



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480)362.6315

ROSITA FULWILDER

Appellant,

-V-

TRINA DE LA CRUZ, et al.,

Appellees.

Appeal Case No.: **AP-24-0004**

Trial Case No.: P-23-0021

OPINION AND ORDER

Before Justices Bender, Dworkin and Guss.

This matter is before the court on an appeal from the probate of the estate of Delbert Hollis Fulwilder ("Decedent" and enrolled member of the Salt River Pima Maricopa Indian Community (the "Community")), who died on October 4, 2022. Rosita Fulwilder, Decedent's spouse, and Maxine Fulwilder, Decedent's daughter and enrolled member of the Community, filed a Petition for Probate on November 17, 2022. After holding hearings on the matter, the Court found that Rosita Fulwilder is not an heir to Decedent's property. An appeal was timely filed by Rosita Fulwilder objecting to the Probate Court's order denying her any share of the estate assets, either as a portion of the estate owed to Rosita Fulwilder as the surviving spouse under Arizona's community property law or as an omitted spouse under a premarital will of the Fulwilder estate. We reverse the Probate Order dated March 21, 2024 and the Order dated May 6, 2024, denying Rosita Fulwilder as an heir and remand for further action consistent with this Opinion.

BACKGROUND

Decedent, an enrolled member of the Community, was born on June 9, 1955, and died on October 4, 2022. On February 23, 1988, Decedent executed a will disposing of personal and real property subject to this Court's jurisdiction. At the time the will was executed Decedent possessed testamentary capacity and acted free of undue influence. The will was in writing and the Decedent signed the will in the presence of two witnesses

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who also signed the will. The will provided for Decedent's two daughters who were alive when the will was executed: Lisa Marie Manuel and Trina Manuel, now De La Cruz. The will expressly excluded the then Decedent's spouse: "I am not leaving any of my interests to my wife, Patricia Ann (Enos) Manuel, DOB: 10/28/72, SRID20614, because she has interests of her own, and I do not have any other children." Decedent did not revoke that will and executed no other will before his death in 2022. Decedent remarried on July 1, 2002 to Rosita Ann Sacatero (now Fulwilder).

At the time of his death in 2022, Decedent had three daughters: Trina De La Cruz, Maxine E. Fulwilder (DOB 6/21/2003) and Laura J. Fulwilder, and a spouse of twenty years, Rosita Fulwilder (hereinafter, "Spouse"). Decedent's daughter Lisa Marie Manuel named in the 1988 will had died prior to Decedent's death. Decedent possessed the following personal property listed in the Probate Order: (a) Ford pick-up truck; (b) Chevy Express van; (c) trailer at 1859 N. Dobson Rd., Scottsdale, AZ 85256; (d) home at 1859 N. Dobson Rd., Scottsdale, AZ 85256; and (e) per capita payout check.

The Court held hearings on January 25, February 1, February 12, February 28, and March 21, 2024. The Court issued its Probate Order on March 21, 2024, and concluded that (1) the Decedent's will was validly executed, (2) that the property described in the will subject to SRPMIC law should be given to the persons named in the will, and (3) that pursuant to Section 14-2302(A) of the Arizona Revised Statutes the named living daughter as well as the other 2 living, but omitted daughters should share equally in the estate. The Court's March 21 Probate Order, however, denied Spouse's motion to be an heir and receive a portion of Decedent's property.

Spouse timely filed a Motion for Reconsideration on April 3, 2024. The Motion raised two separate arguments: (1) Spouse should take half of the community property as an existing owner; and (2) that the Decedent died intestate. Both arguments were rejected by an Order issued on May 6, 2024. The Court dismissed the first argument referencing A.R.S. § 14-2301(A) and the Court's March 21 Order. As to the second argument the Court explained that it had previously found that Decedent had died testate and it would be "contrary to justice to the Decedent's daughters if this Court were to rule that the Decedent died intestate." Spouse filed a Notice of Appeal on May 10, 2024 and

her Principal Brief as Appellant on June 18, 2024. Appellee Trina De La Cruz filed a Response Memorandum on July 9, 2024.

DISCUSSION

We begin with the recognition that none of Decedent's assets at his death fall into the category of trust property. All of Decedent's property is personal consisting of a car, a truck, a mobile home, a house at 1859 N. Dobson Road (within the Community), and a per capita payment. We therefore conclude that the American Indian Probate Reform Act is not relevant in this proceeding.

The Community's Tribal Probate Code is brief and establishes two basic concepts: (i) the determination of heirs will be based on State law and (ii) the property will be given to the persons identified in a validly executed will. See Section 9-2 and 9-3 of the Community Code. Based on this limited direction of the Community Probate Code, the Court was faced with determining (1) the rights of Decedent's children Laura and Maxine Fulwilder, omitted from the will due to their birth after the will was executed and (2) the rights of Spouse omitted from the will due to the fact that the spousal relationship began after the will was executed.

With respect to the two daughters born after the will was executed, The Court reviewed A.R.S. § 14-2302 discussing the rights of children born after the execution of the will and concluded that Laura and Maxine shall share equally with the one daughter Trina De La Cruz who was named in the will. "The Decedent's will listed Trina Manuel (now De La Cruz) as an heir. Maxine E. Fulwilder and Laura J. Fulwilder are now added as heirs pursuant to A.R.S. § 14-2302(a)." The Court ordered the Decedent's property distributed in "three equal shares." March 21 Order, page 1 of 2. The Probate Court's conclusion regarding treatment of the omitted children is a correct interpretation of Arizona law and the three children should share equally in the portion of the estate to be allocated to the children.

The Probate Court, however, failed to properly interpret the rights of Decedent's spouse, Rosita Fulwilder. Potentially, Spouse has rights regarding her share of the community property and separately as an omitted spouse. First the Probate Court must

determine which of Decedent's property is community property and which was Decedent's sole and separate property. Assets acquired before the marriage are generally considered sole and separate property. Assets purchased during the marriage are community property. See A.R.S. § 25-211. At Decedent's death, for any of the listed personal property acquired during the marriage and determined to be community property, half of the asset is the Spouse's and the remaining half is devised pursuant to Arizona's probate laws. For any of the listed assets that are sole and separate property, the asset in its entirety is governed by the Arizona probate law. The Court below failed to make such a determination and we remand to the Probate court to consider the impact of community property on the distribution of assets at death.

Second, we consider the status of the Spouse as an heir, pursuant to A.R.S. §. 14-2301. Section 2301(A) states:

If a testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive as an intestate share that is not less than the value of the share of the estate the spouse would have received if the testator had died intestate as to any portion of the testator's estate that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of that child or that passes under § 14-2603 or 14-2604 to that child or to a descendant of that child.

Section 2301 is designed to guard against unintentional disinheritance. *In the Matter of the Estate of Beaman v. Beaman*, 119 Ariz. 614, 583 P.2d 270, 273 (Ariz. App. 1978) (holding that the omitted spouse is treated in the same manner as the pretermitted child, A.R.S. §2302.) As the *Beaman* Court explained, Section 2302 "grants the omitted spouse an intestate share in the deceased spouse's estate to preserve the remainder of the will while still providing for the omitted spouse." *Id.* Section 2301(A) provides for three exceptions, none of which apply here.

1. It does not appear from the will and no other evidence was presented that the will was made in contemplation of the marriage of Decedent to Spouse and the marriage did not occur until 12 years after the will was executed;

2. Nothing in the will expresses the request that the will as written is to be effective notwithstanding a subsequent marriage; and
3. The Decedent addressed the treatment of his then spouse, but nothing in the will or other evidence demonstrated that the Decedent would be providing for his surviving spouse outside the will.

Thus, having eliminated the 3 statutory exceptions, Spouse's rights as an heir are addressed in A.R.S. §14-2301.

In the case of a premarital will, Spouse is entitled to receive as a testate share not less than the value of the share of the estate the spouse would have received if the Decedent had died intestate. Spouse receives one-half of the Decedent's sole and separate property and none of the Decedent's interest in community property subject to probate. By example, if the home in Scottsdale is Decedent's sole and separate property because it was acquired by Decedent prior to the marriage and it was maintained as sole and separate property during the marriage, then Spouse receives one half of the home. If, however, the Court determines that it is community property, then at Decedent's death, Spouse receives her one-half of the house as her portion of the community property. In this case, whether Sole and Separate or Community property, the outcome is the same, Spouse receives one-half of the home. A similar analysis would be required with each of Decedent's list of assets.

Appellant's *Notice of Additional Information/Brief* dated November 3, 2023 and provided as requested by the Court is consistent with the appropriate interpretation of the Arizona statutes regarding the omitted spouse. The Arizona decision *In the Matter of the Estate of Beaman*, 119 Ariz. 614, 583 P.2d 270 (Ariz. App. 1978) is informative. The *Beaman* Court explained, the omitted spouse is treated in the same manner as the pretermitted child, the omitted spouse is granted an intestate share in the estate. Rosita Fulwilder should enjoy a similar result as that of Alma Beaman, surviving spouse of deceased Leo Beaman. Like Rosita Fulwilder, Alma Beaman married after Leo Beaman had executed a will, leaving everything to his two children. The Beaman children were not children of Alma Beaman. Trina De La Cruz is not the child of Rosita Fulwilder. Alma Beaman appealed the lower court's decision to deny her a portion of the estate as the

omitted spouse and the Court reversed and remanded. In similar fashion, Rosita Fulwilder should not be denied her portion of the estate as an omitted spouse. We reverse the Orders of the Probate Court and remand to the Probate Court in order that the Court can consider the rights of Appellant Rosita Fulwilder under A.R.S. § 14-2301.

CONCLUSION

For the reasons stated above, this Court reverses the Probate Order dated March 21, 2024 and the Probate Order regarding Reconsideration dated May 6, 2024 and remands to the Probate Court to apply A.R.S. §§ 14-2302(A) as described above.

ISSUED this 10th day of September, 2024

S E A L



Electronically approved 9/10/2024

/s/ Judith M. Dworkin

Judith M. Dworkin, **Justice**

Electronically approved 9/10/2024

/s/ Mary Guss

Mary Guss, **Justice**

Electronically approved 9/10/2024

/s/ Paul Bender

Paul Bender, **Justice**