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Shirley A. Webster

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USE OF DECLARATORY JUDGMENT, ACTIONS IN PROBATE

SHIRLEY A WEBSTER*

An action for a declaratory judgment is an extremely useful procedure in probate.

Probate administration gives rise to complex problems involving every conceivable kind of property. The intertwined and often conflicting rights of the distributees, heirs and creditors create uncertainties which can delay the closing of administration. A prompt and final determination of these problems is most desirable from the point of view of the fiduciary, his attorney, the persons interested in the estate and the general public.

A fiduciary is often confronted with problems as to the interpretation of a will, determination of who are heirs or distributees, questions of priority of claims, title and rights to property, abatement of bequests and many other matters. The parties interested do not have all of the information held by the fiduciary and are not in a position to see the overall picture of the estate. Because of these factors and a natural reluctance to become involved in litigation, few adversary actions are commenced by interested persons to determine these questions.

The usual procedure is for the fiduciary to obtain a court order authorizing or approving certain acts on his part. These orders are either *ex parte* or with notice. *Ex parte* orders are subject to review at a later time. At most, *ex parte* orders merely give rise to a presumption as to their validity. They certainly lack the degree of finality necessary to protect the fiduciary and permit him to proceed with the administration of the estate.

The degree of finality of orders after notice varies from state to state, depending on the statutes of the particular state and the extent of the jurisdiction of the Probate Court in that state. The decision of the United States Supreme Court in the *Mullane*¹ case

* J.D., 1932, State University of Iowa; Chairman, Special Committee on Probate, Property and Trust Law, the Iowa State Bar Association; partner in the law firm of Webster, Jordan and Oliver, Winterset, Iowa.

1. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

has materially altered the concept of notice in probate matters.² At the risk of over simplification, *Mullane*, in construing the due process clause, holds that a notice in probate must be reasonably calculated to inform and must afford a reasonable time for appearance.³ Notice by posting is not sufficient notice in any event. Notice by publication was held to be ineffective where the names and addresses of the interested persons were known to the fiduciary.⁴

The notice requirements in the various states for the commencement of an adversary action will, in most instances, meet the test of due process. Since the notice requirements for an action for a declaratory judgment are the same as in other adversary actions, a declaratory judgment has the force and effect of a final judgment or decree.⁵ It is expressly so provided by the Uniform Declaratory Judgments Act⁶ and by the Federal Declaratory Judgments Act.⁷

A great majority of the states have adopted the Uniform Declaratory Judgments Act,⁸ in some instances, with slight modification.⁹

The Uniform Declaratory Judgments Act provides:

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, a lunatic, or an insolvent, may have a declaration of rights or legal relations in respect thereto:

- (a) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- (b) to direct the executor, administrator, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (c) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.¹⁰

2. See Boyd, *Constitutional, Treaty, and Statutory Requirements of Probate Notice to Consuls and Aliens*, 47 IOWA L. REV. 29, 80-88 (1961); Boyd, *Some Suggestions for a Model Estates Code*, 47 MINN. L. REV. 787, 795 (1963).

3. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance. . . ." 339 U.S. at 314-5

4. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

5. *Nashville, C & St. L. Ry. v. Wallace*, 288 U.S. 249; see also, Annot. 87 A.L.R. 1191 (1933).

6. UNIFORM DECLARATORY JUDGMENTS ACT § 1.

7. 28 U.S.C. § 2201 (1964).

8. See AM. JUR. 2d *Desk Book*, Document 129.

9. See generally 9A UNIFORM LAWS ANN., Declaratory Judgments.

10. UNIFORM DECLARATORY JUDGMENTS ACT § 4.

In England, by court rule, fiduciaries, beneficiaries and creditors of decedents' estates and trusts were empowered to apply to chancery for a determination of their rights and duties.¹¹ The Uniform Declaratory Judgments Act, according to its terms, suggests that it was inspired by the English rule.

The Uniform Declaratory Judgments Act was first proposed in this country in 1922.¹² The Federal Declaratory Judgments Act was enacted in 1934.¹³ The Model Probate Code,¹⁴ noting the desirability of finality of orders in probate, suggests the use of declaratory judgments. The Uniform Probate Code does not use the term "declaratory judgments" as such, but in spelling out the jurisdiction of the court relating to the affairs of decedents, it uses language very similar to, but not as broad as,¹⁵ the provisions of the Uniform Declaratory Judgments Act. Many states have recently revised their Probate Code. So far, the State of Iowa appears to be the only state that has expressly adopted the declaratory judgment procedure in probate.¹⁶ The Iowa Rules of Civil Procedure incorporates the Uniform Declaratory Judgments Act.¹⁷

11. The English Supreme Court of Judicature Rules, Order LV, Rule 3 (1883), authorized fiduciaries, beneficiaries, and creditors of decedents' estates and trusts to apply to Chancery for the determination of their rights and duties. By making declaratory relief available, it was possible to settle isolated estate issues without resorting to the expensive and complicated administration procedures that had developed in England at the time. E. BORCHARD, DECLARATORY JUDGMENTS 226-8 (2d ed. 1941).

12. See AM. JUR. 2d *Desk Book*, Document 129.

13. 28 U.S.C. §§ 2201, 2202 (1964).

14. L. SIMES, MODEL PROBATE CODE (1946).

15. "To the full extent of constitutional power, the Court is granted jurisdiction and authority to administer justice in all matters relating to trusts and to the affairs of decedents, missing persons, disabled persons, minors, and after any required notice and hearing to try and determine all questions arising between any and all of the parties to any action or proceeding. As to all matters over which jurisdiction is conferred upon the Court by this Act or by any general or special statute or provision of law, the Court has full power to make orders, decrees or take other action necessary and proper to administer justice in the matter before it including orders and decrees sometimes called equitable relief as to any action, proceeding or other matter. No determination in the Court shall be tried again on appeal or otherwise re-examined in a manner other than the manner appropriate to issues determined by Courts with general jurisdiction. The jurisdiction and authority to the Court in relation to trusts is as described in Article VII of this Code. The 'affairs of decedents' include probate of wills; determination of heirship; administration, settlement and distribution of estates of decedents; determination of title to and rights in property claimed by or against estates of decedents; granting of letters to personal representatives, guardians and conservators; construction of wills; and protection of property of minors and disabled persons." UNIFORM PROBATE CODE § 1-302 (working draft No. 5).

16. "During the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees." IOWA CODE ANN. § 633.11 (1963).

17. "Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian has been appointed, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct executors, administrators, guardians, trustees or other fiduciaries, to

Iowa is fortunate in that it has only one court of general jurisdiction, the District Court of Iowa. The probate court is a division of the district court.¹⁸ The Iowa Probate Code provides that the probate court has full legal and equitable powers to make declaratory judgments in all probate matters.¹⁹ The probate court has jurisdiction of estates of decedents, conservatorships, guardianships and express trusts.²⁰

Provision for use of actions for declaratory judgments in probate avoids any necessity to make application to the probate court to bring such an action at law or in equity. If the probate court has jurisdiction to enter final orders determining heirs and devisees and their respective rights and to determine titles and interests in property, then there should be no necessity for a transfer of such actions to another court. If the probate court is a division of a unified court or a court of general jurisdiction, then there should be no requirement that the judge of the probate court remove his "probate hat" and put on his "equity hat" to determine the matter.

There is really little difference between the concept of declaratory judgments in probate and the use of orders with notice to interested persons, with two exceptions. First, actions for declaratory judgments are broader in scope and a final decree can determine many matters which would not ordinarily be subject to an order in probate, even after notice. Examples are: determining the existence, construction and validity of wills;²¹ declaration of rights or legal relations of persons interested in trusts or estates;²² any question of title or rights to property owned or claimed to be owned by a decedent.²³ Second, the provisions for notice governing commencement of an action for a declaratory judgment leave little doubt as to due process.

Actions for declaratory judgments are procedural in nature and it is submitted that all courts of record have inherent power and jurisdiction to grant declaratory relief.²⁴

If a probate court in any jurisdiction is by statute a "court of record" and that state has adopted the Uniform Declaratory Judgments Act, then by the terms of the act,²⁵ the probate court

do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate, guardianship or trust, including questions of construction of wills and other writings." Iowa R. Civ. P. 264.

18. IOWA CODE ANN. § 633.3(9) (1963).

19. IOWA CODE ANN. § 633.11 (1963).

20. IOWA CODE ANN. § 633.10 (1963).

21. Katz Investment Co. v. Lynch, 242 Iowa 640, 47 N.W.2d 800 (1951).

22. UNIFORM DECLARATORY JUDGMENTS ACT § 4.

23. *In re Dahl's Estate*, 196 Ore. 249, 248 P.2d 700 (1952).

24. W. ANDERSON, ACTIONS FOR DECLARATORY JUDGMENTS (2d ed. 1951).

25. UNIFORM DECLARATORY JUDGMENTS ACT § 1.

would have the power to grant declaratory judgments on subjects within the jurisdiction of the court.²⁶

The "courts of record" requirement of the Uniform Declaratory Judgments Act has been variously interpreted as having been met by superior,²⁷ county,²⁸ circuit,²⁹ district,³⁰ and common pleas³¹ courts.

A proceeding for a declaratory judgment must involve an "actual controversy". The actual controversy must be of a "justiciable nature." Some courts have declined to define the term "justiciable controversy", stating that the rule relative thereto depends upon the facts of each case.³² It is generally held that such a controversy must involve persons adversely interested in the matters in respect to which a declaration is sought. The interest must be such that the judgment will operate as *res judicata* to the parties and will effectively terminate the matter.³³

The existence of another adequate remedy does not preclude a judgment for declaratory relief in appropriate cases.³⁴ The Uniform Declaratory Judgments Act by its own terms³⁵ is declared to be remedial and is required to be liberally construed and administered. The courts have held, without exception, that such acts are to be construed liberally so as to effect their purpose of enabling one to have his rights determined without violating the rights of another.³⁶ The Uniform Declaratory Judgments Act specifically provides that ". . . all persons shall be made parties who have or claim to have any interest which would be affected by the declaration."³⁷ The courts recognize that this provision is mandatory, at least a court should decline to consider a case on the merits until all interested persons have been made parties.³⁸ The courts point out that a declaratory judgment should terminate the controversy.³⁹

The use of declaratory judgments in probate permits the prompt and final determination of any question or matter which arises during administration. It has the further advantage of being a

26. *In re Cryan's Estate*, 301 Pa. 386, 152 A. 675 (1930).

27. *Quinn v. Peoples Trust & Savings Company*, 223 Ind. 317, 60 N.E.2d 281 (1945).

28. *In re Hendricksen's Estate*, 156 Neb. 463, 56 N.W.2d 711 (1953).

29. *Tuscaloosa County v. Shamblin*, 233 Ala. 6, 169 So. 234 (1936).

30. *Montgomery v. Minneapolis Fire Dept. Relief Ass'n.*, 218 Minn. 27, 15 N.W.2d 122 (1944).

31. *Van Stone v. Van Stone*, 95 Ohio App. 406, 120 N.E.2d 154 (1952).

32. *South Charleston v. Board of Education of Kanawha County*, 132 W. Va. 77, 50 S.E.2d 880, 883 (1948).

33. *State ex rel. LaFollette v. Dammann*, 220 Wis. 17, 264 N.W. 627 (1936).

34. *Katz Investment Co. v. Lynch*, 242 Iowa 640, 47 N.W.2d 800 (1951).

35. UNIFORM DECLARATORY JUDGMENTS ACT § 12.

36. *Keller v. Council Bluffs*, 246 Iowa 202, 66 N.W.2d 113 (1954).

37. UNIFORM DECLARATORY JUDGMENTS ACT § 11.

38. *Redick v. Peony Park*, 151 Neb. 442, 37 N.W.2d 801 (1949).

39. *Tennessee Coal, Iron & Ry. v. Muscoda Local No. 123*, 137 F.2d 176 (5th Cir. 1943), *aff'd*, 321 U.S. 590 (1944).

remedy familiar to all lawyers engaged in trial practice in either the state or federal court, or both.

A controversy in probate is no different from any other controversy. It requires a final determination by a court of competent jurisdiction.

The use of actions for a declaratory judgment in probate suggests study by the members of the Bar and by Bar committees of the various states who are involved in rewriting or modernizing their Probate Codes. There is really nothing new to the concept except the idea of applying it in probate proceedings where it actually originated.