

A man died testate. The man's estate consisted of a residence as well as significant personal property. By his duly probated will, the man devised the residence to a friend, who was specifically identified in the will. The residue of the estate was given to a stated charity.

The man's friend, although alive at the time the man executed the will, had predeceased the man. The friend's wife and their child, who has a disability, both survived the man.

The value of the residence has increased significantly because of recent zoning changes. There is credible extrinsic evidence that the man wanted his friend to own the residence after the man's death so that the friend and his wife could care for their child there.

There is no applicable statute.

If both the charity and the child claim the residence, to whom should the estate distribute the residence?

- A. The charity, because the devise to the friend adeemed.
- B. The charity, because the devise to the friend lapsed.
- C. The child, because extrinsic evidence exists that the man's intent was to benefit the child.
- D. The child, because no conditions of survivorship were noted in the will.

Explanation:

Doctrines affecting conveyance by will

Lapse Causes devise to fail if beneficiary predeceases testator

Ademption Causes devise to fail by either:

extinction – specifically devised property not owned by testator (or destroyed or fundamentally changed) at death

satisfaction – beneficiary received devised property (or other asset intended to satisfy devise) during testator's life

Exoneration Allows beneficiary of specifically devised real property to use estate's remaining assets to pay off any encumbrances on that property

Abatement Reduces devises that cannot be satisfied by assets remaining after testator's debts are paid

Residuary devises abated first, followed by general & then specific devises

The man (testator) died **testate** and left his residence to the friend (beneficiary) under a valid will. However, the **doctrine of lapse** will cause a **devise to fail** if the **beneficiary dies before the testator** (as seen here). In that case, neither the beneficiary nor his/her heirs will acquire the devised property. Instead, it will become **part of the general estate** and be distributed in accordance with the rest of the will. And if there are no other provisions in the will, the property will be distributed under intestacy laws. But since the man left the residue of his estate to the charity, the estate should distribute the residence to the charity—not the child.

(Choice A) The doctrine of ademption will cause a specific devise to fail if the testator does not own the devised property upon death. But since the man owned the residence when he died, the devise to the friend did *not* adeem.

(Choice C) Although extrinsic evidence exists that the man's intent was to benefit the child, the parol evidence rule prohibits a court from rewriting a will that lacks significant ambiguities. And since the man's will was clear and unambiguous, such evidence cannot be used to support the child's claim to the residence.

(Choice D) Had the man's will included a condition of survivorship instructing that the residence go to the child in the event that the friend predeceased the man, the child would have received the residence. But since the man's will included no such condition, the residence should be distributed to the charity.

Educational objective:

The doctrine of lapse causes a devise to fail when the beneficiary predeceases the testator. The devised property will instead be distributed in accordance with other devises in the will or, if no others exist, in accordance with intestacy laws.

References

80 Am. Jur. 2d Wills § 1409 (2018) (doctrine of lapse).

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