

MORALS FROM THE COURTHOUSE

A study of recent Texas cases impacting the wills, probate and trust practice

MATERIALS BY GERRY W. BEYER
GOVERNOR PRESTON E. SMITH REGENTS PROFESSOR OF LAW
TEXAS TECH UNIVERSITY SCHOOL OF LAW

PRESENTED BY ELISA DILLARD RAINEY
RAINEY & RAINEY, ATTORNEYS AT LAW, L.P.
WACO, TEXAS

RAINEY & RAINEY
ATTORNEYS AT LAW, L.P.

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Other Estate Planning Issues

RAINEY & RAINEY
ATTORNEYS AT LAW, L.P.

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Conveyance of Property Subject to Survivorship

Fogal v. Fogal – Page 13

Beaumont Court of Appeals

Background

- A and B owned property “as joint owners with rights of survivorship.”
- A deeded A’s interest to C, reserving life estate for herself and also stating that upon her death, title would vest in C
- A died
- Question whether B owned all property under survivorship right or C owned one-half of property under A’s deed

Fogal v. Fogal – Page 13

Beaumont Court of Appeals

Decision

- When A conveyed interest in property, joint tenancy with rights of survivorship was broken
- English common law rule: “the sale of one joint tenant’s interest in a property held by joint tenants cuts off the survivorship rights that the surviving joint tenant would have otherwise enjoyed had the property not been sold.”
- B and C hold as tenants in common

Moral: A co-tenant’s conveyance of property subject to a right of survivorship destroys the survivorship feature.

Lady Bird Deeds

Wright v. Jones – Page 13
Waco Court of Appeals

Background

- Husband and Wife executed Lady Bird deed reserving life estate and power to revoke.
- Husband died
- Wife revoked deed in two documents – one signed by Wife and agent and one signed only by agent
- Question whether Wife owned entire premises to exclusion of grantee under Lady Bird deed

Wright v. Jones – Page 13
Waco Court of Appeals

Decision

- Under deed, each spouse reserved life estate in community one-half of property
- H's life estate ended and his interest immediately vested in Grantee when H died
- Deed could have provided that Husband's interest would pass to Wife upon his death, but did not.
- Wife's revocation of deed only impacted her one-half interest

Moral: Share owned by co-grantor of Lady Bird deed passes to grantee upon co-grantor's death and is not subject to revocation by surviving co-grantor unless deed expressly provides otherwise.

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