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COOK v. GRIERSON:

Pursuant to the Maryland Slayer Rule, Grandchildren Have no Right to Inherit from their Grandfather's Intestate Estate when Death is a Result of an Act of Patricide by the Children's Father

By: Jigita A. Patel

In a case of first impression, the Court of Appeals of Maryland held that grandchildren of a decedent who dies intestate cannot inherit from the decedent when the children's father is precluded from inheriting because of the Slayer's Rule. *Cook v. Grierson*, 380 Md. 502, 845 A.2d 1231 (2004). In so holding, the court found that grandchildren have no independent claim against a grandparent's estate because they were not "issue" within the meaning of the Maryland intestacy statute since their father was still alive. *Id.* at 513-14, 845 A.2d at 1237-38. Thus, pursuant to the Slayer's Rule, which specifically prohibits "anyone claiming through the slayer" from sharing the decedent's estate, the grandchildren were denied any share in their grandfather's estate. *Id.* at 503, 845 A.2d at 1231.

In January 2002, Frederick Charles Grierson, Jr. ("Frederick") died intestate, survived by his widow, his son Charles, and three grandchildren. Frederick died as a result of multiple stab wounds inflicted by his son, Charles. Charles pled guilty to second-degree murder and was sentenced to thirty years in prison.

The decedent's widow, Deborah Grierson ("Deborah"), as personal representative of her husband's estate, filed a notice of disinheritance in the Orphans' Court for Anne Arundel County ("Orphans' Court"), asserting that Charles was not entitled to a share in his father's estate under the Maryland Slayer's Rule. Subsequent to this action, the grandchildren petitioned the Orphans' Court to declare their rights to inherit a share of the decedent's estate. The Orphans' Court denied the grandchildren's claims, and the Circuit Court for Anne Arundel County affirmed this ruling. Thereafter, the Court of Appeals of Maryland granted *certiorari* prior to any proceedings in the Court of Special Appeals of Maryland.

The court of appeals began its analysis with a review of the Maryland Slayer's Rule. *Id.* at 505-09, 845 A.2d at 1232-35. The court acknowledged that Maryland does not have a slayer statute; rather, the judiciary has formulated a Slayer's Rule in Maryland through case law. *Id.* at 505-06, 845 A.2d at 1233. The purpose of the Rule is to prevent someone from "profiting by his own fraud . . . or acquiring property by his own crime." *Id.* at 505, 845 A.2d at 1233.

The present court relied on an interpretation of the Slayer's Rule as enunciated in the seminal Maryland case, *Price v. Hitaffer*, 164 Md. 505, 165 A. 470 (1933), in which the court concluded a murderer failed to acquire a beneficial interest in the victim's estate due to his murderous acts. *Id.* at 506, 845 A.2d at 1233-34. Next, the court summarized the Slayer's Rule as set forth in *Ford v. Ford*, 307 Md. 105, 111-12, 512 A.2d 389, 392-93 (1986), in which the court opined:

"a person who intentionally and feloniously kills another may not share in the distribution of the decedent's estate as an heir by the way of statutes of descent and distribution, or as a devisee or a legatee under the decedent's will These principles also apply to anyone claiming through or under the slayer."

Id. at 508-09, 845 A.2d at 1235 (quoting *Ford*, 307 Md. at 111-12, 512 A.2d at 392-93).

The grandchildren offered two theories for claiming a right to inherit. *Cook*, 380 Md. at 510-11, 845 A.2d at 1263. First, they proposed Charles be treated as having predeceased the victim, thereby making the grandchildren "issue" pursuant to the intestacy statutes. *Id.* Second, they asserted a constructive trust theory, whereby Charles' interest would be held in trust for the benefit of the grandchildren. *Id.* The court flatly denied the constructive trust theory in light of the *Price* holding that a murderer never acquires an interest in the decedent's estate. *Id.*

In response to the grandchildren's first theory, the court noted that, out of the forty-two states that have adopted slayer statutes,

twenty-seven statutes treat the slayer as having predeceased the decedent, thereby distributing the slayer's share of the estate to the slayer's heirs. *Id.* at 510-11, 845 A.2d at 1235-36. The remaining statutes regard the slayer as having disclaimed his share, or provide for other heirs of the decedent to split the slayer's portion. *Id.* Because there is no statute or legislative intent that elucidates the treatment of a slayer in Maryland, the court of appeals relied on the reasoning of the Tennessee Court of Appeals in *Carter v. Hutchison*, 707 S.W.2d 533 (Tenn. Ct. App. 1985). *Cook*, 380 Md. at 511-12, 845 A.2d at 1236-37.

Carter involved the efforts of a great-grandchild to inherit from his great-grandfather who was slain by the great-grandchild's father. *Id.* The *Carter* court recognized two goals of the Tennessee slayer statute: (1) forfeiture of all rights by the slayer in the decedent's estate, and (2) property distribution pursuant to the Tennessee intestate statute. *Id.* After the slayer forfeited his rights in the victim's estate, the court distributed the property to the slayer's child because, pursuant to Tennessee's intestacy statute, the child qualified as "issue." *Id.* The Tennessee intestate statute defined "issue" as "all direct, lineal descendents of the deceased." *Id.*

Applying Tennessee's construction of the slayer statute to the present matter, the court of appeals treated Charles as having forfeited his rights in the decedent's property. *Id.*, 380 Md. at 512-13, 845 A.2d at 1237-38. Thereafter, the court looked to Maryland's intestacy statute to determine whether Frederick's grandchildren would independently qualify as "issue" of the decedent. *Id.* Recognizing that only the Maryland legislature has the authority to regulate the distribution of property, the court noted the Maryland intestacy statute's definition of "issue" explicitly excludes lineal descendents of a living decedent. *Id.* Thus, because Charles was still alive, the court determined that the grandchildren were not "issue" within the meaning of the Maryland intestacy statute. *Id.* at 513, 845 A.2d at 1237. Therefore, the court concluded that the grandchildren could not independently claim a share in their grandfather's estate pursuant to the intestacy statute. *Id.*

In assessing its decision, the court of appeals stated that prohibiting the grandchildren from inheriting is not analogous to punishing them for the acts of their father. *Id.* at 514, 845 A.2d at

1237-38. The court reasoned, if Frederick had died naturally, then pursuant to the Maryland intestacy statute, only Frederick's surviving spouse and his son, Charles, would inherit. *Id.* Thus, the court of appeals determined, adopting the legal fiction that Charles had predeceased his father would place the grandchildren in a better position than if their grandfather had died of natural causes. *Id.* In conclusion, the court stated that a change in the statutes of descent and distribution allowing children of the slayer to inherit "should come from the legislature and not the judiciary." *Id.*

The interpretation of the Slayer's Rule by the court of appeals in *Cook* summons the legislature to clarify and codify the Slayer's Rule in Maryland so that an equitable solution is provided to the slayer's children. The *Cook* court's ruling removes all possibility for the slayer's children to inherit from their intestate ancestor. For instance, under *Cook's* court interpretation of the Slayer's Rule, a slayer's child in Maryland will *never* be able to inherit from any intestate ancestor if the child's parent caused the ancestor's death, and the parent is alive at the time of the ancestor's death. Conversely, if the ancestor had died naturally, the children may *likely* inherit some share of the ancestor's estate through their parents. Thus, to avoid punishing slayer's children for the acts of their parents, the Maryland legislature should either codify the Slayer's Rule, requiring the slayer be treated as "predeceased," or change the definition of "issue."