

ESTATE OF RUTH M. COONS, C.P. Franklin County Branch,
No. 119, 1984, Volume 93, Page 223

Declaratory Judgment - Wills - Ambiguity

1. The intention of the testator is of primary importance and must be gathered by a consideration of all of the language contained in the four corners of the will.
2. It is presumed that the testator did not intend to die intestate and her will should be constructed so as to avoid intestacy, unless it does violence to the language of the will.

John McD. Sharpe, Jr., Esquire, Counsel for plaintiff

Edmond C. Wingerd, Jr., Esquire, Counsel for Defendants

OPINION AND ORDER

EPPINGER, P.J., July 3, 1985:

Ruth M. Coons left two pieces of paper seemingly intended as wills disposing of her real estate. The first is as follows:

"My Will of farms
Apr. 20, 1984

"I want Ray to get my home place for less than half price as he and Nancy looked after me everyday, did for me everyday.

C. Coons

"Norman is to get Archie Coons farm for less than market value too. He repaired also.

Estep

"Jane is to get her home for (illegible) as we charged her very little rent.

Ruth M. Coons"¹

The second is as follows:

"Made in 1974 after Bruce passed away reapp

¹ Emphasis in original.



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall
24 Hour Banking Available at the Waynesboro Mall

LEGAL NOTICES, cont.

26. Deed from Gregory A. Christman and Peggy M. Christman, his wife, to Glenn K. Mann and Jean L. Mann, his wife, recorded September 26, 1983, in Franklin County Deed Book 889, Page 485.

27. Deed from Gregory A. Christman and Peggy M. Christman, his wife, to Glenn D. Dice and Catherine M. Dice, his wife, recorded November 9, 1984, in Franklin County Deed Book 917, Page 185.

28. Deed from Gregory A. Christman and Peggy M. Christman, his wife, to Katherine L. Williamson and Dominique M. Harris, recorded November 9, 1984, in Franklin County Deed Book 917, Page 180.

29. Deed from Gregory A. Christman and Peggy M. Christman, his wife, to Roy K. Bricker and Faye E. Bricker, his wife, recorded November 9, 1984, in Franklin County Deed Book 917, Page 190.

SUBJECT, NEVERTHELESS, to a right of way granted by Ambrose G. Christman and Margaret C. Christman, his wife, to United Telephone Co. of Pa. dated February 12, 1973, recorded in Franklin County Deed Book Volume 683, Page 804.

BEING sold as the property of Gregory A. Christman and Peggy M. Christman, his wife, Writ No. AD 1985-250.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, February 24, 1986 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, February 28, 1986 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

1-17, 1-24, 1-31

LEGAL NOTICES, cont.

Apr. 20, 1984
rewritten
in

"I will home to Ray K. Coons also land willed to my children by my father I want sold to Ray. He gets share of that land too.

"I will my Archie Coons farm to Norman C. Coons for less than marget value. He repaired also.

"Jane Estep is get home & land where she lives. Must pay 28,000 mountain fot it. That is with land we reserved off her place. (mountain land)

Ruth M. Coons"

Both were probated as wills of the decedent.

In this declaratory judgment action we are asked:

(1) to declare that the attempted devise of the Home Place of the decedent to Ray K. Coons, fails because of ambiguity as to which (of the two writings) expressed decedent's final intentions and uncertainty in its terms,

(2) that the devise of the Archie Coons Farm to Norman C. Coons fails for lack of certainty in its terms,

(3) that the specific devise of the home and land where Jane Estep lives is a valid effective devise conditioned upon her paying or having her share of the estate charged with the sum of \$26,000.²

We are only asked to resolve issue (2). Issues (1) and (3) were uncontested. Thus we are asked to determine the rights of Norman C. Coons under the writings. We conclude that the two are identical in effect. They give Norman the right to purchase the Archie Coons property for less than market value. The price will have to be determined in another proceeding or agreed upon because no evidence was presented to us by any of the parties from which we can make that determination.

Dale Coons, the administrator c.t.a., asks us to find that Norman should take nothing, thus creating a partial intestacy. We must presume that Mrs. Coons "intended to dispose of her

² Plaintiff's complaint.

entire estate and not die intestate as to any part of it. In order to effectuate this intention, a construction should be adopted that would avoid intestacy unless it does violence to the language of the will." *In Re Farrington's Estate*, 422 Pa. 164, 168, 220 A.2d 790, 793 (1966).

Both purport to give Norman the right to buy the Archie Coons' farm for less than market value. The only difference is that in the first, after the testatrix said she wanted Ray Coons to have the home place for less than half price because he and Nancy looked after him, she said in the second paragraph she wanted Norman to have the Archie Coons' farm for less than market value too, while in the second, after willing the Archie Coons' farm to Norman she said, "He repaired also."

In order to reach his conclusion that the devise must fail because of ambiguity, the administrator suggests that the word "too" could be interpreted in two ways; one allowing Norman to take the Archie Coons' farm for less than half the market value in the same way Ray takes the home place. The second interpretation, administrator contends, would allow Norman to take the farm for less than market value in addition to the similar gift to Ray. We see no ambiguity in the two instruments. Each clearly indicates that Norman Coons is to have the Archie Coons' property for less than market value.

In construing the two documents, we are guided by the principle that, "the intention of the testator is of primary importance, the lodestar, cornerstone, cardinal rule. So that intention shall be given full expression, it can be denied only where it is unconstitutional, unlawful, or against policy." *In re Janney's Estate*, 498 Pa. 398, 401, 446 A.2d 1265, 1266 (1982). Mrs. Coons' intent, "must be gathered from a consideration of all of the language contained in the four corners of the will and not merely from isolated clauses or provisions thereof." *Dinke Estate*, 403 Pa. 179, 182, 168 A.2d 337, 339 (1961).

ORDER OF COURT

July 3, 1985, a declaratory judgment is entered in the above captioned matter as follows:

(1) The attempt of the decedent to devise the Home Place to Ray K. Coons fails.



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall
24 Hour Banking Available at the Waynesboro Mall

(2) The Archie Coons farm shall go to Norman C. Coons for less than the market value.

(3) The home and land where Jane Estep lives shall pass to her under the will on condition that she pays \$26,000 to the estate. Such sum or any portion thereof may be charged against her share of the estate.

The costs of these proceedings shall be paid by the estate.

MOHN V. MOHN, C.P. Franklin County Branch, F.R. 1984-370

Divorce - Discovery - Interlocutory Order - Bifurcation

1. A spouse seeking divorce is not entitled to the detailed financial information of the other spouse until a Master determines that the plaintiff is entitled to a divorce.

2. An order bifurcating a divorce action between issue of alimony pendente lite, counsel fees, expenses and divorce - the issue of property distribution is an interlocutory order and not appealable.

3. An order is interlocutory and not final unless it effectively puts the litigant out of court.

4. The issue of bifurcation of a divorce proceeding is properly raised in the defendant's prayer for relief in his answer.

5. Where defendant stipulates ability to pay alimony pendente lite, plaintiff must show need and detailed information on defendant's business is irrelevant in proving need.

Eileen F. Schoenhofen, Esquire, Counsel for Plaintiff

Wayne F. Shade, Esquire, Counsel for Defendant

OPINION AND ORDER

EPPINGER, P.J., June 14, 1985:

On May 30, 1984, plaintiff, Maxine E. Mohn (Maxine), filed a complaint seeking a divorce, equitable division of property, alimony pendente lite, counsel fees and expenses. Subsequently, she served interrogatories on defendant, George B. Mohn (George). Included were requests for information about his business which



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall

24 Hour Banking Available at the Waynesboro Mall
