

Opinion
#1132

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

TAX DIVISION

SEP 28 1976

FILED

EDWARD BALL)
JESSIE BAKER THOMPSON and)
GEORGE C. WRIGHT,)

Petitioners)

v.)

Docket No. 2357

DISTRICT OF COLUMBIA,)

Respondent)

OPINION AND ORDER

These petitioners appeal from the respondent's refusal to grant them a refund of inheritance taxes resulting from the distribution made in the Estate of Elsie Ball Bowley. This Court has jurisdiction pursuant to D. C. Code 1973, §§11-2201, 11-2202, 47-2413 and 47-2403.

The issue presented is whether George C. Wright, who was adopted in 1953 by the son of the decedent Elsie Ball Bowley, is entitled to share in the decedent's estate. The decedent died intestate in 1972.

All of the facts in this case have been fully stipulated by the parties. The Court received briefs and heard arguments presented on behalf of the parties on August 20, 1976.

I

The stipulation filed by the parties is as follows:

1. Elsie Ball Bowley was a domiciliary of the District of Columbia who died intestate on August 29, 1972.

2. Petitioner George C. Wright was adopted on July 30, 1953 in Henrico County, Virginia by the late Thomas Ball Wright, the son of the decedent Elsie Ball Bowley.

3. Thomas Ball Wright predeceased his mother, Elsie Ball Bowley.

4. Petitioner Edward Ball is a brother of the decedent Elsie Ball Bowley.

5. Petitioner Jessie Baker Thompson is the niece of the decedent, Elsie Ball Bowley.

6. On September 13, 1972, George C. Wright filed a petition in the United States District Court for the District of Columbia for letters of administration as the sole heir-at-law and next of kin of Elsie Ball Bowley. Thereafter, Jessie Baker Thompson and Edward Ball also petitioned in the United States District Court for the District of Columbia for letters of administration as sole heirs-at-law and next of kin of Elsie Ball Bowley, and moved to dismiss the petition of George C. Wright.

7. Litigation commenced and on November 30, 1972 the United States District Court dismissed George C. Wright's petition for letters of administration and ruled that Mr. Wright could not be an heir-at-law according to his interpretation of the District of Columbia adoption statutes, as embodied in D. C. Code §§16-301 through 16-305.

8. On December 12, 1972, Mr. Wright's motion to reconsider his petition for letters of administration for the Bowley estate was denied, and on December 21, 1972, he filed a notice of appeal in the United States Court of Appeals for the District of Columbia circuit.

9. On May 30, 1973, while Mr. Wright's appeal was pending in the United States Court of Appeals for the District of Columbia Circuit, co-administrators of the estate of Elsie Ball Bowley filed an inheritance tax return with the District of Columbia based on the results of the litigation in the District Court. This return was filed as if Jessie Baker Thompson and Edward Ball were the sole heirs of the estate of Elsie Ball Bowley.

10. After filing their briefs, but before oral argument was held, all interested parties to the appeal in the United States Court of Appeals, George C. Wright, Edward Ball and Jessie Baker Thompson, entered into a settlement agreement. The settlement agreement represented a compromise and final settlement of all interested parties' rights and claims to the estate of Elsie Ball Bowley. The agreement contained a plan for the distribution of the assets of the District of

Columbia estate of Elsie Ball Bowley and for the satisfaction of the estate's liabilities, equally among the three claimants.^{1/}

11. On March 25, 1975, the settlement agreement described in paragraph 10 hereof was ratified by the Superior Court of the District of Columbia, Probate Division.

12. After the settlement agreement described in paragraph 10 hereof had been reached by petitioners herein and after the Superior Court Probate Division had ratified that agreement, attorneys for the estate attempted to amend the inheritance tax returns filed with the District of Columbia by modifying the assessment of inheritance taxes to reflect the actual distribution of the estate under the settlement agreement.

13. By letter dated January 13, 1975, Alfred R. Rector, Supervisor of the Inheritance Tax Section of the Department of Finance and Revenue of the District of Columbia, informed counsel for petitioners that his office would accept only the inheritance tax return filed with the District of Columbia on May 30, 1973, in which Jessie Baker Thompson and Edward Ball were treated as the sole heirs-at-law of Elsie Ball Bowley.

14. The amount of tax paid in full by petitioners is \$518,751.14. Payment in full was made on August 29, 1975.

15. In addition, petitioners made a formal claim with respondent for a refund of inheritance taxes in the amount of \$340,059.45 plus interest, or in the alternative, for \$150,960.12 plus interest, on September 9, 1975. That formal claim was denied by respondent on January 12, 1976.

16. On February 2, 1976, Edward Ball, Jessie Baker Thompson and George C. Wright filed a petition with this Court seeking relief from the denial of their claim for a refund of inheritance taxes by respondent District of Columbia.

^{1/} The parties are in agreement that the decision entered by the United States District Court is not binding upon this Court, although, of course, the respondent argues that the ruling of the District Court is correct and should be followed in the instant case. Petitioners argue just as vigorously that the decision was in error.

The petitioners argue that, pursuant to D. C. Code 1973, §16-312 George C. Wright is entitled to inherit both from and through his adoptor (his father) and thereby is entitled to inherit from the adoptor's mother, Elsie Ball Bowley. Under this theory, the refund of inheritance tax would be slightly greater than \$340,000. In the alternative, the petitioners had argued that in any event, the tax imposed should not exceed that which would result following the actual distribution. Under the settlement reached while the probate case was pending in the United States Court of Appeals, the three petitioners had agreed to share, one-third each. Under this latter theory the amount of refund would have been almost \$151,000. However, the petitioners advised the court at the time of oral argument that they had abandoned this theory and would pursue their claim based upon the statute alone.

II

Before embarking on a discussion of the merits of this case, it is important to note the history of the adoption statute which affects the adoptee's right of inheritance.

The first such statute appeared in 1895 and provided that an adoptee was an heir-at-law of the adoptor. D. C. Code 1929, §15-1. Under that law, the adoptee could inherit from the adoptor but could not inherit through the adoptor. The adoptee also had the right to inherit from and through any natural parent.

A new adoption statute was enacted in 1937 (sometimes referred to as the 1937 Act), which provided that an adoptee could no longer inherit from his natural parents.^{2/} D. C. Code 1940, §16-205. The 1937 Act provided however that the above provision, "shall not be construed as affecting in any way the right and relation obtained by any decree of adoption entered prior to August 25, 1937".^{3/} D. C. Code 1940, §16-207. The obvious purpose of Section 16-207 was to avoid taking away any right which an adoptee had received under the prior law. Thus, a child adopted in 1936 and who thereby was entitled to inherit from his natural parent(s) as well as from his adoptive parent(s) did not lose that right upon passage of the statute. In Re Penfield's Estate, 81 F. Supp. 622 (D.C. 1949), affirmed sub nom 86 U.S. App. D.C. 201, 181 F.2d 277 (1950), rehearing denied 88 U.S. App. D.C. 201, 188 F.2d 990 (1951), cert denied 341 U.S. 925 (1951). In short, the statute was prospective. Needless to say, any child adopted after the effective date no longer was entitled to inherit from his natural parent, absent a contrary expression of intent by that parent.

Finally in 1954, the statute was again amended to provide that an adopted child could inherit both from and through

^{2/} It goes without saying that an adopted child could inherit from his natural parents where they expressed such an intent in their will.

^{3/} The effective date of the statute.

his adoptor. D. C. Code 1973, §16-312. That statute became effective June 8, 1954, and is hereinafter sometimes referred to as the 1954 Act.^{4/} In defining child, Congress provided

4/ §16-312. Legal effects of adoption

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adoptor. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural parents is the spouse of the adoptor, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time.

(D. C. Code 1973, §16-313):

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective.

Last, Congress also provided (D. C. Code 1973, §16-315):

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954.

III

The interpretation to be given the above-quoted sections is the issue in this case. The petitioners contend that even though George Wright was adopted before the effective date of the 1954 Act, he is still entitled to inherit from and through his adoptive father, that is, from the estate of Mrs. Bowley. The respondent counters by arguing that the 1954 Act is not retroactive by its terms and that accordingly, anyone adopted prior to the effective date of the statute would take from but not through their adoptor. This was also the ruling of the United States District Court when these same petitioners were adversaries; Wright contending that he was the sole heir of Mrs. Bowley and Ball and Thompson arguing that Wright took nothing under the statute. The District Court in deciding against Wright apparently placed heavy reliance on the decision of Riggs National Bank of Washington v. Summerlin, 144 U.S. App. D.C. 131, 445 F.2d 201 (1971).

In the opinion of this Court, the District Court's reliance on Summerlin is misplaced and in fact that portion of the case which purported to interpret the statute is merely dicta. Even so, that dicta supports the argument now made by these petitioners.

Before discussing the above case it is important to discuss a case decided two years before by the same court. In Johns v. Cobb, 131 U.S. App. D.C. 85, 402 F.2d 636 (1968), the court was asked to decide whether an adopted child was entitled to take under two wills which left property to the "issue" of his adoptive mother. One will was executed in 1922 and the other in 1944. The adoption took place in 1924. Although it is not clear exactly when the testators died, it does seem clear that they died well after 1954 Act. The court found, after reviewing the wills, that it could not find any language in the four corners of the wills to assist them in determining what the testators meant by "issue". The Court's search for extrinsic evidence was also unsuccessful. Finding nothing in the wills to assist them, the court decided that absent any expression of intent they would look to the 1954 Act which provided "a clear indication of this jurisdiction's general policy towards adopted children". They determined that the public policy as expressed by the 1954 Act was to afford the adopted child "all the rights of natural offspring". U.S. App. D.C. at 87, F.2d at 638. Since the testators expressed no intent in their wills, the court in keeping with the public

policy, held that the term "issue" as used in those wills included adopted children.^{5/}

The trustee in Riggs National Bank of Washington v. Summerlin, supra, became concerned about his responsibilities after reading Johns and filed suit for construction of the will which had been executed in 1929. The testatrix died in 1930 leaving a will which provided for a testamentary residuary trust. She provided in part that upon the death of her grandsons, the corpus of the trust was to be distributed to the "issue" of her grandsons. One grandson adopted a child twelve years after the death of the testatrix and the question became whether that adopted child was entitled to take as "issue" of the testatrix.

The court in Summerlin found that it could interpret the will based upon the language contained in the will itself. It concluded that the testatrix did not intend to include adopted children in the term issue. This alone distinguishes the Summerlin case from Johns where the testator expressed no intent as to what they meant by "issue". It can also be distinguished from this case since here Mrs. Bowley died intestate, therefore expressing no intention. The Summerlin court could have stopped at this point since they had already interpreted the will, however, they went on to distinguish

^{5/} The court also relied on D. C. Code 1967, §16-313 which defines "child".

the facts in Johns and suggested an interpretation which should be given to Sections 16-312 and 16-315. This latter portion of their opinion clearly is dicta.

They noted that in Johns the testators had written their wills and that the adoption had occurred before the 1954 Act and that the testators had died after 1954. Under these facts the testators knew the adoptee and presumably were aware of the statute and elected not to change their wills. Congress had considered that some persons might not agree with the changes made by the 1954 Act but noted that those who objected "could specifically change their wills to the contrary [to exclude adopted children]". (Matter in brackets supplied.) H. Rep. No. 1347, 83rd Cong., 2d Sess. 7 (1954). The Johns testators could have changed their wills, however, such was not the case in Summerlin where the testatrix died before the 1954 Act and twelve years before the adoption. 144 U.S. App. D.C. at 140, 445 F.2d at 210. The court also suggested that the proper interpretation of Section 16-315, in which Congress provided that the 1954 Act was not retroactive, was to prevent the new law (1954 Act) from applying to the "wills of those already dead, who had no chance to change their wills." 144 U.S. App. D.C. at 139, 445 F.2d at 209. Even though the above comments are dicta, they do no violence to the position of these petitioners and are actually supportive of their arguments.

Last, in Summerlin, the court noted that in construing wills it was necessary to consider the law in existence at the time the testator makes his will or at least at the time of his death.

144 U.S. App. D.C. at 138, 139; 445 F.2d at 208, 209.^{6/} The testatrix in Summerlin executed her will in 1929 and died in 1930, and the adoption took place apparently in 1942. All dates were pre-1954 Act. Here, the decedent left no will and died in 1972, 18 years after the 1954 Act and 19 years after the adoption. Certainly, Mrs. Bowley, had she not been satisfied with the method of distribution, could have framed a will excluding the adoptee. It is interesting to note that the Appellate Court supported the proposition that we ascertain the intent of the testator by looking at the law at the time of his death, by citing In Re Gray's Estate, 168 F. Supp. 124 (D DC 1958). 144 U.S. App. D.C. 138, 445 F.2d at 208. In that case the adoptee was adopted in 1946 and the adoptive mother died in 1954 before the effective date of the 1954 Act. The testator died in 1958. The District Court held that the rights of the adoptee were determined as of the date of the death of the testator and that accordingly, the child, who had been adopted before 1954, could inherit from and through his adoptor.

IV

The statute itself appears to be unclear. Section 16-312 allows adopted children to inherit from and through the adoptor but Section 16-315 limits the retroactive affect of that statute. Although agreeing that the statute is somewhat ambiguous, respondent argues that Section 16-315 acts to make Sections 16-312 prospective only - that is, it does not apply, according to the respondent, to anyone adopted prior to June 8, 1954. This Court cannot agree.

^{6/} The court took pains to review the law in existence at the time of the execution of the will and at the death of the testators, 1929 and 1930 respectively.

A careful reading of Section 16-315 and a review of its history and a review of the legislative history, demonstrates that it would not prevent George Wright from inheriting from the estate of Mrs. Bowley.

In the view of this Court, Section 16-315, is designed to accomplish two things. First, it is included to protect the right of a child adopted prior to the 1937 Act to inherit from his natural parent. Absent that section, that proposition would be thrown into question. See Part II, supra. Thus, it provides that it in no way affects "the rights and relations obtained by any decree of adoption entered prior to June 8, 1954". Second, it has no effect "prior to June 8, 1954, except to the extent that they specifically so provide". This is consistent with the Summerlin statement that the statute does not affect those estates where the testator did not have an opportunity to change his will, i.e., those cases where the testator or the intestate died prior to the 1954 Act. Thus, had George Wright been adopted in 1953 and Mrs. Bowley died the same year, it is clear that Wright could not have inherited from and through his adoptor's estate. The best illustration of this principle is found in the case of a testamentary trust which continues in existence after the 1954 Act but where the testator died before the Act. This was of course the situation in Summerlin. Under those conditions, as the court in Summerlin found, the adoptee could not inherit through the adoptor's estate.

Historically, it must also be noted that the primary purpose of the predecessor of Section 16-312, namely the 1937 Act (D.C. Code 1940, §16-207) was to prevent the statute from affecting rights which had already attached. Prior to 1937, an adoptee could inherit both from his natural and adoptive parents. After 1937, an adoptee could inherit only from his adoptive parents. Under Section 16-207, a pre-1937 adoptee who lived beyond 1937 still retained the right to inherit from and through his natural parent.

Section 16-207 of the 1937 Act appeared necessary for another reason. When a petition for adoption is filed the adoption court must take into consideration many factors before acting on the petition. One such factor is the financial standing of the adoptive parents. Prior to 1937, the adoptee also stood to inherit from his natural parent and it is reasonable to assume that in such cases the adoption court may also have placed upon the scale of decision, the interest the adoptee might have been expected to receive (from his natural and well as his adoptive parents.)

The legislative history also suggests the interpretation this court have given the statute. See H. Rep. No. 1347, 83rd Cong., 2nd Sess. (1954). It is quite clear that Congress intended Section 16-312 to have a retroactive application where the adoption and the execution of the will occurred prior to the 1954 Act. They weighed the problem that a child might be "sneaked" in on an unsuspecting grandparent. They also noted that, while most grandparents preferred the "from and through"

law, there were some who did not. Congress resolved this impasse by noting that it was therefore "the thought of the Committee that the law should be brought into conformity with the desires of the many and the few who objected to it could specifically change their wills to the contrary". Obviously, Congress intended the statute to have retroactive application in the case of the pre-1954 adoption and a post-1954 death of the testator. Since Congress intended the statute to have retroactive application in those cases, it seems logical that the same would apply in the case of one who elected to allow her estate to pass under the intestacy laws and who died after the 1954 Act. Any other construction would mean that Congress intended to create two classes of pre-1954 Act adoptees. One class would consist of adoptees whose grandparents executed a will prior to 1954 and died after the 1954 Act. This class would inherit from and through unless the will expressed a contrary contention. The second class would be those adoptees whose adoptive grandparents died after 1954 and who died without a will. The respondent's construction of this statute would allow this class to take only "from" but not "through" their adoptors. Nothing in the statute nor the legislative history even remotely suggests that that was the intent of Congress. This Court concludes that Congress had no such intent and that Congress intended the law to apply with equal force to those who died with or without a will.

Last, it should not be overlooked that the change in the 1954 Act represents public policy. That policy is that adopted

children are to be treated just as though they were the natural children of the adoptor. Johns v. Cobb, supra. As Congress expressed it, "the proposed change is in keeping with the idea that the greatest possible protection should be given to the adopted child". H. Rep. No. 1347, 83rd Cong., 2d Sess. 7 (1954).

V

This Court holds that Congress intended the statute to have retroactive application where the adoption occurred prior to the 1954 Act and the decedent dies with or without a will after the 1954 Act. In those cases, the decedents, if they had been dissatisfied with the 1954 Act, had a chance to change or write their will as the case may be. Section 16-315 prohibits the retroactive application of the act in those cases where the decedents died prior to the 1954 Act and also allows pre-1937 Act adoptees to claim inheritance from their natural parents.

Here the Court holds that George C. Wright is entitled to inherit from and through his adoptor, that the 1954 Act applies in his case and that as a result he may inherit from the estate of Elsie Ball Bowley.

There apparently is no dispute as to the effect this ruling will have on the refund of the inheritance tax.

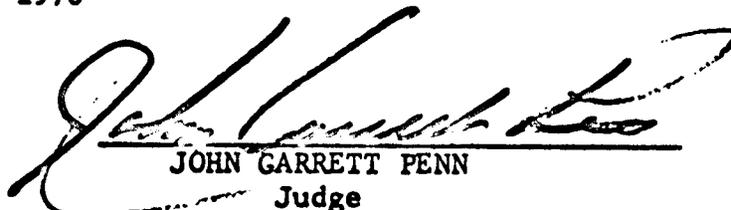
O R D E R

It is hereby

ORDERED that the petitioners are entitled to a refund of inheritance taxes consistent with the ruling of this Court and it is further

ORDERED that the petitioners shall submit a proposed order for refund within five days of the receipt of this Opinion and Order, and shall simultaneously submit a copy of the proposed order to the respondent. Respondent shall have five days in which to file written objections to the proposed order for refund. In the event respondent fails to object to the proposed order within the above time, the Court will deem that the respondent has consented to the order and the order shall be entered accordingly.

Dated: September 27, 1976


JOHN GARRETT PENN
Judge

Copies to:

John J. Pyne, Esq.

Dennis Collins, Esq.

Richard L. Aguglia, Esq.

Copies mailed postage prepaid
to parties mentioned above on
9/28, 1976.

John Senerius

