Michigan Law Review

Volume 56 | Issue 3

1958

Wills - Legacies - Presumption of Satisfaction of Debt

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WILLS—LEGACIES—PRESUMPTION OF SATISFACTION OF DEBT—Petitioners, the residuary legatees under their father's will, sought an accounting of dividends from stocks and rents from real property belonging to them but which had been collected by their father during his life and commingled with his own assets. The will did not state that the legacy to petitioners was intended to be in satisfaction of claims against the estate. To review an order of the chancellor requiring them to elect between accepting the legacy or prosecuting their claims against the estate petitioners brought certiorari. *Held,* certiorari granted, order requiring election quashed, and cause remanded. There is no presumption that a legacy to a creditor of the estate is in satisfaction of the debt owed to him. A legacy will operate in satisfaction of a debt only where the will indicates this to be the intention of the testator. *Lopez v. Lopez,* (Fla. 1957) 96 S. (2d) 463.

The doctrine that a legacy to a creditor of the testator is presumed to be in satisfaction of the debt appears to have originated in the case of *Talbott v. Duke of Shrewsbury.*[1] The rule subsists today,[2] its existence proved almost solely by its numerous exceptions. The presumption has always been held rebuttable,[3] but since its inception it appears to have been more rebutted than rebuttable, and cases allowing the presumption to stand are exceedingly rare. Since rebuttal of the presumption merely requires a showing that the testator did not intend the legacy to operate in discharge of the debt owed by him,[4] the courts have developed a body of exceptions based upon various methods of ascertaining such an intent. Thus, where the legacy is smaller than the debt[5] this is considered a con-

1 Prec. Chan. 394, 24 Eng. Rep. 177 (1714).

2 4 PAGE, WILLS, 3d ed., §1572, p. 471 (1941).

3 Glover v. Patten, 165 U.S. 394 (1897).

4 Some courts will permit a limited showing of extrinsic evidence. See Rowe v. Strother, 341 Mo. 1149, 111 S.W. (2d) 93 (1937).

5 Strong v. Williams, 12 Mass. 391 (1815).

clusive rebuttal.[6] Again, an uncertain or unliquidated claim is not held to be satisfied by a legacy,[7] and an uncertain legacy is held not to satisfy a certain debt.[8] The presumption is rebutted where the legacy is of a different nature,[9] or where its terms differ from the debt.[10] Sufficiency of assets in the estate to pay all legacies and also to pay all debts has been held indicative of testator's intention to give bounty.[11] Since the intent of the testator controls the operation of the presumption, a debt incurred after the making of the will is not within the rule,[12] nor is the case where the testator in making the legacy expresses a motive other than payment of his debt.[13] A clause in the will directing the executor to pay all of the testator's debts has been held to eliminate the presumption.[14] Some courts refuse to apply the presumption unless there is an exact coincidence between the terms of the legacy and the prior claim.[15]

The principal case walks an old path with new shoes. By accepting the "modern rule," which does away with the presumption, it abandons verbal obedience to the "general rule" in favor of reason.[16] Although it would appear to be a much more rational approach to the problem, the modern rule has found only limited acceptance.[17] Unfortunately, after

[6] A legacy smaller than the debt is not considered a "pro tanto" satisfaction. See Allen v. Etter, 92 Ind. App. 297, 175 N.E. 286 (1931). But see In re Estate of Cooke, 207 Minn. 437, 292 N.W. 96 (1940).

[7] Witt v. Witt, 105 Ind. App. 415, 12 N.E. (2d) 1013 (1938).

[8] Will of Shirley, 207 Wis. 549, 242 N.W. 207 (1932).

[9] Turner v. White, 329 Mass. 549, 109 N.E. (2d) 155 (1952).

[10] McMillan v. Massie's Executor, 233 Ky. 808, 27 S.W. (2d) 416 (1929).

[11] Spangler's Estate, 65 York Leg. Rec. (Pa.) 193 (1952).

[12] In re Jewuske's Estate, 85 N.Y.S. (2d) 476 (1948).

[13] In re Estate of Holta, 246 Iowa 527, 68 N.W. (2d) 314 (1955); In re Huether's Will, 106 N.Y.S. (2d) 272 (1951).

[14] Rouse v. Rouse, 238 N.C. 568, 78 S.E. (2d) 451 (1953).

[15] In re Latz's Estate, 95 N.Y.S. (2d) 584 (1950); Merrill v. Dustman, 97 Cal. App. (2d) 473, 217 P. (2d) 998 (1950). For more detail on the exceptions to the presumption of satisfaction, see 86 A.L.R. 6 (1932); 47 A.L.R. (2d) 1140 (1955). Courts have been less hesitant about applying the presumption in cases where there was an understanding that certain claims were to be satisfied by will. In this type of case the testator's actual intent will usually be in line with the presumption, making its application reasonable. However, the presumption remains rebuttable. See Estate of Cooke, note 6 supra, noted in 25 MINN. L. REV. 122 (1940).

[16] "The rule itself is not founded in reason, and often tends to defeat the bounty of testators, and able chancellors have thought it more agreeable to equity, to construe a testator to be both just and generous, where the interests of third persons are not affected. And courts of justice will now lay hold of slight circumstances to get rid of the rule." Byrne v. Byrne, 3 Serg. & R. (Pa.) *54 at *60 (1817).

[17] The opinion of the principal case at 466 quotes ATKINSON, WILLS, 2d ed., §138 (1953) as authority for the "modern rule." However, the citations given by Atkinson in support of this rule do not appear to be very strong. In Wilson v. Safe Deposit & T. Co., 183 Md. 245, 37 A. (2d) 321 (1944), the issue is handled by applying a rule against requiring an election by the legatee-claimant which, in effect, amounts to a contrary presumption, though on a different level. Rizzo v. Cunningham, 303 Mass. 16, 20 N.E. (2d) 471 (1939), and Matter of Card, 145 Misc. 686, 260 N.Y.S. 764 (1932), at least partially base their holdings on case authority which had applied exceptions to the old rule. But see White v. Deering, 38 Cal. App. 433, 177 P. 516 (1918).

courageously adopting the new rule the principal case weakens itself as authority for the modern approach by fitting its factual situation under several of the well-recognized exceptions to the old rule. It is to be hoped that for greater clarity in achieving the same result courts will more and more tend to favor the modern rule[18] and discard the presumption which for generations has unnecessarily obscured the law in this area.

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[18] Recent cases ignoring the presumption are Matter of Runyon, 201 Misc. 464, 105 N.Y.S. (2d) 118 (1951); Hollister v. Old Colony Trust Co., 328 Mass. 225, 102 N.E. (2d) 770 (1952); Matter of Herb, 163 Misc. 441, 296 N.Y.S. 491 (1937).