Judgment rendered June 13, 2012.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

NO. 47,023-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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SUCCESSION OF WILLIAM EDINBURG SMITH

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 536,744

Honorable Leon L. Emanuel, III, Judge

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THE SINGLETON LAW FIRM
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Before BROWN, WILLIAMS, GASKINS, CARAWAY and DREW, JJ.

CARAWAY, J., dissents with written reasons.

WILLIAMS, J.

The plaintiff, Everlena Lane, appeals a judgment denying her petition to reopen the succession of William Smith for the sale of the succession's ownership interest in immovable property. The trial court affirmed an August 2010 judgment of possession placing Jeffrey Smith in possession of that ownership interest. For the following reasons, we reverse and render.

FACTS

In July 2009, William Smith executed his will designating Everlena Lane as testamentary executrix. In the will, Smith devised and bequeathed "all of my monetary assets to my special friend, EVERLENA C. LANE, including but not limited to sales from any and all properties shared between my sister and I. I further give, devise and bequeath my IRA, Savings and Checking Account to my friend, EVERLENA C. LANE." Smith also bequeathed all of his "personal belongings" to Everlena's son, Richard Lane. The will did not contain a residuary clause. The decedent, Smith, died in October 2009.

Subsequently, Everlena Lane filed a petition to probate the decedent's statutory will and the court issued an order probating the will. Everlena Lane filed a petition for possession naming Everlena and Richard Lane as decedent's legatees and seeking possession of the property as provided in the will. The petition stated that one adult child, Jeffrey Smith, was born of decedent's marriage, which had terminated by divorce. Attached to the petition was a detailed descriptive list of all movable and immovable property of the decedent. The movable property included vehicles, furniture, tools, appliances and funds from decedent's checking, savings,

money market and 401(k) accounts. The immovable property consisted of an undivided one-half interest in four tracts of land in Caddo Parish. The decedent's sister owned the remaining interest in the land.

The district court rendered a judgment of possession placing Everlena Lane in possession of the money, stocks, annuities and bank accounts of decedent and placing Richard Lane in possession of decedent's movable property. Pursuant to amended and second amended petitions for possession, the trial court rendered an amended judgment of possession providing corrected bank account numbers and a "2nd Amended Judgment of Possession" adding two utility trailers to the movable property placed in Richard Lane's possession. None of the judgments placed Everlena Lane in possession of decedent's interest in the immovable property.

In July 2010, Jeffrey Smith filed a petition seeking possession of the testator's immovable property in Caddo Parish. In August 2010, the district court rendered a judgment of possession recognizing Jeffrey Smith as decedent's only child and placing him in possession of all property not subject to testamentary disposition in the July 2009 will, including the decedent's ownership interest in the immovable property described in the detailed descriptive list of succession property.

In October 2010, the plaintiff, Everlena Lane, filed a petition to reopen the Succession of William Smith, alleging that based upon the language in his will, the decedent had intended that his interest in the immovable property be sold and the proceeds given to the plaintiff. Alternatively, plaintiff alleged that the testator intended for her to receive

his ownership interest in the land. In support of the petition, the plaintiff attached the affidavit of decedent's attorney, Lori Graham, who stated that the decedent's desire was to have the immovable property sold and the proceeds given to plaintiff. Jeffrey Smith filed a motion for summary judgment, which was denied by the trial court.

After a hearing, the trial court found, in effect, that the testator's bequest of assets to the plaintiff did not include the decedent's interest in the immovable property. The court concluded that in the absence of a residual clause, the decedent's ownership interest in the land passed to his heir, Jeffrey Smith. The court rendered judgment dismissing plaintiff's claims and affirming the August 2010 judgment of possession in favor of Smith. Plaintiff appeals the judgment.

DISCUSSION

The plaintiff contends the trial court erred in denying her petition to reopen the succession. Plaintiff argues that the evidence showed that the decedent's intent in writing the will was to bequeath his interest in the immovable property to her.

The testator's intent controls the interpretation of his testament. LSA-C.C. art. 1611. Courts must seek to give meaning to all testamentary language in a will and avoid any interpretation that would render the language meaningless. LSA-C.C. art. 1612; *Succession of Tyson*, 30,703 (La. App. 2d Cir. 6/26/98), 716 So.2d 148; *Succession of Meeks*, 609 So.2d 1035 (La. App. 2d Cir. 1992). The first and natural impression conveyed to the mind on reading the will as a whole is entitled to great weight. *Meeks,*

supra. In the absence of valid testamentary disposition, the undisposed property of the deceased devolves by operation of law to his descendants by blood or adoption. LSA-C.C. art. 880.

Initially, we must consider the testamentary language, which provides in pertinent part:

> I give, devise and bequeath all of my monetary assets to my special friend, EVERLENA C. LANE, including but not limited to sales from any and all properties shared between my sister and I. I further give, devise and bequeath my IRA, Savings and Checking Accounts to my friend, EVERLENA C. LANE.

The appellee focuses on the term "monetary assets," while ignoring the testator's language stating that the bequest includes his interest in "any and all properties shared" with his sister, not limited to sales of such property. The record shows that the testator shared an undivided one-half ownership interest with his sister in four tracts of land described in the detailed descriptive list of property. The testator's reference to this immovable property in his bequest of assets to Everlena Lane indicates the testator's intent that the plaintiff receive the benefit of his ownership interest in the land.

Thus, contrary to the appellee's assertion in his brief, the testator's bequest to plaintiff did provide for disposition of his ownership interest in the immovable property. Although the wording is somewhat awkward, the first impression conveyed upon reading the clause at issue is that the testator intended to give the plaintiff his interest in the immovable property. To find otherwise would render meaningless the testamentary language referencing the testator's interest in the Caddo Parish land in his bequest to plaintiff.

Because the will contained a valid testamentary disposition of the testator's interest in the immovable property, Article 880 is not applicable.

In the absence of a contrary expression, the law presumes that when a will is executed the testator intends to dispose of his entire estate. *Carter v. Succession of Carter*, 332 So.2d 439 (La. 1976); *Succession of Kearl*, 440 So.2d 179 (La. App. 4th Cir. 1983). In this case, the lack of a residuary clause in the will supports the presumption that the testator intended to dispose of all of his property, including his ownership interest in the Caddo land, through the bequests stated in his will. It would require a strained interpretation of the will provisions to believe that the testator did not intend to give his interest in the co-owned immovable property to plaintiff, despite his express reference to that land in his bequest to her.

Based upon our consideration of the testament as a whole, we must conclude that the trial court erred in finding that the testamentary bequest to plaintiff did not validly dispose of the testator's ownership interest in the immovable property. Thus, that property interest shall pass not to the testator's heir, Jeffrey Smith, but to the plaintiff. Consequently, we shall reverse the trial court's judgment and render judgment sending the plaintiff into possession of the testator's undivided one-half interest in the immovable property described in the detailed descriptive list.

CONCLUSION

For the foregoing reasons, the trial court's judgment is reversed and it is hereby ORDERED that EVERLENA LANE is recognized as legatee of the deceased, WILLIAM EDINBURG SMITH, and as such is recognized as

owner and sent into possession of all of the deceased's right, title and

interest in and to the immovable property described below:

1. A tract of land located in Section 7, Township 16 North, Range 15 West, Caddo Parish, Louisiana, more fully described as follows: Begin at the Southeast corner of said Section 7, thence run due North along the West right-of-way line of the Simpson Road a distance of 2,049 feet for a point of beginning; thence run West 925.65 feet, thence run North 100 feet, thence run East 925.65 feet, thence run South along the West right-of-way line of the Simpson Road 100 feet to the point of beginning, said tract of land being located in Lot "C" of the Lewis-Washington Partition, and containing two and one-eight acres, more or less, known as 9304 Simpson Road and 9306 Simpson Road, Shreveport, Louisiana.

2. 19.85 ACRES M/L OF LEWIS-WASHINGTON PARTITION IN E/2 OF SEC. 7(16-15) N. 608.25 ft of Lot "C," less N. 100 ft of W. 841.2 ft of E. 871.2 ft & less N. 200 ft of S. 400 ft of W. 895.65 ft of E. 925.65 ft and less S. 100 ft of W. 841.2 ft of E. 871.2 ft and less N. 100 ft of S. 200 ft of W. 840 ft of E. 870 ft thereof, located in Caddo Parish, Louisiana.

3. 7.385 ACRES M/L OF LEWIS-WASHINGTON PARTITION IN E/2 OF Sec. 7 (16-15), S. 500 ft of Lot "C," located in Caddo Parish, Louisiana.

4. 2.06 ACRES M/L OF LEWIS-WASHINGTON PARTITION IN E/2 OF SEC. 7 (16-15), N. 100 ft of S. 400 ft of 895.65 ft, of E. 925.65 ft of Lot "C," located in Caddo Parish, Louisiana.

Costs of this appeal are assessed to the appellee, Jeffrey Smith.

REVERSED AND RENDERED.

CARAWAY, J., dissenting.

The testament of Mr. Smith contains only two particular legacies and no universal legacy addressing the balance of his estate. Such a will is completely permissible. Courts need not strain to construe the will to dispose of all of the decedent's property since our law supplements for the balance.

Mr. Smith's first legacy addresses the decedent's "personal belongings," including "any car, truck, furniture and equipment." Thus, this particular legacy addresses the decedent's corporeal movables.

The second legacy provides as follows:

> I give, devise and bequeath all of my monetary assets to my special friend, EVERLENA C. LANE, including but not limited to sales from any and all properties shared between my sister and I. I further give, devise and bequeath my IRA, Savings and Checking Accounts to my friend, EVERLENA C. LANE.

This legacy, the focus of this suit, lists the decedent's broad concern for the disposition of "monetary assets" or incorporeal movables, "including ... sales from any and all properties shared between my sister and I."

There is no particular legacy specifically addressing Mr. Smith's ownership of immovable property. Nevertheless, according to the majority, the decedent's co-owned family immovables were included in the disputed legacy of his "monetary assets." This assessment is somehow made from only a reading of the language of the will, since the trier-of-fact found no competent extrinsic evidence of such intent.

The Civil Code's rules for the interpretation of legacies are provided in Articles 1611 through 1616. La. C.C. arts. 1611, *et seq.* Article 1611(A) first states as follows:

> A. The intent of the testator controls the interpretation of his testament. If the language of the testament is clear, its letter is not to be disregarded under the pretext of pursuing its spirit. The following rules for interpretation apply only when the testator's intent cannot be ascertained from the language of the testament. In applying these rules, the court may be aided by any competent evidence.

La. C.C. art. 1611.

In the articles following this initial directive of Article 1611, the codal provisions and official comments (La. C.C. arts. 1612-1616) identify only a few correctable instances of the lack of clarity in a testator's disposition. In contrast, in settings other than legacy interpretation, the Civil Code's provisions for the resolution of ambiguity in legislation or in contract are premised upon the determination of unclear and disputed language "susceptible of different meanings." La. C.C. arts. 10 and 2048. Yet, the rules for interpretation of legacies do not state a general rule that any ambiguous legacy with a disposition "susceptible of different meanings" allows the court to choose or discern the mind of the decedent. This absence of such general rule authorizing the court to select between two reasonable dispositions from testamentary language "susceptible of different meanings" is recognition of the default principle for a testament set forth in Civil Code Article 880. "In the absence of valid testamentary disposition, the undisposed property of the deceased devolves by operation of law." La. C.C. art. 880. In recognition of this codal scheme, the guide from the jurisprudence is that "extrinsic evidence may be used on a limited

basis to determine what the testator's words mean but not to rewrite the will." *Succession of Burguieres*, 612 So.2d 864 (La. App. 5th Cir. 1993), *writ denied*, 614 So.2d 1256 (La. 1993).

Thus, from these Civil Code principles, the first question for resolution of this disputed legacy is: How unclear is Mr. Smith's language? And second, does a specific codal rule for legacy interpretation from Articles 1612-1616 apply, mandating one disposition?

I believe that Mr. Smith's legacy to Everlena Lane is fatally unclear regarding any intent for a disposition of immovable property. At the time of the will, his sister who is referenced in the legacy had recently died and there was family dispute over her estate. The language of the will was apparently the product of the testator alone and not an attorney. It reasonably reveals the intent that "sales" proceeds, that might result before Mr. Smith's death "from" the sale of his co-owned immovables, be included within his legacy of "monetary assets" to Ms. Lane. As Civil Code Article 1614 and its revision comments demonstrate, the testator's consideration in the will of the assets he owns at the time of his execution of the will and the assets he might own at the time of his death can cause interpretive issues. Here, that type of issue is reflected in Mr. Smith's expressed contemplation of his possible sales of the co-owned family immovables and his desire that "sales" proceeds be included in the legacy to Ms. Lane. While it is unclear if Mr. Smith was focused on "sales" he might make before his death or "sales" thereafter, the immovable properties were clearly to be liquidated and the proceeds fall into his legacy of "monetary assets."

On the other hand, it is very much in doubt that Mr. Smith even contemplated the other contingency that some or all of his immovable properties would remain in his and the family's co-ownership at his death and be inherited by Ms. Lane as an immovable. If Mr. Smith did contemplate his retention of the tracts until his death, it is reasonable that Mr. Smith's desire was that the continued co-ownership of the immovables would be left for his intestate heir and sister's heirs to resolve.

With this wide and unclear array of possibilities for a particular legacy dealing generally with "monetary assets," Articles 1612-1616 do not specifically provide a rule mandating one interpretation over another. Article 1612 charges that the "disposition be interpreted in a sense in which it can have effect, rather than" no effect. However, in its context this disposition was to transfer "monetary assets" and effectively operated for such assets existing at death even though the legacy's condition of the "sales" of the immovables may never have occurred. The other specific codal rules likewise have no application. Therefore, this court is not authorized by the Civil Code's interpretive provisions to rewrite the disposition as a particular legacy of immovables.

In summary, while the legacy clearly contemplated "sales" of immovables before the testator's death and a disposition of proceeds "from" those sales, it does not address the possibility of an immovable remaining in Mr. Smith's estate at death. Therefore, with no operative and valid testamentary disposition of his co-owned family property, the immovable property devolves by operation of law.