

Forfeiture and New York's "Slayer Rule"

By Ilene S. Cooper and Jaclene D'Agostino



New York's "slayer rule" essentially provides that an individual who kills another person forfeits any interest in the victim's estate. The rationale is simple – no one should financially benefit from his or her own crime.

This long-standing rule has never been codified in New York, but it is a common law principle emanating from the 1889 Court of Appeals decision in *Riggs v. Palmer*.¹ There, a grandson, who intentionally killed his grandfather to ensure his inheritance, was barred from profiting from his own wrong. The Court stated:

Palmer cannot take any of this property as heir. Just before the murder he was not an heir, and it was not certain that he ever would be. He might have died before his grandfather [the murdered man], or might have been disinherited by him. He made himself an heir by the murder, and he seeks to take property as the fruit of his crime. What has before been said as to him as legatee applies to him with equal force as an heir. He cannot vest himself with title by crime.²

Application of the slayer rule is generally straightforward, but in certain cases, the lines can become blurred. This was evidenced this past year in *In re Edwards*,³ in which the killer sought to inherit from his victim's estate, indirectly, through the estate of his post-deceased spouse, and in the cases of *In re Demesyieux*,⁴ and *In re Ledson*,⁵

wherein the killers were determined not responsible for their actions by reason of mental disease or defect.

In *Edwards*, the decedent's son-in-law, Brandon, pleaded guilty to manslaughter. Brandon's wife, Deanna, was the decedent's only child, and sole beneficiary of her estate. Less than a year later – and before Brandon's guilty plea – Deanna died intestate, as a result of an accidental drug overdose. Brandon was Deanna's sole distributee and thus stood in a position to inherit his mother-in-law's entire estate indirectly through his wife's estate. In a 2012 decision, *Surr. John M. Czygier*, Surrogate's Court, Suffolk County, opined that the slayer rule should be extended upon equitable principles to prohibit Brandon from inheriting.⁶ The Appellate Division, Second Department recently affirmed.⁷

Acknowledging that this was a case of first impression, the Second Department was guided largely by its decision in *Campbell v. Thomas*.⁸ There, the court held that a surviving spouse forfeited her elective share as a result of her own wrongdoing, having knowingly taken

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advantage of the decedent in a deathbed marriage for her own pecuniary gain. Although none of the statutory disqualification provisions of Estates, Powers & Trusts Law (EPTL) 5-1.2 applied to that situation, the court relied upon principles of equity in making its determination.⁹

The court also relied upon an analogous Illinois case, *In re Estate of Vallerius*.¹⁰ There, the decedent was murdered by two of her grandsons. Their mother post-deceased the decedent mere months later, leaving them as her only heirs. The Illinois court held that the grandsons could not indirectly benefit from their own crime by inheriting their grandmother's estate, albeit through their mother's estate, and explained that an intervening estate "should not expurgate the wrong of the murderer or thwart the intent of the legislature that the murderer not profit by his wrong."¹¹

The Second Department utilized this rationale in its *Edwards* decision, opining that the case was similar to both *Campbell* and *Vallerius* in that there was "a clear causal link between the wrongdoing and the benefits sought."¹² Accordingly, it affirmed the Surrogate's Court's decree to exercise its equitable powers in extending the slayer rule to the case.¹³

Notably, the Second Department rejected arguments that (1) Deanna's inheritance from her mother's estate vested immediately upon her mother's death, allowing her to do what she wished with the property; and (2) extension of the slayer rule would raise "a host of enforceability problems."¹⁴ The court explained that it was unpersuaded by hypothetical scenarios that Deanna's estate raised and concluded that the rule as extended would be applied on a fact-specific basis. It remains to be seen how, and to what extent, different facts may support a different result.

The decision in *Ledson* presented another scenario, but turned on the identical issue addressed in *Edwards* – that is, whether the killer should be disqualified from participating as a beneficiary of a fund that was not directly derived from his wrongful conduct. There, Surrogate's Court, Kings County, addressed the distribution of settlement proceeds following an action for injuries the decedent had sustained from asbestos exposure. In connection with that proceeding, the petitioner requested that the court disqualify one of the decedent's children, Gary Ledson, from sharing in the recovery based upon the slayer rule. Gary was criminally charged with the decedent's death, entered a plea of not guilty by reason of mental disease or defect, and was subsequently committed to a psychiatric facility. The guardian *ad litem* appointed to represent Gary's interests argued that the slayer rule was inapplicable because Gary had lacked the requisite intent to commit murder.

Explaining that New York courts have historically found the slayer rule inapplicable where a distributee or beneficiary was held not responsible for the decedent's death by reason of mental disease or defect, the

court agreed with the guardian *ad litem* and the longstanding principle that "punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong."¹⁵ Accordingly, the court held that Gary was entitled to a share of the settlement proceeds for his father's pain and suffering despite having been criminally charged with his death.

In reaching this result, the court disagreed with the rationale employed by Surrogate's Court, Nassau County, in the 2013 decision of *In re Demesyieux*.¹⁶ That case also addressed the applicability of the slayer rule where the killer was found not responsible by reason of mental disease or defect. However, as compared to *Ledson*, the question was whether the killer, who was the mother of the subject decedents, was entitled to share in the proceeds of a wrongful death settlement that arose from her own conduct. According to the Nassau County surrogate's court, this issue presented a matter of first impression in New York.

The facts of *Demesyieux* are particularly disturbing. Leatrice Brewer admitted to intentionally killing her young children to protect them from voodoo. She pleaded and was found not guilty by reason of mental disease or defect. Innocent Demesyieux, the father of two of the children, sought to disqualify her from taking any share of the wrongful death proceeds that were to be paid as a result of her actions.

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Prior to addressing disqualification under the slayer rule, the court began its analysis with the question of whether Leatrice should be disqualified under the relevant wrongful death statutes. The court explained that, in construing the statutes, courts "should consider the mischief sought to be remedied by the legislation, and they should construe the act in question so as to suppress the evil and advance the remedy."¹⁷

The court recited the pertinent portion of EPTL 5-4.3(a), providing that damages awarded in the context of wrongful death represent "'fair and just compensation for the pecuniary injuries resulting from the decedent's death"; under EPTL 5-4.4(a) "the damages are to be distributed 'in proportion to the pecuniary injuries suffered by [the decedent's distributees].'"¹⁸

Although the court characterized the concept of a parent suffering pecuniary injury by the death of her minor child as "something of a fiction," it went on to analyze whether she would be entitled to "fair and just compensation" for that pecuniary injury in the event it had

existed, or whether she had forfeited that right by killing her children. The court further noted that abandonment of a child may, in and of itself, disqualify a parent from compensation for any pecuniary injury that may have occurred in the wrongful death context.

In this latter regard, the court cited two cases, to wit: *Mark G. v. Sabol*,¹⁹ in which parents whose physical abuse of their child caused the child's death were disqualified from sharing in wrongful death proceeds under EPTL 4-4.4(a) by virtue of abandonment; and *In re Pesante*,²⁰ wherein the deceased child's mother was disqualified from sharing in wrongful death proceeds because the death occurred as a result of the mother's neglect.²¹ Despite the foregoing precedent, the court noted that the facts of *Demesyeux* were more complicated by virtue of Leatrice's plea of not responsible for her children's deaths by reason of mental disease or defect. Thus, the court turned to the question of whether the slayer rule disqualified Leatrice from sharing in the wrongful death proceeds.

Indeed, while the court recognized that the slayer rule, as emanating from *Riggs v. Palmer*,²² is intended to prevent an individual profiting from taking the life of another, it further acknowledged that application of the rule is not always straightforward. The court went on to state that while New York courts had previously addressed the issue of whether a person who is found not responsible for his or her actions by reason of mental disease or defect is disqualified from sharing in the victim's estate, none of those cases appeared within the context of a wrongful death proceeding.

The court characterized the case as a classic illustration of the equitable dilemma between two moral public policies. On the one hand, [prior New York cases] demonstrate the judicial attempt to apply the enlightened definition of criminal insanity recognizing there should be no punishment where the slayer is mentally ill. On the other hand, principles of equity, justice and morality dictate that one should not profit from his own wrong.²³

In balancing the foregoing principles, the court could not ignore Leatrice's admissions concerning the "methodical manner" in which she killed her children, and opined that to ignore those admissions by allowing her to share in a profit that would not have existed but for her actions "disturbs the conscience of the court" as a court of equity. Indeed, in reaching its result, the court relied heavily upon Leatrice's admission that she intended to kill her children to protect them from voodoo, and her acknowledgment at her plea allocution that she intended to cause her children's deaths. The killer's expressed intent to kill her children, despite her plea, was the factor that distinguished Leatrice from parents who were responsible for their children's deaths in negligence cases.²⁴

In view of these facts, the court adopted the position of the dissenting opinion in *Ford v. Ford*,²⁵ which stated,

"[T]he fact that the State cannot criminally punish an insane defendant is irrelevant to a determination of whether it is equitable for the killer to inherit from her victim."²⁶ The court concluded that while one who suffers from insanity is excused from criminal punishment for the crime, "the principles of morality and equity dictate that the murderer is still morally responsible for her crime,"²⁷ opining that "[a] finding of insanity in the criminal context is not tantamount to an absence of a mens rea necessary in this context to render [Leatrice] disqualified as a distributee."²⁸ In other words, the court determined that a lower standard of *mens rea* should apply in the civil context for purposes of disqualification, and concluded that "equity must intervene to combat the unjust enrichment" that would otherwise inure to Leatrice as the killer of her children.²⁹

As the Kings County surrogate's court noted in *Ledson*, the decision in *Demesyeux* certainly appears to be a deviation from existing precedent. However, as Surrogate's Court, Nassau County, explained, *Demesyeux* was a case of first impression that seemed to provoke a slightly distinguishable equitable analysis, perhaps because, despite her plea of insanity, the murderer articulated the "methodical manner" in which she killed her children, and the wrongful death settlement at issue was directly derived from the killer's own conduct. The settlement proceeds at issue in *Ledson* were not.

The equitable principles that proved to be the motivating force in *In re Demesyeux* were similarly the basis for the decision in *In re Edwards*. In fact, *Edwards* and *Demesyeux* both relied upon the equitable principles espoused by the court in *Campbell v. Thomas*.³⁰

Notwithstanding the foregoing, and Surrogate's Court, Nassau County's morally compelling analysis, one must question whether the novel issue of wrongful death proceeds derived from the killer's own conduct in *Demesyeux* is truly a distinguishing factor. Indeed, in the *Riggs v. Palmer* context of benefiting from one's own wrongdoing, a pecuniary gain based upon inheritance as opposed to a wrongful death settlement is a distinction without a difference. Thus, it seems that the sole distinguishing factor of *Demesyeux* is the murderer's admitted intent to kill, which the Nassau County surrogate's court found so troubling. Then again, there is the question, can insane individuals truly have such intent? Does this contradict the very purpose of finding such individuals not responsible for their actions based upon mental disease or defect? And what authority supports a lower threshold of *mens rea* in the civil context? Only time and future developments in case law will tell.

On the other hand, while *Ledson* addressed the applicability of the slayer rule in the context of an individual who had been found not responsible by reason of insanity, the issue of the killer sharing in settlement proceeds from a personal injury action, as opposed to a wrongful death, is distinguishable to the extent that the personal

injury action does not arise from the killer's wrongdoing. Thus, while it would have been the decedent rather than the killer to take those proceeds absent the killer's actions, those actions did not directly produce the pecuniary gain as they did in *Demesyeux*.

Every case will always present a slightly different scenario. However, the manner in which the slayer rule is applied, like any other common law principle, should remain somewhat consistent. It will be interesting to see how this area of the law develops from this proverbial crossroad, but, for the time being, the divergent views that have emerged in recent years will leave practitioners wildly uncertain as to how similar cases will unfold. ■

1. 115 N.Y. 506 (1889).
2. *Id.* at 513.
3. 121 A.D.3d 336 (2d Dep't 2014).
4. N.Y.L.J., Jan. 6, 2014, p. 28 (Sur. Ct., Nassau Co.).
5. N.Y.L.J., July 9, 2014, p. 26, col. 5 (Sur. Ct., Kings Co.).
6. 36 Misc. 3d 486 (Sur. Ct., Suffolk Co. 2012).
7. *In re Edwards*, 121 A.D.3d 336 (2d Dep't 2014).
8. 73 A.D.3d 103 (2d Dep't 2010).
9. EPTL 5-1.2 enumerates the statutory circumstances under which a surviving spouse will be disqualified from entitlement to his or her right of election pursuant to EPTL 5-1.1-A. These include a final decree or judgment of divorce; a void, incestuous or bigamous marriage; a final decree or judgment of divorce, annulment, or dissolving the marriage on the ground of absence, not recognized as valid in New York State; a final decree or judgment of separation that was in effect when the deceased spouse died; the spouse abandoned the deceased spouse until the time of his or her death; and failure or

refusals to provide support for the deceased spouse despite having the means to do so, unless this marital duty was resumed and continued until the death of the deceased spouse in need of support (see EPTL 5-1.2).

10. 259 Ill. App. 3d 350 (5th Dist. 1994).
11. *Id.* at 355.
12. *Edwards*, 121 A.D.3d at 341 (citations omitted).
13. See SCPA 201(2), providing in pertinent part, "[t]his and any grant of jurisdiction to the court shall . . . in all instances be deemed to include and confer upon the court full equity jurisdiction as to any action, proceeding or other matter over which jurisdiction is or may be conferred."
14. *Edwards*, 121 A.D.3d at 341.
15. See *In re Ledson*, N.Y.L.J., July 9, 2014, p. 26, col. 5 (Sur. Ct., Kings Co.); see also *In re Wirth*, 59 Misc. 2d 300 (Sur. Ct., Erie Co. 1969); *In re Fitzsimmons*, 64 Misc. 2d 622 (Sur. Ct., Erie Co. 1970).
16. 42 Misc. 3d 730 (Sur. Ct., Nassau Co. 2013).
17. *Id.* at 732.
18. *Id.* (emphasis in original).
19. 180 Misc. 2d 855 (Sup. Ct., N.Y. Co. 1999).
20. 37 A.D.3d 1173 (4th Dep't 2007).
21. See *In re Demesyieux*, 42 Misc. 3d 730.
22. 115 N.Y. 506 (1889).
23. *Demesyeux*, 42 Misc. 3d at 736.
24. See, e.g., *In re Wigfall*, 20 Misc. 3d 648 (Sur. Ct., Westchester Co. 2008).
25. 307 Md. 105 (Ct. of Appeals, Md. 1986).
26. *Id.* at 138.
27. *Demesyeux*, 42 Misc. 3d at 737.
28. *Id.*
29. *Id.* at 738.
30. 73 A.D.3d 103 (2d Dep't 2010).

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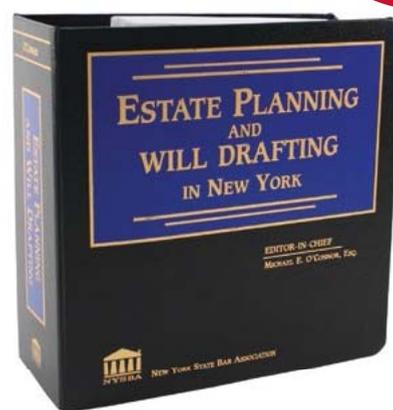
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