

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

FILED

June 11, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

IN THE MATTER OF:)
ESTATE OF AVIS BASS, DECEASED)
)
CHARLIE HOLLIDAY, EXECUTOR)
OF THE ESTATE OF RUTH BASS,)
DECEASED,)
)
Appellee,)
)
VS.)
)
DONNA BASS GROFF,)
)
Appellant.)

Hardeman Chancery No. P-571
Appeal No. 02A01-9504-CH-00094

APPEAL FROM THE CHANCERY COURT OF HARDEMAN COUNTY
AT BOLIVAR, TENNESSEE
THE HONORABLE DEWEY C. WHITENTON, CHANCELLOR

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AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:
W. FRANK CRAWFORD, P.J., W.S.
HOLLY KIRBY LILLARD, J.

This is an appeal from the trial court's order establishing a year's support for decedent's widow, Ruth Bass, in the amount of \$14,000.00. Ruth Bass died prior to this appeal, and the executor of her estate, Charlie Holliday, was substituted as appellee. Appellant is Donna Bass Groff, daughter of the decedent, who seeks to set aside the order for year's support on the basis that Ruth Bass received a significant amount of assets that passed outside of the probate estate. The trial court held that assets passing outside of the probate estate could not be considered in determining the year's support pursuant to the version of T.C.A. § 30-2-101 that was in effect at the time of the decedent's death. For the reasons stated below, we affirm the judgment of the trial court.

Decedent, Avis Bass, died on April 16, 1990, leaving a Last Will and Testament that named his daughter, Donna Bass Groff, as the beneficiary. Ruth Bass filed a Petition of Surviving Spouse for Elective Share, Year's Support and Exempt Property and Application for Homestead. The decedent's estate contained assets totaling \$33,665.21. Ruth Bass testified that her annual living expenses were \$14,288.73, and that she received, outside of the probate estate, \$30,000.00 in life insurance, a trailer worth \$9,000.00, and motor home worth \$24,000.00, a truck worth \$7,675.00, certain real estate worth \$23,000.00, and bank accounts worth \$6,139.35.

The pertinent issue at trial was whether the version of T.C.A. §30-2-102 that was in effect at the time of the decedent's death applied to the present action, or whether the 1993 amendment to T.C.A. § 30-2-102 applied. In 1990, at the time of the decedent's death, T.C.A. § 30-2-102(a) provided:

[T]he surviving spouse of an intestate, or a spouse who dissents from a decedent's will, is entitled to a reasonable allowance in money out of the estate for his or her maintenance during the period of one (1) year after the death of the spouse, according to his or her previous standard of living, taking into account the condition of the estate of the deceased spouse.

In 1993, T.C.A. § 30-2-102(a) was amended to add the following sentence at the end of the above provision:

The court may consider the totality of the circumstances in

fixing the allowance authorized by this section, **including assets which may have passed to the spouse outside probate.**

T.C.A. § 30-2-102(a) (Supp. 1995) (emphasis added).

The trial court ruled that the 1993 amendment to the year's support statute affected substantive rights and should not be applied retrospectively. The trial court further ruled that the statute that was in effect at the time of the decedent's death prevented the court from taking into consideration the property and assets that Ruth Bass received outside of the estate. Accordingly, the trial court awarded Ruth Bass \$14,000.00 as a year's support.

Appellant has raised two issues for our consideration, which are: (1) whether the trial court erred in ruling that the 1993 amendment to T.C.A. § 30-2-102 affected substantive rights and should not be applied retrospectively; and (2) whether the trial court erred in awarding \$14,000.00 as a year's support based on T.C.A. § 30-2-102 as it existed at the time of the decedent's death.

We find appellant's first contention to be without merit based on the decision of this court in In re: Estate of Fraker v. Blount, No. 01A01-9411-GS-00528, 1995 WL 134514 (Tenn. App. March 29, 1995). In Fraker, the court held that the 1993 amendment to T.C.A. § 30-2-102 could not be applied retrospectively, and that the surviving spouse's right to a year's support should be determined pursuant to the statute in effect at the time of the decedent's death. Id. at *2.

Appellant argues that if this court determines that the 1993 amendment should not be applied retrospectively, the evidence presented at trial and the statute in existence at the time of the decedent's death do not support the trial court's award of a year's support. According to appellant, the size of the estate obviates Ruth Bass' need for support and to allow such support would severely deplete the estate. We reject appellant's contentions in this regard.

In Phipps v. Watts, 781 S.W.2d 863 (Tenn. App. 1989), the court stated:

[T]he executor argues that, since the widow is able to provide for herself out of funds that passed to her as consequence of the death of the decedent, the court should reduce the amount awarded. We can see nothing in the statute that would allow the result sought by the executor. The cases interpreting the statute have said that the statute is to be construed liberally in favor of the right of the widow. Acuff v. Daniel, 215 Tenn. 520, 387 S.W.2d 796 (1965). We find no authority in Tennessee for construing the statute to mean that the probate court should not allow a year's support if the surviving spouse is able to support himself or herself.

Id. at 867.

The Court in Phipps also stated that the trial court, in determining year's support, should consider whether the estate would be seriously impaired or depleted. Id. at 867. In the present case, however, the year's support award does not comprise even half of the decedent's estate.

Based upon the foregoing, we find that the evidence does not preponderate against the trial court's judgment. T.R.A.P. 13(d). The judgment of the trial court is therefore affirmed. Costs on appeal are adjudged against appellant, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

LILLARD, J.