



10/28/88 BARBARA PURSE MOORE v. C. EDWARD GRAYBEAL

550 A.2d 35 (1988) | Cited 0 times | Supreme Court of Delaware | October 28, 1988

ORDER

Joseph T. Walsh, Justice

This 28th day of October, 1988, upon consideration of appellees' motion to affirm pursuant to Supreme Court Rule 25(a) and the appellants' opening brief, it appears to the Court that:

(1) This is an appeal from a decision of the Superior Court which dismissed appellants' complaint for lack of subject matter jurisdiction. The appellants are persons who claim tortious interference with an inheritance expected by reason of the death of Jean L. Purse, who died testate on January 4, 1986. The defendants-appellees below are, respectively, a physician who treated the deceased; the physician's wife; the hospital at which deceased was treated during her last illness and the bank which was named executor under the deceased's will. In essence, the appellants contend that each of the defendants-appellees exerted undue or improper influence upon the deceased to execute a will which impliedly revoked an earlier will favoring appellants.

(2) In June, 1986, appellants filed a civil action in the United States District Court for the District of Delaware, based on diversity jurisdiction, alleging a claim of tortious interference with inheritance, the same cause of action asserted in the Superior Court. The District Court ultimately dismissed the action holding that the claim, in effect, sought review of a will, a statutory remedy under Delaware law and within the exclusive jurisdiction of the Court of Chancery. *Moore v. Graybeal*, D. Del., 670 F. Supp. 130 (1987). That ruling was affirmed on appeal. *Moore v. Graybeal*, 3rd Cir., 843 F.2d 706 (1988) (a rehearing and a rehearing en banc were denied by the third circuit on April 22, 1988 Id.).

(3) Following rejection of their claim in the federal courts, the appellants commenced the present action in the Superior Court. At approximately the same time, appellants commenced an action in the Court of Chancery for "review of proof of the Will of Jean L. Purse" as authorized by 12 Del.C. § 1309. In granting appellees' motion to dismiss, the Superior Court ruled, in agreement with the federal courts who had considered the matter, that in pursuing a claim for tortious interference with an inheritance the appellants were "merely attempting to put another label on a probate claim within the exclusive jurisdiction of the Court of Chancery." *Moore v. Graybeal*, Del. Super., C.A. No. 88C-AP-194, Balick, J. (July 29, 1988) (ORDER).

(4) Appellants contend that they cannot secure complete relief in a will review proceeding in the Court of Chancery since the statutory remedy fails to provide for trial by jury or recovery of punitive



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damages. There is no constitutional right to trial by jury in actions historically within the jurisdiction of the Court of Chancery. *Park Oil, Inc. v. Getty Refining & Marketing Co.*, Del. Supr., 407 A.2d 533, 535 (1979). Nor is there entitlement to punitive damages if the statute creating the underlying remedy does not so authorize. *William Whitman Co. v. Universal Oil Products Co.*, D. Del., 125 F. Supp. 137, 162 (1954) ("n the absence of express statutory provisions, a court of equity is without authority to assess exemplary or punitive damages.") (citations omitted) See also *Beals v. Washington International Inc.*, Del. Ch., 386 A.2d 1156, 1157-60 (1978) (adopting holding in *William Whitman Co.*, 125 F. Supp. at 162).

(5) We agree with the Superior Court, and the federal courts which have considered the issue, that appellants' claim of tortious interference with an inheritance if pursued in a court of law would constitute a collateral attack upon the probate of the will of Jean L. Purse. Such an attack is clearly precluded by Delaware law. See *Criscoe v. Derooy*, Del. Ch., 384 A.2d 627, 630-31 (1978); *Anthony v. Harris*, Del. Ch., 100 A.2d 229, 232 (1953). Consequently, the Superior Court properly dismissed appellants' complaint for lack of subject matter jurisdiction.

(6) It is manifest from the appellants' brief that the issues posed in the appeal are clearly controlled by settled Delaware law.

