

Inheritance by Wrongdoers In Victims' Estates

For decades, New York has permitted individuals convicted of murder, but determined insane, to recover inheritance from their victims, based on their moral innocence. A case last year in Nassau County, however, has challenged that notion. The court in *In Re Demesyeux*, 978 N.Y.S.2d 608, has denied a mother who killed her three children from recovering funds from her children's estate. The mother was not convicted of murder because the court found that she was mentally ill and therefore not guilty. Last month, the Kings County Surrogate's Court called the Nassau court's finding "a clear departure from existing law." *Estate of George J. Ledson*, NYLJ, July 9, 2014.

This article examines approaches taken around the country to the question of denying inheritance rights to wrongdoers who are mentally incompetent. In New York, case law has addressed inheritance issues in murder cases and in specific instances of insanity (see for example, *Riggs v. Palmer*, 115 NY 506 (1889); *Re Fitzsimmon's Estate*, 64 Misc.2d 622, 315 NYS2d 590 (1970); *Re Bobula's Estate*, 19 NY2d 818 (1967); and *Re Eckhard's Estate*, 184 Misc. 748, 757, 54 NYS2d 484, 492 (1945)).

The Nassau case involved Leatrice Brewer who intentionally and methodically murdered her three young children, hoping thereby to break a voodoo curse over the family. Brewer was not convicted of murder, however, because the court found that she was mentally ill and therefore not guilty. A wrongful death action was successfully brought against Nassau County Department of Social Services by Innocence Demesyeux, the father of two of the children, for failing to intervene despite having sufficient information to do so prior to the murders.

Nassau County paid \$350,000 in damages to the estates of the two

By
**Bruce M.
DiCicco**



children, which otherwise would have had no assets. Brewer, as the sole distributee, would thus inherit the estates of her murdered children. *In Re Demesyeux*, 978 NYS2d 608 (2013). Should Brewer retain her claim as beneficiary to the estates of her children since she has not been convicted of any crime?

Moral Wrong

Many states use the correlation of moral and criminal knowledge to find that a criminally innocent person should not suffer any legal

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recrimination. They argue that if a person is judged "not guilty" on the basis of insanity, then that person has committed no moral wrong and should retain inheritance rights. Connecticut statutory law, for example, assumes that a criminally innocent person is by definition morally innocent. Thus, a person can only be denied inheritance from an estate if he has been convicted of a crime (C.G.S.A. §45a-447). A murderer who has been found "not guilty" based on insanity does not, therefore, lose inheritance rights to the estate of his victim in Connecticut.

Georgia similarly correlates criminal and moral responsibility in its statute though with a slightly different emphasis than that of Connecticut. Rather than defining moral innocence by criminal innocence, it defines criminal innocence by moral innocence. It argues that a person who has committed no moral wrong should

not be convicted of criminal wrong. So Georgia defines insanity for criminal purposes as the ability to understand the moral wrong of the crime, stating,

General insanity is not a defense to a crime in Georgia; only defenses recognized are no capacity to distinguish right from wrong, and delusional compulsion at time of act (Ga. Code Ann., 16-3-2).

A person, then, who is directed to kill by a delusional person or force but who understands that the act is wrong would be found guilty according to Georgia criminal law since the criminal wrong is defined by moral wrong. It would seem, conversely, that if the person were unaware of the wrongfulness of his action, then he would be innocent and thus could still inherit from the estate of the victim.

Fully exonerating the insane person because of the correlation between criminal and moral knowledge is further supported by common law. Indiana, for example, permitted an insane murderer to inherit both the estate and life insurance distributions from his victim because he had, by definition, committed no wrongful (viz., no immoral) behavior (*Turner v. Estate of Turner*, 454 NE2d 1247 (1983)).

New York, similarly, permitted insane people to receive inheritance from their victims based on their moral innocence. When George Fitzsimmons was found not guilty of murdering his parents because of insanity, the court found that he could still inherit from their estates because he had "committed no legal wrong" and therefore could not suffer legal recriminations (*Re Fitzsimmon's Estate*, supra, at 591, citing *Re Eckhard's Estate*, supra). This approach, followed by both statutory and common law, argues that criminal and moral innocence are analogous and therefore murderers acquitted based on insanity, should be able to inherit from their victims.

Intentionality

Another common approach to inheritance by wrongdoers simply tests the intentionality » Page 8

BRUCE M. DICICCO is an attorney in Manhattan concentrating in trusts and estates law. BONNIE DANIELS, legal assistant, contributed to the article.

Inheritance

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of the murder without considering the moral responsibility of the slayer. Consider the following scenario: Bob believes that his mother is planning to murder his daughter, but his daughter does not in fact exist. He therefore creates and executes a plan to kill his mother in order to save the life of his imagined daughter. He is acquitted of murder based on his insanity. Should he inherit from the estate of his mother even though he clearly knew that he was killing her? States that use the intentionality approach have specific slayer statutes that preclude a slayer who "intentionally" or "willfully" kills a person from inheriting from the estate of that person even though acting delusionally or from the product of insane delusion would otherwise obviate a moral wrong. New York has no such law.

States that follow the intentionality test would determine that Bob cannot inherit from the estate because of his awareness of his actions even though deluded. Florida, for example, ruled that a husband could not inherit from his murdered wife because he "intended to shoot his victim" even if he did not know that such an action was wrong (*Congleton v. Samson*, 664 So.2d 276, 280 (1995)). Washington, similarly, specifically separated the intentionality test from the criminal guilt test. In *Re Estate of Kissinger*, the alleged assailant Joshua Hoge was found not guilty under Washington law of the murder of his mother and stepbrother due to his proven insanity. The court still denied his inheritance from the estate of his mother.

The court explained, "A finding of not guilty by reason of insanity does not make an otherwise unlawful homicide lawful. Willful under the slayer statute means intentionally and designedly" (*Re Estate*

of Kissinger, 166 Wash.2d 120, 122 (2009)). Hoge was unable to inherit from the estate because his actions, while not resulting in criminal guilt, were "willful and unlawful." In applying the intentionality test, these states argue that when their slayer statutes refer to an "intentional" killing, it precludes insane people from inheriting from the estates of their victims when the act itself was intended even though the result of illness.

Intentionality Mitigated

Other states contend, however, that if a person does not understand the full repercussions of his act, he cannot "intentionally" commit the act. California, for example, ruled that an insane mother who murdered her sons could still inherit from their estates, the murder being "unintentional" since intentionality requires a sound mind (*Estate of Ladd*, 91 Cal.App.3d 219, (1979)).

Texas similarly stated that an insane husband could not have "willfully" murdered his wife because such action would be incompatible with insanity, and so he could inherit from her estate and enjoy all proceeds of her life insurance policy (*Simon v. Dibble*, 380 S.W.2d 898 (1964)). This second approach to using intentionality to determine inheritance differs in the mens rea necessary to find for intentionality. As shown above, the precise definition of intentionality differs by state, leading to contradictory conclusions under the rubric of the same test.

Equitable Approach

The final and most simplistic approach finds that one cannot profit from his own wrongdoing, leading to the natural conclusion that a murderer can never inherit from the estate of his victim. This approach was established in *Riggs v. Palmer*, supra. A 16-year-old boy

shot his grandfather in order to receive his inheritance under the will. Judge Earl reasoned: "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes" (*Riggs v. Palmer*, supra at 511, emphasis added). This approach does not deny the fundamental correlation between criminal and moral responsibility. Rather, it states that all crime is morally

into equity must come with clean hands. It is well established that our courts will not grant relief to one who comes into equity with unclean hands (*Demesieux*, supra at 611 citing *Matter of Murphy*, NYLJ, Sept. 15, 1999, at 30, col. 2 [Sur. Ct. Richmond County]).

This equitable common law responsibility of the court would naturally bar Brewer from inheriting from the estates. The decision relies on *Riggs*, supra, but in that case there was no plea of not guilty by reason of insanity. The court tacitly acknowledges this weakness by going on to cite numerous decisions where mental illness

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wrong and should never lead to profit, thus inherently denying the inheritance rights of insane murderers to the estates of their victims.¹

The primary rationale of Nassau Judge Edward McCarty in *Demesieux* resembles *Riggs v. Palmer*, supra, in his finding an absolute denial of inheritance from wrongdoing via the "equitable approach." McCarty specifically builds his argument on the common law principle that a court of equity must not permit a person to take inheritance with unclean hands. He states:

A court of equity, in its endeavors to maintain, promote, and enforce the interests of justice, stringently demands good faith, fairness and uprightness from the litigants who come before it. This basic rule is stated in the form of an ancient and most favored principle or maxim, known by every law student, that he who comes

excused moral wrong and intentionality where the wrongdoer was allowed to inherit from the estate of the deceased, *Matter of Fitzsimmons*, 64 Misc.2d 315, NYS2d 590 (Sur. Ct. Erie Co. 1970); *Matter of Lupka*, 56 Misc.2d 677, 289 NYS2d 705 (Sur. Ct. Broome Co. 1981); *Matter of Eckardt*, 184 Misc. 748, NYS2d 484 (Sur. Ct. Orange Co. 1945) and *Matter of Bobula*, 19 NY2d 818, 280 NYS2d 152, 227 NE2d 49 (1967).

The Nassau Surrogate acknowledged the dilemma posed by the case stating essentially that New York is a "Moral Wrong" state but at the same time the court is an equitable court. The decision then adopts the dissenting opinion in *Ford v. Ford*, 307 Maryland 105, 512 A.2d 389 (Ct. of Appeals Maryland 1986) where the son of a beneficiary who had murdered her mother claimed property as an alternative beneficiary under the victim's will. On certiorari, the Court of Appeals held that the beneficiary could

share in the victim's estate because she was insane at the time of the crime and the "slayer's rule" did not apply. In doing so the Nassau court now finds, in my view, New York to be an intentionality state. The decision states:

A finding of insanity in the criminal context is not tantamount to an absence of a mens rea necessary in this context to render Ms. Brewer disqualified as a distributee. Here, by her own admission, Ms. Brewer stated that she intended to kill her children....While not criminally responsible, this court will not relieve Ms. Brewer from moral responsibility" (*Demesyeux*, supra, at 614).

In support of his finding, McCarty added a separate argument based on Brewer's abandonment of her children. The question of whether or not abandonment can be accomplished by one who is mentally ill and thus cannot be responsible for murder is not explained. If Brewer was unaware of the criminal nature of her actions and therefore acquitted of murder, then it would follow that her innocence should also acquit her of abandonment. If she is guilty of abandonment because of killing her children, then she seems analogously guilty of murdering them. The court ruled that Brewer could not receive distributions from the estates of her children. She was found disqualified because of abandonment of her children and moral knowledge of her crime. In doing so the court moves to an intentionality rationale with no exception for mental illness.

This same question in the context of a wrongful death case was considered in *Estate of George J. Ledson*, NYLJ, July 9, 2014, p. 26, col. 5, (Kings Cty. Surr. Lopez-Torres, Surrogate). There the distributee son was charged with the death of the decedent and entered a plea of not guilty by reason of

insanity and was committed to a psychiatric facility. The assets of the estate arose from a wrongful death suit involving exposure to asbestos so unlike the Nassau County case, the actions of the distributee did not themselves give rise to the estate asset.

The Kings County Surrogate held that where the distributee is legally exculpated by reason of mental disease or defect no grounds exist for disqualification in the civil context. The surrogate did not distinguish the creation of the estate asset. The court stated: "The *Demesyeux* case well illustrates the old adage, 'hard cases are apt to make bad law' and while the rationale preferred in *Demesyeux* perhaps offers some visceral satisfaction, its result is a clear departure from existing law and ignores the fundamental moral and legal principle that punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong."

The court went on to say, "As a civilized society we recognize that insanity is a defense against punishment for crime, regardless of the heinous nature of the offense." The decision closes with the admonition that the Legislature would have to act in this matter rather than the courts ignoring binding precedent. It eschews possible distinguishing facts such as those mentioned above. This issue seems clearly in need of clarification by higher tribunals in order to resolve the conflict especially since both cases arose in the Second Department.

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1. Case law does not generally apply this approach in insanity cases. The common argument is that lack of moral knowledge means that the person exhibited no wrongful behavior. New Jersey, for example, ruled that an insane wife who murdered her husband could still inherit her share of his intestate estate and life insurance policy since she was not intentionally committing a wrong act (*Campbell v. Ray*, 102 N.J. Super. 235, 1965).