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The Right to Contest a Will in Maryland - Fry v. Yeatman

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The Right To Contest A Will In Maryland

Fry v. Yeatman[1]

This caveat of a will was filed in the Orphans' Court of Montgomery County by the sister of the testator. The testator was survived by his widow, father, and mother — his heirs at law in case of intestacy.[2] By his will, which was admitted to probate on November 25, 1952, his mother and father were left nothing. Ten months later the father and mother both died testate, the will of the mother completely disinheriting her daughter, the caveatrix in this case, and the will of the father leaving her a legacy of $100.00. This

[1] 207 Md. 379, 114 A. 2d 621 (1955).
[2] Md. Code (1951), Art. 93, Secs. 132, 133, 136, Art. 46, Secs. 1, 2.

disinherited daughter filed a *notice to caveat* the wills of her parents, and consequently they were not as yet probated when she filed the caveat in question in the instant case. The caveatrix filed the caveat on November 24, 1953, one day within the statutory limitation on the time for contesting wills in Maryland.[3] The Orphans' Court dismissed the caveat because of the insufficiency of the caveatrix's interest in the estate of the testator to maintain a contest of his will. On appeal to the Circuit Court for Montgomery County this decision was affirmed.

The Court of Appeals, in affirming the lower court's decision *Held:* — since the caveatrix had not yet filed caveats to the wills of her mother and father to establish her interest in the testator's estate, her *possibility* of being successful in annulling either of their wills was not *such an interest* that would allow her to caveat the testator's will. The Court expressly refused to hazard a guess as to the result if the caveatrix had also filed caveats to the wills of her father and mother before or at the same time as filing the one to her brother's will. It also left unanswered a query as to the outcome had the caveatrix asked the Orphans' Court to toll the limitations on the time in which she could contest the testator's will until the issues under the caveats to the wills of her parents had been decided.

The question of who may contest a will has been the subject of an enormous amount of litigation throughout the United States. Under the typical statute limiting the right of contest to "any person interested", or under general principles established in the absence of statute, the courts have generally required that the contestant have some pecuniary interest in the estate of the testator in the event that the testamentary paper under attack is set aside.[4] Thus, the courts agree on the proposition that a mere stranger to the estate of the testator can not contest, and that a disinherited heir or legatee under a prior will may contest.[5] However, as to the situations which lie between these two extremes there are many conflicting decisions. The problem in the instant case is more readily analyzed if the question as to possible contestants is divided into two phases.

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[3] Code (1951), Art. 93, Sec. 372:
"No will, testament, codicil or other testamentary paper shall be subject to caveat or other objection to its validity after the expiration of one year from its probate."

[4] 68 C. J. 902, Wills, Sec. 631. 2 PAGE, WILLS (Lifetime ed.), Sec. 610, p. 167. 57 Am. Jur. 541, Wills, Sec. 798.

[5] *Ibid.*

In Whom Does the Right to Contest Accrue at the Time the Will is Offered in Probate?

When a will is offered for probate, the courts uniformly recognize a right of contest in all disinherited heirs. Similarly a legatee who receives more under a prior will is allowed to contest.[6] A conflict of authority exists as to the right of an executor[7] under a prior will, or of a person entitled to administer[8] the estate in case of intestacy, while a trustee has been treated as a legatee and allowed to contest.[9] The authorities also differ on whether parties who have a contingent interest in the estate have the right to contest.[10] However, it seems well settled that the right does not accrue to a party, who otherwise would have no interest, merely because of his relationship to a living person who is possessed of such a right.[11] His possibility of acquiring an interest in the future through this living person is deemed insufficient.

In the absence of a statute in Maryland specifying the parties entitled to contest, the Court of Appeals has limited the right to a "party interested". In *Johnston v. Willis*,[12] the Court announced the general rule to be:

> ". . . any person having an interest in the property of the testator in the event the will is annulled has the right to caveat his will."

This broad language has been cited in many Maryland decisions which have mitigated its effect. The Court of Appeals has allowed a legatee under a will revoked by a later one to contest.[13] The right to contest has been extended

[6] Crowell v. Davis, 233 Mass. 136, 123 N. E. 611 (1919), Appeal of Buckingham, 57 Conn. 544, 18 A. 256 (1889). It would seem that courts should refuse to allow a party to contest who has a greater financial interest if the will is upheld. Connor v. Brown, 9 Harv. 529 (Del.) 3 A. 2d 64 (1938); In re Fallon's Will, 107 Iowa 120, 77 N. W. 575 (1898). *Cf.* Dexter v. Codman, 148 Mass. 421, 19 N. E. 517 (1889).

[7] Allowing: In Re Murphy's Estate, 153 Minn. 60, 189 N. W. 413 (1922); Connelly v. Sullivan, 50 Ill. app. 627 (1893). Disallowing: In re Stewart's Estate, 107 Iowa 117, 77 N. W. 574 (1898).

[8] Allowing: In Re Carll's Will, 201 Misc. Rep. 829, 106 N. Y. S. 2d 363 (1951); Webb v. Lohnes, 96 F. 2d 582 (C. A. D. C., 1938). Disallowing: Austin v. Patrick, 179 Miss. 718, 176 So. 714 (1937); In re Sexton's Estate, 146 Neb. 618, 20 N. W. 2d 871 (1945). For discussion see 58 A. L. R. 1462.

[9] Reed v. Home Nat. Bank, 297 Mass. 222, 8 N. E. 2d 601 (1937).

[10] Allowing: In re Plaut's Estate, 27 Cal. 2d 424, 164 P. 2d 765 (1945); Disallowing where contestant only had a mere possibility: In re Rogers' Estate, 15 N. J. S. 189, 83 A. 2d 268 (1951). See also: 162 A. L. R. 843.

[11] Halde v. Schultz, 17 S. D. 465, 97 N. W. 369 (1903); In re Ballmann's Will, 198 Misc. Rep. 916, 100 N. Y. S. 2d 447 (1950); 149 A. L. R. 1270.

[12] 147 Md. 237, 240, 127 A. 862 (1925).

[13] De Garmendia's Estate, 146 Md. 47, 125 A. 897 (1924); Hamill v. Hamill, 162 Md. 159, 159 A. 247 (1932).

to a trustee under a prior will.[14] However an executor whose appointment under the will was revoked by a codicil was refused the right to caveat.[15] In *Loyola College v. Stuart*,[16] where religious corporations who were named beneficiaries in a prior will filed a caveat to a later will, although under the Maryland Declaration of Rights in order to be valid, all gifts to religious corporations had to be subsequently sanctioned by the Legislature, it was held that since their gift could be ratified by timely legislative action, the caveators were sufficiently interested. This decision, apparently recognizing the right to contest in a contingent legatee under a prior will, must be compared with *Blake v. Blake*,[17] where the Court of Appeals refused to allow a caveat to a codicil by a contingent remainderman under the will, whose taking was predicated on the happening of two events. In so holding the Court of Appeals said:

> ". . . the possible future interest of the appellants in the testator's estate is too remote to serve as the basis of a right to contest the codicil by which his will was modified. In order to be sufficient for such a purpose, the contingent interest should at least be one which would have fastened upon the remainder if the contingency affecting its vesting, at the death of the life tenant, had occurred when the caveat was filed."[18]

These cases may be harmonized in view of the differences in the contingencies involved, but at what degree of contingency the Court will draw the line as to the accrual of the right to contest is uncertain. It is reasonable to infer, however, that the Court of Appeals would not recognize a right to caveat by a party who, but for his relationship to a living person with a right to contest, would have no interest in the testator's estate.

Thus, under the prevailing Maryland view, as well as general trend of decisions throughout the United States, no right to contest had accrued to the caveatrix in the instant case at the time the will was offered for probate. At this time the caveatrix was merely a presumptive heir of a party who held the right. Whether the caveatrix gained the necessary standing to contest after the death of her parents raises the second phase of the problem.

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[14] Johnston v. Willis, *supra*, n. 12; Morgan v. Dietrich, 178 Md. 66, 12 A. 2d 199 (1940).
[15] Helfrich v. Yockel, 143 Md. 371, 122 A. 360 (1923).
[16] 179 Md. 96, 16 A. 2d 895 (1940).
[17] 159 Md. 539, 150 A. 861 (1930).
[18] *Ibid*, 543.

CAN THE RIGHT TO CONTEST SUBSEQUENTLY BECOME MAINTAINABLE BY THOSE CLAIMING THROUGH THE PARTY TO WHOM IT ORIGINALLY ACCRUED?

The cases in which this problem most frequently arises are those where the party to whom the right of contest accrued dies within the statutory period for contesting the will of the testator, and his heirs, personal representatives, or beneficiaries under his will attempt to contest the original will. The caveators there proceed on the theory that if the contested will is annulled, they will have an interest in the estate of the testator through the party who died with the right of contest.[19] The courts that allow the contest to be originated by an heir, personal representative, or beneficiary under the will of a deceased party to whom the right of contest originally accrued, treat the right of contest as a property right which survives the death of the original accruee.[20] Generally the same courts that allow an heir, personal representative, or beneficiary under a will to originate the contest, allow him to revive a contest instituted by the party through whom he claims.[21] The rationale advanced by these courts was probably best stated by the Supreme Court of Washington when they said:

> ". . . the heir of an heir has, on descent cast, exactly the same direct pecuniary interest that the deceased heir had. In either case, but for the will, the same property rights would have descended first to the heir, then to the heirs of the heir. . . . It is a property right in no sense purely personal to the heir of the testator, . . ."[22]

Conversely, the courts that deny the right of the heirs, personal representatives, and beneficiaries under the will of the party to whom the right of contest originally accrued

[19] Conversely, if the accruee was merely a trustee or executor under a prior will, the right of contest based on this purely personal status should only be maintainable by the party to whom it accrued.

[20] In Re Baker's Estate, 170 Cal. 578, 150 P. 989 (1915); In Re Rapp's Will, 180 Misc. Rep. 731, 44 N. Y. S. 2d 404 (1943); In Re Field's Estate, 38 Cal. 2d 151, 238 P. 2d 578 (1952); In Re Siebs' Estate, 70 Wash. 374, 126 P. 912 (1912); Crawfordsville Trust Co. v. Ramsey, 178 Ind. 258, 98 N. E. 177 (1912); Chilcote v. Hoffman, 97 Ohio St. 98, 119 N. E. 364 (1918); 129 A. L. R. 324. See Dickson v. Dickson, 5 S. W. 2d 744 (Tex., 1928), where the court denied a disinherited heir of the original accruee the right to contest. This case seems to be in point with the instant case.

[21] Hall v. Blackard, 298 Kent. 354, 182 S. W. 2d 904 (1944); In Re Mackenzie's Will, 247 App. Div. 317, 286 N. Y. S. 362 (1936); In Re Hilkemeier's Will, 46 N. Y. S. 2d 161 (1943); Holt v. Rice, 51 N. H. 370 (1871); Burnett v. Milnes, 148 Ind. 230, 46 N. E. 464 (1897).

[22] Ingersoll v. Gourley, 72 Wash. 462, 130 P. 743, 747 (1913).

to originate or revive a contest, treat the right of contest as a personal right in the original accruee.[23] An example of the reasoning of these courts may be seen in the language of an opinion by the Supreme Court of Tennessee:

> "The (right of contest) . . . was not a property right. It was a mere right of action, in which nothing could or can be directly recovered. . . . The policy of the law is against the transfer of mere rights of action."[24]

Some of the courts that have recognized the right of contest as a property right have allowed a creditor of a disinherited heir to bring a contest of the will.[25] This can be justified by considering the right of contest as a means of garnishing an asset of the debtor.

There is only one prior Maryland decision covering this phase of the problem. In *Brewer v. Barrett*,[26] where the testator left A, B, and C as his heirs at law and A subsequently died, it was held that A's heirs were sufficiently interested in the estate of the testator to originate a contest of his will. A statute in Maryland gives heirs, personal representatives, and beneficiaries under a will of the deceased party with the right to contest the right to continue a contest instituted by the original accruee.[27] However, the availability of these remedies in Maryland is lessened to some extent by the statutory limitation on the time for bringing the contest, which provides that no contest may be instituted after one year from the admission of the will to probate.[28] Furthermore, unlike some similar statutes in other jurisdictions no period of extension for disabilities is

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[23] Selden v. Illinois Trust & Savings Bank, 239 Ill. 67, 87 N. E. 860 (1909); Darby v. Arrington, 194 Miss. 123, 11 So. 2d 220 (1942); Storrs v. St. Luke's Hospital, 180 Ill. 368, 54 N. E. 185 (1899); Cain v. Burger, 219 Ala. 10, 121 So. 17 (1929); Hall v. Proctor, 242 Ala. 636, 7 So. 2d 764 (1942); Davis v. Davis, 252 S. W. 2d 521 (Mo., 1952); Thomson v. Butler, 136 F. 2d 644 (8th Cir., 1943).

[24] Ligon v. Hawkes, 110 Tenn. 514, 75 S. W. 1072, 1074 (1903). Parenthetical material supplied.

[25] Allowing: In Re Kalt's Estate, 16 Cal. 2d 807, 108 P. 2d 401 (1940); In Re Van Doren's Estate, 119 N. J. Eq. 80, 180 A. 841 (1935). Disallowing: Lockard v. Stephenson, 120 Ala. 641, 24 So. 996 (1899); Shepard's Estate, 170 Pa. 323, 32 A. 1040 (1895). See 46 A. L. R. 1490; 128 A. L. R. 963.

[26] 58 Md. 587 (1882).

[27] Md. Code (1951), Art. 93, Sec. 234:

> "Wherever after issues granted any party thereto dies, the court to which they are sent may admit as a party to such issues the proper representative, whether as to realty or personalty, namely, devisee, heir, executor or administrator of the party so dying in the place of such party, and the Orphans' Courts shall have the same right at any time after filing a petition before the issues are sent."

[28] Md. Code (1951), Art. 93, Sec. 372, set out in full, *supra*, n. 3.

allowed.[29] While the above decision in *Brewer v. Barrett* would seem to indicate a treatment of the right to contest as a property right, the Court of Appeals has refused to allow a judgment creditor of a disinherited heir to maintain a caveat to the will which disinherited his debtor. In *Lee v. Keech*,[30] the Court reasoned:

> "The judgment creditor would not be one upon whom any part of the estate or rights of ownership in the property would devolve if intestacy should be established, . . ."

It is interesting to note that in that case the testator's property was real estate on which the lien of the judgment creditor would attach immediately if intestacy were established. This apparently inconsistent view was explained by the Court. They pointed out that if intestacy were established, the judgment creditor would not have "a part of the sum total rights of ownership"[31] but merely a lien. This distinction seems valid.

In the instant case the caveatrix was disinherited by the original accruees, her parents, and therefore even if the Court of Appeals had considered the right of contest as a property right, it would not have passed to her on their death. It is submitted that the caveatrix would have been in no better position had she filed caveats to the wills of her parents at the same time as filing the one involved here, since she would still have had merely a possibility of an interest in the estate of her parents until the issues on the caveats were heard. Whether the Orphans' Court could have honored a request of a party in the position of the caveatrix here to toll the limitations on his right to contest until he could establish a right to the estate of the original accruee is doubtful under the prior decisions of the Court of Appeals in dealing with the statute.[32]

Although the Court of Appeals has never expressly adopted the view that the right of contest is a property right, their prior decisions indicate a treatment of it as such, if only in a limited sense. Before recognizing the right of contest as an absolute property right the Court of Appeals would have to weigh the reasonable arguments *pro*

[29] The Court of Appeals has refused to read a period of extension for disabilities into the statute. See: McLaughlin v. McLaughlin, 186 Md. 165, 46 A. 2d 307 (1946); Garrison v. Hill, 81 Md. 551, 32 A. 191 (1895). Also see: 15 A. L. R. 2d 515, as to the possibility of fraud affecting the limitation in time for bringing a contest.

[30] 151 Md. 34, 38, 133 A. 835 (1926).

[31] *Ibid*, 36.

[32] *Supra*, n. 29.

and *con*. Such a recognition would allow more persons to tie up the estate of a testator with contests of his will, and the resulting depletion of the estate with the costs incident to the defense of these suits is a worthy argument against the propriety of the acceptance of this absolute view. In rebuttal, the statutory limitation on the time for filing a caveat might be sufficient to prevent overburdening litigation; and moreover, protection of parties who may have a right to property is a strong argument for the adoption of the absolute view. In view of the history of the treatment of this problem by the Court of Appeals, it is more probable that this Court would decline the adoption of any absolute view, but rather would prefer to have each different situation separately considered, at which time its inclusion or exclusion from the class of qualified contestants would of necessity be made.

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