Wyoming Law Journal

Volume 19 | Number 3 Article 6

December 2019

Probate Procedure - Distinctions between the Probate and Civil Arms of the District Courts - Gaunt v. Kansas Univ. Endow. Ass'n

William H. Vines

Case Notes

PROBATE PROCEDURE — DISTINCTIONS BETWEEN THE PROBATE AND CIVIL ARMS OF THE DISTRICT COURTS—*Gaunt v. Kansas Univ. Endow. Ass'n, 379 P.2d 825 (Wyo. 1963).*

The action was one brought in the District Court of Big Horn County, Wyoming in which the contestants of a will alleged that the maker of the will, (probated in the District Court of Big Horn County), was not of sound mind and memory at the time such will was made.[1] The action was dismissed and the dismissal was affirmed by the Wyoming Supreme Court on the ground that the Wyoming will contest statute requires that the petition be filed in the "court in which the will was proved."[2] This phrase was interpreted to mean that the petition must be filed in the probate arm of the district court of the county where the will was admitted to probate and not on the civil docket. The court *held,* in this case, that a will cannot be attacked in an action brought directly in the district court even though it is the same court and the same judge, for the simple reason that a will contest is strictly a probate matter.

The contestants made one fatal error: the suit was placed on the wrong docket, and since contestants' right to commence a contest in the probate proceedings expired one day after the filing of their petition, dismissal was an effective bar to further action on their part.[3]

One might very well question why such a result is reached assuming that the contestants had a legitimate claim. At first glance the separation of probate powers and those exercised in actions at law or in equity may seem to result from mere technicality. However, this separation has a valid and realistic purpose in that the probate court can, for most purposes, acquire jurisdiction of interested persons without actual notice to them. Since probate proceedings are largely ex parte and, therefore, have been considered a distinct field of law, it still may remain important to retain this separation.[4]

Originally probate matters were part of ecclesiastical jurisdiction in England. Then the chancery courts assumed jurisdiction in order to protect a decedent's property because the ecclesiastical courts were not deemed competent.[5] A look to the historical limits of probate practice is necessary, therefore, to determine the bounds of probate jurisdiction. An astute Montana court has observed:

> By probate jurisdiction . . . is meant the exercise of the ordinary power of what, *ex vi termini,* is generally understood to be the

1. Gaunt v. Kansas Univ. Endow. Ass'n., 379 P.2d 825 (Wyo. 1963).
2. WYO. STAT. §2-83 (1957).
3. WYO. STAT. §2-83 (1957). Filed one day before the six month contestable period was up.
4. Church v. Quiner, 31 Wyo. 222, 224 Pac. 1073 (1924); *In re* Black's Estate, 30 Wyo. 55, 216 Pac. 1059 (1923); State *ex rel.* State Board of Charities and Reform v. Bower, 362 P.2d 814 (Wyo. 1961).
5. 1 HENDERSON, BANCROFT'S PROBATE PRACTICE 37-38, §16 (2d ed. 1950).

> authority of courts of that name. They derive their origin from the ecclesiastical courts of England, and this fact suggests the character of their powers. Unless otherwise regulated by statute, they have a special mode of procedure, and are subject to rules that had their origin in the ecclesiastical courts, and issues of fact are not tried by jury. Although they do not proceed according to the rules of the common law of England in this country, yet they are recognized by it, and their jurisdiction is as well defined and understood as is that of our other courts of law and equity. Their powers are limited, unless extended by statute, and are confined to the establishment of wills, the settlement and management, or, in other words, administration, of decedents' estates, the supervising of the guardianship of infants, the control of their property, the allotment of dower, and other powers pertaining to the same general subject.[6]

These were the factors which influenced and still influence the determination of the bounds of probate jurisdiction in America. This direction was pointed at by the Wyoming Territorial Supreme Court which stated that probate jurisdiction "is to be determined by the general nature and character of such courts, as they are recognized in our system of jurisprudence."[7]

Today, however, as a general proposition, it would be correct to state that probate proceedings are controlled by statute, and probate courts are merely "creatures of law and limited in their jurisdiction."[8] These statutes are by no means uniform. The Wyoming courts of probate jurisdiction fall somewhere between two extremes of courts exercising probate jurisdiction. The one extreme, as shown by the Washington type of practice, is a court of general jurisdiction which, as an incident to that jurisdiction, exercises the probate functions and determines practically any matter which comes before it. It seems immaterial whether or not the matter is directed to the court sitting in probate.[9] The other extreme is found in New Mexico where the probate court is one of special and limited jurisdiction with its powers severely limited, and its decisions are not reviewed on appeal but tried de novo.[10]

The major portion of the Wyoming probate code was adopted from the California probate code. And, even though the California probate code has been significantly changed,[11] the Wyoming courts still rely heavily on California decisions. This is shown by the court's reliance, in the *Gaunt* case, on two California decisions in making its decision, stating that "the portion of our probate code having to do with contests was taken from California, and this jurisdiction has been inclined to follow decisions in that state on this subject."[12] However, this is not limited to the portion of our probate code per-

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6. Chadwick v. Chadwick, 6 Mont. 566, 13 Pac. 385 (1887); Quoted in 1 HENDERSON, BANCROFT'S PROBATE PRACTICE 55, §23 (2d ed. 1950) and 34 WORDS AND PHRASES, *Probate Law* 105 (1957).
7. McCray v. Baker, 3 Wyo. 192, 18 Pac. 749 (1888).
8. 1 HENDERSON, BANCROFT'S PROBATE PRACTICE 38, §16 (2d ed. 1950).
9. *Id.* at 39, §17.
10. *Ibid.*
11. The law which Wyoming adopted was repealed by California in 1931; see Editor's note following WYO. STAT. §2-4 (1957).
12. *Gaunt, supra* note 1.

taining to the contest sections, as the court has said the probate "code was taken from California, so that we are inclined to follow the decisions in that state on that subject, if not inappropriate to do so."[13] The last phrase of the above quoted section should, however, be an appropriate warning against relying too heavily on such decisions.

The holding in the principal case is not a novel innovation of the Wyoming court. California, in a similar case,[14] which involved a contest alleging decedent was not of sound mind, was brought in the Superior Court of California, the same court in which the will was being probated, however, not in the probate arm of the court, *i.e.*, on the civil register rather than the probate register. California's statute[15] provides, like Wyoming's, that a contest must be "file(d) in the court in which the will was proved. . . ." The contestant argued here that the clerk of court may have been misled into giving the matter a new number instead of filing it as part of the original probate proceedings and that since there is but one form of action in the state that the pleading was, in fact, a petition to contest and the court had jurisdiction. The court, however, stated that probate jurisdiction is separate and distinct from the jurisdiction of the superior court in a civil action or in equity. The court said that the intent here was to proceed by a separate action.

> We think that the provision that a petition must be filed in the same court means that it must be filed in the same jurisdiction of the court which made the order which is objected to, in other words, the petition must in some manner reach the superior court sitting as a court of probate and exercising probate jurisdiction. While this petition was filed in the same superior court, it was not brought within the probate jurisdiction of that court. . . .[16]

Nor, has the Wyoming court previously been silent on the matter of filing in the wrong division of the district court. In *Slover v. Harris*,[17] involving contractual rights, the court said that a decree admitting a will to probate is not subject to collateral attack but it will stand if not revoked by a direct proceeding or reversal. As the jurisdiction of the court sitting in probate matters is limited and special, one, having contractual rights arising from a previous will or an oral agreement to make a will, must settle them in a proper suit. By proper suit the court meant that a contractual right was an independent civil matter and not a probate matter, as the latter merely determines the validity and substance of the last will of the decedent. In still another Wyoming case[18] the high court, in an action in equity by decedent's widow to set aside an order admitting a will to probate on the grounds of irregularity of notice of the proceedings to admit the will, held that a person cannot bring an action in equity to set aside an order admitting a will to

13. Merrill v. District Court of Fifth Jud. Dist., 73 Wyo. 58, 272 P.2d 597 (1954).
14. Fisher v. Superior Court, 23 Cal. App.2d 528, 73 P.2d 892 (1937).
15. CAL. PROB. CODE §380 (West 1956).
16. *Fisher, supra* note 14, at 896.
17. Slover v. Harris, 77 Wyo. 295, 314 P.2d 953 (1957).
18. Hartt v. Brimmer, 74 Wyo. 356, 287 P.2d 645 (1955).

probate because the probate of a will is a matter exclusively within the jurisdiction of the probate court.[19]

As pointed out by the *Gaunt* case a proceeding to contest a will is not a civil action and it must be filed in the probate arm of the district court; that is, the will cannot be attacked in a new action brought directly in the district court.[20] The contestants should have filed their petition in the probate division of the district court in which the will was proved within the six month time period allowed by statutes for such a contest. There would seem to be little doubt that alleging that a testator is of unsound mind and memory at the time the will was made is an attack on the validity of the probate instrument and should be made a part of the probate proceeding in the district court in which the will is being probated.[21]

Probate jurisdiction in Wyoming is a special jurisdiction even though it is not exercised by a separate court but rather by a separate division of the court which exercises general jurisdiction, *i.e.*, the district court.[22] The investiture of probate powers in the district court of general jurisdiction has, in some instances, blurred the boundaries, as vividly pointed out in our principal case.

Although probate proceedings are typically controlled by statute, the Wyoming probate code does not go into detail concerning the procedure, but merely provides that the district court "shall have exclusive original jurisdiction of all matters relating to the probate and contest of wills and testament, the granting of letters testamentary and of administration, and the settlement and distribution of decedents' estates."[23] The Wyoming Supreme Court has interpreted this phrase as meaning that the jurisdiction of the probate arm of the district court is limited and special, and "only matters affecting the validity and subsistence of the will should be considered. . . ."[24] The absence of enumeration in detail of the probate jurisdiction of the court leaves such court without a fixed guide which results in a conflict as to the extent of the powers of such courts and sometimes in a loss of remedy or loss of time and costs, as evidenced by the *Gaunt* case.

The primary objectives of probate jurisdiction are adjudicating the validity of testamentary instruments, primarily wills and codicils, and the

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19. However, the court retreated from this firm position slightly by saying that even if it can be brought in equity for a justifiable excuse, the action must be brought within a reasonable time and nineteen months is not reasonable. Thus a reasonable time could presumably be limited to the six month contest period unless there was a very good excuse for the delay, even though the attack on an order of probate because of a defect in procedure is distinct from a contests of will, the latter actually attacking the validity of the will and only incidentally seeking to set aside the order of probate.
20. *Gaunt, supra* note 1.
21. See WYO. STAT. §2-47, (1957), which states that only persons "of full age and sound mind may dispose by will" of their property.
22. WYO. CONST. art. 5, §10; WYO. STAT. §2-3 (1957).
23. WYO. STAT. §2-3 (1957).
24. *In re* Stringer's Estate, 80 Wyo. 426, 345 P.2d 786, 789 (1959).

administration, supervision, and distribution of estates. Thus the probate court in Wyoming, by judicial decree or statutory authority, has been held to have jurisdiction to do the following: entertain the contest of a will;[25] revoke the probate of a will;[26] set aside an order admitting a will to probate;[27] determine the liability of a guardian and whether disputed amounts involved belong to the guardianship or the guardian personally;[28] determine title to property of the estate when a personal representative claims title;[29] grant specific performance where a decedent is bound by written contract and has died before making the conveyance;[30] partition or distribution of real estate where the original heirs or devisees have conveyed their shares if there is no dispute as to the conveyance or assignment;[31] determine heirship upon petition of a person claiming to be an heir or upon petition of executor or administrator when the time of final distribution arrives;[32] determine claims of a contestant to shares of other beneficiaries because of advancements made to these beneficiaries;[33] and order a continuance of a decedent's business and determine proper compensation of executors who appoint themselves officers of such a business.[34]

As the probate proceedings are statutory the court is limited in its probate jurisdiction to such powers as are expressly granted by statute or may be implied therefrom. Therefore, it has been held that probate jurisdiction in Wyoming does not include: determining title to property in a dispute in

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25. *Gaunt, supra* note 1.
26. *Merrill, supra* note 13.
27. *Hartt, supra* note 18.
28. Wayman v. Alanko, 351 P.2d 100 (Wyo. 1960). See also, *State ex rel. State Board of Charities, supra* note 4, which held that the civil arm and probate arm of the district court are separate and distinct, functioning in different capacities and possessing different powers within their own jurisdiction. This case disallowed a creditor's claim against a decedent's estate filed in a guardianship proceeding at a time when no letters of administration had issued, even though the guardian and administrator were the same person.
29. Security-First Nat'l. Bank v. King, 46 Wyo. 59, 23 P.2d 851 (1933); Annot. 90 A.L.R. 125 (1934); *Wayman, supra* note 28. It seems to be assumed by the Wyoming Supreme Court in these cases that the probate court does not have jurisdiction to determine title to property in a dispute in which a stranger claims property as against the representative of the estate.
30. *In re* Rigby's Estate, 62 Wyo. 401, 167 P.2d 964 (1946); Poston v. Delfelder, 39 Wyo. 163, 270 Pac. 1068 (1928); WYO. STAT. §§2-166 to -174 (1957). The Court stated that the probate court's power is limited to cases defined by statute.
31. *Church, supra* note 4. One exception to this rule is WYO. STAT. §2-317 (1957) which states: "The function of the court in probate is to distribute the residue of the property of the deceased among those who are entitled thereto under the will or the laws of succession."
32. The probate court has no power to determine heirship absent statutory provision but in Wyoming, two proceedings for such a determination are provided by the probate code. *In re Black, supra* note 4; *Church, supra* note 4. WYO. STAT. §§2-304 to -306, 2-310 to -313 (1957). See also WYO. STAT. §§2-325 to -328 (1957) for determination of heirship outside the probate code.
33. Barrett v. Whitmore, 31 Wyo. 301, 226 Pac. 452 (1924); WYO. STAT. §2-241 (1957).
34. *In re* Austin's Estate, 37 Wyo. 313, 261 Pac. 130 (1927); *In re* Hartt's Estate, 75 Wyo. 305, 295 P.2d 985 (1956).

which a stranger claims property as against the representative of the estate;[35] determining a creditor's claim owned by an executor or personal representative against an estate which claim has been rejected by the judge in a probate proceedings;[36] contractual rights arising from a previous will or an oral agreement to make a will;[37] determining priority of conflicting assignments of a legatee's interest in an estate;[38] and the granting of injunctions.[39]

From this mass of seemingly unrelated material a guide evolves for the determination of the bounds of the probate court's jurisdiction. In order to be a proper subject of probate jurisdiction the matter must involve (1) orders granting letters testamentary, orders of administration and of guardianship and their propriety, or (2) a testamentary instrument to be probated and matters relating directly to the proof of such instrument, or (3) matters involving the administration, supervision, and distribution of the estate or matters related directly thereto. In short, that which is necessary to prove the testamentary instrument, collect assets of the estate, pay the debts and distribute the remainder constitutes probate jurisdiction. The court is then generally allotted such incidental powers necessary to carry out these purposes.[40] When one of these factors is involved, the matter should be the subject of probate jurisdiction and cognizable in the probate arm of the district court. When an action involves one of these factors the court should and does have plenary power to adjudicate the matter.[41] Factors which fall outside of this range of subjects should be determined in the civil arm of the court; the best example being a contractual right which necessitates proving the contract rather than a testamentary instrument. In such a case the contract must be proved in the civil arm as it is an instrument which does not involve proving that the will is valid even though the right, when proved, may subsequently become a claim against the estate.

In the last analysis it is up to the particular judge as to what is included or excluded in probate jurisdiction. This is undoubtedly a problem area and will remain so unless it is resolved (1) by more precedent (growth of law in this manner is slow), (2) by a more detailed statute limiting specifically the bounds of probate jurisdiction, or (3) by allowing the court general jurisdiction

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35. Davidek v. Wyoming Inv. Co., 77 Wyo. 141, 308 P.2d 941 (1957).
36. Roberts v. Roberts, 62 Wyo. 77, 162 P.2d 117 (1945); WYO. STAT. §2-237 (1957).
37. *Slover, supra* note 17; *In re Stringer, supra* note 24.
38. *Church, supra* note 4.
39. *McCray, supra* note 7. The Territorial Court said that "granting of an injunction is clearly not an exercise of probate jurisdiction." *Id.* at 750.
40. While the probate court is not a court of general jurisdiction, still it has plenary jurisdiction in probate matters and therefore can relieve a party in default. *Merrill, supra* note 13.
41. *Ibid.* Also by statute in Wyoming, when the district court acts in probate matters, its orders do not have to recite jurisdictional facts and a presumption of regularity applies to a collateral attack on its judgments in the same manner as in civil cases. *Davidek, supra* note 35; WYO. STAT. §2-17 (1957).

such as has been done in some other states.[42] Hopefully, the use of the guides set out in this note will at least result in fewer errors in choosing the proper division of the district court.

William H. Vines

42. *e.g.*, UTAH CODE ANN. §75-1-6 (1953); Weyant v. Utah Sav. & Trust Co., 54 Utah 181, 182 Pac. 189 (1919).