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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PROBATE PART
MONMOUTH COUNTY
DOCKET NO. MON-P-296-22

IN THE MATTER OF THE
ESTATE OF

ARTHUR JAMES REINITZ, JR.

AMENDED OPINION

Decided April 1, 2024

Joel A. Davies, Esq. (Taff, Davies & Kalwinsky, LLC, attorneys for plaintiff Deborah Scully-Reinitz).

Joel N. Kreizman, Esq. (Scarinci Hollenbeck, attorneys for defendants Stacy Founds, Elaine Lago and Arthur Reinitz III).

Warren L. Peterson, Esq. (The Law Office of Warren L. Peterson, attorneys for defendant Audra Stewart).

FISHER, P.J.A.D. (t/a, retired on recall).

Plaintiff Deborah Scully-Reinitz was married to Arthur James Reinitz, Jr., when he died on January 7, 2022. His probated June 25, 2001 Last Will and Testament was made and executed eleven years before he ever met Deborah and

twelve years before their September 9, 2013 marriage. The Will directed an equal division of his estate to his four children; it didn't provide for Deborah.[1]

Consequently, Deborah filed this probate action for a finding that she was an omitted spouse within the meaning of N.J.S.A. 3B:5-15(a). That statute declares that a surviving spouse, who married the testator after execution of the testator's will, is "entitled to receive, as an intestate share, no less than the value of the share of the estate" the omitted spouse "would have received if the testator had died intestate."

There being no dispute that Deborah married Arthur years after he executed his last Will, and there being no dispute that the Will does not provide for her, the focus turns on whether she is barred from recovering an intestate share because of any of the exceptions recognized in N.J.S.A. 3B:5-15(a).[2] That is, the statute provides a basis for a recovery by an omitted spouse but not if one of three circumstances is present. The only one of those three exceptions that arguably applies is that expressed in N.J.S.A. 3B:5-15(a)(3), which precludes the recovery otherwise allowed if

> the testator provided for the spouse . . . by transfer outside the will and the intent that the transfer be in lieu

[1] Arthur was married six times. The probated Will intentionally made no provision for his wife at the time, his fourth.

[2] Deborah has repeatedly asserted that she does not seek an elective share under N.J.S.A. 3B:8-1 to -19.

> of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

This statute and its predecessor, N.J.S.A. 3A:2A-44(a), have not been the subject of much discussion in our case law.

This case first requires the court's legal determinations about where to place the burden of introducing evidence and the burden of persuasion, and whether the latter is governed by the preponderance or clear and convincing standard. Second, the court must reach an understanding about the scope of the word "transfer" in N.J.S.A. 3B:5-15(a)(3). And third, this action requires the court's determinations about whether Arthur intended transfers to Deborah outside the Will to be in lieu of his testamentary provisions or, if there is no evidence that Arthur made written or oral statements that would reveal such an intent, whether that intent may be "reasonably inferred" from the overall circumstances.

I

The first question raised about N.J.S.A. 3B:5-15(a)'s application to Arthur's Will concerns the allocation of the burdens of introducing evidence and persuasion. The "internal structure," Lewis v. Bd. of Trs., Pub. Emp. Ret. Sys., 366 N.J. Super. 411, 416 (App. Div. 2004), of the statute reveals that these burdens belong to the omitted spouse but only to show the occurrence of the

marriage after the Will's execution and the omission of any testamentary disposition for the surviving spouse in the Will. On the other hand, the burdens of introducing evidence and persuasion about the existence of one of the three statutory exceptions fall on the contestants.

The court draws this conclusion from the construction of the statute, which first requires the purported omitted spouse to show he or she is the testator's "surviving spouse" who was married to the testator "after the testator executed" the Will and that the Will does not provide for the surviving spouse. When those elements are shown, the omitted spouse is entitled to relief "unless" one of three things can be shown. That is, when the word "unless" is introduced in the statute's language, the tenor of the statute pivots and calls for a denial of relief to the omitted spouse if one of the three exceptions, which are set forth in subsections (1), (2), and (3), is shown. In reaching this understanding about the burdens of introducing evidence and persuasion, the court agrees with the approach taken by sister states that have interpreted their similar statutes. See Hellums v. Reinhardt, 567 So.2d 274, 277 (Ala. 1990)[3]; In re Estate of Beaman,

[3] The Hellums court recognized that other jurisdictions have applied these burdens differently. That court concluded that courts in Utah and Idaho had determined that omitted spouses must not only prove they were not provided for in their late spouses' Wills but also prove that their late spouses did not provide for them outside their Wills. See In re Estate of Christensen, 655 P.2d 646, 650-51 (Utah 1982); In re Estate of Keeven, 716 P.2d 1224, 1230-31 (Idaho 1986). Another view, adopted in Florida, imposed an irrebuttable presumption in the

583 P.2d 270, 274 (Ariz. App. 1978); King v. Bell, 444 P.3d 863, 868 (Colo. App. 2019).

Deborah argues the contestants' burden of persuasion should be the more stringent clear and convincing standard rather than the "more likely than not" preponderance standard. She is correct in part. Although the Legislature did not say in N.J.S.A. 3B:5-15(a) whether the preponderance or clear and convincing standard governs – it was silent there – N.J.S.A. 2A:81-2 (the so-called "Dead Man's Act") declares that any party who asserts a claim "that is supported by oral testimony of a promise, statement, or act of . . . the decedent . . . shall be required to establish the same by clear and convincing evidence." That is, it is not the party who has the overall burden of persuasion on a claim that must prove that claim by clear and convincing evidence. It is the party who alleges a decedent made an oral statement who must prove the truth of that allegation by clear and convincing evidence. So, Deborah is correct that the clear and convincing standard applies to any attempt by Arthur's children to prove that Arthur made some statement about his intentions but it also applies to her to the

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omitted spouse's favor. See In re Estate of Dumas, 413 So.2d 58, 59 (Fla. App. 1982). This court rejects both those approaches. Our omitted spouse statute is nearly identical to Uniform Probate Code, § 2-301, the comments to which express that it is the "moving party" – meaning the proponent of an exception – that "has the burden of proof on the exceptions."

extent she offered any evidence that Arthur made some statement that would reveal a contrary intent.

This clear and convincing standard requires that the claim that Arthur made an oral statement about his intentions – one way or the other – must establish in the mind of the trier of fact "a firm belief or conviction as to the truth of th[at] allegation[]." In re Purrazzella, 134 N.J. 228, 240 (1993). The reason for this higher standard is obvious: Arthur is no longer here to respond to such an allegation and his plan – whatever it may have been – should not be upset by less than firmly persuasive evidence about the alleged expressions of his intentions. See In re Dodge, 50 N.J. 192, 228-29 (1967) (observing that "where death . . . has intervened between the alleged gift and the making of the claim, which generally facilitates the making of false and non-meritorious claims, the common law has long recognized a particular need for compliance with the burden of proof; and the Legislature by [N.J.S.A. 2A:81-2] has made the need a matter of public policy").

II

With that understanding about the burdens of introducing evidence and persuasion, the next question concerns whether the proofs reveal whether Arthur made "transfers" outside the Will within the meaning of N.J.S.A. 3B:5-15(a)(3). Arthur's children assert – and there is no dispute – that Arthur made Deborah

the beneficiary of a $200,000 policy of insurance on his life and that she was either the joint owner with a right of survivorship or the beneficiary of two retirement accounts.

Arthur's children first assert that Arthur's naming of Deborah as a beneficiary of a life insurance policy was a "transfer" outside the Will within the meaning of N.J.S.A. 3B:5-15(a)(3). Deborah responds that the act of naming someone a beneficiary of a life insurance policy is not a "transfer." The word "transfer" is not defined in the statute, and it cannot be denied that the common meaning of "transfer," which should be considered, N.J.S.A. 1:1-1, does not suggest the act of designating someone as the beneficiary of a life insurance policy because that act does not cause something to move from one place to another or ownership of some asset to go from one person to another. See, e.g., Merriam-Webster's Collegiate Dictionary (11th ed.) at 1328 (defining "transfer" as a conveyance "from one person, place, or situation to another").

But, despite how the word "transfer" is commonly used and understood in everyday parlance, the court is persuaded to the broader connotation favored by Arthur's children because of the context in which the word "transfer" is found, a highly relevant consideration. See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013); Germann v. Matriss, 55 N.J. 193, 220 (1970); Gil v. Clara Maass Med. Ctr., 450 N.J. Super. 368, 386 (App. Div. 2017). That is, while

"transfer" usually describes a movement of something from one person or from one place to another – and the naming of someone as a beneficiary of a life insurance policy would not seem to comfortably fit that understanding – the word "transfer" is used in N.J.S.A. 3B:5-15(a) as a substitute for a testamentary provision, and a testamentary provision is similar to an insurance-beneficiary designation in that no actual transfer takes place immediately but instead occurs at a later date, namely, the benefactor's death. So, as have others, this court concludes that the act of designating a purported omitted spouse as a beneficiary of life insurance should be understood to be a "transfer" within the meaning of N.J.S.A. 3B:5-15(a)(3). See In re Estate of Knudsen, 342 N.W.2d 387, 391 (N.D. 1984); Beaman, 583 P2d at 273-74; King, 444 P.3d at 868.[4]

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[4] The court is mindful of Fox v. Lincoln Fin. Grp., 439 N.J. Super. 380 (App. Div. 2015), where that court considered a contest concerning entitlement to the proceeds of a life insurance policy. The evidence there revealed that the decedent had designated his sister as his beneficiary on the policy. After he later married he never changed the beneficiary to his wife before dying. In affirming a decision in favor of the decedent's sister by rejecting an argument that a surviving spouse has a "presumptive right" to life insurance proceeds, id. at 383, the court stated that N.J.S.A. 3B:5-15 "applies only to wills, and does not extend to nonprobate assets such as a life insurance policy." Id. at 389 (emphasis added). To be sure, life insurance proceeds normally pass to a beneficiary outside a Will, but that circumstance does not mean that designating a spouse as a beneficiary is not the type of "transfer" that may be incorporated in a court's determination whether N.J.S.A. 3B:5-15(a)(3) should apply. The court therefore rejects the argument that Fox somehow requires the exclusion of the life insurance proceeds as a transfer outside the Will in this situation.

The same should be said about Arthur's naming Deborah as a beneficiary of his retirement accounts; no immediate transfer occurred when those accounts were set up so as to then pass to Deborah; the transfer would occur only on Arthur's death. This is not dissimilar to when a testator has created or maintains a joint bank account that becomes the property of the other account holder when the testator dies, as the cases cited above, and others, see In re Estate of Taggart, 619 P.2d 562, 568-69 (N.M. App. 1980), have concluded. This court agrees with the conclusions reached by those sister states that a testator's creation or ownership of a joint account like the retirement accounts here – that benefit the omitted spouse when the testator dies – is a "transfer" within the meaning of N.J.S.A. 3B:5-15(a)(3), because the legislative intent, considering the circumstances, must have been to incorporate any type of vehicle by which property or interests would go to the omitted spouse on the testator's death.

III

The mere fact that there were transfers, however, does not end our inquiry. Arthur's children were also required to prove that Arthur intended that these transfers "be in lieu of a testamentary provision." In other words, it can be assumed that Arthur intended that Deborah receive the insurance proceeds and the retirement accounts upon his death, but N.J.S.A. 3B:5-15(a)(3) further

required that his children prove that Arthur intended those transfers to be a substitute for what he might have naturally been expected to convey via his Will.

The statute provides multiple modes by which that intent may be shown. A proponent of this exception may show that intent with proof of the testator's written or oral statements "or" by presenting evidence by which the testator's intent may be "reasonably inferred from the amount of the transfer."

Applying these statutory elements, the court finds as already alluded to – indeed it is undisputed – that, on Arthur's death, Deborah became:

- entitled to the proceeds of a $200,000 life insurance policy; and
- the owner of two retirement accounts that amounted to approximately $57,000.

The court must consider whether any evidence was presented to support a finding that (a) Arthur expressed in an oral statement (there is concededly no evidence of any written statement to that effect) that he intended these transfers to be "in lieu of a testamentary provision" for Deborah outside the Will, or (b) whether – in the absence of any such evidence – the court may reasonably infer that Arthur possessed that intention.

A

In determining whether Arthur made any oral statements about his estate plan that would suggest he had decided to provide for Deborah outside the Will,

the court turns to the testimony of his widow Deborah, his four children – Arthur J. Reinitz, III, Elaine Lago, Stacy Founds, and Audra Stewart – and Audra's husband, Scott Stewart, who described himself not only as the testator's son-in-law but also his close friend.[5]

Despite the close relationship they all had to the testator, no one offered any testimony to suggest Arthur had explained the specifics about his estate plan, let alone that he had determined to provide for Deborah only outside the Will. Indeed, some of the witnesses expressed doubt about whether Arthur had a Will, let alone that he had ever discussed his estate plan. Scott Stewart testified about how Arthur had lent money to him and Audra on occasions with the admonition that if they didn't pay him back, he would cut them out of his Will, but the way Scott expressed this suggested only that Arthur may have said this more in jest than in fact. At best, this testimony suggested that Arthur had a Will and that it may have provided for Scott and Audra; it does not reveal whether he did or did not provide for Deborah in that Will or otherwise. Nor is there anything about Scott's testimony – when he testified that Arthur said he had his estate plan "covered" – that would provide any illumination about what Arthur was or may have been thinking as to providing for Deborah.

[5] All testimony was heard on March 18, 2024.

If anything, it was Deborah's testimony about Arthur's words or actions that came closest to encompassing what he may have intended about his estate plan and his provision for her. Deborah credibly testified about discussions she had with him on her birthdays or at Christmastime and how, when Arthur asked what she wanted, she would reply that she wanted him to make a Will, presumably to incorporate her as a beneficiary within it, but that he refused and never did.[6] She testified credibly, consistently with the other witnesses, all of whom the court also finds credible but largely unenlighteningly, that no one was sure about what Arthur's Will may have provided or even if he had a Will.

The court is not persuaded – through application of the clear and convincing standard (or even the preponderance standard) – that any of the oral statements attributed to Arthur suggest he intended to provide for Deborah outside his Will or otherwise.

B

There being no persuasive evidence of any oral statements made by Arthur of an intent to provide for Deborah outside his Will, the court turns – as N.J.S.A. 3B:5-15(a)(3) directs – to consider whether it may be "reasonably inferred" from all the evidence and circumstances that the transfers outside the Will were

[6] To add to all this enigmatic evidence about Arthur's purported intent, Deborah testified that Arthur's reasons were expressed only by his reference to "bad karma" or "bad juju."

intended to be in lieu of a testamentary provision. It is here where the court agrees with Arthur's children and rejects Deborah's claim to relief under N.J.S.A. 3B:5-15(a).

An inventory of the assets of Arthur's estate was admitted into evidence as a joint exhibit (J-4) and the accuracy of its contents are not in dispute. That document lists values for Arthur's Howell home, his Florida condominium, three vehicles, a brokerage account, a business account,[7] jewelry, and household furniture, amounting to $1,077,199 at the time of death. Consideration of the value of the estate would result in the adult children benefitting to the tune of approximately $250,000 each; those shares are about the same as what Deborah received by the outside transfers mentioned above. This strikes the court as more than just a coincidence.

Although it would have been better – to avoid this unfortunate disagreement among those he left behind – for Arthur to have been more explicit about his intentions, by enacting N.J.S.A. 3B:5-15(a) the Legislature clearly understood that individuals may act in unusual ways in directing the division of

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[7] There was some testimony about Deborah transferring money out of the business account after Arthur's death. The proofs, however, were too unclear to permit any conclusion about whether any such transfers – assuming they were made for Deborah's benefit rather than for the estate's benefit or Arthur's business – ought to be viewed as transfers made by Arthur outside the Will as the means for providing for Deborah in lieu of a testamentary provision.

their assets upon death. The Legislature thus painted in broad strokes the scope of a court's authority to determine whether an omitted spouse may or may not be entitled to an intestate share because of omission from a Will. The court is satisfied that Arthur's intent is reasonably inferable even if the clear and convincing standard would apply to all aspects of this exception. The court has a "firm belief and conviction," Purrazzella, 134 N.J. at 240, that Arthur intended to provide for Deborah by way of his retirement accounts and life insurance rather than through his Will.

* * *

The court is firmly convinced that it is appropriate to conclude from the evidence that it may be reasonably inferred that Arthur intended to provide for Deborah not through the Will but outside it. On his death, Arthur would have understood that Deborah would receive outside the Will approximately $270,000 in property, and that, by being the only beneficiaries under his Will, his four adult children would each receive approximately the same amount, a completely natural disposition of his property and interests. This intention is further buttressed by the fact that Arthur fended off all Deborah's entreaties that he make a new Will, even to go so far as to refuse to execute a later-crafted Will (D-5) that, if signed, would have provided for her.

The court finds no cause for action on Deborah's complaint and has entered an appropriate judgment dismissing the complaint.[8]

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[8] Defendants Founds, Lago and Reinitz ask this court to direct the administrators as to how to now proceed with the estate. The civil action before this court, however, does not contain a claim for advice or instructions, so the court will not provide any here. Those same defendants ask this court to declare that Deborah should not be awarded her attorneys' fees. The court presently makes no ruling about attorneys' fees but instead will leave open that question and allow for any party who believes the court should make a fee award to present both a certification of services and a brief expressing the basis for such an award and on whom he, she, or they believe the burden to pay such fees should be imposed.