

JUANITA C. WALKER-CALLOWAY, otherwise known as **WARMATTA CONBOR-FREEMAN**, and **FAMATTA WALKER-FREEMAN**, legal heirs of the late **ARTHUR WALKER, SR.**, Appellants, v. **EDWIN DWALU WALKER** and **ARTHUR B. WALKER, JR.**, also heirs of the late **ARTHUR B. WALKER, SR.**,
Appellees

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR
MONTSERRADO COUNTY.

Heard: October 25, 1993. Decided: February 18, 1994

1. The probate court is the legal custodian of all decedent estates and is called upon to supervise the proper handling of these estates.
2. An administrator is a fiduciary clothed with the responsibility to manage the estate of the deceased.
3. Under our Decedent Estates Law, all children of deceased parents, whether natural born, legitimized or adopted are considered heirs of the deceased parents and are entitled to share in the intestate estate of said deceased parents in accordance with the provisions of the Decedents Estates statute.
4. An administrator is under an obligation to perform his duties with diligence, honesty and exercise proper management to the best interest of all persons interested in said estate. As such, he will be held liable when, in the performance of his duties, he caused loss or damage to any person interested in the intestate estate.
5. The probate court has the authority to open, vacate, modify, or set aside any decree or order of the court directing distribution of the property of an estate, which was made prior to the probate of and without knowledge of a will which affects such distribution, and in the same or a different proceeding, a notice to the persons or the fiduciaries of the persons to whom the property has been distributed, to make such further and different direction as to such distribution as justice may require and as incident thereto, order the refund of any property theretofore distributed erroneously."

Appellants filed a petition in the Monthly and Probate of Montserrado County for the equitable distribution of the intestate estate of their late father, Mr. Arthur B. Walker, Sr., so as to include them in the distribution after being left out by the

administrator when he closed the estate in 1961. Appellees interposed the petition contending that the petitioners are barred by the statute of limitations because when the estate was ordered reopened in 1966, upon a petition filed on their behalf, they failed to take advantage of their rights to appoint an administrator until after twenty-two years. The judge heard the petition and ruled for appellees on the grounds that the appellants were barred by the statute of limitations. The Supreme Court reversed the judgment, holding that there was no showing in the records that the appellants had attained the age of majority at the time the estate was ordered open in 1966, and that the court-appointed administrator of the estate had unjustly distributed the estate in 1961. The Court also held that the administrator was liable for his failure to properly administer the estate to include the appellants, especially so when he was aware that appellants were legitimate heirs of their late father.

Molly Gray for appellants and *Joseph P. Findley* for appellees.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

This is a matter from the Monthly and Probate Court for Montserrado County for the equitable distribution of the intestate estate of the late Arthur B. Walker, Sr., so as to include his two legitimized daughters who were left out by the administrator when the intestate estate was first closed and the real and personal property divided between only two heirs who are sons of the deceased. The appellees set up defenses of adverse possession and statute of limitations.

Because the facts presented in the records before us are somewhat unusual or extraordinary, as well as involve what appears to be a novel question, we deem it advisable, at the outset, to make a full statement of the record.

The late Arthur D. Walker, Sr., a resident of Montserrado County, died intestate on the 26th day of April 1956, leaving four children—Arthur Benedict Walker, Jr., Edwin Dwalu Walker, Juanita C. Walker, and Famatta Walker. Arthur Jr. and Edwin were born in wedlock. Juanita and Famatta were begotten by Arthur Walker Sr. from the body of one Liquah Somah, an illiterate woman of one of our indigenous tribes. About a year prior to Mr. Walker's death, that is to say, on the 10th day of April, A.D. 1955, a decree for legitimization was issued legitimizing the two girls, Juanita and Famatta. The girls were, at the time, minor children. There is no evidence before us as to how old these minor children were at the time they were legitimized in 1956.

The Honourable Richard S. S. Bright was appointed as administrator to administer the intestate estate of Arthur D. Walker, Sr., less than one month after decedent's death on the 26th day of April, A. D. 1956. It might be of interest to mention that the Honourable Richard S. S. Bright and Arthur B. Walker, Sr. had been co-workers at the Executive Mansion, in the administration of the late President Edwin J. Barclay, before the latter's death. Honourable Bright served as President Barclay's executive secretary and the late Walker was the President's chief chauffeur. Four years after his appointment, Administrator Richard S. S. Bright filed his report with a petition for the closing of the intestate estate of the late Arthur B. Walker, Sr., on the 31st day of January A. D. 1961. The Monthly and Probate Court of Montserrado County, presided over by his Honour J. Gbaflan Davies, accepted the administrator's report, issued a decree declaring the intestate estate closed, and discharged Administrator Richard S. S. Bright from any further liability concerning the administration of said intestate estate.

Prior to being discharged of his duties as administrator, Richard S. S. Bright apportioned all of the real properties of which the late Arthur B. Walker, Sr., died seized to two of decedent's children, Arthur Benedict Walker, Jr., and Edwin Dwalu Walker, issuing to each of these two heirs administrator's deeds for the real property which their late father possessed at the time of his death.

Five years later, in 1966, following the closure of the intestate estate by Judge Davies, Madam Liquah Somah, on behalf of her two minor daughters, Famatta Walker and Juanita Walker, filed a petition for the reopening of the Walker's intestate estate on the grounds that these two legitimized children had been deprived of their share in the real property of the intestate estate of their late father, Arthur B. Walker, Sr. Further, that at the time when the intestate estate was ordered closed and its property apportioned, these two children were minor children and could not assert their rights. It is interesting to note that the same judge, His Honour J. Gbaflan Davies, who had presided over the closing of the intestate estate in 1961, also heard and decided the petition for the reopening of the estate five years later. Judge Davies granted the petition and ordered the intestate estate reopened. In addition to reopening the estate, Judge Davies requested the representatives of each of the two sets of minor children, the two born in wedlock and the two legitimized, to nominate someone to administer the intestate estate. This nomination was to be made within ten days after the date of the ruling and upon failure to do so, the court would order the Curator of Montserrado County to take charge of said intestate estate and administer same in keeping with law. As it turned out, neither did the representative of the appellants or the representative of the appellees appoint anyone to act as administrator for the

intestate estate as the judge had directed in his ruling of 31 May 1966. Also, the court itself did not order the curator to take over the administration of the intestate estate when the heirs failed to carry out the court's directive. Twenty-three years thereafter, on the 8th day of June, 1989, when both Juanita C. Walker-Calloway and her sister, Famatta Freeman, had now reached their maturity and married, they filed a petition before the Probate Court for Montserrado County, presided over by His Honour Harper S. Bailey, praying said court to issue a writ of summons to be served on their brothers, Edwin Dwalu Walker and Arthur Benedict Walker, Jr., to show cause why the real property of the intestate estate of their late father should not be distributed and the estate closed, and to account for the operation of the said intestate estate since it was reopened in 1966. Appellants also alleged that appellees had exercised exclusive control and management over the properties belonging to the estate.

His Honour Judge Harper S. Bailey of the Monthly and Probate Court of Montserrado County heard the petition and rendered his final ruling on 30th June, 1989. The judge denied the 1989 petition and dismissed it on the grounds that these legitimized heirs of Arthur B. Walker, Sr. had remained silent for twenty-two years before bringing said petition praying for the relief therein. Judge Bailey based his ruling upon the law relating to limitations of particular actions found in the Civil Procedure Law, Rev. Code 1: 2.12, and section 102.6 of the Decedents Estate Law, Rev. Code 8.

The single relevant issue which is presented from these facts and which was argued before us by counsels in this decedent estate matter is the following:

Under what circumstances may an heir lose rights to the descent of real property and the distribution of personal property under an intestate estate guaranteed to such heir under our Decedents Estate Law?

We believe that this question which the facts in this case present, appears to be one with which we are faced for the first time in this jurisdiction.

Under our Decedent Estates Law, all children of deceased parents, whether natural born, legitimized or adopted are considered heirs of the deceased parents and are entitled to share in the intestate estate of said deceased parents in accordance with the provisions of the Decedents Estate Statutes.

From the facts in this case, Administrator Richard S. S. Bright did not comply with the law referred to above. He did not manage the intestate estate to the advantage of

all of the heirs. This administrator who knew of the existence of all of the heirs elected to deprive some of these heirs of enjoying the estate of their deceased father. On the other hand, the probate court judge, who presided over such poor administration, discharged the administrator when the estate was closed in 1961, without being assured that said administrator had properly administered said estate and apportioned its property to all of the heirs who were entitled to share in the property of the intestate estate. More than this, when the intestate estate was reopened by the same judge who presided over the closing of the said intestate estate, he again committed gross error to the detriment of some of the heirs by failing to appoint the curator of intestate estates of Montserrado County to take charge of said estate when the parties failed to nominate one person each to administer the estate as he had directed in his 1966 ruling.

Judge Gbaflan Davies, in his ruling rendered on 31 May 1966, which reopened the intestate estate, observed from the administrator's report that Administrator Richard S. S. Bright, during his administration of the said intestate estate, contributed an amount of \$2,767.85, out of funds for the estate, for the support of the two minor children, Famatta and Juanita. However, Administrator Bright apportioned the real property of the decedent to only two of the heirs namely, Edwin Dwalu Walker and Arthur Benedict Walker, Jr., and issued to them administrator's deeds.

The probate court is the legal custodian of all decedent estates and is called upon to supervise the proper handling of these estates. An administrator is a fiduciary who is clothed with the responsibility to manage the estate of the decedent to the advantage of all of the heirs.

When appellants first sought to exert their rights in the intestate estate of their late father, Arthur B. Walker, Sr., by their mother filing a petition on their behalf in 1966 before the Probate Court for Montserrado County, our Decedent Estates Laws were contained in four inadequate chapters consisting of six and a half pages, couched in Vol. 1 of the 1956 Code of Laws. However, implicit in the sections of these four chapters are clearly spelled out duties and liabilities of the administrator. In these sections, not only is the administrator to perform his duties with diligence, honesty and proper management to the best interest of all persons interested in said estate, but he is also liable when in the performance of his duties he caused loss or damage to any person interested in the intestate estate. The laws under the 1956 Code further provide for the administrator and executors to function under the supervision of the court. Decedents Estates Law, 1956 Code, sections 23-25, pages 419-421. The evidence in this case reveals that during the administration of the estate by Richard S.

S. Bright, he had given to the natural mother of the appellants, during the three years plus of his administration, the amount of \$2,767.85 for the support of the appellants who were at the time minor children. This act is a clear indication that Richard S. S. Bright was aware of the relationship between petitioners and the late Arthur B. Walker, Sr. His Honour Gbaflan Davies, however accepted the report of Administrator Bright, discharged him of his bond, and closed the estate. Even though Administrator Bright knew of the existence of other heirs of the late Arthur B. Walker, Sr., he left these heirs out when he divided the real property of the estate. The probate court was grossly negligent in accepting the administrator's report, discharging him and closing the estate. The negligence of the probate court was further demonstrated when the judge permitted the ruling, which he made in reopening the estate in 1966, to be completely ignored by himself when he failed to appoint the curator to take charge of the estate after the parties had failed to nominate their choice to serve as administrators. We see no reason why these heirs should be deprived of their rights to the property of their late father due to the mismanagement of the estate by Administrator Bright and the negligence of the probate court.

In 1989 when petitioners filed their petition in the Probate Court for Montserrado County, before his Honour Harper S. Bailey, praying for the equitable distribution of the estate of their father, Arthur B. Walker, Sr., the Liberian Legislature had enacted the Decedents Estates Law as Title 8 of the Liberian Code of Laws Revised, approved and published May 26, 1972 and August 26, 1972, respectively.

The Liberian Decedents Estates Law has created the rights of heirs in this jurisdiction. In common law jurisdiction, such as this jurisdiction, where the rights of heirs are created by statutes there is the presumption that the protection of these rights must also be governed by statutes. A fortiori, any statute of limitations extinguishing the rights of heirs would be effective, save for some exceptions, e.g. disability or infancy. It cannot be considered irrational therefore if a court in this jurisdiction would consider statutes of limitations, which may operate to extinguish the rights of heirs under the Decedents Estates Law if such statutes are unequivocally applicable.

Judge Bailey in disposing of this matter on appeal before us, dismissed said petition relying on Section 2.12 of the Civil Procedure Law, Rev. Code 1, and Section 102.6 (d) of the Decedents Estates Law, Rev. Code 8. Section 2.12 of the Civil Procedure Law bars an action to recover real property if the defendant or his privy has held the property adversely for a period of not less than twenty years. Section 102.6 (d) of the

Decedents Estates Law allows for the dismissal of any proceedings which petitioner had neglected to prosecute diligently.

Even though Judge Bailey referred in his ruling to Section 2.12 of the Civil Procedure Law, which is the adverse possession provision of that law, he merely recited the statute without elaborating on specific facts which persuaded him to believe that the petitioners' rights to realty of the estate was affected by the law of adverse possession. We have not discovered in the records any facts, which would suggest to us that Section 2.12 is applicable in this case.

However, the judge does appear to have relied more heavily upon Section 102.6 (d) of the Decedents Estates Law in reaching his conclusion in this case.

The judge in concluding his ruling of the matter, said the following: "Wherefore, and in view of the above legal authorities cited the court says because of either party's failure to recommend a person for appointment as successor to the former administrator as was required of them by this court, and also because of the appellants/petitioners' slumbrous attitude to have sat and remained dormant without prosecuting their petition within the past twenty-two (22) calendar years, it is therefore the ruling of this court that the petitioners have miserably failed to diligently prosecute their case and, as such, this court has no other legal alternative but to deny the petitioners' petition, and the same is hereby vacated and dismissed of any further consideration by this probate court either in law or in equity. The cost in these proceedings are disallowed by the court."

We however disagree with Judge Bailey that either the statute of limitations provision of the civil procedures law or section 102.6 (d) of the Decedents Estates Law upon which the judge has heavily relied is applicable to the determination of the case.

These two statutes do provide for the extinguishing of rights of heirs to intestate estates under certain conditions. We have already stated above why the law of adverse possession cannot apply in this case.

Let us examine Section 102.6 (d) of the Decedents Estates Law. This section permits for the dismissal of any proceedings, which the petitioners have neglected to prosecute diligently. Section 102.6 (d) presupposes that there has been no disability which petitioner suffered that could cause such neglect to prosecute her proceedings diligently. In the instant case, we have not come across evidence which shows that these petitioners were negligent in exerting their claim to share in the property of the

estate of their late father. Therefore, no justifiable reason exists for Judge Bailey to reach the conclusion that petitioners were negligent in prosecuting their rights since the records before us are void of such evidence. All that we have been able to gather from the records in this case is that the estate of the late Arthur B. Walker, Sr., was first closed in 1961 and reopened in 1966 before the petitioners had reached their majority. There is no evidence before us to show how old these children were in 1961 or 1966. In point of fact, the petitioners were in their infancy in 1961 and in 1966, and their natural mother was an illiterate woman who could neither read nor write the English language. Neither did this illiterate mother know that her minor children were entitled by law to any of the property of this estate. Furthermore, from the facts in this case, we are placed in no position to say at what age or period in their lives these petitioners got to know they were legitimized daughters of the late Arthur B. Walker, Sr., and were entitled to share in the property he possessed during his life time.

In the absence of such material evidence, it is our opinion that the petitioners were unjustly deprived of their rights to the estate of their late father, Arthur B. Walker Sr., due to no fault of theirs.

Under section 102.6 (d) of Decedents Estates Law at page 43, the probate court is granted the power, and we quote:

"To open, vacate, modify, or set aside any decree or order of the Court directing distribution of the property of an estate, which was made prior to the probate of and without knowledge of a will which affects such distribution, and in the same or a different proceeding a notice to the persons or the fiduciaries of the persons to whom the property has been distributed, to make such further and different direction as to such distribution as justice may require and as incident thereto, order the refund of any property theretofore distributed erroneously."

The subject property according to the facts of this case was erroneously distributed and these petitioners were deprived of their portion of the property to which they are entitled. The law quoted above vests the probate court with the power to remedy such injustice. This we feel the court must do.

For the foregoing reasons, the judgment of the probate court is hereby reversed and the case is remanded to the probate court of Montserrado County, with instructions that it resumes jurisdiction over the subject intestate estate and order the curator for Montserrado County to take charge of all of the real property of the late Arthur B.

Walker, Sr., which were erroneously distributed between Edwin Dwala Walker and Arthur Benedict Walker, Jr., and where administrator's deeds have been issued, the probate court shall order the curator to seek the cancellation of all such deeds before the proper court. Thereafter, the curator shall apportion said real property in the intestate estate in keeping with the Decedents Estates Law. Costs are ruled against appellees. And it is hereby so ordered.

Judgment reversed.