

Supreme Court

Edw. J. Gerret

vs

Gerard W. Beckman & others

The only question to be determined on the final submission of this case are matters of fact, First, what is the amount of net income derivable from the property devised by Dr Beckman, to his executors in trust "after payment of the necessary charges and expenses which they are directed to apply to the support & maintenance of his son the defendant Gerard W. Beckman and Second, what sum is necessary for the support of Gerard, during his life, having in view such reasonable provisions, as is due to his situation in life?

(Clute vs Bool 8, Page 83)

There being no valid direction for the accumulation of any surplus, it would be liable to the claim of the plaintiff (1 W. S. 729. § 57)

It is shown that this trust estate consisted,

1st of a quantity of household furniture,

2nd about 7½ acres of vacant land, worth about \$500 an acre but unproductive

3rd Cash set apart under the decree of the Surrogate of Westchester County, of September 27th 1858, for investment, to apply the income to the support & maintenance of Gerard W. W. Beckman

20,000

4th Cash proceeds of sale of real estate part of Trust Estate

2,600

5th Cash directed by surrogate, to be set apart
for like purposes of the Trust under Decree
of March 10th 1862.

455.40

For the arrangement of this trust fund, and their receipts & disbursements in respect to it, the Executors on the 10th of March 1862, presented their account to the Surrogate, by whom it was duly settled, and these several sums, adjudged to be the amounts in their hands as such Trustees, upon which they were charged with the interest & income at \$4116.91, and were credited with the amounts disbursed, for the support & maintenance of Gerard, since the previous decree, and their commissions to the amount of \$4341.01, making an excess of Credits, amounting to $\left(\frac{83.34}{1210.76}\right)$ \$224.10 which they were ordered to retain out of the future receipts of income,

This decree under the provisions of Sec 66. of 2 Rev. Stat. 94, as amended by Chap. 272 of the laws of 1850 (3 Rev. Stat. 5 Ed p. 181) has, "the same force & effect as the decree or judgment of any other Court of competent jurisdiction" and could only be questioned, in some suit or proceeding brought directly for that purpose against all necessary parties

The cash belonging to the trust fund is invested except about \$2000, and the gross income is about \$1420 a year.

From this is to be deducted commissions - \$60.50
and annual taxes upwards of \$300..

which without regard to other incidental expenses would leave a net annual income of about \$1100

It is claimed that the Executors ought to sell the unproductive real estate, and not charge income with the yearly taxes

upon it, amounting to some \$116. a year.

By the will the Executors are required to pay such necessary charges and expenses out of the income, and they cannot give the persons entitled to the income, the benefit derived from portions of the property, without deductions for the expenses incident to the management of other portions, the unproductive part is to be preserved for the benefit of the residuary devisees or remaindermen, and the discretion vested by the will in the executors, to sell any portion of the real estate, cannot be controlled by the court, for the benefit of Creditors of persons interested in the life estate.

The executors are not shown to have been in any respect, remiss in their duty, to make the estate productive, nor is this action one in which they could be charged with any neglect of duty in that respect.

As to the other question, what amount is necessary for the support of Gerard R. Beckmann, in a manner suitable to his position in life? It appears that his father was a gentleman of some considerable wealth, and for some years prior to his death, maintained this son as a member of his family, and entrusted him with the charge of the place, on which he resided, to which by reason of bodily infirmity, he was unable to give personal attention.

That this son pursued no business for a livelihood but was without other means for his support, than such as were furnished by his father.

That this support & manner of living, afforded him, was on a somewhat liberal scale, and among other things he was allowed

the use of a horse & carriage. His bodily health is not robust, and he has had a weakness or infirmity in one of his legs since his youth, but not to such extent to prevent or materially embarrass him in walking.

The style in which he lived with his father was more expensive, than that maintained since his father's death, although with the use of some furniture belonging to the trust, he had been enabled to keep house and retain in his house, a housekeeper formerly in his father's service.

Considerable testimony has been offered, as to the probable amount, necessary to support a single man in the situation of life occupied by Gerard N. Beckman. Those who were acquainted with him & his family & the expense of living at or near Tarrytown where he resides generally estimate the amount at from \$1200 to \$2000. a year.

This estimate exceeds by several hundred dollars, the amount which in the opinion of the witnesses called by the plaintiff, is necessary for the comfortable support in the city of New York of a person of respectable parentage and liberal education, but of prudent & economical habits.

But it is evident these latter witnesses have reference to the expenses of a person who is industrious economical and provident & is engaged in some business pursuits.

There is much similarity between the condition of the defendant Gerard N. Beckman and that of the defendant in *Sillick vs Mason 2 Barb. Ch 79* whose misfortune it was to have been brought up in idleness "under the idea that he was to inherit a large estate," and that it was unnecessary that

he should acquire "any business habits to fit him to acquire property" or to enable him to take care of it if given to him by "others" and the Chancellor in that case, held that in fixing the allowance as between him and his creditors it was proper to take those circumstances into account.

The fortune which Dr. Beckmann intended to leave his son absolutely, was just prior to his death diverted from that purpose, evidently on account of the son's indebtedness & the income bequeathed to him was intended to be strictly settled upon him, but this was not effected in such a way as to legally accomplish that object.

The will and its codicil show what were the pecuniary means of the father, and what were the reasonable expectations of the son, as the inheritor of a share of his estate, such expectations would to some extent justify the failure to cultivate those habits of economy and care in the expenditure of money which would be looked for in persons ~~dependent~~ on their own exertions.

This Statute reserving from the claims of creditors, an amount sufficient for the necessary support of the debtor, exacts from him no duty of personal exertions, for the benefit of his creditors.

(Clute vs Wool 8 Paige 86-7)

now is Gerard W. Beckmann shown to have possessed facilities for contributing to his own support, and the only matter to which consideration is to be given is the extent of his claims upon the fund for such support, having regard to his condition and situation in life.

The testimony of the defendants witnesses have a much more direct reference to the precise question at issue, and more satis-

factorily exhibits what was Gerard R. Beckman's situation in life, and what in the opinion of those acquainted with him & his family is justly required for his maintenance in the condition he was left by his father,

In my opinion the net income of this trust estate to an amount not exceeding twelve hundred dollars a year, is under the circumstances but a just and proper allowance, to be made for his support and such as is within the intent of the statute "necessary for that purpose"

There was no accumulation of income in the hands of the Trustees, at the time of the commencement of this action, but on the contrary under the provisions of the Surrogate's decree, they were creditors to the fund for advances and each entitled to re-imbursement out of the future income.

The Complaint should therefore be dismissed with costs -

H. W. Robinson

Supreme Court

Edw. J. Gurnet

agst

Gerard H. Beckman

Copy) Referees Opinions