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Butler v. Gavek, 245 A.3d 750 (R.I. 2021)

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Property Law. *Butler v. Gavek*, 245 A.3d 750 (R.I. 2021). An action to partition a joint tenancy under section 34-15-1 of the Rhode Island General Laws survives the death of either the plaintiff or defendant pursuant to §34-15-12. Additionally, the estate of the deceased may appeal an adverse decision as to partition, despite not being substituted as a party in the action to partition.

FACTS AND TRAVEL

Shirley Butler, the original plaintiff, filed an action in the Superior Court to partition property she owned as a joint tenant with the defendants, Clarence Butler and Kari Gavek on August 1, 2018.¹ The defendants answered on September 20, 2018 and counterclaimed for unjust enrichment and breach of agreement.² The plaintiff died while the litigation was pending in December 2018.³ On January 28, 2019, counsel for the plaintiff notified the defendants of the plaintiff's passing and that substitute counsel was being appointed for the plaintiff's estate.⁴

On February 1, 2019, the defendants filed a motion to dismiss the action under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, prior to the plaintiff's estate taking any further action in the proceeding.⁵ The defendants argued that the partition action was moot due to the plaintiff's death because the property was owned in joint tenancy and therefore, plaintiff's property interest transferred to them following the death of the plaintiff.⁶ A hearing on the motion to dismiss was scheduled for February 26, 2019.⁷ The

1. *Butler v. Gavek*, 245 A.3d 750, 752 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

Probate Court was also scheduled to appoint the representative of the plaintiff's estate on February 26, 2019.⁸

Prior to the hearing, on February 7, 2019, plaintiff's attorney notified the court that an executor would be appointed by the Probate Court, and the plaintiff's estate would have representation at the hearing.⁹ On February 11, 2019, plaintiff's counsel requested that the court continue the hearing until the plaintiff's estate could be substituted into the case and proper service could be given.¹⁰ In this notice, plaintiff's counsel also cited to section 35-15-12 for the proposition that a partition action is not abated by the passing of the plaintiff.¹¹ However, due to the death of the plaintiff, counsel notified the court that he did not have authority to take any further action in the proceedings.¹²

The hearing on the motion to dismiss was not continued and took place on February 26, 2019.¹³ The defendants objected to the continuance, asserting that the case was moot.¹⁴ Counsel for the deceased plaintiff was present at the hearing, and noted that while he no longer had a client and did not represent the estate, he again wanted to put the court on notice of section 34-15-12 and present his belief that the action for partition survived the death of the plaintiff.¹⁵ The hearing justice granted the motion to dismiss, noting that the plaintiff's estate did not file an objection to the motion to dismiss or a motion for continuance.¹⁶ On March 18, 2019, three days after the hearing justice entered the order granting the motion to dismiss, counsel for the plaintiff's estate entered an appearance and filed a motion to substitute.¹⁷ The attorney for the estate noted that the executrix of the plaintiff's estate was not appointed until March 12, 2019, and therefore could not participate in the February 26, 2019 hearing.¹⁸ However, the Superior Court never held a

8. *Id.* at 753.

9. *Id.* at 752.

10. *Id.* at 752-53.

11. *Id.* at 753.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

hearing on the motion to substitute and entered a final judgement, dismissing the action for partition on April 16, 2019.¹⁹ Subsequent to the hearing justice entering an order to grant the motion to dismiss, but prior to the entry of final judgement, the plaintiff's estate filed a notice of appeal to the Supreme Court of Rhode Island on March 25, 2019.²⁰

ANALYSIS AND HOLDING

On appeal, the Court addressed two issues.²¹ First, “[w]hether a petition for partition survives the death of a plaintiff pursuant to § 34-15-12”²² and second, whether the estate had standing to appeal.²³ The Court first noted that joint tenancy in real property exists under the common law and had not been defined by the Rhode Island General Assembly.²⁴ Under the common law, the rule of survivorship dictates that after one joint tenant dies, the remaining joint tenants are entitled to the entirety of the estate.²⁵ However, the Court found that the Rhode Island General Assembly modified the common law by creating a statutory right to partition joint tenancies under section 34-15-1.²⁶ The Court held that section 34-15-12 dictates that an action for partition will not be abated by the death of the plaintiff or defendant in the action.²⁷ As a matter of statutory interpretation, the Court held that section 34-15-12 is unambiguous, such that, when a joint tenant brings an action under “§ 34-14-1 but dies before the case terminates, § 34-15-12 clearly requires that the action continue to judgement with heirs or devisees of the decedent, ‘in the same manner as might have been done had the heirs or devisees been original parties in the action.’”²⁸ Looking to the decision of the hearing justice, the Court found the

19. *Id.*

20. *Id.* The Court treated the appeal as timely, despite being filed prematurely. *Id.* n.1. (quoting *Sullivan v. Coventry Mun. Emp.’s’ Ret. Plan*, 203 A.3d 483, 846 n.4 (R.I. 2019)).

21. The Court summarily decided the appeal. *Id.* at 742.

22. *Id.* at 754.

23. *Id.* at 755.

24. *Id.* at 754 (quoting *Ruffel v. Ruffel*, 900 A.2d 1178, 1188 (R.I. 2006)).

25. *Id.* (quoting *Knibb v. Sec. Ins. Co. of New Haven*, 399 A.2d 1214, 1216 (R.I. 1979)).

26. *Id.* at 754-55 (citing R.I. GEN. LAWS § 34-15-12 (2020)).

27. *Id.* at 755 (quoting R.I. GEN. LAWS § 34-15-12 (2020)).

28. *Id.* (quoting R.I. GEN. LAWS § 34-15-12 (2020)).

hearing justice erred in granting the motion to dismiss because their reliance on the common law rule of survivorship was “contrary to the plain language of §34-15-12.”²⁹ The Court reasoned that it was clear the common law right to survivorship is abrogated when an action under section 34-15-1 is pending, pursuant to section 34-15-12.³⁰

The Court next addressed the defendant’s argument that the estate did not have standing to appeal because the estate was not a party to the action and the action was extinguished upon the plaintiff’s death.³¹ The Court rejected the defendant’s argument that the estate lacked standing to appeal because they were a nonparty to the action, holding that failure to be substituted under section 34-15-12 was not fatal to the estate’s ability to appeal the final judgement.³² The Court reasoned that in enacting section 34-15-12, the General Assembly intended “to treat heirs and devisees as represented by a decedent’s estate, as parties in the action, such that they may appeal a final judgement to the Supreme Court.³³ The Court found that the estate was an aggrieved party because they would hold no interest in the property if the dismissal was upheld.³⁴ Accordingly, the Court held that the plaintiff’s estate had standing to bring the appeal.³⁵

COMMENTARY

The Rhode Island Supreme Court provided clear guidance to the Superior Court that section 34-15-12 dictates that a partition action brought under section 34-15-1 is not abated upon the death of one of the parties.³⁶ The Court provided further guidance that section 34-15-12 treats the estate as a party to the action, such that they may appeal a final judgement if they are an aggrieved party.³⁷ This should help the Superior Court avoid mishaps such as the one

29. *Id.*

30. *Id.*

31. *Id.* at 754-55.

32. *Id.* at 756.

33. *Id.* (quoting R.I. GEN. LAWS § 34-15-12 (2020); R.I. GEN. LAWS § 9-24-1 (2020)).

34. *Id.* (citing *Lombardi v. City of Providence*, 69 A.3d 846, 850 (R.I. 2013)).

35. *Id.*

36. *See id.* at 754-55.

37. *Id.* at 756.

addressed here, where the partition action was dismissed prior to a hearing on substitution. The Superior Court now has clear instruction that a partition action is not extinguished upon the death of a party, such that a party's estate may be substituted into the litigation for further proceedings.³⁸

One may question why the Court addressed the issue of whether the action for partition survived the death of the plaintiff prior to addressing the issue of whether the estate had standing to appeal the decision. After all, there would be no need to reach the merits of the issue if the appellant had no standing to bring the appeal. However, if the partition action extinguished automatically upon the death of the plaintiff, then the estate could not have been a party to the litigation, and thus could not appeal. Because the Court first found that the partition action was not abated upon the death of the plaintiff, it could then find that the estate could be substituted into the action.

CONCLUSION

The Rhode Island Supreme Court held that an action to partition a joint tenancy under section 34-15-1 of the Rhode Island General Laws is not abated by the death of neither the plaintiff nor defendant pursuant to §34-15-12. The Court also held that the estate of the deceased may appeal an adverse decision as to partition, despite not being substituted as a party in the action to partition.

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38. *See id.* at 754-55.