow, the appellant, but left no child, descendant, parent or brother or sister of him surviving. He did, however, leave surviving a number of nephews and nieces, all of whom were mentioned in the will. He made no devise or bequest to his widow, and upon his decease, by timely notice in writing to the executor, she claimed her legal share of his estate, including a $2,000.00 allowance as provided by the statute of distribution in intestacy.[2]

After a meeting of the distributees of the estate, held in pursuance of the statutory requirement,[3] the Orphans' Court of Baltimore City passed an order directing the distribution of the estate, ordering that the widow be entitled to one-half of the personal estate of the deceased in addition to the widow's statutory[4] allowance of seventy-five dollars and that she not be entitled to the additional sum of $2,000.00 as claimed. It was from this order that the widow appealed. *Held,* affirmed. The Court of Appeals held that where a testator leaves only nephews and nieces surviving him, all of whom were provided for in his will,[5] and leaves nothing to his surviving spouse, who elected to take her legal share, such surviving spouse was not entitled, in addition to one-half of the deceased's personalty,

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[1] 3 A. (2nd) 493 (Md. 1939).
[2] Md. Code Supp., Art. 93, Sec. 127.
[3] Md. Code, Art. 93, Sec. 148.
[4] Md. Code, Art. 93, Sec. 318.
[5] The nephews, who were specific legatees likewise appealed from the order of the Orphans' Court, which, by reason of the assertion by the widow of her claim, apportioned the consequent diminution of the testator's estate among the specific and the residuary legatees alike, and thereby ignored priority to the specific legatees. The order of the Orphans' Court on this point was reversed, the Court of Appeals holding the specific legatees were entitled to be first paid out of the net estate after the widow's rights had been ascertained and satisfied. See Marriott v. Marriott, et al., 3 A. (2d) 493, 498-502 (Md. 1939).

to $2,000.00, because the statute[6] applies only in cases of intestacy whereas in the instant case the decedent died testate.

Under the Testamentary Law Act,[7] as it stood at the date of this case, in all cases of intestacy in which the deceased was not survived by child or decedent or parent or brother or sister or child of a brother or sister, the surviving spouse received the whole of the personal estate.[8] In event, however, the intestate was survived by a child or descendant, the surviving spouse received one-third.[9] And in the event there was no child or descendant but a father or mother, the surviving spouse received one-half; however, if there was no parent in such a situation but the deceased was survived by a brother or sister, or child or descendant of a brother or sister, the surviving spouse received $2,000.00, or its equivalent in property at its appraised value, and one-half of the residue of the surplus.[10] It was the construction of this latter provision[11] which gave rise to the appeal of the widow. The widow-appellant contended that because of the fact that she was ignored in the will of her deceased husband, he died intestate as to her, and that, therefore, her claim in her husband's estate should be adjusted and settled as though he died intestate.

Section 311 of Article 93 of the Code limits the time and directs the manner in which a surviving spouse may renounce a devise or bequest, or both, and elect to take in lieu thereof, respectively, a dower in the lands and legal share of the personal estate, or a legal share in both the real and personal estate; in which latter case the share of the renouncing spouse, if the deceased spouse be not survived by descendants, shall be "one-half of the lands, as

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[6] Md. Code Supp., Art. 93, Sec. 127.

[7] Md. Code, Art. 93. The first comprehensive system of testamentary law was enacted in this State in 1798, and while various amendments have since been made to certain provisions of the original Act, in so far as the share of a widow is concerned the Act of 1798 remained unchanged down to 1933 (the passage of Chap. 386 of the Acts of 1933, repealed and reenacted Section 127) except that under the provisions of Sections 317 and 318, the widow was given a special allowance of $150 and $75, as the case may be, whether the deceased spouse died testate or intestate. Other legislation, however, has enlarged her rights in real property of her deceased husband, still reserving to her the right of dower, upon her election as provided by the Act. See Md. Code, Art. 93, Secs. 125, 126, 127 (Supp.), 310, 311, 314, 317, 318, as amended, Md. Laws 1939, Chs. 498, 499, 501. See also Md. Code, Art. 46, Secs. 2, 3, 4.

[8] Md. Code, Art. 93, Sec. 125.

[9] Md. Code, Art. 93, Sec. 126.

[10] Md. Code, Supp., Art. 93, Sec. 127.

[11] *Ibid.*

an heir, and one-half of the surplus personal estate . . . and no more.'"[12]

The question, therefore, which the Court of Appeals had to decide in the instant case was whether the surviving spouse took under Section 127 of the statute of distribution in intestacy[13] or under the above Section 311, relating to the rights of a surviving spouse who renounces the provisions of a will.

In *Harris v. Harris*,[14] the Maryland Court of Appeals had definitely decided that the statute of distribution in intestacy had no application where a decedent left a will. Therefore, it seemed clear to the Court that Section 127[15] affected estates of intestates only and, in the face of the express language of the Testamentary Law Act,[16] it could not be held to relate to estates in which the decedent had executed a will. They reasoned that, in the case of intestacy, the decedent has indicated no discrimination against his surviving spouse and therefore the Legislature by Section 127[17] had directed that the surviving spouse in cases of intestacy should be more liberally dealt with. The Court of Appeals indicated that had the Legislature intended to apply the same liberality to the estates of testates in those cases where the widow was ignored, it could, and doubtless would, have said so.

Such result was caused, if not compelled, by the incomplete provisions of the existing statute law. The effect of the decision was short-lived. The Legislature of 1939 has given more exact expression to the legislative intent by allowing the surviving spouse to take the same share re-

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[12] In connection with the problem raised by Sections 311 and 127 of Article 93, Sections 310 and 314 should also be considered. Section 310 provides that "every devise of land or any estate therein, or bequest of personal estate to the wife of the testator shall be construed to be intended in bar of her dower in lands or share of the personal estate, respectively, unless it be otherwise expressed in the will." Section 314 is as follows: "But if in effect nothing shall pass by such devise, she shall be thereby barred whether she shall or shall not renounce as aforesaid . . .". It is well settled by the Maryland decisions that in all cases wherein a testator makes no provision in his will for his widow, no renunciation by her is necessary as a condition precedent for her to sustain her claim for common law or statutory rights. See, Hokamp, Ex'r., v. Hagaman, 36 Md. 511 (1872); Pacholder v. Rosenheim, 129 Md. 455, 99 A. 672, L. R. A. 1917 D, 464 (1916); Barroll v. Brice, 115 Md. 498, 80 A. 1035 (1911); Harris v. Harris, 139 Md. 187, 114 A. 909 (1921); Kuykendall v. Devecmon, 78 Md. 537, 542, 28 A. 412 (1894).

[13] Md. Code Supp., Art. 93, Sec. 127.

[14] 139 Md. 187, 114 A. 909 (1921). See also, Hokamp v. Hagaman, 36 Md. 511 (1872).

[15] Md. Code Supp., Art. 93.

[16] Md. Code, Art. 93.

[17] Md. Code Supp., Art. 93.

gardless of whether he or she claims in intestacy, in defeasance of an express provision for him or her in the will, or in defeasance of a will which makes no provision for him or her.[18] This seems a simple, practical, and satisfactory solution, because the spouse's need for support is the same in all three cases.[19]

[18] See Md. Laws 1939, Ch. 499, an act to repeal and re-enact with amendments Section 311 of Article 93, changing the law of distribution in certain cases of election of a husband or wife where the will of the decedent is not accepted by the survivor; Md. Laws 1939, Ch. 498, an act repealing and re-enacting with amendments Section 314 of Article 93, changing the law in cases where the will of a husband or wife makes no provision for the surviving spouse. See also Md. Laws 1939, Ch. 501, adding a new section to Article 93 to be known as Section 84 A, providing for the execution of a deed to real or leasehold property or any interest therein, whenever any surviving spouse shall be entitled thereto under the provisions of either Section 127, Section 311 or Section 314 of Article 93.

[19] Note that the provisions of Sections 310 to 314, relating to the rights of widows in the estates of their husbands, apply equally in favor of the surviving husband, so as to give to him the same rights in the estate of his deceased wife, which said Sections 310 to 314 give to widows in the estates of their deceased husbands. See Md. Code, Art. 93, Sec. 328.