

1981

Estates and Trusts

Robert Jenkins

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

Robert Jenkins, *Estates and Trusts*, 30 Cath. U. L. Rev. 752 (1981).

Available at: <https://scholarship.law.edu/lawreview/vol30/iss4/17>

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

ESTATES AND TRUSTS

I. JUDICIAL DECISIONS

In *Gray v. Gray*,¹ the District of Columbia Court of Appeals upheld the imposition of a constructive trust on real property. The defendant, as joint tenant, had succeeded to the property upon the death of her mother. However, the court found that the defendant's name had been included on the deed merely for convenience, *i.e.*, to satisfy the lender. Thus, the court reasoned that the other children, some of whom had contributed note payments, were entitled to share in the property.²

*Estate of Broun v. Broun*³ defined "undue influence" in a will contest as physical or moral coercion that forces the testator to use the judgment of another instead of his own. Although the testatrix's second husband had helped to procure the will at issue in this case, the parties challenging the will had failed to allege that the testatrix lacked full control of her faculties at the time of execution. Consequently, the District of Columbia Court of Appeals, in a decision consistent with prior decisions, upheld summary judgment for the husband.⁴

Interpreting a testamentary trust under District of Columbia law, the United States Court of Appeals for the District of Columbia Circuit held, in *Lipscomb v. District National Bank of Washington, D.C.*,⁵ that a will's designation of "child" included an adopted child. A potential beneficiary of the trust had been adopted after the will's execution. Nevertheless, since other clauses in the will showed a concern for orphans, the court concluded that the testator intended to benefit the adopted child.⁶

II. LEGISLATION

Intended as a modernizing and streamlining measure, the District of Columbia Probate Reform Act of 1980⁷ comprehensively revised District law

1. 412 A.2d 1208 (D.C. 1980).

2. *Id.* at 1211.

3. 413 A.2d 1310 (D.C. 1980).

4. *Id.* at 1313. *See, e.g.*, *Himmelfarb v. Greenspoon*, 411 A.2d 979, 984 (D.C. 1980).

5. 631 F.2d 1003 (D.C. Cir. 1980).

6. *Id.* at 1005-07.

7. D.C. Law No. 3-72, 27 D.C. R. Reg. 2969, 2155 (1980) (to be codified in tit. 20 of the D.C. CODE).

for the probate and administration of decedents' estates.⁸ Revisions made in this Act include changes in traditional terminology: "heir" now includes next of kin; "legacy" includes bequest and devise; and "personal representative" replaces executor, administrator, and their variants.⁹ Other changes, however, are more substantive. Under the Act, real property no longer passes outside the probate estate and loses its traditional preference over personal property.¹⁰ Further, if all interested persons and creditors do not object, the Act, unlike prior law, permits the probate of a will and the appointment of a personal representative without prior notice to interested persons and appearances by will witnesses.¹¹

Other substantive changes implemented by the Probate Reform Act include: (1) eliminating the need for ancillary letters before a foreign personal representative may obtain a nondomiciliary's District property;¹² (2) raising the family allowance¹³ and small estates limit¹⁴ from \$2,500 to \$10,000, thus guaranteeing surviving spouses and minor children larger portions of District estates and permitting more estates to use the summary small estates procedures; and (3) eliminating the special bond procedure which permitted waiver of court review of estate accounts, and substituting a procedure for cursory review of estate accounts, which, unlike the special bond, imposes no personal liability on the personal representative and permits revocation of waivers.¹⁵ The Probate Reform Act applies to the estates of all District residents who die on or after January 1, 1981.¹⁶

Robert Jenkins

8. COMM. ON THE JUDICIARY, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-91, THE DISTRICT OF COLUMBIA PROBATE REFORM ACT OF 1980, 3d Council, 2d Sess. 1 (1980). The Act makes no substantive changes in District law governing the execution of wills and intestate succession.

9. D.C. Law No. 3-72, sec. 101, § 20-101(c), (g), (j), 27 D.C. R. Reg. at 2161-62.

10. *Id.* §§ 20-105 to -106, 27 D.C. R. Reg. at 2164.

11. *Id.* §§ 20-311 to -312, 27 D.C. R. Reg. at 2168.

12. *Id.* §§ 20-341 to -344, 27 D.C. R. Reg. at 2171-74.

13. *Id.* sec. 204(a), 27 D.C. R. Reg. at 2205 (to be codified in D.C. CODE § 19-101(a)).

14. *Id.* sec. 101, § 20-351, 27 D.C. R. Reg. at 2174 (to be codified in D.C. CODE § 20-351).

15. *Id.* § 20-732, 27 D.C. R. Reg. at 2189.

16. *Id.* sec. 402, 27 D.C. R. Reg. at 2209.