

STATE OF RHODE ISLAND  
PROVIDENCE, SC

PROBATE COURT OF THE  
CITY OF PROVIDENCE

**In Re Estate of Charles A. Kilvert**

No. 2000-252

*Decedent Estate*

### **DECISION**

This matter is before the Probate Court on the Statement of Claims of Jacqueline G. Kilvert, the widow of the decedent, filed by her plenary Co-Guardians of the person and estate<sup>1</sup> (“Claimant”) against the estate of Charles A. Kilvert (“Estate”). The Co-Executors of the Estate have denied the claims and the Claimant has requested the Probate Court to conduct a hearing for the purpose of proving its claims.<sup>2</sup> A hearing was held in the Probate Court in July of 2001; as a result of that hearing, the parties agreed to submit memorandum, without testimony, limited solely to the allegations contained in Count II of the Claimant’s statement of Claims as they relate to the interpretation of language in a certain Agreement that the decedent and Jacqueline Gillies entered into on April 9<sup>th</sup>, 1973 in contemplation of their marriage. Therefore, the court is limiting its decision herein to the allegations contained in Count II of Mrs. Kilvert’s claim.

### **Pertinent Facts**

The decedent and Jacqueline G. Kilvert (“Jacqueline”) were married on April 16<sup>th</sup>, 1973; both had been previously married and each had children from those unions. No children were born during their marriage to each other. On April 9<sup>th</sup>, 1973, prior to their marriage, they entered into an Agreement for the purpose of “fixing and determining the rights and claims that will accrue to each of them in the estate and property of the other by reason of the marriage and to accept the provisions of this agreement in lieu of and in full discharge, settlement and satisfaction of all such rights”<sup>3</sup>. In this agreement, each of the parties recite that there is adequate consideration for its execution, that they each understand it and agree to be bound by its terms

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<sup>1</sup> Letters of Plenary Co-Guardianship were issued to Mrs. Kilvert’s daughters Jessie Lobo and Yancy Gillies by Circuit Court for Collier County, Florida; Probate Division on December 20<sup>th</sup>, 2000. It is by this authority that they are proceeding hereunder.

<sup>2</sup> RIGL § 33-11-16

<sup>3</sup> Preamble of April 9<sup>th</sup>, 1973 Agreement that is the subject of this dispute.

and conditions as well as to make it binding on their heirs, legal representatives, assigns and legatees or beneficiaries of their wills. Paragraph 2 of this Agreement provides that the decedent shall by will or otherwise create a Trust providing income to Jacqueline for life or until she remarries consisting of principal in an amount equal to one-half his gross estate (for Federal Estate Tax purposes) or \$250,000 whichever was larger and that she “may use for life or until her earlier remarriage, rent free, such of his residential real property with the buildings and improvements thereon (situated in Providence, Rhode Island at 21 Barnes Street and in Nantucket, Massachusetts on Main Street) and such of the house hold furnishings and furniture therein as she may wish.”

The decedent established a Trust in 1992<sup>4</sup>, income for the benefit of Jacqueline during her lifetime, to be funded according to the term of the April, 1973 Agreement. On March 23<sup>rd</sup>, 1999, he executed the Will that has been allowed for Probate as his Last Will and Testament. It establishes usage for Jacqueline in all his tangible property “during her lifetime for as long as she wishes”, then to be given to his children. It also provides that the Nantucket Property shall, if Jacqueline survives him and does not request that it be sold, be devised to his Trustees under the 1992 Trust which was amended on March 23<sup>rd</sup>, 1999;. Section 4 of the Amended Trust provides that the Nantucket property, as devised to the Trustees, shall make up a portion of the fifty (50%) percent gross value of the Marital Trust and be held by the Trustees as such for Jacqueline’s benefit during her lifetime; Section 10 of the amended Trust provides that this real estate shall be held by the Trustees until such time as Jacqueline notifies the trustees that she no longer wishes to have this real estate retained by them or ceases to live in such real estate. At such time as Jacqueline ceases to use the Nantucket real estate as her personal residence, the Trustees may sell said real estate and distribute the proceeds to the Marital and Residual Trusts to be administered pursuant to the terms and conditions set forth therein. The Will specifically directs the Co-Executors of the estate to sell the Providence property and distribute the proceeds to the Trustees of his 1992 Trust Agreement, as amended. It is as a result of this clause in the Will and action by the Co-Executors to sell this property that the Claimant files Count II of its claim against the estate.

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<sup>4</sup> The trust Agreement provides for a Marital and Residual Trust; under its terms, Jacqueline receives all of the income from the Marital trust during her lifetime and so much of the principal as the Trustees in their discretion deem necessary. She does not receive income or principal from the Residual Trust. (the decedent’s children are the beneficiaries of the Residual Trust) Upon Jacqueline’s death, after provision for payment of estate taxes as a result of the Marital trust being included in her estate, its remainder is to be distributed under the terms and conditions of the Residual Trust.

The respective interested parties for Jacqueline and the decedent are not strangers to this court; prior to the death of Mr. Kilvert, a Guardianship for the person only of Jacqueline had been established in this Probate Court<sup>5</sup>. Approximately one month after Mr. Kilvert's death, the Co-Guardians of the person resigned, and this Guardianship was terminated. It was represented to this Court that Jacqueline no longer had any residency in Providence and that other arrangements for guardianship for her in another jurisdiction would be undertaken by her children.

### **Discussion and Findings**

As previously stated, this matter is before the court pursuant to **RIGL 33-11-16** as amended, after the Co-Executor's denial of Jacqueline's claims. This is a relatively new procedure for Probate Court to adjudicate;<sup>6</sup> the legislature has not enacted any specific statutory schemes or standards to be applied, etc. by the court in rendering its decision on disputed claims<sup>7</sup>. It is this court's interpretation that the claim statute was amended to streamline and shortcut the process as well as reduce expenses. By the very nature of the process and similar to the duty of the court appointed Commissioners under the previous statute, this court must apply the applicable law, whether it sounds in contract or tort, in rendering its decision. It has the authority to exclude evidence and to make decisions based on agreed statements of fact, even if they are not specifically entitled as such, memorandum, as well as uncontroverted, relevant documents.

Both parties herein submitted extensive memorandum and reply memos for the purpose of promulgating their respective positions. With their memorandum, each side presented documents which they believe are relevant and pertinent to their position, but may not necessarily be uncontroverted. The court finds that the April 9<sup>th</sup>, 1973 Agreement between Jacqueline and the decedent; the March 23<sup>rd</sup>, 1999 Will that has been allowed herein and the decedent's Amended Trust Agreement of the same date are both **relevant and uncontroverted** and will be considered by this court in rendering its decision. No testimony is requested or required to assist the Court on the issue before it.

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<sup>5</sup> Providence Probate Court # 99-321.

<sup>6</sup> Previous to August of 2000, this Statute directed the Probate Court to, at the request of either party if timely made, appoint one (1) to three (3) Commissioners for the purpose of hearing and determining disputed claims against an estate; a report of their findings would then be submitted to the Probate Court for implementation.

<sup>7</sup> RIGL 8-9-9 gives the court the power to do and transact all matters and things incidental to the jurisdiction and powers vested in *probate court by law* (emphasis added).

The court has reviewed the April 9<sup>th</sup>, 1973 Agreement between the parties and finds that it is a valid binding contract entered into by the decedent and Jacqueline in anticipation of their impending marriage. It establishes their respective rights and duties as to one another and by its terms is binding on the successors, heirs and assigns. Because it predates the adoption of the Uniform Premarital Agreement Act<sup>8</sup>, common law contract law applies. I find that this Agreement taken as a whole clearly expresses the intention of the parties at the time they executed it. Walsh v Young 660 A2d 1139 (NH 1995). In the agreement, the decedent promised Jacqueline that if he predeceased her, he would by will or otherwise do two specific acts:

- establish a Trust in an amount equal to the larger of \$250,000 or fifty (50%) of his estate as established for Federal Estate Tax purposes for her benefit (income and discretionary principal) during her life for as long as she remained unmarried.
- allow her to **use** for her life, as long as she **remained unmarried**, the Providence and Nantucket property (he also agreed to let her use his personalty in these homes for as long as she desired, then to be given to his children).

This clause in the Agreement was never amended or modified mutually by the parties; as a matter of fact, no part of the Agreement was ever changed and is clear in its four corners as to what the intent of the parties was.

I find that the decedent's Amended 1992 Trust Agreement, executed on March 23<sup>rd</sup>, 1999 contemporaneously with his Will, establishes a Marital Trust which complies with the terms referred to in the April , 1973 Agreement between the parties relative to Paragraph 2)a; I also find that the additional language not in the Agreement which disposes the residual in the Marital Trust at Jacqueline's death, after payment of Estate taxes assessed because this Trust is to be included in her estate for tax purposes, to **his** children reflects precisely what the parties intended in their Pre-Nuptial Agreement.

His Will and the Amended Trust also provide for Jacqueline to use the Nantucket property for as long as she so desires and to have all expenses for the house paid from the Marital Trust while she occupies same, in compliance with the 1973 Agreement as to this property; the decedent again added language not specifically in the Agreement. That language provided that upon Jacqueline's notification to the Trustees of her desire not to occupy the premises any longer **or** if this real estate is no longer used as her personal residence, the Trustees shall sell the subject

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<sup>8</sup> RIGL 15-17-1 et seq

property and distribute the net proceeds to the Marital and Residual Trust(the Amended Trust Agreement provides that each owns 50% of this property), to be administered according to their respective terms. Apparently and according to their memorandum filed herein, **both** the Claimant and Estate are satisfied with the provisions for the Nantucket property as set forth in the Will and Amended Trust Agreement. Ostensibly, this is because Jacqueline has advised the Co-Executors and Trustees of the Amended Trust expressly by her Co-Guardians or by her actions during the marriage to the decedent that it is her desire continue to use this property as her residence.

Because Jacqueline presently is using this property as her residence, she is in complete compliance with the terms of the 1973 Agreement, the Will and the Amended Trust Agreement. Had she ceased using this property as her personal residence, would the Claimant have filed a claim similar to the one that is the subject of this controversy? The disposition of the Nantucket property in the Amended Trust Agreement, if Jacqueline ceases to use it as her personal residence, **does not comply** with the interpretation of the 1973 Agreement that the Claimant's so vigorously propound for the Providence property in support of their claim (a lump sum payment to Jacqueline individually as compensation for her alleged life estate in the Providence Property).

The Co-Executors of the Estate are directed to sell the Providence Property, proceeds to be delivered to the Trustees of the Amended Trust Agreement and be distributed according to its terms<sup>9</sup>, the same basic result as the latter scenario referred to if Jacqueline ceased to use the Nantucket premises.

I find that the dispositions as set forth in the Will and Amended Trust Agreement of the Providence Property and of the Nantucket property are in compliance and consistent with the expressed intent of the parties in the 1973 Pre-Nuptial Agreement. This Agreement does create a duty to establish a life estate by "will or otherwise" for Jacqueline in the two properties; but it is one that is dependent upon which two (2) contingencies can happen, and may determine the estate before her death. 4 Kent's Com. (12<sup>th</sup> edition) , lecture 55. Jacqueline's life estate in the real estate is contingent upon her remaining unmarried **and using the premises**. As long as these contingencies are met , she has a valid life estate therein. For guidance and direction on these points see Disley v Disley 75 A. 481, 30 RI 366 (1910). Jacqueline had a life estate made by contract of the decedent, for an uncertain period which could have lasted for her life. It may in fact endure that long for the Nantucket property. However, she has abandoned the use of the

Providence property as her residence and has thus terminated her life estate. This court is not able to determine whether both parties to the 1973 Agreement or if the decedent alone considered Jacqueline's lack of use of the Providence Property when he made his estate plan in 1992 and again in 1999; suffice it to say that the court takes judicial notice of her lack of use of the Providence property during the time she was under guardianship in Providence, and the complete termination of the Providence Guardianship and subsequent proceeding in Florida, shortly after Mr. Kilvert's death. This, I find, is dispositive of her abandonment of use of the Providence property and ultimate termination of her life estate therein.

### **Conclusion**

Based on the above findings of fact and the reasons given thereto, Count II of the Claim filed on behalf of Jacqueline is denied and disallowed.

ENTER: Martinelli, J.

BY ORDER: Lombardi, C.

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<sup>9</sup> The proceeds would be divided equally between the Marital Trust and Residual Trust.