

COURT OF APPEALS
DIVISION II

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NO. 36000-4-II

STATE OF WASHINGTON
BY _____
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COURT OF APPEALS – DIVISION II
STATE OF WASHINGTON

IN RE THE ESTATE OF ROBERT F. PLATTE

BRIEF OF RESPONDENT

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I. INTRODUCTION

This case involves a straightforward issue: whether a creditor who has an enforceable debt based on an equitable claim against a decedent can request payment of the debt from the decedent's probate assets when the creditor has already received a payment from the decedent's nonprobate assets in excess of the debt.

Catherine J. Platte (hereinafter "Catherine") is the mother of Robert Frank Platte (hereinafter "Robert"). Catherine and Robert co-owned in equal shares a parcel of real property in Lewis County. Robert met and later decided to marry Kathleen "Kit" K. Pingree (hereinafter "Kit"). Robert and Catherine agreed to sell their real property so that Robert could purchase a home with Kit.

After the sale of Catherine's and Robert's property, the net proceeds were distributed to Robert. Robert then transferred \$50,000.00 to Catherine and continued to hold \$93,462.00 of Catherine's share. There was no written agreement as to why or how these funds would be held and/or payable.

Robert died on January 27, 2006. At the time of his death, Robert had three payable on death (POD) accounts that listed Catherine as the beneficiary. The funds in the three POD accounts totaled over

\$127,000.00. These accounts were not joint accounts and Catherine was not otherwise entitled to these funds.

Robert's will provided that all of his just debts be paid for out of his general estate. Despite having received the \$127,000.00 plus from the POD accounts from Robert, Catherine made a creditor's claim against Robert's estate for \$93,462.00 owed to her from the sale of the property. Catherine believes that the payment she received from the POD accounts did not satisfy the debt owed to her. Catherine claims that the POD accounts are not part of the general estate and are, therefore, not subject to payment of Robert's debts. However, after an evidentiary hearing, the trial court concluded that Catherine's claim was an enforceable debt that was more than satisfied by Catherine's receipt of the POD funds. Kit requests that this ruling be upheld.

II. STATEMENT OF CASE

Robert Frank Platte (hereinafter "Robert") co-owned a parcel of real property in Lewis County, Washington (hereinafter "the Winchester Hill property") with his mother, Catherine J. Platte (hereinafter "Catherine"), until it was sold on about November 2, 2005. CP 13-14. The net proceeds of the sale totaled \$286,764.32 and Robert and Catherine were each entitled to one-half of the proceeds: \$143,382.19. CP 14. However, in one form or another, all proceeds were initially transferred to

Robert only. CP 14. On about November 7, 2005, Robert tendered to Catherine \$50,000.00 from the net proceeds. CP 14, 79. Until his death, Robert continued to hold Catherine's remaining share of the net proceeds: \$93,382.19. *See generally*, CP 19-21, 43, 69-70, 80.

Decedent married Kathleen K. Platte, formerly Kathleen K. Pingree (hereinafter "Kit"), on December 24, 2005. CP 14, RP 31. The wedding was originally planned for September of 2005, but was postponed due to Decedent's medical issues. RP 27-28. On November 2, 2005, Robert and Kit purchased a home together located at 196 Vista Road, Chehalis, Lewis County, Washington (hereinafter "the Vista Road property"). CP 14, RP 29. Robert and Kit each contributed an equal one-half share of \$192,523.06 towards the purchase of the Vista Road property. CP 14, RP 28-29.

Robert executed his last will and testament on January 17, 2006. CP 14, 88-92. Catherine was left nothing under the will. CP 14, 88-92. Robert died on January 27, 2006. CP 14. At the time of his death, Robert held three payable on death (POD) accounts that named Catherine as the beneficiary. CP 14. These were not joint accounts of Robert and Catherine, and Catherine was not otherwise entitled to those funds. CP 17. There was approximately \$127,500.00 in these three POD accounts. CP 14.

Robert's will was admitted to probate on April 7, 2006, and Catherine was named personal representative of the estate, as per the will's instructions. CP 82-84, CP 88-92. Catherine filed a creditor's claim against Roberts's estate on May 16, 2006, requesting payment of \$93,462.00, her remaining share of the net proceeds from the sale of the Winchester Hills property that Robert was holding for her, along with a petition for instructions and resolution of claim by personal representative. CP 80, 69-79. Kit filed a response to Catherine's claim and requested that the court deny the claim because Catherine had already received the approximately \$127,500.00 funds from the POD accounts. CP 45-66.

The court held an evidentiary hearing for the disputed claim on December 8, 2006. *See generally*, RP 2-54. On December 11, 2006, the court issued a written decision denying Catherine's claim against the estate. CP 17-18. The court reasoned that Catherine was owed an enforceable debt, but that Catherine's receipt of the funds from the POD accounts satisfied that debt. CP 17-18. On February 9, 2007, the court entered Findings of Fact, Conclusions of Law and Order Denying Creditor's Claim in support of its decision. CP 13-16, RP 55-59.

Catherine appealed the decision of the trial court (CP 1-12), presenting the following issue: whether a creditor who has an enforceable debt based on an equitable claim against a decedent can request payment

of the debt from the decedent's probate assets when the creditor has already received a payment from the decedent's nonprobate assets in excess of the debt and when the decedent's will instructs that his just debts be paid from his general estate.

III. ARGUMENT

A. THE COURT CORRECTLY CONCLUDED THAT CATHERINE'S CLAIM WAS SATISFIED BY HER RECEIPT OF FUNDS FROM PAYABLE ON DEATH ACCOUNTS BECAUSE THE WILL DIRECTED THAT PAYMENT OF DEBTS BE MADE FROM THE GENERAL ESTATE, WHICH INCLUDES NONPROBATE ASSETS.

Catherine made a creditor's claim against the Estate of Robert F. Platte on May 16, 2006. CP 80. Kit contested the validity of the claim. CP 45-66. The trial court held an evidentiary hearing and heard arguments regarding the disputed claim on December 8, 2006. *See generally*, RP 2-54. On December 11, 2006, the court issued a written decision. CP 17-18. On February 9, 2007, the court entered findings of fact and conclusions of law. CP 13-16. The court concluded that Catherine had a valid creditor's claim. CP 15. The court also concluded that Catherine's claim was satisfied by her receipt of the decedent's three POD accounts. CP 15. The court's conclusion should be upheld because Robert's will instructed his debts to be paid from his general estate, which

includes probate and nonprobate assets, and because equity requires that Catherine not be allowed to receive payment for the same debt twice.

1. Robert's Will Required Payment of "Just Debts" from His General Estate, Which Includes Both Probate and Nonprobate Assets.

In his will, Robert directed that his "just debts . . . be paid for out of [his] general estate." CP 88. The general estate of a decedent includes all assets: probate and nonprobate. Therefore, the court correctly concluded that Catherine's creditor's claim was satisfied by her receipt of Robert's nonprobate assets – specifically, Catherine's receipt of Robert's payable on death (POD) bank accounts.

- a. It was the intent of testator that all assets, probate and nonprobate assets be included in his "general estate."

The court's "paramount duty in construing wills is to give effect to the testator's intent." *In re Riemcke's Estate*, 80 Wn.2d 722, 728, 497 P.2d 1319, 1323 (1972) (citations omitted); *see also*, RCW 11.12.230.

Although a will speaks at the time of death, the testator's intentions, as viewed through the surrounding circumstances and language, are determined as of the time of the execution of the will. *In re Estate of Bergau*, 103 Wn.2d at 436, 693 P.2d 703; *In re Estate of Robinson*, 46 Wn.2d 298, 280 P.2d 676 (1955). The testator is presumed to have known the law at the time of execution of his will. *In re Estate of Patton*, 6 Wn.App. 464, 471, 494 P.2d 238 (1972). The intent must, if possible, be derived from the four corners of the will and the will must be considered in its entirety. *In re Estate of Bergau*, 103 Wn.2d at 435, 693 P.2d 703; *In re Estate of Douglas*, 65 Wn.2d 495, 499, 398 P.2d 7 (1965). When, after reading the will in its entirety, any uncertainty arises about

the testator's intent, extrinsic evidence, including testimony of the drafter, may be admitted to explain and resolve the ambiguity. *In re Estate of Bergau*, 103 Wn.2d at 436, 693 P.2d 703; *In re Estate of Torando*, 38 Wn.2d 642, 645, 228 P.2d 142, 236 P.2d 552 (1951).

Matter of Estate of Mell, 105 Wn.2d 518, 524, 716 P.2d 836, 839 (1986).

“The intent must be gathered when possible from the words of the will, construed in their natural and obvious sense.” *Anderson v. Anderson*, 80 Wn.2d 496, 499, 495 P.2d 1037, 1039 (1972). “Words used in a will are understood in their ordinary sense if there is nothing to indicate a contrary intent.” *In re Price's Estate*, 75 Wn.2d 884, 886, 454 P.2d 411, 412-413 (1969).

The term “general estate” is not defined in Robert’s will. It is not defined under Title 11 of the Revised Code of Washington. The term is not defined by Washington case law interpreting the provisions of Title 11 either. Accordingly, “general estate” must be given its plain and ordinary meaning. *In re Price's Estate, supra*.

When used as an adjective, the word “general” is, among other definitions, defined as “of or pertaining to all persons or things belonging to a group or category.” *Random House Webster's Unabridged Dictionary* 795 (2d ed. 1998). It is also defined as “not limited to one class, field, product, service, etc.” *Id.* When used as a noun, the word “estate” is, among other definitions, defined as “property or possessions”

or “the property of a deceased person . . . viewed as an aggregate.” *Random House Webster’s Unabridged Dictionary* 663 (2d ed. 1998). “In its broad sense, ‘estate’ applies to all that a person owns, whether **real** or **personal property.**” *Barron’s Law Dictionary* 175 (4th ed. 1996) (emphasis in original).

If property owned at death is considered the category, then “general estate” would be defined as “of or pertaining to all . . . things belonging to (the category of) the property of a deceased person . . . viewed as an aggregate.” Using this basic integrated definition of “general estate,” it is clear that the term “general estate” includes every kind of property – probate and nonprobate property alike. Therefore, if the plain and ordinary meaning of “general estate” includes all property of an estate, probate and nonprobate alike, it must have been Decedent’s intent that his nonprobate assets be subject to his just debts.

b. Including Both Probate and Nonprobate Assets in the Definition for “General Estate” is Supported by Title 11, RCW Wherein Nonprobate Assets Are Subject to the Satisfaction of a Decedent’s Debts and Liabilities.

Under Title 11, RCW, nonprobate assets are subject to creditor’s claims and payment of other estate expenses and costs. Under RCW 11.40.051, regarding the time limits for claims made against an estate, the time “bar is effective as to claims against both the decedent's probate and

nonprobate assets.” RCW 11.40.051(3). It thereby logically follows that claims may be made against both probate and nonprobate assets.

Under Chapter 42 of Title 11 regarding “Settlement of creditor claims for estates passing without probate,” nonprobate assets are included in the property liable for claims. Under the provision for allowance of claims and the order of payment, a “notice agent shall pay claims allowed . . . from the assets of the decedent that are subject to the payment of claims as provided in RCW 11.42.085.” RCW 11.42.090(2). “The decedent’s nonprobate and probate assets that were subject to the satisfaction of the decedent’s general liabilities immediately before the decedent’s death are liable for claims.” RCW 11.42.085(1).

Robert’s three POD accounts were subject to satisfaction of his general liabilities immediately before his death, as they were his non-exempt separate property. Therefore, had Robert’s estate passed without probate under RCW 11.42, the three POD accounts would have been subject to Catherine’s creditor’s claim.

Most importantly, under RCW 11.18.200, regarding the liability of a beneficiary of a nonprobate asset, nonprobate assets are equally subject to the liabilities, claims, taxes, and costs of administration of the estate.

Unless expressly exempted by statute, **a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's**

death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of estate taxes under chapter 83.110 RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative shall give notice to the beneficiary, in the manner provided in chapter 11.96A RCW, that the beneficiary is liable to account under this section.

RCW 11.18.200(1) (emphasis added). The statute goes on to specifically name POD accounts as subject to a decedent's liabilities.

A beneficiary of **payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section,** to the extent of the decedent's beneficial ownership interest in the property immediately before death.

RCW 11.18.200(2)(c) (emphasis added).

The testator is presumed to have known the law at the time he executed his will. *In re Estate of Patton*, 6 Wn.App. 464, 471, 494 P.2d 238 (1972). Therefore, it is presumed that Robert was aware that his nonprobate assets would be subject to his liabilities, claims, estate taxes and costs of administration. Given this presumption, it is clear that Robert contemplated that his "general estate," which was subject to his "just debts," would include both probate and nonprobate assets.

2. The Trial Court Properly Denied Catherine's Equitable Creditor's Claim Because She Had Already Received Payment in Excess of Claim.

Catherine's claim for the debt owed by Decedent was based in equity. *See* CP 94-95. Appellant claimed she was owed \$93,462.00 under the equitable and common law theories of unjust enrichment and conversion. CP 94-95. "It is well established that unjust enrichment and liability only occur where money or property has been placed in a party's possession such that in equity and good conscience the party should not retain it." *Lynch v. Deaconess Medical Center*, 113 Wn.2d 162, 166, 776 P.2d 681, 683 (1989) (citation omitted). It logically follows that once the money is returned or paid to the rightful owner by the party in possession, the equitable claim by the rightful owner is satisfied or extinguished. To hold otherwise would allow the rightful owner to become unjustly enriched herself by receiving more in return than she was otherwise entitled.

Robert was "holding" \$93,462.00 which belonged solely to Catherine. *See generally*, CP 19-21, 43, 69-70, 80. Catherine had a legitimate claim in equity that this money should be returned to her. CP 15. Catherine received over \$127,000.00 from Robert when his three POD accounts were paid to her. CP 14. Catherine had no tenancy interest in or prior right to the funds in these three POD accounts. Therefore,

Catherine's equitable claim for the \$93,462.00 was satisfied and extinguished when she received the money from the POD accounts, which was in excess of her claim. If the trial court had ordered Catherine's claim to be paid out of Robert's probate assets, then it would have been Catherine who was unjustly enriched.

B. RESPONDENT IS ENTITLED TO AN AWARD OF HER ATTORNEY'S FEES AND COSTS.

Respondent hereby respectfully requests that she be awarded her reasonable attorneys' fees and legal costs incurred in defending this action, pursuant to RAP 18.1(a)-(b) and RCW 11.96A.150. RCW 11.96A.150 authorizes the court on appeal to order costs, including reasonable attorneys' fees, in its discretion for claims brought under RCW 11.96A, the Trust and Estate Dispute Resolution Act (TEDRA). Catherine's creditor's claim and petition for instructions to the trial court were made pursuant to TEDRA. CP 69-79, 80. Therefore, Respondent respectfully requests an award of her reasonable attorneys' fees and legal costs incurred in responding to this appeal.

IV. CONCLUSION

Robert executed his will on January 17, 2006. In his will, Robert specifically requested "that the just debts . . . be paid for out of [his] general estate." Robert owed Catherine \$93,462.00 when he died on

January 27, 2006. Robert had about \$127,500.00 spread throughout three POD accounts with Catherine named as beneficiary for each. Nonprobate assets, such as POD accounts, are a part of a testator's general estate and are subject to a decedent's liabilities and claims against the estate. Catherine received the funds from the POD accounts upon Robert's death. Therefore, the court correctly concluded as a matter of law that Robert satisfied his debt to Catherine when the funds from the POD accounts were paid to her.

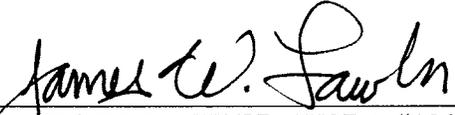
Respectfully Submitted this 15th day of June, 2007.

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AFFIDAVIT OF SERVICE

I, Cindy Abbott, hereby certify under penalty of perjury under the laws of the State of Washington that I served the Brief of Respondent in the above-entitled matter on the Appellant by mailing true and correct copies in a sealed envelope, postage pre-paid and properly addressed to the following:

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and deposited in the post office at Centralia, Washington this 18th day of June, 2007.



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