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Recent Developments: Emmert v. Hearn: "All My Personal Property" Clause Construed to Encompass Testator's Tangible and Intangible Personal Property

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the statute, his action took precedence over that of the eleven employees. *Id,* 107 S.Ct. at 2212. The court rejected Fort Halifax's argument that the Maine statute was preempted by ERISA, holding that ERISA preempted only benefit plans created by employers or employee organizations. Since this case involved a benefit plan which arose by operation of state law, ERISA did not apply and there was no preemption problem.

The Supreme Court, while affirming the judgment of the Maine Supreme Judicial Court, rejected their rationale. Under the Maine court's analysis, states could set up benefit plans because only employers and employee organizations were barred by ERISA from doing so. What the Maine court failed to recognize, however, was that such an analysis was in direct conflict with the Congressional purpose for enacting ERISA. Congress wanted to establish a uniform set of administrative practices in dealing with employee benefits, thereby eliminating conflicting regulatory requirements. By allowing states to set up benefit plans sua sponte there could still be serious conflicts between state benefit plans and benefit plans provided for by ERISA.

Recognizing the fallacy of the lower court's reasoning, the Supreme Court took a different approach. The Court held that the Maine statute was valid because it neither established, nor required, employers to maintain an "employee benefit plan" as that phrase was interpreted by Congress. In so holding, the Court rejected Fort Halifax's principle argument that any state law which deals with an employee benefit listed in ERISA automatically regulates an employee benefit plan and is therefore preempted.

The Court stated three reasons for its ruling. First, the Court decided that the plain language of ERISA is contrary to Fort Halifax's interpretation. The preemption provision of ERISA applies only to employee benefit plans, not employee benefits. The Maine statute providing for severance pay gave employees a benefit but did not establish a benefit plan. The Maine statute requires no regulatory scheme or administrative programs that could be construed as a "plan." It merely establishes a one-time payment conditioned upon the happening of a specific event. *Id.* at 2213.

Second, the Court analyzed the legislative history and determined that Congress' principle purpose in enacting ERISA was to eliminate conflicting state and local regulations. *Id.* at 2216. Companies frequently conduct business in many different cities and states, thus making compliance with state and local regulations both burdensome and inefficient. By establishing a system of federal regulations to control benefit plans, Congress hoped to make it easier for employers to do business while at the same time protecting the pension and benefit rights of employees. Examining the Maine statute in light of ERISA's purposes, it was clear to the Court that none of the Congressional concerns were present in this case. *Id.* at 2213.

Finally, the Court noted that another purpose of ERISA was to mandate disclosure requirements, thus providing safeguards "with respect to the establishment, operation, and administration of (employee benefit) plans." 29 U.S.C. §1001(a) (1982). Since there were no administrative regulations or continuous activities involving a "plan" under the Maine statute, disclosure would be meaningless and safeguards unneccessary.

The Court's decision in *Fort Halifax* allows states to provide statutory benefits to employees as long as they require no continuous administration constituting a benefit plan.

— *Steven E. Sunday*

Emmert v. Hearn: "ALL MY PERSONAL PROPERTY" CLAUSE CONSTRUED TO ENCOMPASS TESTATOR'S TANGIBLE AND INTANGIBLE PERSONAL PROPERTY

The Court of Appeals of Maryland in *Emmert v. Hearn,* 309 Md. 19, 522 A.2d 377 (1987), held that a testator's intangible, as well as tangible, personal property passed to his surviving children under a paragraph in a will that read: "I bequeath all my personal property to my surviving children." In so holding, the court of appeals affirmed the court of special appeals' reversal of the circuit court ruling.

George Roberts, the testator, died in 1981. He was survived by seven children. His wife had predeceased him eleven years prior, and a son had died in 1971, leaving one child. Roberts left a will (executed in 1977) in which he bequeathed all of his personal property to his surviving children to be divided equally.

The estate of George Roberts, at the

time of his death, was valued at approximately $750,000. Inventories were filed showing $425,000 in real property, $2,500 in tangible personal property and $324,000 in intangible personal property including stocks, bonds and bank accounts.

Miriam E. Emmert was the designated personal representative of her father's estate. In this capacity, she filed a petition for declaratory relief in the Circuit Court for Carroll County. The petition alleged, among other things, that the phrase "personal property was ambiguous; that the testator's intention was to include only tangible personal property..." *Emmert v. Hearn*, 309 Md. at 21, 522 A.2d 377.

The trial court concluded that a latent ambiguity existed as to whether the "personal property" referred to in the second provision of Roberts' will included tangible, as well as intangible, personal property. Extrinsic evidence, including testimony by Emmert, one of the testator's children, and the deposition by the attorney who drafted the will, was admitted to "clear the ambiguity." *Id.* at 22, 522 A.2d at 379. From this testimony, it was gleaned that the intention of the testator was to include only tangible personal property in his second provision. The court held that the words "personal property," as used in the second provision of his will, applied to tangible property only, and that the intangible personal property passed under another provision of the will into the inter vivos trust.

In an unreported opinion, the Court of Special Appeals of Maryland reversed the circuit court judgment. It found that no ambiguity existed as to the words of the will; therefore, extrinsic evidence as to the intention of the testator should not have been permitted. According to the court of special appeals, the trial court was in error in admitting extrinsic evidence of the testator's intention. Certiorari was granted by the court of appeals to consider the important question presented 307 Md. 163 (1986).

Upon review, the court of appeals applied a step-by-step analysis in construing the will. Ordinarily, the court said, the intent of a testator must be gathered from the four corners of the will, giving words their "plain meaning." In so doing, the court recognized that their foremost concern was to ascertain the testator's expressed intent. However, the court stressed that "[e]xtrinsic evidence should not be admitted to show that the testator meant something different from what his language imports... What he meant to say must be gathered from what he did say." *Id.* (quoting *Fersinger v. Martin*, 183 Md. 135, 138, 36 A.2d 716 (1944)).

The court then looked to Webster's Dictionary, as well as Black's Law Dictionary, to determine both the ordinary and the legal meaning of the term "personal property." Both sources included intangible property in their definitions. Additionally, the court noted that bequests of personal property are generally to be construed broadly unless there is some indication in the will to the contrary. The court cited several cases where it had applied this general rule.

In *Leroy v. Kirk*, 262 Md. 276, 283, 277 A.2d 611 (1971), for example, the testator bequeathed "all of my personal property, including my automobile, boat and the contents of my house and outbuildings...." The listing of items put a restriction on the term "personal property" and caused the court to limit, by example, the bequest to tangible personal property.

Returning to the Roberts' will, the court found that nothing on the face of the will limited or qualified the bequest of personal property. No examples were given in the will for the purpose of illustration as to what the testator meant by personal property. The court concluded that the will was unambiguous on its face. Furthermore, the court stated that a latent ambiguity did not exist in the provisions of the Roberts' will. If "the language of the will is plain and single, yet is found to apply equally to two or more subjct or objects then it would indicate latent ambiguity." *Emmert*, 309 Md. at 27, 522 A.2d 377, 381. Extrinsic evidence would be admissible only to resolve an ambiguity. *Id.* Such extrinsic evidence might also indicate that the description in the will is defective.

The court stated that there was no defective description in the will nor was there any indication that Roberts' bequest applied to two or more persons or things.

Thus, "if the language of a will is clear and no latent ambiguity exists, the court's role in the construction of the will is at an end." *Id.* at 28, 522 A.2d at 382. There being no indication that the testator intended anything other than all of his personal property to pass under the second provision, the court held that the bequest in that paragraph was all-inclusive.

The court cautioned that its holding would yield an unfair result to the grandchildren, especially to the son of the deceased child, but such "[A]n inequality cannot influence a court in its duty to find out what a testator meant by his will. ..." *Emmert*, 309 Md. at 28, 522 A.2d 377 (quoting *McCurdy v. Safe Deposit & Trust Co.*, 190 Md. 67, 69, 57 A.2d 302, 303 (1948)).

By its holding the court has once more underscored the important of specificity in the drafting of legal documents. Drafters of wills and other testamentary devices will take note to be as specific as possible in putting into words the *true* intentions of their clients.

— Margaret Ann Willis

Allstate Insurance Company v. Atwood: INSURER BOUND BY VERDICT IN TORT ACTION AND COULD NOT RELITIGATE SAME ISSUES AND OBTAIN AN OVERRIDING DECLARATORY JUDGMENT ON JURY'S VERDICT

In *Allstate Ins. Co. v. Atwood*, 71 Md. App. 107, 523 A.2d 1066 (1987), the Court of Special Appeals of Maryland held that a tort-feasor's insurer, which provided defense for the tort-feasor in an action brought by the victim, in which the jury determined that the defendant's striking of the victim was the result of negligence rather than battery, was bound by the verdict even though it was not a party to the suit. As a result, the insurer could not seek post verdict declaratory relief on the same issues of fact which has been decided in the tort-feasor's trial.

This case stems from an incident which occured in 1983. In an apparently unprovoked attack, the insured, John Atwood, struck another youth in the face. The suit was brought by the victim, individually and through his father, against Atwood in the Circuit Court for Montgomery County. The complaint alleged that the plaintiff's injuries were the result of either Atwood's negligence or intentional assault and battery.

Atwood, who was living with his parents at the time of the incident, relied on their policy with Allstate Insurance Company. The exclusionary clause provided that the insurer is not liable for "bodily injury...intentionally caused by an insured person." *Id.* at 108, 523 A.2d at 1067.

Before the trial, believing Atwood's striking of the victim was intentional and thereby excluded from coverage, Allstate filed for declaratory relief in 1984. The Bill was dismissed on the grounds that it was premature.

At the trial, the jury found that Atwood was negligent which prevented the defendant's conduct from coming within the policy's exclusion regarding intentional conduct. Despite the jury's finding of negligence, Allstate filed for a Bill of Declaratory Relief on the ground that the injuries sustained by the plaintiff "were a direct result... of (Atwood's) intentional