

Connecticut Supreme Court Ruling Requires Review of Wills

On February 27, 2007, the Connecticut Supreme Court issued its decision in the case of *Ruotolo v. Teitjen*. John Swanson executed a Will on March 1, 1990, stating “one-half of the residue of my estate to Hazel Brennan of Guilford, Connecticut, if she survives me.” Hazel was John’s stepdaughter. The remainder of the residuary clause gave 1/8 shares to four other individuals. The Will did not say what would happen if a beneficiary did not survive John. Hazel died on January 2, 2001, 17 days before John.

Connecticut General Statute §45a-441 states that when a beneficiary who is a child, stepchild, grandchild, brother or sister of the person signing the Will (i.e.- the testator) dies before the testator and the Will makes no provision for such contingency, the issue of the beneficiary take the beneficiary’s share. Issue are descendants like children, grandchildren, great grandchildren, etc. Without this law, the gift would lapse and the laws controlling who receives property if a decedent has no Will (i.e.- the laws of intestacy) control. That is why this statute is called the “anti-lapse statute.”

Kathleen Smaldone, Hazel’s daughter, was one of the four 1/8 residuary beneficiaries under John’s Will. At the probate hearing, she claimed that, in addition to her 1/8 share, she should take all of Hazel’s share of the estate because of the anti-lapse statute. Fred and Charlene Ruotolo, who were also 1/8 residuary beneficiaries, argued that because Hazel did not survive, her share should be distributed equally to the other residuary beneficiaries. The probate court and later the trial court ruled that Hazel’s share neither passed to her daughter under the anti-lapse statute nor to the remaining residuary beneficiaries under the Will. Those courts ruled that the gift lapsed and Hazel’s share passed by the laws of intestacy to John’s heirs!

The Appellate Court overruled the lower courts. It stated that the words “if she survives me” do not alone negate the anti-lapse statute. The legislature intended the anti-lapse statute to prevent an unintended disinheritance of a beneficiary’s descendants. Only if John had explicitly stated that the bequest will lapse or will go to other residuary beneficiaries would the anti-lapse statute not apply.

The Executor of John’s estate and a couple of his heirs appealed the Appellate Court decision. The Connecticut Supreme Court issued a short decision adopting the Appellate Court decision as a proper statement of the law. Hazel’s daughter won!

Lessons Learned from this Case

First, if the anti-lapse statute applies, any gift to which it applies passes by law, not under the Will. Second, where a testator does not want a bequest to go to a beneficiary’s issue if the beneficiary does not survive, the Will should say that the anti-lapse statute does not apply. In addition, a Will should clearly state what happens to a gift if the beneficiary does not survive. For instance, a Will should not simply give “\$100,000 to Margaret, if she survives me.” The Will should say what happens to the \$100,000 if Margaret does not survive. Third, if the Will says “If Margaret does not survive me, this gift shall lapse,” and Margaret does not survive the testator, it does not mean that the gift will be added to the residue of the estate. It means that the gift will go to the testator’s heirs as if there were no Will at all. If the \$100,000 gift is to go with the residue of the estate, the Will must say, “If Margaret does not survive me, this gift shall be added to the residue of my estate.”

At the Elder Solutions Center™, we are committed to staying on top of developments in the law and assuring that your Will carries out your wishes. If you have not reviewed your Will lately, read it again and give us a call. If you have never prepared a Will, now is a good time to clarify your wishes. We are here to help.

Joseph A. Cipparone, Esq. CFP®, wrote this article. Mr. Cipparone serves on the Executive Committee of both the Estates & Probate Section and the Elder Law Section of the Connecticut Bar Association. This information is for general purposes only and does not constitute legal advice. For specific questions related to your situation, you should consult a qualified attorney.

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