

# Court Affirmed Trial Court's Reformation Of A Will To Omit The Word "Personal" From The Term "Property" In A Residuary Clause

Article By:

David Fowler Johnson

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In *Odom v. Coleman*, a brother and a sister sued each other regarding their father's estate. No. 01-19-00669-CV, 2020 Tex. App. LEXIS 9551 (Tex. App.—Houston [1st Dist.] December 8, 2020, no pet.). The dispute centered on whether the father's will should be reformed pursuant to Texas Estates Code Section 255.451(a)(3) that permits a court to modify or reform a will if "necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent," which must be established by clear and convincing evidence. *Id.* The will contained a residuary clause that devised "personal property" to the son and then to the daughter. A strict reading of the will meant that the decedent's real property would not be included in the residuary clause and would pass by intestacy. The son sued to reform the will to omit the word "personal" in the residuary clause. The trial court ruled for the son and the daughter appealed.

The daughter alleged that the will was unambiguous and had to be construed to mean that the residuary clause only applied to personal property. The court of appeals rejected this argument because "[r]eformation and modification cases involving written instruments are fundamentally different than construction cases, and, as a result, the same legal principles do not apply." *Id.* Moreover, "[r]eformation cases involve a party claiming that the instrument, as written, contains an error and does not reflect the intent of the party or parties executing it." *Id.* The court held that the trial court could hear evidence regarding the testator's intent in this reformation case:

Significantly, Estates Code subsection 255.451(a)(3) expressly provides that a will may be reformed or modified to correct a scrivener's error in the will's terms, even if the will's terms are unambiguous. Because reformation is permitted even when the will's language is unambiguous, reliance on extrinsic evidence to determine whether the terms of the will accurately reflect the testator's intention may be necessary. While extrinsic evidence is admissible in will-construction cases only when a term is open to more than one construction, courts have considered extrinsic evidence in reformation cases in other contexts, such as reformation of trust instruments, even when the language in the instrument is unambiguous.

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*Id.*

The court then reviewed the evidence and affirmed the trial court's determination that the will should be reformed. The testator had a hand written will that stated that he intended to "leave all my worldly goods, land, property accounts all that I own to my son Howard W. Coleman, on this day 6-15-2015. If anything happens to Howard W Coleman it will go to my daughter Nadine Odom then to Thomas B. Coleman." The court held that the attorney drafting the will made an error in adding the term "personal" to the term "property" in the residuary clause: "We conclude that the handwritten will showed an intent by Mr. Coleman to covey both personal and real property to Howard. The Final Will prepared by Iverson did not "mirror" Mr. Coleman's handwritten will because it conveyed only Mr. Coleman's personal property. Thus, the evidence shows that the placement of the word "personal" before the word "property" in the Final Will was an error." *Id.* The court held that the attorney's mistake was a scrivener's error:

The Estates Code does not define the phrase "scrivener's error." Generally, when a statute uses an undefined word, a court should apply the word's common, ordinary meaning. "We often look to dictionary definitions to shed light on the ordinary meaning of a statutory term." Black's Law Dictionary defines "scrivener's error" as a synonym for "clerical error." A "clerical error" is one "resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." Iverson's failure to delete the word "personal" from the residuary clause falls within the definition of "scrivener's error." As discussed, Iverson testified that he used a former client's will as a template to draft Mr. Coleman's will. Iverson stated that, to make the will conform to Mr. Coleman's "wishes," he had to delete "a lot of things" from the former client's will. Iverson intended to delete the word "personal" before the word "property" but failed to do so. Iverson testified that his failure to remove the word "personal" was "just a cut-and-paste mistake." The evidence showed that the error was not a result of Iverson's professional judgment or based on a decision that he or Mr. Coleman made to limit the property he devised to personal property. Instead, the evidence showed that Iverson's error in failing to delete the word "personal" resulted from an "inadvertence." See *id.* Thus, we conclude that the evidence and the plain and ordinary meaning of what constitutes a scrivener's error supports the probate court's determination that Iverson's failure to delete the word "personal" was a scrivener's error for purposes of Estates Code subsection 255.451(a)(3).

*Id.* The court also held that the trial court's determination was based on clear and convincing evidence. The court also rejected an argument that the son's claim to reform the trust triggered an in terrorem clause. The court held:

Here, Howard's petition shows that he did not bring the action to attack the will's terms selected by Mr. Coleman. Instead, Howard brought the action to attack a term not selected by Mr. Coleman, which was frustrating Mr. Coleman's intent to dispose of all his property. The entire focus of the action was to ensure that Mr. Coleman's intent was preserved and given effect by reforming the will to conform with his intent. Thus, given the facts of this case, we hold that the probate court did not err in rejecting Nadine's claim that Howard forfeited his right to inherit under the will by violating the in terrorem clause.

*Id.* The court affirmed the trial court's judgment reforming the will to omit the word "personal" from the residuary clause so that the son was entitled to all of the decedent's property (personal or real) that was not otherwise disposed of in the will.

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