

The Slayer Rule Revisited

By Robert M. Harper

In what has been described as a precedent-setting decision in *Matter of Brewer*, Nassau County Surrogate Edward W. McCarty, III recently addressed whether a killer is entitled to receive the proceeds of wrongful death claims arising from her victims' deaths, given that the killer was excused from criminal liability for the deaths and found not guilty of criminal charges due to the killer's mental disease or defect. As explained more fully below, Surrogate McCarty answered that question in the negative.

Against the backdrop of the slayer rule, this article discusses Surrogate McCarty's recent determination in *Brewer* and the legal principles upon which it is based.

The Slayer Rule

To view Surrogate McCarty's determination through the proper lens, one must first understand the slayer rule, as articulated by the Court of Appeals in *Riggs v. Palmer* in 1889. In *Riggs*, the court held that "[n]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."¹ Although *Riggs*'s holding is oftentimes applied in cases concerning the intentional or reckless killing of another, its application is anything but straightforward and has resulted in a rich, sometimes conflicting body of case law.²

Under *Riggs* and its progeny, killers have forfeited their rights to the proceeds of their victims' life insurance policies; to legacies under their victims' wills; to take as their victims' intestate distributees; and to receive sole title to bank accounts they owned with their victims, jointly with right of survivorship. Conversely, Surrogate's Courts have excused killers from forfeiture when their victims' deaths have resulted from self-defense; accidents; or disabilities that negated any culpable mental state, such as insanity.³

For example, in *Matter of Wirth*, the decedent died at the hands of her husband, who was found "not guilty [of murder in the first degree] by reason of insanity." In the context of the Public Administrator's accounting as administrator of the decedent's estate, the Surrogate's Court, Erie County, addressed whether the husband was entitled to a share of the decedent's

estate as one of the decedent's intestate distributees.

Former Erie County Surrogate William J. Regan answered that question in the affirmative. In doing so, the surrogate stated that "insanity is a defense against punishment for crime." Surrogate Regan also reasoned as follows: (a) "where one benefitted from an unlawful act, such as a killing committed without intent because of insanity, it cannot be concluded that he perpetrated the act with the end in view of profiting thereby"; and (b) "it is not against . . . public policy . . . to permit one who has killed while insane subsequently to take a share of the estate of the deceased" One fact that may have influenced Surrogate Regan's decision is that all of the decedent's distributees (of course, other than the husband), including the children she had from a prior marriage, consented to the husband receiving an intestate share of the decedent's estate. Given the foregoing, the Surrogate's Court found that the husband could inherit from the decedent's estate.

Recently, in *Brewer*, Surrogate McCarty decided a slightly different issue than the one resolved in *Wirth*. Specifically, in *Brewer*, Surrogate McCarty fashioned the issue as whether a person found not guilty of a crime by reason of mental disease or defect, but who possessed the ability to understand that her conduct was morally wrong when undertaken can financially benefit from her criminal act.⁴ As explained below, the surrogate answered that question in the negative.

Matter of Brewer

In *Brewer*, Leatrice Brewer ("Leatrice") killed her three children in February, 2008.⁵ Leatrice apparently did so because she believed that by killing her children, she would save them from a voodoo curse. Leatrice was found "not responsible for the children's deaths due to mental disease or defect." She has undergone psychiatric treatment in an upstate facility since being found not guilty.

Following Leatrice's criminal proceedings, the children's fathers commenced a wrongful death action against Nassau County, alleging that its social workers failed to properly monitor Leatrice and her children.



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"Caseworkers visited [Leatrice's] apartment two days before the killings and found no one home but neglected to schedule an immediate follow-up visit."

After the children's fathers settled the wrongful death claims against Nassau County for \$350,000, Leatrice objected to the fathers receiving the proceeds thereof. A contested proceeding ensued in the Surrogate's Court. In that proceeding, Leatrice argued that the father had abandoned the children and, therefore, forfeited their rights to receive any of the wrongful death settlement proceeds. Notably, due to the fact that the state has a \$1,300,000 lien against Leatrice's property, it was unlikely that Leatrice would receive any of the wrongful death proceeds, even if the Surrogate's Court ruled in her favor.

In addressing Leatrice's objections, Surrogate McCarty apparently discussed the slayer rule and the Son of Sam laws (which prohibit a criminal from profiting from her crimes). Surrogate McCarty began by acknowledging that, due to the fact that Leatrice was found not guilty by reason of mental disease or defect, she was properly excused from criminal punishment for killing her children. However, in reasoning that appears to contradict *Wirth*, Surrogate McCarty also explained that: (a) a "finding of insanity in the criminal context is not tantamount to an absence of a mens rea;" (b) Leatrice was still morally responsible for her children's deaths; and (c) "[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 the victim."

Surrogate McCarty continued "[i]t is one thing to say that the state should imprison one who was insane when she committed the murder," but it is "quite another to say that the insane murderer can financially profit from her crime." He stated: "The only relevant focus here must be upon the killer's moral and personal responsibility for the crime.[] If the insane killer has intentionally killed her victim, if she has acted with the required mens rea for the crime, she is personally and morally responsible for her wrong, and equity demands that she will not benefit from the deed."

According to Surrogate McCarty, "[i]t is repugnant to decency to say that an insane murderer can finance her rehabilitation with new found wealth from her victim's estate."

Based upon the foregoing principles, Surrogate McCarty found that Leatrice forfeited her interest in the wrongful death proceeds because she possessed the mens rea to cause her children's deaths at the time that she killed them. Indeed, Surrogate McCarty reasoned that, regardless of her criminal culpability, Leatrice admitted at her criminal plea allocation that she "intended to cause her children's deaths." Accordingly, as per Surrogate McCarty's determination, equity prohibited Leatrice from receiving any of the wrongful death proceeds.

While (hopefully) few, if any, practitioners will have to address the issue in *Brewer* in their own practices, Surrogate McCarty's holding in *Brewer* certainly raises a number of interesting, somewhat novel issues. It will be interesting to see whether other courts adopt the *Brewer* rule or whether it sparks legislative action.

Note: Robert M. Harper is an associate at Farrell Fritz, P.C., concentrating in the field of trusts and estates litigation. In addition to his work at Farrell Fritz, Mr. Harper serves as a Special Professor of Law at Hofstra University; an Officer of the Suffolk Academy of Law; and a Co-Chair of the Legislation and Governmental Relations Committee of the New York State Bar Association's Trusts and Estates Law Section.

1. *Riggs v. Palmer*, 115 N.Y. 506 (1889).

2. Ian W. MacLean & Robert M. Harper, "2011 Legislation Update", N.Y.S.B.A. *Trusts & Estates Law Section Newsletter* at 17 (Summer 2011).

3. *Matter of Savage*, 175 Misc.2d 880 (Sur. Ct., Rockland County 1998); *Matter of Wirth*, 59 Misc.2d 300 (Sur. Ct., Erie County 1969).

4. *Matter of Brewer*, Nov. 7, 2013 (which Surrogate McCarty apparently read into the Surrogate's Court record, but which has not been formally published as a decision), available at: www.newyorklawjournal.com (last viewed on November 13, 2013).

5. Tania Karas, "Mother Can't Share Estate of Kids She Killed, Judge Says", NYLJ, Nov. 7, 2013, available at: www.newyork-law-journal.com (last viewed on November 13, 2013).