

STATE OF RHODE ISLAND
PROVIDENCE, SC

PROBATE COURT OF THE
CITY OF PROVIDENCE

In Re Estate of: **AMADOR D. PEREZ**

No.: 2017-0158

DECISION

SUMMARY OF ISSUES AND PARTIES

The matter is before the Court for decision on a **Motion to Distribute¹, Allow and Set off the widow's statutory** share of decedent, **Amador Perez's** two family house located at 356-358 Willard Avenue, Providence, RI 02907. It was filed by widow of the decedent, **Carmen (Altagracia Marte De Marz) Perez ("Petitioner")**, pursuant to **RI General Laws § 33-1-6**, as amended, effective **July 1st, 2014**. The decedent passed away on **February 21, 2000**. (Emphasis added).

Petitioner also requests in her memorandum, as a secondary and additional argument, that she is entitled to a life estate in the property pursuant to **RI General Laws § 33-25-2** or pursuant to **RI General Laws § 33-1-5** as amended, effective **July 1st, 2014** and is entitled to reimbursement from the statutory heirs at law for her payment on the mortgage encumbering the house since the date of death of her husband and for payment by her of repairs and other necessary expenses of the home from that date.

The two (2) children of the decedent (**not the issue** of the **Petitioner** herein), **Carmen D. Perez** and **Armador Perez, Jr.** (collectively "**Objectors**") filed their **objection** to the **Motion to Distribute Allow and Set Off**, and to the **Petitioner's request** to be appointed **Administratrix** of her late husband's estate.

TRAVEL OF THE CASE

The hearing for the appointment of an Administrator of the estate and the Motion to Distribute, etc. was held on **May 9, 2017**. The widow was appointed and qualified as **Administratrix** and **Appraiser** for the estate. The only asset in the decedent's name solely, save a Toyota motor vehicle (Probate inventory value **\$1000.00**) was the aforementioned two family house in Providence.

At the above hearing and after reviewing the Motion to Distribute, etc., this court opined that the statute that the Motion to Distribute, etc. as filed was based upon, **RI General**

¹This Motion was filed contemporaneously with the widow's Petition for her appointment as **Administratrix** of her husband's estate and refiled and heard on **August 22nd, 2017**, to specifically comply with the statutory requirement that it be filed within 6 months from the date of the first publication of notice of the qualification of the Administrator of a decedent's estate.

Laws § 33-1-6, as amended, effective **July 1, 2014**². This new version of the Statute is **materially different** from the statute that was in effect as of the date of death of **Amador D. Perez**. The court then suggested and the parties through their respective counsel agreed that the case be the subject of a **Declaratory Judgement** action in the **RI Superior Court** to determine **which version of the statute is applicable** in this case. A **Consent Order** providing for this action in the **Superior Court** was presented to this court by the parties and entered on **June 24th, 2017**.

No further hearings were held in **Probate Court** until August 22, 2017, at a status review hearing. Counsel for the Petitioner refiled the Motion to Distribute, Allow, etc (*footnote I*), and reported that the parties wanted this Court to decide the issue as to which version of **RI General Laws § 33-1-6** should be applied.

A Briefing Order was entered on September 5th, 2017; both parties through counsel submitted briefs and reply briefs in support of their respective positions and at the court's suggestion addressed the issue of applicability of the **1986 version** vs. **2014 version** of **RI General Laws § 33-1-6**

STATEMENT OF FACTS ACCEPTED BY THIS COURT

- I. Decedent, Amador Perez acquired the subject real estate at 356-358 Willard Avenue, Providence, RI 02907 from **S.W.A.P., Inc.** by Warranty deed dated November 1, 1991 and recorded on November 4, 1991 in the Land Evidence Records of the City of Providence.
- II. On the same day as the date of the warranty deed, he executed a Mortgage deed as mortgagor to Old Stone Bank in the face amount of **\$72,000.00**.
- III. Decedent, his daughter Carmen D. Perez, her husband and the couple's minor child, and decedent's son Amador L. Perez, Jr resided in the home (not known if in the same apartment) until sometime prior to 1997.
- IV. Decedent married the Petitioner on July 29th, 1995 in the Dominican Republic. and commenced living in the home sometime in 1996.
- V. On June 24th 1997, **Petitioner** executed an Assumption Agreement with the present holder of the mortgage referred to in II above. At that time, the mortgage was held by **Citizen's Bank** and was in the amount of **\$67, 315.28**. The Assumption Agreement was recorded in the Land Evidence Records of the City of Providence.
- VI. No deed from the Decedent to the Petitioner is on record and was not alleged by either party herein.

² This is significant to this matter as the amendment was effective over fourteen (14) years after the date of death of the decedent. This issue will be further reviewed and discussed later in this decision as it is of utmost importance to the decision(s) made herein.

- VII. During their marriage, Petitioner and the Decedent contributed equally to pay the expenses, etc. of the property.
- VIII. Decedent passed away **intestate** on **February 21, 2000**.
- IX. Petitioner (widow) paid Decedent's funeral bill in the amount of **\$ 4,422.00**.
- X. The balance of the aforesaid mortgage as of the death of the Decedent was **approximately \$65,000.00**.
- XI. The assessed Tax value of the real estate as of December 31, 1999 for tax year 2000, the year the decedent passed, was **\$117,200.00**.
- XII. No Administration petition was filed in Probate Court **prior to April, 2017**:
- XIII. The Tax Assessed value of the property as of December 31, 2016 (**2017 Tax value**) is **\$139,700.00**.
- XIV. An appraisal for sale purposes for the subject real estate was obtained by the Petitioner from a CMA appraiser in **2017** showing a value of **\$147,200.00**
- XV. The mortgage balance to Citizen's Bank as of the appointment of the Administratrix was approximately **\$18,000.00**
- XVI. The Petitioner, since the decedent's death has paid the mortgage, taxes, water, sewer, insurance, maintenance and alleged capital improvements since the date of death of decedent using her own funds and rental income from the premises.

ISSUES AND DISCUSSION

First Issue: Is **RI General Laws § 33-1-6**, as amended, **effective July 1st, 2014** applicable to this Petitioner?³

The previous version of the section which was enacted in **1986** was amended in **2014** as follows:

1. The amount allowed to be set off to the **surviving spouse** was increased from a maximum of **\$75,000.00** to a maximum of **\$150,000.00**.⁴
2. The phrase "**If there is no issue as aforesaid**" was removed from **RI General Laws § 33-1-6**,
3. All other material terms and conditions of the respective versions are identical.

The Petitioner correctly points out in its initial memorandum that both the 1986 version and 2014 version of the statute establish the time frame for filing the petition in probate court to be within six (6) months from the date of the first publication of

³ This amendment is part of a **group of 2014 Legislative and Public Law amendments to Title 33 of the RI General Laws dealing with Probate; 2014 ch.312 Sections 1-5 which overhauled RI General Laws § 33-1-1, 2, 3, 5 ,6,7, 11,12, 13, § 33-10-1,2,3 and § 33-28-1,2,3,4**. Section 5 of the collection provides that **all the amendments and additions contained in it become effective on July 1, 2014**.

⁴ The amount of the set off is determined by the Probate Court; each version of the statute establishes a maximum amount that can be set off by the court.

notice of the qualification of the administrator **rather** than within one year of the date of death of the decedent. See: **Harrop v Tillighast 63 RI 394** (1939). (N. B In 1944, **RI General Laws § 33-1-6** was amended to reflect the change in timeliness of filing a request for a spousal set off from one (1) year from date of death to six (6) months from date of **qualification of a fiduciary in Probate court**.

Petitioner further argues that the statute in effect when the petition was filed should be applied because it does not recite that is only applicable to decedents who passed away subsequent to its enactment as was stated in the prior version (the **1986 Amendment**) and the previously referred to **1944 amendment** to the **RIGL** section covering this topic.

Henderson v Henderson 818 A2d 669 (RI 2003) is cited in support of this premise that if the language of the statute is clear on its face, then the plain meaning of the statute must be given effect. Petitioner argues that since there is no specific statutory language in the **2014 Amendment** limiting its application to decedents who pass away after the effective date of the enactment, her petition should be allowed to go forward and be granted by the Probate Court since the restriction of there being issue surviving does not now disqualify her from requesting the Probate court to set off **up to \$150,000.00** in value of the subject real estate for her.

Petitioner submitted a **supplemental brief** in support of its position that the **2014 Enactment** of **RI General Laws § 33-1-6**, should apply. In it, the premise of “**Repeal by Implication**” is argued and set forth as the reason(s) that the **2014 Amendment** should be applied. The brief sites a legal treatise **1A Sutherland Statutory Construction § 23:9(7th ed.)** and numerous **RI** cases in support of this premise that the increase in the statutory allowance from **\$75,000.00 (1986 version)** to **\$150,000.00 (2014 version)** are repugnant to one another, therefore repeals by implication the **entire 1986 version of RI General Laws § 33-1-6**, requiring the application of the **entire 2014 version** to this matter; also citing **Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire 637 A. 2d 1047 (RI 1994)** and numerous other earlier **RI** cases supporting the same premise.

Petitioner does not brief the significance of the removal of the phrase “**If there is no issue as aforesaid**” from the **amended 2014 statutory version**.

Objector argues in both its **initial** and **supplemental** brief that the amendments/enactments to the **Rhode Island General Laws** prior to the **2014 Amendment** regarding **the maximum amount to be set off by the Probate Court** and the **conditions precedent** allowing a spouse the right to set off value of real estate owned exclusively by a decedent spouse all contain **specific language** that make the statutory enactments/amendments applicable only to **decedents who die after their effective date**. Objector argues that even though the **2014 Amendment** does not

contain such specific limitation, this Probate Court, by implication, should find that the Legislative Intent was to include the same limitation and application; to do otherwise, would apply a statute **retroactively since Amador Perez** died more than **14** years before its enactment and would be disturbing established juris-prudence which could affect the rights of any decedent who passed away without a will prior to the **2014 enactment** leaving a spouse surviving.

Second Issue: What is the **Life Estate Value** of the spouse pursuant to **RI General Laws § 33-25-2 & 33-25-5**

The Petitioner provides substantial information concerning various “**scenarios**”⁵ concerning the **losses** the petitioner has incurred from an **IRS view** over the past 18 years since the death of her husband and claims she is due a credit in the amount of **\$46,945.00** for these **alleged tax losses** from the **2017 appraised value of the real estate**⁶; petitioner further avers that she is entitled to a credit against the aforesaid real estate for **\$46,822.00**⁷ representing the amount she paid off the mortgage on the subject property since the decedent’s date of death. In addition, petitioner seeks reimbursement of the funeral bill in the amount of **\$4,422.00** and **\$14,200.00** in **purported improvements** from the estate of the decedent or as a part of her requested setoff.

Using the **2000 version of RI General Laws § 33-1-6**, and giving herself a **\$75,000.00** allowance as if the administration was filed then⁸, and using the assessed value at the date of death of **\$117,200.00**, petitioner avers that the allowance, mortgage balance and reimbursement value would provide the remainder heirs a minus value. *(see footnote 5).*

Objector avers that under **RI General Laws § 33-25-2 & 33-25-5** Petitioner is not entitled to reimbursement of **IRS tax losses** as under common law a life tenant is entitled to the use of the real estate during her/his lifetime, keeps any profits obtained and suffers any losses. It is further averred that petitioner may be entitled to certain improvements made to the property that are not categorized as repairs but are major

⁵ **Three distinct scenarios** are provided in **exhibit L by Petitioner and** attached to its brief.; each ask credit for reimbursement to petitioner for the funeral bill and assumes a **\$75,000.00 spousal allowance**; **scenario 1 and 2** assume a **2017** date for the setoff and also seek a credit for the cumulated reduction of the mortgage secured by the real estate **scenario 1** shows a credit for alleged tax losses of widow as well; **scenario 2** substitutes a credit for alleged improvements to the premises instead of a credit for the alleged tax losses.; **scenario 3** is based on 2000 numbers for the mortgage payoff to the bank. all 3 scenarios produce a negative value for the remainder heirs at law.

⁶ **CMA appraisal of property of \$147,200.00. See XIV Facts Accepted by the court**

⁷ Amount paid off see **X and XV Facts Accepted by the Court**, but not adjusted as Petitioner does in its Schedule L attached to its brief.

⁸ Petitioner does not mention that this statute **would not be applicable to her** since decedent died leaving issue.

improvements. Improvements required by a government entity, if general in nature and not required because of the life tenant's discretionary usage of the property, may also be reimbursed from the remainder heirs. **Harris v Audubon Society of Rhode Island 468 A.2d 258 (RI 1983).**

No mention of the reduction of the mortgage on the premises by the Petitioner is addressed by the Objector nor is potential reimbursement to Petitioner for the paid funeral bill.

Objector also argues that for life estate value, this court should use the **2017** IRS tables (petitioner was only **54** in **2000** at time of decedent's death) and not the **2000** IRS tables.

FINDINGS

This court, in rendering this decision is duty bound to act strictly pursuant to the **Probate Statutes** in force at the time of this decision and their interpretation as defined by appropriate *stare decisis precedent*.

The Objectors argues the premise that the application of the **2014** amendment to **RI General Laws § 33-1-6**, as amended, effective **July 1st, 2014** in this matter would constitute **a retrospective application** of law for a decedent who died in February of **2000** and not reflective of the Legislative intent at the time of its enactment. **N.B.-** Objectors provided the court with copies of the numerous amendments and additions made by the legislature to the Probate Statutes⁹, all effective on **July 1, 2014 without inclusion** of language limiting them to decedents who die after their effective date (*footnote 3 supra*).

To this premise, the court disagrees. This amendment to the statute acts **prospectively** and effects only estates that have **not yet been administered prior to its enactment, regardless** of the date of death of the decedent. If the Legislature had wanted to limit the application of this amendment to decedents who died subsequent to it, appropriate language would have been included.

This court finds that the limitation of this statute is that it only applies to administration estates that have **not yet been probated** or those that were filed, but were within the six (6) month **window provided by it**, regardless of the date of death of the decedent. In **Henderson v Henderson 818 A2d 669 (RI 2003)**, the **RI Supreme Court** held that if the language in a statute is clear on its face, the plain meaning of the statute must be given effect and there is no need to look elsewhere to determine legislative intent; see also **In Re Estate of Gervais 770 A 2d. 877 (RI 2001)**. **No interpretation is needed as there are no words to be interpreted.**

The **2014 enactment** to **RI General Laws § 33-1-6**, does not eliminate the remainder heirs' interest in the real estate, but if the surviving spouse's request for set off is allowed by

⁹ **Title 33** of the **RI General Laws**.

the Probate Court¹⁰, it does reduce the value of the remainder heirs interest by the amount that the Probate Court sets aside for the surviving spouse. In this case, that would not have happened had the Legislature made the act applicable only to estate administrations for decedents who died after its enactment. However, they did not include this limitation language.

Even if, **arguendo**, the **2014 amendment to RI General Laws § 33-1-6**, was deemed to be retroactive in this case, Objectors argument, in this court's opinion, would fail.

The RI Supreme Court decision of **Lawrence v. Anheuser-Busch, Inc. 523 A 2d.864 (RI 1987)** speaks specifically as to the standards to be examined before allowing the retrospective application of a statute in a civil case. In it, the plaintiff argues that a statute enacted a year after an accident which caused the death of the plaintiffs' son should be applied in their wrongful death case against a tavern who served alcohol to the driver of a vehicle responsible for their son's death; the amended statute prohibited sale to anyone who **appeared intoxicated.....** The statute in effect at the time of the accident **did not have such language.**

Unlike this case, the revised statute said that it should be applied retroactively¹¹. The Supreme Court found that if a statute contains clear and convincing language or by necessary implication that the Legislature intended it to apply retroactively, it **may** be so applied.

Clearly in our case, the absence of any prospective language specifically limiting the statues application would allow a retroactive application and by implication, the Legislature has allowed such an application because it did not include any limiting language as to decedents who would be excluded by the subject enactment.

Next, the Court in the **Lawrence case**, supra, opined that if a statute did not have the necessary specificity or intent by implication to apply it retroactively, the distinction between a substantive statute and remedial or procedural statute must be examined. Because it had clear language as to its applicability to torts that were not barred by the Statute of Limitation, this test would not be dispositive. In our case, the change to the statute is procedural, increasing the maximum dollar value that the Probate Court could set aside for a surviving spouse and removing the condition precedent that decedents not have issue surviving. Neither change eliminated the heir's remainder interest in the real estate owned by the decedent.

The Court also examined the **Due Process** defense raised by the Tavern; it reiterated the long standing holding that the application of a statute retroactively in a civil case setting must comply with due process. Retrospective application must not impair contractual obligations or interfere with vested rights.

In our case, no contractual rights are affected; the question becomes do the remainder heirs possess a **vested right** to application of the **1986 version of RI General Laws § 33-1-6**.

¹⁰RI General Laws § **33-1-6** as amended allows a setoff for the surviving spouse at the at the discretion of the court.

¹¹ RI General Laws § **3-8-1**

The **Lawrence case**, supra, decided that a vested right prohibiting a retroactive application of a statute arises if the parties have laid reasonable reliance on the law existing at the time of the conduct (our case event-.i.e. date of death of decedent) whose legal consequences the retroactive statute would alter¹². In this case, the Court found that the Tavern had a **vested right** to rely on the statute in effect in 1978, that this was a reasonable reliance on the statute in effect at the time of the incident, that the Tavern would have acted differently if they knew they could be held liable for the death of Plaintiff's son and that the public interest was not sufficient to allow a retroactive application in this case. The Court sustained the Summary Judgement dismissal of the plaintiff's case.

This case does not approach the gravity of the facts set forth in the **Lawrence Case**; however in applying the **vested rights test**, it is clear that the Objectors had no vested right to rely on the application of the **1986 statute** which did not allow a spouses to proceed under it if the decedent had "**issue surviving**". All they had to do was file an **Administration** before 2014; that act alone would have precluded the ability of the widow to receive a set off of the decedent's real estate. Given the fact that the Probate Court is a statutory court subject strictly to application of RI General Laws and therefore to amendments from the Legislature, such an action should have been taken by them within a reasonable amount of time after the decedent's passing The Objector's had a remainder interest in **2000** and continue to have a remainder interest in the subject real estate in **2018**.

For the reasons set forth herein the court does **grant the Petitioner's Motion for a Set off**. Terms and conditions to be delineated in the **Order Section** provided hereafter.

Since **RI General Laws § 33-1-5** mirrors **RI General Laws § 33-25-2** the court **declines** to rule on its applicability as the later statute is not being challenged by Petitioner.

This court **denies** the request to establish the value of the **Petitioner's Life Estate** pursuant to **RI General Laws § 33-25-5** since there is **no Petition for Sale pending before it** and that is a prerequisite for this Court to consider a request by a Life tenant for establishment of value of its Life Estate.

ORDER

1. The Petitioner's Motion to set off a sum of money from decedent's real estate is granted; Amount to be set forth in this **Order**.
2. The Petitioner's Motion to establish value of her Life Estate is denied.
3. The Court awards as follows:
 1. The sum of **\$65,000.00** representing the value of the mortgage encumbering the property as of the decedent's death for which the Petitioner is jointly and severally responsible for by virtue of her assumption of the mortgage in June of 1997.

¹²**The Supreme Court and the Constitutionally of Retroactive Legislation**, 73 Harv, L Rev. 692 (1960)
Charles B. Hochman

2. The sum of **\$4,422.00** to reimburse Petitioner for the payment of the decedents funeral bill.
 3. The sum of **\$15,000.00** for losses and improvements incurred by Petitioner over the past 18 years which the court finds is a reasonable adjustment to amounts requested by the Petitioner in her addendum to her briefs. .
 4. The total amount set off for the widow is **\$ 84,422.00**.
4. Petitioner’s counsel shall prepare an appropriate, separate **Decree** reciting the monetary awards of this Order and after appropriate execution by the Court, a Certified Copy or Duplicate Original of the Decree shall be recorded in the Land Evidence Records of the City of Providence by Petitioner and shall be a **Lien** on the subject property, said amount to be payable to the surviving spouse, her successors and heirs upon the sale of the subject real estate, whenever that occurs.

ENTER: _____
John E. Martinelli, Providence Probate Judge

DATE: _____

BY ORDER: _____
Paul V. Jabour, Providence Probate Clerk

DATE: _____