

In re ESTATE OF JAMES C. MACKAY

[Cite as In re Estate of Mackay, 121 N.H. 682]

Hillsborough County Probate Court

No. 80-501

August 5, 1981

1. Wills---Pretermission---Presumption

Statute dealing with pretermitted heirs does not create a presumption that pretermission of a child or issue of a child was accidental, but a rule of law; and the rule is conclusive unless there is evidence in the will itself that the omission was intentional. RSA 551:10.

2. Wills---Pretermission---Children

In determining whether a child is entitled to an intestate share of the estate as a pretermitted heir, the supreme court's task is not to investigate the circumstances to divine the intent of the testator; rather, it is to review the language contained within the four corners of the will for a determination of whether the testator named or referred to the child. RSA 551:10.

3. Wills---Pretermission---Children

Although a devise or legacy to a class circumscribed by the terms "children" or "issue" may be sufficient recognition of a child of the testator to exclude the child from the ambit of statute providing for an intestate share of an estate for pretermitted heirs, a devise or legacy to a class which may include children, such as "heirs-at-law" or "next-of-kin" is not sufficient recognition. RSA 551:10.

4. Wills---Pretermission---Children

If a child or grandchild is not named or referred to in a will, and is not a

devisee or legatee, he will take his share, as if the estate was intestate. RSA 551:10.

Howard & Gleason, of Henniker (Robert R. Howard, III, on the brief and orally), for the plaintiff. Sullivan, Gregg & Horton, of Nashua (Sherman D. Horton, Jr., on the brief and orally), for the defendants.

BOIS, J. The issue in this appeal is whether the Probate Court (Spanos, J.) erred in finding that the plaintiff "was not actually named or distinctly referred to personally" (emphasis in original) in the will of her father, and therefore was entitled "to the same portion of his estate, real and personal, as she would be if the deceased was intestate." We agree with the decree and affirm.