Petty v. Petty

121 Wash.App. 1066 (2004) | Cited 0 times | Court of Appeals of Washington | June 1, 2004

UNPUBLISHED OPINION

After the death of his father, Guy Petty filed a petition asking the court to award him a family allowance from his father's estate. The King County Superior Court Commissioner followed In re Estate of Garwood, 109 Wn. App. 811, 38 P.3d 362 (2002) and ruled that under RCW 11.54.010(1), absent a petition from the surviving spouse or minor children, Petty did not have an independent right to petition for an award of property. Petty appeals and argues the commissioner erred in following Garwood. Alternatively, Petty contends the court in Garwood incorrectly interpreted RCW 11.54.010(1). We conclude the court in Garwood correctly construed RCW 11.54.010(1) and absent a petition from the surviving spouse, an adult child may not independently file a petition for an award of property. We affirm the trial court's decision to deny Petty's petition.

FACTS

Blaine Petty died in January 2002. He is survived by his spouse, Margaret Petty, and two adult children from a prior marriage, Guy Petty and Teresa Joule.

In 1995, Blaine and Margaret Petty executed a will. The will provides that upon the death of either spouse, all property passes to the surviving spouse. On the death of the surviving spouse, the couple's estate passes to Blaine's children, Guy and Teresa.[1]

At the time of his death, Blaine Petty's share of the community estate was valued at $3.4 million. Margaret filed their will in King County Superior Court. No probate was commenced. Instead, Margaret relied on the community property agreement she and Blaine executed to administer the estate.

In September 2002 Petty filed a petition under RCW 11.96A.100 for a declaration of rights in the administration of his father's estate.[2] In his petition, Petty stated that because of medical problems he is unable to secure employment or support himself. [3] Petty asserted his father provided him with regular support and since his father's death, Margaret 'made no efforts to make distributions' to him despite the 'trust relationship' he had with his father.[4] He also said he was concerned that Margaret would 'attempt to dissipate the assets of his father's estate' and he would not receive his inheritance 'unless restraints are placed on her.'[5] In his petition, Petty asked the court to find that Margaret and Blaine had agreed that Petty would receive a distribution of assets when his father died. He also requested an order to preclude Margaret from making another will. In support of his petition for a

declaration of rights, Petty submitted the declaration of his mother, Margaret Webber. Webber stated that Blaine regularly provided funds to Petty and assured her he would 'take care' of Petty in the future. She also stated that several years before his death, Blaine told her that he had drafted provisions for a trust for Petty's benefit and faxed a document to her outlining them.[6] In addition, Petty submitted the declaration of a friend, who said that Blaine supported Petty. There is nothing in the record indicating the court ruled on Petty's petition for a declaration of rights in the administration of his father's estate.

In April 2003, Petty filed a petition[7] for a family allowance under RCW 11.52.040.[8] In his petition for a family allowance, Petty requested an award of $40,000 from his father's estate. In support of his request, Petty submitted the declaration of Blaine's sister. Blaine's sister stated her brother told her that when he died, Margaret would retain half of his property and the other half would go to his children, Guy and Teresa. She also said Blaine assured her he would take care of Petty.

In response to Petty's request for a family allowance, Margaret Petty relied on Garwood, 109 Wn. App. 811, and argued that Petty did not have a right to petition for a family allowance under RCW 11.54.010(1).

The court commissioner denied Petty's request for a family allowance 'on the basis of the holding in In re Estate of Garwood.'[9] Petty appeals.

ANALYSIS

Petty contends the commissioner erred in denying his request for a family allowance because Garwood does not apply. Alternatively, Petty argues the court in Garwood incorrectly interpreted the statute and this court should not follow Garwood.

The right to petition for a family allowance is a statutory right. Francon v. Cox, 38 Wn.2d 530, 540, 231 P.2d 265 (1951). A petition for a family allowance is governed by RCW 11.54.010(1).

RCW 11.54.010 Award to surviving spouse or children - Petition. (1) Subject to RCW 11.54.030, the surviving spouse of a decedent may petition the court for an award from the property of the decedent. If the decedent is survived by children who are not also the children of the surviving spouse, on petition of such a child the court may divide the award between the surviving spouse and all or any of such children as it deems appropriate. If there is not a surviving spouse, the minor children of the decedent may petition for an award.

Statutory interpretation is a question of law that this court reviews de novo. Berger v. Sonneland, 144 Wn.2d 91, 104-05, 26 P.3d 257 (2001). This court does not construe an unambiguous statute where plain words do not require construction. Davis v. Dep't of Licensing, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999). Instead, we derive the meaning of words from the statute itself. State v. Tili, 139 Wn.2d

107, 115, 985 P.2d 365 (1999). The court necessarily gives effect to all the statutory language so that we do not render any portion meaningless or superfluous. Davis, 137 Wn.2d at 963. A court must not add words where the legislature did not include them and only if a statute is subject to more than one reasonable interpretation, may we look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent. See Philip A. Talmadge, A New Approach to Statutory Interpretation in Washington, 25 Seattle U.L.Rev. 179, 203 (2001).

In Garwood, the court carefully analyzed the language and legislative intent of RCW 11.54.010(1) and concluded the statute does not allow an adult child to independently petition the court for an award of the decedent's property. The decedent in Garwood, Kathleen Garwood, was survived by her second husband, an adult daughter from her previous marriage, and her adopted son. In her will, Garwood left any amount owed her from a settlement agreement with her first husband to her son and daughter. She left all of her other assets to her surviving spouse. No money was owed under the settlement agreement and consequently, her daughter and son received nothing under Garwood's will. The daughter filed a petition under RCW 11.54.010(1) for an award of $40,000 in lieu of homestead. The surviving spouse did not petition for an award under RCW 11.54.010 and objected to the daughter's petition. The trial court granted the daughter's petition.

On appeal, the court reversed the award to the daughter and held that the plain language of RCW 11.54.010(1) requires the surviving spouse to petition for an award of the decedent's property before an adult child is entitled to file a petition for an award. Garwood, 109 Wn. App. 816-17. In addition to the unambiguous provisions of the statute, the court noted the public policy supporting the legislature's intent and its construction:

The award in lieu of a homestead is a statutory device that can alter the testamentary wishes of the decedent, the intestate succession statutes, and the rights of creditors. It can also blur the distinctions of community property and probate and non-probate assets. Thus, it is logical that only if the survivor chooses to use the device to alter any of those relationships would the Legislature see fit to address the right of the children to petition to divide what the survivor has exempted from creditors and perhaps from non-probate assets.

Garwood, 109 Wn. App. at 817.

We agree with the Garwood court's interpretation of RCW 11.54.010(1). Under RCW 11.54.010(1), only a surviving spouse, or, in the absence of a surviving spouse, minor children may petition for an award of the decedent's property.

Petty contends Garwood doesn't apply because the adult daughter in Garwood sought an award in lieu of homestead and the court focused 'solely on the construction of the homestead provisions' and did 'not reach the family allowance provisions.'[10] But RCW 11.54.010(1) consolidates and eliminates prior historically distinct property awards from a decedent's estate such as an award in lieu of

homestead and a family allowance. An award in lieu of homestead and a family allowance are now 'property awards' under RCW 11.54.010(1). The Garwood court's interpretation of the statute in the context of a petition for an award in lieu of homestead applies with equal force to Petty's petition for a family allowance.

Alternatively, Petty argues Garwood was wrongly decided based on the following statement in the decision: '{u}ntil 1997, only the surviving spouse could petition for an award in lieu of homestead, and awards to minor children for support occurred only when there was no surviving spouse.' Garwood, 109 Wn. App. at 814. Petty contends this statement is incorrect because the statute prior to 1997 allowed persons other than the surviving spouse to petition for an award in lieu of homestead and the Garwood court relied on this incorrect premise to conclude that the current statute also permits only a surviving spouse to petition for an award. We disagree. The court's holding in Garwood that RCW 11.54.010 does not permit an adult child to petition for an award of property was based on the unambiguous terms of the statute. The court's decision was not based on an interpretation of the former version of the statute. The statement about who was entitled to petition for an award in lieu of homestead before the statute was amended in 1997 was part of the description of the historical purpose of the homestead statutes. Garwood, 109 Wn. App. at 814.[11]

Petty concedes that under a 'literal reading' of the statute only a surviving spouse may petition for a family allowance, but he claims that this interpretation contravenes the legislative purpose and public policy of protecting the family.[12] The only case Petty cites in support of his argument is Griesemer, v. Boyd, [13] Wash. 171, 43 P. 17 (1895), and it involved an award of a family allowance to a surviving spouse and minor children. Petty cites no Washington case that allows a court to award a family allowance to parties other than a surviving spouse and minor children. Petty also relies on In re Bell's Estate, 70 Wash. 498, 127 P. 100 (1912), to claim that a court may grant a family allowance even where the surviving spouse did not petition for it. He argues that he is also entitled to an award of a family allowance, even though Margaret has not filed a petition for an award of property. Although the surviving spouse in Bell's Estate did not petition for a family allowance, the court, sua sponte, awarded it out of concern for 'the protection of a surviving widow.' State ex rel. Case v. Superior Court for Grant County, 23 Wn.2d 250, 259, 160 P.2d 606 (1945) (Simpson J, dissenting). The statute in effect at the time of Bell's Estate permitted the court to exercise its discretion to award an allowance as 'necessary for the maintenance of the family' during the settlement of the decedent's estate and did not require filing a petition. Bell's Estate, 70 Wash. at 501.13 Bell's Estate is not inconsistent with Garwood. Under both cases, awards of property out of a decedent's estate are available only to a surviving spouse and minor children.

Finally, Petty argues that the statute is contrary to public policy and unfair because the surviving spouse may have interests adverse to the decedent's adult children.[14] This argument is more appropriately addressed to the legislature. See Burkhart v. Harrod, 110 Wn.2d 381, 385-86, 755 P.2d 759 (1988).

Petty v. Petty

121 Wash.App. 1066 (2004) | Cited 0 times | Court of Appeals of Washington | June 1, 2004

The language of RCW 11.54.010(1) is unambiguous and, as the court ruled in Garwood, absent a petition for an award of property by a surviving spouse or minor children, it does not permit an adult child to petition for an award of property.

We affirm.

1. A third remainder beneficiary under the will, Robert Zutter (the father of Blaine Petty's grandchildren) is deceased.

2. Petty's citation to RCW 11.96A.100 is inaccurate. But under RCW 11.96.070, a person with an 'interest in' the administration of an estate may petition for a declaration of rights.

3. Petty's medical problems include diabetes, emphysema and asthma.

4. Clerk's Papers (CP) at 3.

5. CP at 3.

6. The document is not signed and the designated amount for the trust is blacked out.

7. Both the petition for a declaration of rights and the petition for a family allowance were filed under the same King County cause number.

8. This statute was repealed and replaced in 1997 with RCW 11.54.010.

9. CP at 52.

10. Appellant's Brief (App. Br.) at 6.

11. However, even under the prior statute adult children were not entitled to either an award in lieu of homestead or a family allowance. Former 11.52.010, which governed awards in lieu of homestead, states, in part: upon petition for that purpose, {the court} shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of thirty thousand dollars Guy claims that the language 'upon petition for that purpose' allowed someone other than the surviving spouse to file a petition under former RCW 11.52.010. But awards in lieu of homestead were available only to the surviving spouse under the prior statute. The only exception was if there was no surviving spouse, an award of property was to be set aside for minor children under former RCW 11.52.030. Former RCW 11.52.040 did not explicitly limit the right to file a petition for a family allowance to the surviving spouse, but the only parties entitled to receive an allowance were a surviving spouse and minor children. See In re Pugh's Estate, 22 Wn.2d 83, 154 P.2d 308 (1944); In re Estate of Dillon, 12 Wn. App. 804, 531 P.2d 1189 (1975). We conclude the difference in language between the current and former statute reflects a stylistic, but not a substantive, change.

12. App. Br. at 11, Reply Br. at 7.

13. Petty does not acknowledge that an award of a family allowance is discretionary. See RCW11.54.010(1); Garwood, 109 Wn. App. at 814.

14. In his reply brief, Petty cites an ALR annotation, Who is Included in Term 'Family' or 'Household' in Statutes Relating to Family Allowance or Exemption Out of Decedent's Estate, 88 ALR 2nd 890 (1963), and argues that adult children are intended beneficiaries of family allowance statutes. The annotation merely compiles and compares the provisions of various state statutes. It does not affect the interpretation of Washington's statute. Nor does it show that any other state permits adult children not residing in the decedent's household to petition the court for a family allowance.