Landram Vs. Jordan

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Court : US Supreme Court

Decided On : Oct-22-1906

Appeal No. : 203 U.S. 56

Appellant : Landram

Respondent : Jordan

Judgement :

Landram v. Jordan - 203 U.S. 56 (1906)
U.S. Supreme Court Landram v. Jordan, 203 U.S. 56 (1906)

Landram v. Jordan

No. 179

Argued October 8, 1906

Decided October 22, 1906

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APPEAL FROM THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

Testator created a trust for his children including therein all of his property except one parcel, the income whereof was to go to a niece for life, the trustee to make such income up to a specified sum from the property in the general trust. The general trust was declared void as creating a perpetuity, but not the trust for the niece. The children appealed, claiming that the trust for the niece was also void.

HELD

One not appealing cannot, in this Court, go beyond supporting the judgment and opposing every assignment of error, and therefore the niece could not endeavor to sustain the validity of the trust as a whole.

The trust for the niece was not illegal, and was not so intimately connected with the failing trust as to fail with it, but the decree was modified so that the income could only be made up to the specified sum from income from property in the jurisdiction.

An objection that a person should have been made a party to a bill of review comes too late when the existence of that person does not appear of record.

25 App.D.C. 291 modified and affirmed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court upon a bill of review brought by Gabriella K. Jordan, the appellee. The decree under review was rendered in a suit for the construction of the will of Thomas Kearney and for the determination of the validity of a trust created by it so far as the same concerned land in the District of

Columbia. That decree declared the trust bad as attempting to create a perpetuity. Under the bill of review, the decree was modified, on demurrer, to the extent of the interest of Gabriella K. Jordan, and the trust was declared valid as to her. 25 App.D.C. 291. The executors of the testator's heirs and a daughter of the said heir appealed to this Court.

Thomas Kearney died on July 5, 1896. The will disposes of land in various places. In item 3, it enumerates the testator's

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property in Washington. In item 5, it devises this and other property upon a trust to be continued until January 1, 1928, and there and elsewhere, with the following exception, makes a fund from the Washington rents and profits to be disposed of as directed in the will. Item 6 is as follows:

"I hereby authorize and direct that my said trustee shall, during the natural life of my beloved niece, Gabriella K. Jordan, pay over to her regularly each month, as soon as collected, all rents and revenues collected or derived from that certain property described in the third item hereof as lot No. 611 'M' Street, N.W. Washington, D.C., but, in case said rents and revenues shall at any time be less than the sum of $40 for any one or more months, then my said trustees are hereby authorized and instructed to add to the sum so collected a sufficient amount to make the said amount of $40 for each and every month, it being my desire that she shall have a regular income of at least $40 per month, and that the same shall be paid over to her monthly; but if the income derived from said premises shall amount to a sum in excess of $40 per month, she shall have the whole thereof."

Item 7 directs the trustee to let all the Washington property, except 611 M Street, and out of the rents to pay $90 a month to the testator's daughter, Constance K. Vertner, as ordered in item 5, the residue, so far as necessary, to be applied to the support and education of her three children, named, with further provisions. Item 8 gives the remainder in fee of 611 M Street to the testator's grandson, provided that, if Gabriella Jordan dies before January 1, 1928, he shall only receive the

rents and profits, and if she dies before the grandson reaches the age of twenty-two, the rents shall be disposed of as provided in item 7 as to other Washington property. In item 21, the testator, "for fear that there may be some difficulty in construing the different provisions" of the will, states his intention that all the money

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arising from the Washington rents,

"except that which is to go to Gabriella K. Jordan, shall be placed in a common fund for the payment (1) of taxes, insurance, and repairs on said property and of the premises at Luray, Virginia; (2) of (90) ninety dollars per month to my said daughter, Constance K. Vertner, during her natural life; (3) for the support, education, and maintenance of my said three Vertner grandchildren until Lillie K. Vertner shall have arrived at the age of nineteen years, and until Edmund K. and Thomas K. shall have arrived at the age of twenty-two years, respectively."

The persons in whose favor were made the provisions which were adjudged bad were one of the testator's heirs, his daughter, Constance K. Vertner, and the children of Constance. The daughter pleaded that the other heir, Edmund Kearney, also provided for in the will, died, leaving her his heir, that the trust was bad, and, by implication, that she was entitled to the property which it embraced. She now is dead. By the original decree, the whole trust fund, including that given to Gabriella Jordan, went to the testator's heirs as property undisposed of by the will. The only person dissatisfied with that decree was Gabriella Jordan, and, on the other hand, the executors and the children of Constance are the only appellants from the decree on review. According to the rule that has been laid down in this Court, Gabriella, as she did not appeal, cannot go beyond supporting the decree and opposing every assignment of error. *Mt. Pleasant v. Beckwith,* 100 U. S. 514 , 100 U. S. 527 ; *The Stephen Morgan,* 94 U. S. 599 ; *Chittenden v. Brewster,* 2 Wall. 191, 69 U. S. 196 ; *Field v. Barber Asphalt Paving Co.,* 194 U. S. 618 , 194 U. S. 621 . We assume this rule to be correct. Although her counsel attempted to argue the validity of the trust as a whole, and

other questions, we assume, without deciding, the decree to be unimpeachable and right except so far as appealed from. Therefore we shall confine ourselves to considering whether the gift to Gabriella is so intimately connected with the failing scheme as to fail with it.

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It would be a strong thing to say that we gather from this will an intent that, if the trust so far as it concerns the testator's descendants should fail because they prefer to take the property by intestacy free from the limitations of the will, therefore the one gift outside his family should be defeated also. The trust is not a metaphysical entity or a Prince Rupert's drop which flies to pieces if broken in any part. It is a provision to benefit descendants and a niece. There is no general principle by which the benefits must stand or fall together. It is true that all the Washington property was given to the trustees in one clause, and that a part of the scheme in favor of the testator's grandchildren was the creation of a fund from the rents. But, as is stated in item 21, 611 M Street was excepted from the scheme, and the whole income of this lot -- or, in other words, an equitable estate in the specified land -- is given to Gabriella Jordan for life by item 6. If that were all, we see no reason for a doubt that that gift would be good whether the gift to the other beneficiaries were good or not. The fact that the testator's daughter takes all the rest of the property, instead of her children's getting a postponed interest in a part, is no ground for denying to the niece the life estate given to her in an identified and excepted piece of land. It does not make the case any worse that a part of the property thus going to the testator's daughter is the remainder in the estate given to his niece.

The appellants lay hold of the instructions to the trustees to add to the rents enough to make Gabriella's income up to $40 a month, and argue as if the gift were in substance only a gift of $40 a month from a fund that cannot be established. Such is not the fact. The gift is primarily and in any event a gift of the income of 611 M Street. But whatever may be the fate of the rest of the trust, we see nothing to hinder the trustees from keeping the income up to $40 from the

other property devised to them. Of course, they could not derive income from property not included in the trust, and only the property included is charged with

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the liability. The decree may be modified by inserting after the words "against his entire estate" the words "in the District of Columbia."

It is objected in argument, although not in the pleadings, that the widow of Edmund Kearney has a right of dower in the Washington estate which descended to him, and that she should have been made party to the bill of review. The fact of the widow's existence does not appear of record as against the appellees, and we agree with the Court of Appeals that the objection is made too late.

Decree affirmed.