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Descent and Distribution - Joint Ownership - Imposition of Constructive Trust on Murderer of Co-Tenant

John B. Schwemm S.Ed.
University of Michigan Law School

DESCENT AND DISTRIBUTION—JOINT OWNERSHIP—IMPOSITION OF CONSTRUCTIVE TRUST ON MURDERER OF CO-TENANT—A husband, owning land with his wife as tenants by the entireties, killed her and immediately thereafter committed suicide. In an action to determine ownership of the realty, both the probate and appellate[1] courts declared that since a relevant disinheritance statute[2] was inapplicable, full title vested in the husband and, upon his death, descended to his heirs. On appeal, *held,* reversed. Despite the common law nature of such tenancies, equity will impose on the husband a constructive trust in one-half the property for the benefit of the victim's estate. *National City Bank of Evansville v. Bledsoe,* (Ind. 1957) 144 N.E. (2d) 710.

In order to prevent the enjoyment of property acquired by descent or devise from the victim of murder, yet avoid a questionable interpretation of the statutes of wills and intestacy,[3] many writers have favored imposing on the slayer a constructive trust in favor of the decedent's estate.[4] Since it is generally agreed that to allow retention of such interests by

1 Nat. City Bank of Evansville v. Bledsoe, (Ind. App. 1956) 133 N.E. (2d) 887.

2 Ind. Stat. Ann. (Burns, 1953 Repl.) §6-212, providing that one ". . . legally convicted of intentionally causing the death of another . . . shall . . . become a constructive trustee of any property . . . acquired by him . . . because of such death. . . ." The husband, by reason of his suicide, of course was never "legally convicted."

3 A minority of decisions in the absence of disinheriting statutes have concluded a murderer may take no interests from his victim by reading into the laws of descent and devise an exception based on public policy and supposed legislative intent. E.g., Box v. Lanier, 112 Tenn. 393, 79 S.W. 1042 (1904); Price v. Hitaffer, 164 Md. 505, 165 A. 470 (1933).

4 Ames, "Can a Murderer Acquire Title By His Crime and Keep It?" LECTURES ON LEGAL HISTORY 310 (1913); BOGERT, TRUSTS AND TRUSTEES §478 (1946); SCOTT, TRUSTS, 2d ed., §§492, 493.2 (1956); RESTITUTION RESTATEMENT §§187, 188 (1937).

the slayer is undesirable,[5] this solution is becoming increasingly acceptable to the courts.[6] With joint ownership, however, a basic objection to use of the trust has arisen since, under the theoretical nature of these tenancies, a survivor obtains no additional interest through the death of his co-tenant.[7] Most recent decisions, absent statute, have not considered this argument conclusive.[8] Considering that as a practical matter substantial benefit does accrue,[9] and that the reason for equitable intervention is as strong here as in the cases of inheritance, these courts appear justified in disregarding the technical rules of title. Ostensibly, a more serious threat to the trust solution is the existence, presently in some thirty states, of disinheriting legislation. As these laws are generally drafted to preclude only taking by descent or devise,[10] an intent on the part of legislatures to allow the surviving joint owner retention of his full interest could be inferred. This has been the result in the majority of jurisdictions where prior to enactment the murderer was allowed to take.[11] In Illinois[12] and Indiana,[13] however, the common law appears to have been reversed on grounds of the general policy indicated by the statutes.[14] Similarly, in states where the issue had not previously been resolved in the slayer's favor, the statutes have been said to supplement rather than supersede common law ideas.[15] On the whole, these laws have not been conclusive in joint ownership litigation.

[5] E.g., New York Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591 at 600 (1886).

[6] E.g., Dutill v. Dana, 148 Me. 541, 113 A. (2d) 499 (1952); Whitney v. Lott, 134 N.J. Eq. 586, 36 A. (2d) 888 (1944). Technical objections to the constructive trust in this situation are collected in Wade, "Acquisition of Property By Wilfully Killing Another," 49 HARV. L. REV. 715 (1936).

[7] BOGERT, TRUSTS AND TRUSTEES §478 (1946). In this note, joint ownership refers to any tenancy involving the right of survivorship.

[8] E.g., Budwit v. Hurr, 339 Mich. 265, 63 N.W. (2d) 841 (1954); Neiman v. Hurff, 11 N.J. 55, 93 A. (2d) 345 (1952). See, generally, annotation in 32 A.L.R. (2d) 1099 (1953).

[9] Death entitles the survivor to exclusive use and enjoyment, allows him to alienate the property freely, and removes the possibility of his interest being divested. Tyler v. United States, 281 U.S. 497 (1930).

[10] At least two statutes, S.D. Code (1939) §§56.0502, 56.0505(1), and Wash. Rev. Code §11.52.012, Laws (1955) c. 141, directly include joint ownership. Absent a specific reference, however, no case has been found construing the statutes as applicable to these tenancies although the language in several conceivably lends itself to such interpretation; e.g., Utah Code Ann. (1953) §74-3-22.

[11] Smith v. Greenburg, 121 Colo. 417, 218 P. (2d) 514 (1950); Wenker v. Landon, 161 Ore. 265, 88 P. (2d) 971 (1939); In re Foster's Estate, (Kan. 1958) 320 P. (2d) 855, which says at 860, ". . . the legislature has pre-empted the field and subject matter, and . . . has [not] . . . seen fit to limit or restrict the right of a surviving *joint tenant*. . . ."

[12] Bradley v. Fox, 7 Ill. (2d) 106, 129 N.E. (2d) 699 (1955).

[13] Principal case.

[14] For a strong disapproval of this procedure, see principal case at appellate level, note 1 supra, at 892.

[15] E.g., Smith v. Dean, 226 Ark. 438, 290 S.W. (2d) 439 (1956); Ashwood v. Patterson, (Fla. 1951) 49 S. (2d) 848; Cowan v. Pleasant, (Ky. 1954) 263 S.W. (2d) 494. Thus, in Leggette v. Smith, 226 S.C. 403 at 407, 408, 85 S.E. (2d) 576 (1955), it was said the statute served only to make criminal conviction conclusive in a subsequent civil action.

Granting, then, that a trust is to be imposed, two distinct and conflicting theories are employed in determining what portion of the estate will be divested. By one, the survivor retains that life estate in half the property to which he always was entitled but, in most instances, must surrender the remainder.[16] The alternative, illustrated by the principal case, whereby the victim's heirs are given an undivided one-half of the entire property is currently more popular[17] despite what appears to be a fallacious premise. According to this view death, like divorce, must sever the entirety tenancy.[18] Further, when death is wrongfully caused by the co-tenant, that person cannot be said to survive in contemplation of the law, and since neither party is then eligible to claim the whole by right of survivorship, it must be held through a tenancy in common.[19] This analysis fails to consider substantive differences presented by the situations of divorce and murder. In the former, the problem is to distribute property between two living co-owners, neither of whose claim is necessarily more equitable than that of the other; in the latter, it is to divest the remaining owner of whatever practical gain he has wrongfully acquired. Thus, a conclusion that the interest of the murderer should rise no higher than that of the divorcee[20] fails to reach the more meaningful question of whether it should rise as high as that of the divorcee. As the killing has precluded a natural determination of who ultimately will enjoy the benefits of survivorship, it would appear more reasonable to resolve any doubt against the slayer and, as in the first approach, take from him the remainder interest.[21] However, when theory is but a device of justification for decision, as is probably the case in this area, it should not be unduly criticized if in the final analysis substantive justice has been achieved. It is submitted that, absent controlling legislation, where the slayer is alive and a party to the action, he should retain only a life interest in one-half the property; but where, as in the instant case, both parties are deceased, the property should be equally divided among the respective heirs. There appears no good reason for penalizing anyone not a party to the criminal act; yet when the murderer is dead this must necessarily happen unless there is

16 Neiman v. Hurff, note 8 supra; Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927); Colton v. Wade, 32 Del. Ch. 122, 80 A. (2d) 923 (1951). It has been held that the slayer may retain the remainder interest if, when the killing occurs, his life expectancy exceeded that of his victim. Sherman v. Weber, 113 N.J. Eq. 451, 167 A. 517 (1933).

17 Barnett v. Couey, 224 Mo. App. 913, 27 S.W. (2d) 757 (1930); Bradley v. Fox, note 12 supra; Cowan v. Pleasant, note 15 supra; Budwit v. Hurr, note 8 supra; Ashwood v. Patterson, note 15 supra.

18 This is because the fictitious unity of the person upon which such ownership is predicated has been dissolved. 2 BISHOP, MARRIAGE AND DIVORCE, 6th ed., §716 (1881).

19 First stated in Barnett v. Couey, note 17 supra, at 921.

20 Barnett v. Couey, note 17 supra, at 919, cited in principal case at 715.

21 Since mortality tables are but calculated estimates, it does not seem inequitable to disregard them in this connection. But see BOGERT, TRUSTS AND TRUSTEES §478 (1946).

an equal division of the fee.[22] As equity is remedial, the constructive trust solution, if accepted, should remain sensitive to what are significant factual variations.[23] The Indiana result is appealing, therefore, not because a murderer's interest is akin to that of a divorcee, but because the opposing interests were, in substance, those of innocent third parties.

John B. Schwemm, S.Ed.

[22] Only the Kentucky court appears to have given any great weight to this factor, however. Cowan v. Pleasant, note 15 supra.

[23] Vanneman, "The Constructive Trust," 10 UNIV. CIN. L. REV. 366 at 391 (1936).