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Property - Effect of Murder and Suicide on Right of Survivorship in Joint Tenancy

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gia,[27] it would seem that the movement was well under way even though these jurisdictions had no applicable statutes on which relief could be predicated. *Woods v. Lancet*,[28] the instant case, adds more authority to an equitable view which grants relief to a child injured *en ventre sa mere*. Furthermore, in an enlightened scientific and medical age the causal connection between the negligence and the resulting injury can be accurately traced and presented through competent medical evidence. It would seem then that to allow recovery for prenatal injuries is the better and more logical view, notwithstanding the weight of authority to the contrary.

PROPERTY—EFFECT OF MURDER AND SUICIDE ON RIGHT OF SURVIVORSHIP IN JOINT TENANCY

A husband and wife held certain real and personal property as joint tenants. The husband murdered the wife and immediately committed suicide. The Supreme Court of Wisconsin, three judges dissenting, held that even though the wife had died, under the circumstances, her status as joint tenant continued in her administrator and heirs at law, and when the husband died and his life interest ended, the entire property of the joint tenancy became the wife's estate of inheritance and passed to her administrator and heirs at law. *In re King's Estate*, 261 Wis. 384, 52 N.W. 2d 885 (1952).

The administrator of the husband's estate contended that to deprive the husband of his right of survivorship would not only be an interference by the court with the statutes of descent,[1] but would also work attainder and corruption of blood in violation of the Wisconsin Constitution[2] and the United States Constitution.[3] The contention regarding the statutes of descent was disposed of by the court's adoption of the general rule which holds that upon the death of one joint tenant, the devolution of the property is an incident of the joint tenancy, without regard to the laws of inheritance or statutes of descent.[4]

The court stated that there could be no attainder or corruption of the blood for, under the Wisconsin view of the law, the estate of the wife as joint tenant never vested in the husband, even though she had

[27] Tucker v. Carmichael and Sons, 208 Ga. 201, 65 S.E. 2d 909 (1951).

[28] 303 N.Y. 349, 102 N.E. 2d 691 (1951).

[1] Wis. Stat. (1947) c. 237.

[2] Wis. Const. Art. I, § 12.

[3] U. S. Const. Art. 1, § 9.

[4] United States v. Jacobs, 306 U.S. 363 (1939); Anson v. Murphy, 149 Neb. 716, 32 N.W. 2d 271 (1948); Hoeffner v. Hoeffner, 389 Ill. 253, 59 N.E. 2d 684 (1945); Edge v. Barrow, 316 Mass. 104, 55 N.E. 2d 5 (1944); 2 Tiffany, Real Property § 419 (3rd ed., 1939).

predeceased him. The court explained that it was not taking away from the slayer an estate which he had already acquired but was simply preventing him from acquiring property in an unauthorized and unlawful way, i.e., by murder.[5]

The court concluded that the husband's right to an estate of inheritance on the death of his cotenant became inoperative at the moment of his wrongful act. Accordingly, since his administrator had only those rights to which the husband would be entitled were he living, the administrator was also without any enforceable right in the property.

The problem as to the effect of the right of survivorship where one joint tenant murders the other is not a new one, although the cases directly in point are relatively few. Prior to this decision, the authorities that had treated the matter could be divided into three main views.

The first of these, known as the "constructive trust view," holds that if one joint tenant murders the other, he should be chargeable as constructive trustee for the estate of the other, at least to the extent to which his interest is enlarged by the murder.[6] The authorities are not in agreement as to whether the murderer should be permitted to keep half the property and should be chargeable as constructive trustee of half, or whether he should be deprived of the whole.[7]

The second view, if it may be called such, is represented by one lower court decision[8] and is the view adopted by the dissenting opinion in the instant case. Under this theory, the whole of the property would be equally divided, the wrong-doing spouse being permitted to retain half as if a divorce had occurred or as if the joint tenancy had been terminated in some other way. The murder would operate as a severance of the joint tenancy resulting in a tenancy in common. The murderer would retain ownership in his undivided one-half interest; he would not gain title in, or enjoyment of, the other half, which would vest in the heirs at law and next of kin of the murdered joint tenant.

[5] In support of this proposition, the case of Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908), was cited. However, this case did not involve a joint tenancy; it involved the interpretation of a statute which provided that when a wife dies without any descendants, her widower shall be entitled to one-half of her property. The court held that the term "widower" meant one who has been reduced to that condition by the ordinary vicissitudes of life, not a husband who murdered his wife.

[6] Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927); Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889); Bierbrauer v. Moran, 244 App. Div. 87, 279 N.Y.S. 176 (1935); Sherman v. Weber, 113 N.J. Eq. 451, 167 Atl. 517 (Prerog. Ct., 1933); In re Santourian's Estate, 125 Misc. 668, 212 N.Y.S. 116 (1925); Van Alstyne v. Tuffy, 103 Misc. 455, 169 N.Y.S. 173 (1918); 4 Pomeroy, Equity Jurisprudence § 1504(d) (5th ed., 1941); Rest., Restitution § 188 (1937); 3 Bogert, Trusts and Trustees, c. 24, § 478 (1935); Ames, Lectures on Legal History 321 (1913).

[7] For a complete discussion of the problem and the authorities, see 3 Scott, Trusts § 493.2 (1939).

[8] Barnett v. Couey, 224 Mo. App. 913, 27 S.W. 2d 757 (1930).

The third view is the one most favorable to the joint tenant committing the murder; it holds that the circumstances of the death are immaterial and that the right of survivorship takes its customary course.[9] This view was adopted by the Supreme Court of Illinois in a recent decision, the court stating that the murder of the wife by her husband did not deprive the husband of his right of survivorship in property held in joint tenancy.[10] This case appears to be directly contrary to the instant Wisconsin decision, and a comparison of the two cases should serve to give a better appreciation of the problem.

The main distinction between the two cases is found in the conflicting views of the courts as to the source of the survivor's title on the death of his joint tenant. The Illinois court stated that in a joint tenancy, each tenant is seized of the whole and has a vested interest in the property from the time of the creation of the joint tenancy.[11] Finding that the husband was already vested with legal title to the property, the court held that he could not be said to have acquired any interest in the property by virtue of his unlawful act. It was concluded that to take such a vested interest from the husband would amount to a forfeiture of estate and corruption of the blood, which is expressly prohibited by the Illinois Constitution.[12]

It will be recalled that the Wisconsin court held that there was no attainder or forfeiture under such circumstances because the husband's wrongful act precluded him from ever acquiring title to the wife's share.

The American courts seem to be in agreement that the death of a joint tenant gives the survivor no new title or right, but simply relieves him from further interference by his cotenant; the survivor does not take the moiety of the other tenant as successor, but takes it under the conveyance or instrument by which the joint tenancy was created.[13]

The Wisconsin court cited no authority in support of its proposition that "in our view of the law the estate never vested in Mr. King."[14] The court quoted in great detail from a prior Wisconsin decision which

[9] Welsh v. James, 408 Ill. 18, 95 N.E. 2d 872 (1950); Oleff v. Hodapp, 129 Ohio St. 432, 195 N.E. 838 (1935); Beddingfield v. Estill and Newman, 118 Tenn. 39, 100 S.W. 108 (1907).

[10] Welsh v. James, 408 Ill. 18, 95 N.E. 2d 872 (1950).

[11] The court cited 2 Tiffany, Real Property, § 418 (3rd ed., 1939).

[12] Ill. Const. Art. II, § 11 (1870).

[13] Tooley v. Commissioner of Internal Revenue, 121 F. 2d 350 (C. A. 9th, 1941); Klajbor v. Klajbor, 406 Ill. 513, 94 N.E. 2d 502 (1950); Paulson v. Paulson, 70 A. 2d 868 (Me., 1950); Draughton v. Wright, 200 Okla. 198, 191 P. 2d 921 (1948); In re Peterson's Estate, 182 Wash. 29, 45 P. 2d 45 (1935); Frederick v. Southwick, 165 Pa. Super. 78, 67 A. 2d 802 (1949).

[14] No Wisconsin decision has been found holding that a joint tenant takes the moiety of the other joint tenant from him or as his successor, and not by the original instrument of conveyance.

applied the equitable doctrine that a man shall not profit by his own wrong.[15] It appears that the court was determined to reach the result which it believed to be the most equitable, and, in doing so, it disregarded the well established rule of property law that a joint tenant acquires his title by the original conveyance creating the interest.[16]

However, the Illinois case is also not completely free from objection. It seems that a decision which deprives the heirs and personal representatives of the murdered joint tenant of any interest in the property fails to reach an equitable result. The court inferred that a joint tenant who murders his cotenant does not acquire any benefit by his unlawful act. It appears however, that he does in fact acquire a benefit inasmuch as he has eliminated the cotenant's right of survivorship and thereby prematurely made his own possession of the estate absolute.

The "constructive trust view" seems to be a desirable one. It complies with the rules of property law, as followed in the Illinois decision, by admitting that legal title is vested in the slayer; however, at the same time, it reaches the equitable result of the Wisconsin decision and refuses to allow the wrongdoer to profit by his wrong. This is accomplished by impressing a constructive trust on him for the benefit of the victim's heirs. Yet, under this view, the question still arises as to whether the murderer should be deprived of the whole of the property. It would seem that it is not unjust to deprive him of all the property, except for a life interest in one-half of it.[17] If the murderer had predeceased his cotenant, the former would have taken nothing; if he would have survived the cotenant, he would have taken everything. It being impossible to know which of the two would have outlived the other, equity would, in all probability, give the innocent victim the benefit of the doubt and would accordingly give the entire interest to the victim's heirs upon the murderer's death.[18]

It may be argued that it would be inequitable to deprive the heirs of the murderer, who are innocent of his unlawful act, from participating in the property. It is then wise to consider the theory favored by the dissenting opinion in the present case wherein the murder operates as a severance of the joint tenancy, resulting in a tenancy in common. The murderer would retain ownership to an undivided half interest without gaining title in, or enjoyment of, the other half, which would vest in the heirs of the murdered joint tenant. Thus, in our present case, where

[15] In Estate of Wilkins, 192 Wis. 111, 211 N.W. 652 (1927). This case dealt with a legatee who, not knowing of the legacy, murdered the testator and immediately committed suicide. It was held that the murderer took nothing under the will.

[16] Authorities cited note 13 supra.

[17] Ames, Lectures on Legal History 321 (1913).

[18] Ibid.

the slayer immediately committed suicide, equity would be achieved by permitting the innocent heirs of both joint tenants to share equally in the property. No doubt the problem would be best resolved by a legislative enactment setting down the requirements of the public policy of the state when one joint tenant murders the other.[19]

CONTEMPT–DOCTRINE OF "PURGATION BY OATH" OVERRULED IN ILLINOIS

Defendant Gholson was being tried on a criminal charge for violation of the Illinois Medical Practice Act.[1] A contempt petition was filed against him and his wife charging that they circulated an advertisement extolling defendant with intent to influence the jurors before whom he was to be tried. They were also charged with having organized a motor caravan of persons, whose attendance at the trial caused some disturbance, with intent to influence the jury. Defendants denied any unlawful intent in their verified answers, admitting the advertisement circulation and knowledge of the motor caravan. Defendants contended that they were purged of indirect contempt by virtue of their verified petition. The Illinois Appellate Court for the Second District affirmed the finding of the trial court that, under the doctrine of "purgation by oath," the answers of the defendants were insufficient to purge them of the alleged contempt.[2] Judgment was reversed and remanded by the Illinois Supreme Court in declaring that the doctrine of "purgation by oath" is no longer to be adhered to in Illinois. *People v. Gholson*, 412 Ill. 294, 106 N.E. 2d 333 (1952).

The power of the courts to punish for contempt is inherent,[3] and exists independent of statutes.[4] Contempt of court, as stated in the *Gholson* case, may be classified as criminal, civil, direct, or indirect. Criminal contempt is conduct directed against the dignity or authority of the court, while civil contempt consists of the failure to obey a court order.[5] Indirect contempt is a contempt committed outside the presence of the court, and direct contempt is one committed in the presence of the court while in session,[6] or in any place set apart for the use of any

[19] Many states have statutes preventing the acquisition of property by an unlawful killing. The constitutionality of such statutes was upheld in Hamblin v. Marchant, 103 Kan. 508, 175 Pac. 678 (1918). For a thorough explanation, see Wade, Acquisition of Property by Wilfully Killing Another, 49 Harv. L. Rev. 715 (1936).

[1] Ill. Rev. Stat. (1951) c. 91, §§ 1-16(x).

[2] People v. Gholson, 344 Ill. App. 199, 100 N.E. 2d 343 (1951).

[3] People v. White, 334 Ill. 465, 166 N.E. 100 (1929).

[4] People v. Hagopian, 408 Ill. 618, 97 N.E. 2d 782 (1951).

[5] People v. Gholson, 412 Ill. 294, 106 N.E. 2d 333 (1952).

[6] Ibid.