

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

In re Estate of Kathy M. Campbell

Court of Appeals No. WD-12-028

Trial Court No. 20111383

DECISION AND JUDGMENT

Decided: April 5, 2013

* * * * *

Joan Torzewski, for appellant

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Lorie Davis, acting as executrix for the estate of Kathy M. Campbell, appeals the judgment of the Wood County Court of Common Pleas, Probate Division, denying a claim for reimbursement of funeral luncheon expenses filed by appellant and two of her siblings, and holding that appellee, Jeffrey Schimmel, has a statutory right to purchase personal property from the estate at its appraised value.

A. Procedural Facts and Background

{¶ 2} Kathy Campbell died on August 5, 2011. Her will was subsequently admitted to probate, and appellant was appointed executrix of the estate. Campbell's will directs that the funeral expenses be paid out of her estate. Further, the will disposes of the remainder of the property in equal shares to each of Campbell's children, per stirpes. The will makes no provision for Schimmel, who married Campbell after the execution of the will.

{¶ 3} On December 8, 2011, appellant filed an inventory and appraisal of the estate. Three days later, Schimmel filed exceptions to the inventory, claiming that appellant undervalued the real property and certain items of personal property, and demanded a second appraisal as to each item. In addition, Schimmel filed his election to take against the will.

{¶ 4} Ultimately, an independent appraisal was performed on each of the contested items. Based on that appraisal, appellant filed an amended inventory and appraisal on March 6, 2012. On that same day, appellant filed the first partial account, which stated, inter alia, that appellant and two of her siblings were reimbursed a total of \$1,800 for a funeral luncheon they paid for with their personal funds.

{¶ 5} Once again, Schimmel filed exceptions to the amended inventory and appraisal, claiming that certain items listed as estate property were actually his own property. Further, Schimmel indicated that he wished to purchase several pieces of estate

property at their appraised value. Finally, Schimmel objected to appellant's reimbursement for the funeral luncheon expenses.

{¶ 6} In response, appellant objected to Schimmel's purchase of the personal property on the theory that the property belonged solely to Campbell and should therefore pass to her children as expressed in her will. Further, appellant stated that the funeral luncheon was an integral part of the funeral ceremony according to Polish tradition. Thus, appellant reasoned, its expense was properly payable by the estate as a "funeral expense."

{¶ 7} On May 9, 2012, the probate court conducted a hearing on the objections to the inventory, objections to the partial account, and the application to purchase personal property. Following the hearing, the court held that the expenses incurred as a result of the funeral luncheon did not qualify as funeral expenses and, thus, were not payable by the estate. Further, the court concluded that Schimmel, as the surviving spouse, has a statutory right to purchase the contested items of personal property at their appraised value.

B. Assignments of Error

{¶ 8} Appellant appeals the judgment of the probate court, assigning the following errors for our review:

1. The trial court erred when it refused to allow the Executrix to reimburse herself and her siblings for the expense of Decedent's funeral luncheon.

2. The trial court erred when it allowed the surviving spouse the absolute right to purchase any personal property he wanted from the estate.

II. Analysis

A. Funeral Luncheon Expenses

{¶ 9} In her first assignment of error, appellant contends that the probate court erred when it denied reimbursement of the funeral luncheon expenses to her and her siblings. Specifically, appellant argues that the probate court's determination that the funeral luncheon is not a "funeral expense" under Ohio law was erroneous.

{¶ 10} Whether a funeral luncheon fits the definition of a "funeral expense" is a question of law that is reviewed de novo. *See Demery v. Baluk*, 6th Dist. No. E-11-027, 2012-Ohio-4486, ¶ 21; *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, ¶ 13.

{¶ 11} Ohio law provides that a person, other than the surviving spouse, who pays for funeral expenses, is entitled to reimbursement from the estate so long as the expenses are reasonable. *Smith v. Bauknecht*, 6th Dist. No. L-10-1286, 2011-Ohio-4046, ¶ 18, citing *Osbourne v. Osbourne*, 114 Ohio App.3d 412, 415, 683 N.E.2d 365 (2d Dist.1996). Section 2117.25(A)(2) of the Ohio Revised Code further provides for the payment of funeral expenses as follows:

(A) Every executor or administrator shall proceed with diligence to pay the debts of the decedent and shall apply the assets in the following order:

* * *

(2) An amount, not exceeding four thousand dollars, for funeral expenses that are included in the bill of a funeral director, funeral expenses other than those in the bill of a funeral director that are approved by the probate court, and an amount, not exceeding three thousand dollars, for burial and cemetery expenses, including that portion of the funeral director's bill allocated to cemetery expenses that have been paid to the cemetery by the funeral director.

{¶ 12} In denying appellant's claim for reimbursement, the probate court primarily relied upon its determination that a funeral luncheon is not a "funeral expense" under R.C. 2117.25 and the supporting case law.¹ Specifically, the court stated: "From this Court's review of the applicable case law, funeral lunches have not qualified as ordinary funeral or burial expenses as anticipated under Ohio Revised Code 2117.25." However, our review of the applicable case law reveals no such exclusion of funeral luncheons from the category of funeral expenses. Indeed, the issue of whether funeral lunches are "funeral expenses" under R.C. 2117.25(A)(2) appears to be one of first impression.

¹ The court also pointed to a lack of substantive evidence that Campbell wished to include expenses for a funeral luncheon as part of the "funeral expenses" referenced in the will. However, appellant testified at the hearing that Campbell, who was of Polish descent, intended to have a traditional Polish funeral. Further, appellant testified that the funeral luncheon is an important component of a Polish funeral. In any event, Campbell's will specifically directs the executor to use estate funds to pay for her "funeral expenses." Because we hold that the funeral luncheon is a "funeral expense," Campbell's will specifically provides for the payment of the funeral luncheon from the assets of the estate.

{¶ 13} The Ohio Supreme Court has stated that a court’s primary objective when interpreting statutory language is to apply the statute as the legislature intended. *State v. S.R.*, 63 Ohio St.3d 590, 594, 589 N.E.2d 1319 (1992). Unless expressly defined, words and phrases in a statute must be given their plain, common, ordinary meaning and are to be construed “according to the rules of grammar and common usage.” R.C. 1.42; *Kunkler v. Goodyear Tire & Rubber Co.*, 36 Ohio St.3d 135, 137, 522 N.E.2d 477 (1988).

{¶ 14} Applying these principles to the case sub judice, we agree with appellant that a funeral luncheon qualifies as a “funeral expense” under R.C. 2117.25(A)(2). We reach this conclusion for three reasons.

{¶ 15} First, the term “funeral expenses,” while not defined by the statute, is defined by Black’s Law Dictionary as “[a]n expense necessarily and reasonably incurred in procuring the burial, cremation, or other disposition of a corpse, including the funeral or other ceremonial rite, a casket and vault, a monument or tombstone, a burial plot and its care, and a visitation (or wake).” *Black’s Law Dictionary* 618 (8th Ed.2004). This broad definition seems to encompass the entirety of the funeral process, including a funeral luncheon following the burial of the decedent. The fact that the funeral luncheon is ordinarily attended by those in attendance at the funeral ceremony and burial further supports appellant’s position that it is an integral part of the funeral and should be labeled as a funeral expense.

{¶ 16} Second, the language of the statute implicitly supports the assertion that funeral expenses encompass more than simply the funeral ceremony itself. *See, e.g., Bauknecht*, 6th Dist. No. L-10-1286, 2011-Ohio-4046 (concluding that a reasonable expenditure for a headstone and funeral flowers, while not absolute necessities, are to be considered necessary funeral expenses under R.C. 2117.25(A)(2)). In providing for the payment of expenses “other than those in the bill of a funeral director,” the legislature took notice of the fact that the executor or administrator will oftentimes incur expenses in addition to those billed by a funeral director for the funeral ceremony itself. A funeral luncheon is an example of such an expense. *See Mlynek v. Mlynek*, 6th Dist. No. WD-07-056, 2008-Ohio-380 (construing a funeral luncheon as a “funeral expense” that requires presentment of the claim to the estate as a prerequisite to reimbursement).

{¶ 17} Finally, treating the funeral luncheon as a funeral expense is consistent with the reality that the funeral luncheon is a custom that has been widely observed for millennia in connection with the funeral ceremony. Encyclopædia Britannica Online, Death Rite, accessed March 20, 2013, <http://www.britannica.com/EBchecked/topic/154596/death-rite/66361/Post-funerary-rites-and-customs> (referring to a funeral banquet as a “widespread funerary custom”). Indeed, the practice of gathering together for a meal following the funeral ceremony dates back to ancient Roman times. *Id.*

{¶ 18} For the above-mentioned reasons, we hold that a funeral luncheon qualifies as a “funeral expense” under R.C. 2117.25(A)(2). Thus, the probate court’s denial of

reimbursement to appellant and her siblings, which rested on the premise that the luncheon was not a funeral expense, was erroneous. Accordingly, appellant's first assignment of error is well-taken.

B. Surviving Spouse's Right to Purchase Personal Property

{¶ 19} In her second assignment of error, appellant argues that the probate court erred in granting Schimmel an "unfettered right to purchase property" of the estate.

{¶ 20} The right of a surviving spouse to purchase estate property that has not been specifically devised or bequeathed is set forth in R.C. 2106.16, which states in pertinent part:

A surviving spouse, even though acting as executor or administrator, may purchase the following property, if left by the decedent, and if not specifically devised or bequeathed:

* * *

(B) Except for any automobile that passes to the surviving spouse of the decedent under division (A) of section 2106.18 of the Revised Code, any other real or personal property of the decedent not exceeding, * * * one-third of the gross appraised value of the estate, at the appraised value as fixed by the appraisers.

* * *

No hearing on the application or petition shall be held until the inventory is approved. On the hearing of the application or petition, *the*

finding of the court shall be in favor of the surviving spouse, unless it appears that the appraisal was made as a result of collusion or fraud or that it is so manifestly inadequate that a sale at that price would unconscionably prejudice the rights of the parties in interest or creditors.
(Emphasis added.)

{¶ 21} Appellant acknowledges that R.C. 2106.16 permits Schimmel to purchase the property unless there is fraud or collusion, or the sale price is manifestly inadequate. She does not argue that the price is inadequate or that the values ascribed to the property were a result of fraud or collusion. Instead, she argues that allowing Schimmel to purchase the items would be unconscionable because he “has already disregarded the wishes of the Decedent and taken everything else that Decedent wanted to leave to her children.” Although we understand appellant’s sentiments, we are bound to apply the law as it is written. Thus, since the property at issue was not specifically devised or bequeathed, Schimmel is entitled to purchase the property at its appraised value.

{¶ 22} Accordingly, appellant’s second assignment of error is not well-taken.

III. Conclusion

{¶ 23} For the foregoing reasons, the judgment of the Wood County Court of Common Pleas, Probate Division, is affirmed, in part, and reversed, in part. Having determined that the funeral luncheon is a “funeral expense” under R.C. 2117.25(A)(2), we remand this matter to the probate court to determine whether appellant’s expenditure

for the funeral luncheon was reasonable. *See Bauknecht*, 6th Dist. No. L-10-1286, 2011-Ohio-4046, ¶ 18. Costs are to be split evenly between the parties pursuant to App.R. 24.

Judgment affirmed, in part
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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