

Magdaline Duncan-Witherspoon, only surviving Executrix of the late Julia Evelyn Duncan-Stauard of the City of Monrovia, Liberia Appellant versus **Evelyn Witherspoon-Dunbar**, one of the beneficiaries and devisees under the Last Will and Testament of the late Julia Evelyn Duncan-Stauard of the City of Monrovia, Liberia
Appellee/Movant

APPEAL

Heard: October 16, 2007 Decided: January 11, 2008

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

When this case was called for hearing, the Court decided to consolidate the motion to dismiss and the appeal.

Julia Evelyn Duncan-Stauard, a resident of Monrovia, Montserrado County, Republic of Liberia, died in 1986, leaving a last will and testament which was proven and admitted to probate. The testatrix, in Article fourteen of her will, nominated and appointed Alberta Herrion-Russell, Eugenia Simpson-Cooper and Magdaline Duncan-Witherspoon, the respondent to the bill of information, as executrices. Only Magdaline Duncan-Witherspoon is alive.

During the February Term, 1995 of the Monthly and Probate Court for Montserrado County, Evelyn Elfreda Witherspoon, Nancy Beatrice Witherspoon, Lionel A. Keller, Madia Mae Keller, by and thru their attorney-in-fact, Evelyn Elfreda Witherspoon, grandchildren of the late Julia Evelyn Duncan-Stauard, filed a petition praying the Court for a decree ordering the issuance of an executor's deed transferring property under the last will and testament of the late Julia Evelyn Duncan-Stauard.

The petitioners alleged that under the will, the testatrix bequeathed to petitioners and the heirs of their body, in fee simple, share and share alike, a piece of property described as lot 99, located in Mamba Point, with a large concrete bungalow thereon then occupied by the Ministry of Health, all other buildings and improvements thereon in the City of Monrovia, Montserrado County. The petitioners alleged, also, that as they were all minors at the time the will was executed, the will provided that Magdaline Duncan-Witherspoon and Nancy Julia Keller were to serve as trustees of the bequeathed property on behalf of the petitioners until they had reached their majority. The petitioners alleged, further, that of the two trustees only Magdaline Duncan-Witherspoon was in the bailiwick of the Republic, while Nancy Julia Keller, the other trustee, was then residing in the Cote d'Ivoire, with no apparent intention of returning to Liberia then or in the near future.

In count six of the petition, the petitioners alleged that having reached their age of majority, the trustees had failed to inform them of the existence of the property bequeathed to them under the will, but had also neglected and refused to transfer the property to them, contrary to the express provisions of the will and the intent of the testatrix, and a deliberate attempt to deny petitioners of their legitimate property rights. The petitioners prayed that the Court, exercising its powers over the estate, will grant a decree ordering Magdaline Duncan-Witherspoon, the only trustee within the bailiwick of the Republic of Liberia, to issue an executor's deed in favor of the petitioners, investing them with title, ownership, control and dominion over the property bequeathed to them by their late grandmother.

Magdaline Duncan-Witherspoon, as co-executrix of the estate, filed returns dated February 16, 1995 in which she admitted that Nancy Julia Keller and she, as trustees, had not turned over the property bequeathed to petitioners, that it was not done with any ill-intent, but purely due to the fact that co-executrices Alberta Herrion-Russell and Eugenia Simpson-Cooper were out of the bailiwick of the Republic, and as such she considered it expedient to conduct the entire estate together, pending the return of the co-executrices named. The respondent indicated she had no objection to the court granting a decree ordering her to issue an executor's deed in favor of the petitioners, and submitted that such decree should extend to all parties, so as to enable all concerned to have their properties transferred to them.

On March 1, 1995, Her Honor Gloria M. Scott, then Judge of the Monthly and Probate Court for Montserrado County, granted the petitioners' petition and ordered Magdaline Duncan-Witherspoon, as sole executrix who was within the bailiwick of the Republic of Liberia and within the jurisdiction of the court, to issue executor's deeds not only in the names of the petitioners, but also in the name of other [devises and] legatees under the said will. The court also ordered that the names of the other named executrices be dropped from the letters testamentary and a new letters testamentary issued in the name of the respondent.

The decree as to the petitioners must have been enforced; for, we note in the record before this Court the photocopy of an executor's deed executed by Magdaline Duncan-Witherspoon in favor of Evelyn Elfreda Witherspoon, Nancy Beatrice Witherspoon, Lionel Keller Jr., and Madea Mae Keller, duly probated and registered March 14, 1995.

On December 19, 2005, Evelyn Witherspoon-Dunbar, representing as one of the devisees and beneficiaries under the last will and testament of the Julia Evelyn Duncan-Stauard, filed a fifteen-count bill of information before the Monthly and Probate Court for Montserrado Court, naming Magdaline Duncan-Witherspoon as respondent, informing the court that contrary to its decree dated March 1, 1995, ordering the respondent "to issue executor's deeds not to only the name of the petitioners, but also in the names of all the other [devisees and] legatees under the said will," the respondent had not complied with the decree of the court as she had not received a testator's deed conveying unto her, in fee simple, property devised to her under article third, clause (b) of the last will and testament of Julia Evelyn Duncan-Stauard.

On December 29, 2005, the respondent filed returns containing four counts. On January 20, 2006, the respondent withdrew her returns and simultaneously filed amended returns containing ten counts. The essence of the amended returns was that the respondent, under article third, clause (b) of the last will and testament of Julia Evelyn Duncan-Stauard, had a life interest and exclusive right of possession to lot number two (2) in block nineteen (19) on 19th Street and Payne Avenue, Sinkor.

Ruling on the law issues on February 24, 2006, His Honor J. Vinton Holder, Judge of the Monthly and Probate Court, identified three issues:

1. Whether or not the last will and testament in question was duly admitted into probate in keeping with law?
2. Whether or not under the circumstances, the court was required to appoint an administrator de bonis non cum testamento annexo?
3. Whether or not informant has a legitimate claim to the subject property during the lifetime of the respondent?

Judge Holder determined that these were issues of mixed law and facts, and ruled the information and returns to trial.

At trial, the informant took the stand and testified. The respondent waived the production of evidence. In the court's final ruling delivered on August 10, 2006, Judge Holder, notwithstanding he had identified three issues in his ruling on the law issues, decided there was one fundamental issue: Whether the testatrix intended to create a life estate in the respondent/executrix rather than a trustee for her minor child upon attaining the age of majority?

Judge Holder ruled that article 3, clause (b) of the last will and testament did not create a life estate in the respondent, and decreed that the order of Judge Gloria M. Scott, dated March 1, 1995, ordering the respondent to issue executor's deeds to all [devisees and] legatees under the last will and testament of the late Julia Evelyn Duncan-Stauard be ordered enforced and that respondent being the sole surviving executrix was ordered to issue informant's deed.

To this final judgment, respondent noted exceptions and announced an appeal to this Court. The appeal is before us on a seven-count bill of exceptions.

Before deciding whether Magdaline Duncan-Witherspoon was granted a life estate in lot number two in block nineteen (19) on 19th Street and Payne Avenue, Sinkor under article third, clause (b) of the last will and testament of the late Julia Evelyn Duncan Stauard, her mother, we shall refer to the definitions of "life tenant," and "life estate" and how it may be created.

Life tenant. A person who, until death, is beneficially entitled to property; the holder of a life estate. *Black's Law Dictionary Life Tenant*, 947 (8th ed. 2004).

"A life estate created by deed or *will* is an estate to be held by the grantee or devisee for the term of his own life, or for that of another person, or for more lives than one" (emphasis supplied). 28 Am Jur 2d, *Estates*, § 56.

Stripped of all issues not germane to its determination, we decide that the one issue determinative of this case is whether Magdaline Duncan-Witherspoon, daughter of the late Julia Evelyn Duncan-Stauard, was granted a life estate in lot number two in block nineteen (19) on 19 th Street and Payne Avenue, Sinkor under article third, clause (b) of the last will and testament of her late mother. We hold that Magdaline Duncan-Witherspoon was granted a life estate. We hold, also, that Evelyn Witherspoon-Dunbar, upon reaching her majority, was granted title in fee simple to lot number two (2) in block nineteen (19) on 19th Street and Payne Avenue, Sinkor, but her title is subject to Magdaline Duncan-Witherspoon's life estate which the life tenant is entitled to possess and enjoy unmolested during her lifetime.

"The principle is well settled that a life tenant who is the holder of a present estate for life in real property is entitled to the possession and use of the property. Thus, it has been held that a devise of real estate for life, with remainder over, is always to be treated as a specific devise, of which the tenant for life is to have the possession, use

and income during life. During an ordinary life tenancy in realty, the remainderman or reversioner does not have the right to possession or use. Closely associated in legal theory with the life tenant's right of possession is his right to the issues and profits of realty during the duration of the life estate, and his analogous right to the rents *received* as income from letting possession of the property, for a consideration, to some person. 51 Am Jur 2d, *Life Tenants and Remainderman*, § 32.

We quote article third, clause (b) of the last will and testament of Julia Evelyn Duncan-Stauard.

"I will and bequeath to my daughter Magdalene Versa Duncan-Witherspoon the below listed property (*sic*) as specified herein:

"(b) Lot number two (2) in block nineteen (19) on 19 th Street and Payne Avenue, Sinkor, on which a concrete bungalow is situated, for life, with the buildings and other improvements thereon, and upon her death to my grandchild Evelyn Elfreda Witherspoon, with all the rights and privileges afforded, in fee simple. *Magdaline Witherspoon is appointed as trustee of her minor daughter Evelyn, who upon reaching her majority, will become immediate owner in fee*" (emphasis supplied).

In making this determination we must look to the intent of the testatrix when the will was executed.

"In determining whether a life estate or other interest has been created, the testator's intention as gathered from his will and surrounding circumstances is controlling upon the interpretation and construction of the instrument." 28 Am Jur 2d, *Estates*, § 68, fn. 9.

This principle finds support, also, in our jurisprudence. In *Duncan v. Karpeh*, 10 LLR 194, 196-7 (1949), Mr. Justice Reeves speaking for the Court relied on the following principles by Judge Bouvier on *Construction of Legacies*.

"First, the technical import of words is not to prevail over the obvious intent of the testator. . . . Second, where technical words are used by the testator, or words of art, they are to have their technical import, unless it is apparent that they were not intended to be used in that sense. . . . Words are to be construed with reference to the surrounding of the testator when the will was made. . . . The particular intent will always be sacrificed to the general intent. . . . Third, the intent of the testator is to be determined from the whole will. . . . In ascertaining this intention, courts should not

seek it in particular words and phrases, or confine it by technical objections, but should find it by construing the provisions of the will with the aid of the context and by considering what seems to be the entire scheme of the will . . . and should put itself in the position occupied by a testator. . . ." 2 *Bouvier's Law Dictionary*, 1901, *Construction of Legacies* (Rawle's 3rd rev.1914).

Magdaline Duncan-Witherspoon is the daughter of the late Julia Evelyn Duncan-Stauard. Magdaline Duncan-Witherspoon is infirm, but alert, intelligent and educated.

We hold that because of her infirmity, her mother, in article third, clause (b) of her last will and testament, made provision for her. The late Julia Evelyn Duncan-Stauard never intended that her grand-daughter, Evelyn Witherspoon-Dunbar, upon reaching her majority, would dispossess her infirm mother of the property. That this was not the intention of the testatrix is buttressed by the inaction on the part of Evelyn Witherspoon-Dunbar to take any legal action against her mother immediately upon reaching her majority. It was only when her mother, the respondent, leased the property to provide herself with income that she instituted this action against her mother in the Monthly and Probate Court for Montserrado County praying that Magdaline Duncan-Witherspoon, as the only surviving executrix, "to immediately issue appellee/informant a deed for lot number two in block nineteen on 19th Street and Payne Avenue in Sinkor [and] upon her failure and/or refusal to do so, the Monthly and Probate Court for Montserrado County should have her removed, and appoint another individual to serve as executrix and order the new executrix to issue informant a deed for the stipulated property."

"Life estates are usually created to provide someone with income or a place to live, or both, during their lifetime, while assuring that on the life tenant's death, the property will go to persons selected by the grantor." *Black's Law Dictionary*, 588 (8th ed. 2004).

We have reviewed the entire record before this Court, and find that the informant does not recognize that Magdaline Duncan-Witherspoon, her infirm mother, was granted a life estate in lot number two (2) in block nineteen (19) on 19 th Street and Payne Avenue, Sinkor. We quote the following counts of the informant's bill of information filed December 19, 2005.

"3. That of the three (3) persons appointed as executrices of the last will and testament of the late Julia Evelyn Duncan-Stauard, namely Alberta Herrion-Russell,

Eugenia Simpson-Cooper and Magdaline Duncan-Witherspoon, only Magdaline Duncan-Witherspoon is alive.

"4. That up to and including the present, the only surviving executrix, Magdaline Duncan-Witherspoon is yet to complete the execution of the various devises under the said will.

"5. That due to her reluctance to execute her functions under the last will and testament, in 1996, a petition was duly filed by and informant and several other [devises and] legatees under the said last will and testament of the late Julia Evelyn Dunbar-Stauard, and this Honorable Court ordered executrix Magdaline Duncan-Witherspoon "to proceed to issue executor's deeds not only in the name of the petitioners, but also in the names of all the other [devises and] legatees under the said will.

"6. That *up* to the present the order of this Court, as quoted above, has not been complied with, and informant has not received her deed in compliance with article third, clause (b), as found on page two of the last will and testament.

"7. Further to count six (6) of this information, informant says that in article three, clause (b) of the will as found on page two, after the preamble found on page one which says 'I will and bequeath to my daughter Magdaline Versa Duncan-Witherspoon, the below listed as specified herein,' it is stated:

`(b) Lot number two (2) in block nineteen (19) on 19 th Street and Payne Avenue, Sinkor, on which a concrete bungalow is situated, for life, with the buildings and other improvements thereon, and upon her death to my grandchild Evelyn Elfreda Witherspoon, with all the rights and privileges afforded, in fee simple. Magdaline Witherspoon is appointed as trustee of her minor daughter Evelyn, *who upon reaching her majority, will become immediate owner in fee'* (emphasis supplied by the informant).

8. Further to count seven of this information, informant says that executrix Magdaline Duncan-Witherspoon has failed and refused to issue informant a deed, consistent with the wishes of the testatrix, *because she has wrongly and mistakenly maintained that she is to hold the said property for life.* (emphasis supplied).

Counsel for the informant, arguing before this Court, relied on *Duncan v. Karpeh*. The Supreme Court in that case had to construe two clauses in the last will and testament of the late R. S. Karpeh: clause one and clause eleven.

In clause one, the testator made the following disposition:

"I will and bequeath to my son Sceah, whose mother is Worter, lot no. 531 situated in the City of Monrovia, County of Montserrado and Republic of Liberia, with dwelling house and all other appurtenances thereon and thereunto belonging to him and his heirs and in fee simple forever."

In clause eleven, the testator, referring to the same lot no. 531, made the following provision:

"It is my will and desire that the premises now occupied by the Rev. Chas. W. Duncan and his family being situated on lot no. 531, the same being herein bequeathed to my son Sceah, shall be continued to be occupied by the said Rev. Chas. W. Duncan and his family during his life time, or until he shall have built him a home. At which time if my son Sceah herein shall have come of age, he shall be put in possession of the property, otherwise the said property shall be administered by the said Rev. Chas. W. Duncan until my son Sceah shall have become of age at which time he shall be put in possession of the property."

The Court, construing clause eleven, held:

"From clause eleven of the will, the intention of the testator can be clearly seen from the fact that when he said, 'it is my will and desire that the premises now occupied by the Rev. Chas. W. Duncan and his family being situated on lot no. 531, the same being herein bequeathed to my son Sceah, shall be continued to be occupied by the said Rev. Chas. W. Duncan and his family during his life time,' he did not intend same to be construed as a life interest; otherwise, he would have never expressed in the same clause, 'at which time it my son Sceah herein shall have come of age, he shall be put in possession of the property, otherwise the said property shall be administered by the said Rev. Chas. W. Duncan until my son Sceah shall have become of age at which time he shall be put in possession of the property.' To *construe it as appellant contends testator would be expecting both a physical and legal impossibility, in that appellant at such a time would be dead and could not function in administering the said property*" (*emphasis supplied*).

We must distinguish *Duncan v. Karpeh* and this case. In *Duncan v. Karpeh*, the appellant was not related to the testator. He was a "stranger" to the will. In this case, the appellant is the daughter of the testatrix.

In *Duncan v. Karpel*, this Court had to construe ". . . if my son Sceah shall have come of age, he shall be *put in possession* of the property. . . ." (emphasis supplied). The operative words in that clause were "put in possession." In this case, the operative words are not "put in possession;" rather, they are "will become immediate owner in fee."

We hold that the principle in *Duncan v. Karpel* is not determinative of the issue in this case.

In view of the foregoing, the final judgment of the Judge of the Monthly and Probate Court for Montserrado County, is hereby affirmed with the modification that the informant, on reaching her majority, has become the owner in fee of lot number two (2) in block nineteen (19) on 19th Street and Payne Avenue, Sinkor, subject to Magdaline Duncan-Witherspoon's life estate which she is entitled to possess and enjoy unmolested during her lifetime.

The respondent is ordered to issue an executor's deed in favor of the informant, clearly indicating therein that it is subject to the respondent's life estate. The Clerk of this Court is ordered to send a mandate to the Monthly and Probate Court for Montserrado County commanding the judge to resume jurisdiction over the case and to give effect to this judgment.

Judgment affirmed with modification.