Wills: The Intention of the Testator, as Expressed in the Will, is Binding

Howard Kalupske

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take of law as such. Just how far the courts will carry this departure is a matter of conjecture, but it certainly is a decided step away from the long established doctrine of relief for mutual mistake of fact but not for mutual mistake of law.

E. D. G.

Wills: The Intention of the Testator, as Expressed in the Will, is Binding.—The recent case of In re Manderscheid’s Will is the latest addition to the long line of Wisconsin cases holding that the will is conclusive evidence of the intention of the testator. In the instant case the testator made a will in which he treated as advancements various sums of money paid by him to his sons either for work and labor performed or as trust funds held by him in trust for his sons until they should have reached maturity. The testator, as shown by the evidence, had really intended to make an equal distribution of his property but had been in error as to method to be used.

The court in this case follows the rule laid down in the case of Estate of Wills, that where the will had clearly and definitely prescribed the manner in which such amounts should be treated, the tenure of the will must be effectuated. The intention of the testator must be ascertained from the will itself and the court will not be allowed, simply because the will was not expressive of the testator’s intention, to change the testamentary instrument.

The rule in the case seems, at first sight, to be extremely harsh, but nevertheless, it is one of the well settled principles of our law. The specific question has often been passed upon by the Wisconsin Supreme Court.

In Hopkins v. Holt we find this statement of the rule: “When the language of a will, used in its ordinary sense, is clear and unambiguous, no exposition will be made contrary to the express words.”

Eastman’s Estate and Estate of Goodrich give us this version: “The intention of the testator as collected from the will itself must prevail, whenever effect can be given to it.”

In re Moran’s Will together with many other cases give us a rule similar to this: That, in construing a will, it is the duty of the court, when possible, to ascertain the intention of the testator from the will itself, giving the words there plain and ordinary meaning. When the intention of the testator is clearly expressed it is conclusive.

HOWARD KALUPSKE

1 — Wis. —, 212 N.W. 247.
2 184 Wis. 242; 199 N.W. 52.
3 9 Wis. 228.
4 24 Wis. 556.
5 38 Wis. 492.
6 118 Wis. 177, 96 N.W. 377.
7 133 Wis. 43, 113 N.W. 398, 133 Wis. 161, 111 N.W. 573, 135 Wis. 584, 116 N.W. 229, 126 Wis. 47, 105 N.W. 216.