

ADMINISTRATION: Title passes to widow on order of Probate Court refusing letters of administration, and she is authorized thereby to sue.

November 30, 1936. 12-2



Mr. Earl M. Potts,  
Clerk of Probate Court,  
Callaway County,  
Fulton, Missouri.

Dear Sir:

This acknowledges receipt of your inquiry, which is as follows:

"This office would greatly appreciate your furnishing it with an opinion on the following subject;

"Whether or not order refusing administration for insufficiency of property will be proper form for a widow or widower to assign, sell, collect, sue for and retain personal property belonging to the deceased at the time of the death of deceased.

"To explain the case a little more definite, I will try to explain the case that came to our attention: T.F. Pierson, a resident of this county, died on or about the 29th day of May, 1936, leaving his widow and one minor child. On the 21st day of November, the widow, Flossy Pierson, petitioned this court for an order for refusal of administration, making affidavit and signing a petition stating that the estate of said deceased did not exceed the sum of Four Hundred Dollars and that the family of the deceased consisted of the widow, Flossie Pierson, and Iva Jewell Pierson, a minor child.

"The deceased died the owner of one Pontiac Coupe, 1928. The title was in the name of the deceased at the time of his death. I prepared the title so as the purchaser could secure his title to the car and used the form printed on the back of the title, 'Assignment of Title', in the following manner:

we  
"For Value received I hereby sell,  
assign or transfer unto

John Landers

Name of purchaser

Address R.F.D #6 Fulton Callaway Missouri  
Street City County State

The motor vehicle described on the reverse side of the Certificate and <sup>we</sup> I hereby warrant the title to said motor vehicle, and certify that at the time of delivery the same is subject to the following liens or encumbrances and none other.

Amount Kind Date Favor of

Flossie Pierson

Signature of Assignor.

Flossie Pierson,  
Widow of T.F. Pierson, deceased.

"On this 21st day of November, 1936, before me personally appeared Flossie Pierson, to me known to be the party described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal on the day and year last above written.

Earl M. Potts  
Clerk of Probate Court,  
Fulton, Callaway Co., Missouri.

"This title as executed in my presence was presented to the Secretary of State's Office, accompanied with the attached order from this court. The employee waiting on the purchaser of this car contends that it would be necessary for the widow to assign the car to herself and then assign to the purchaser.

"In the first place by the widow receiving the order refusing administration for insufficiency of property, we contend places the property in her hands by such a court order. In the second place she could not assign any property to herself. She, it would seem to this court, would be in the same place as an administrator, executor, guardian and curator, and they, of course, are prohibited by law from doing business with themselves.

"Judge Lamar has been Judge of this court for 14 years

and never before have they refused to issue a title in the manner above set forth, however, of course this does not make such procedure correct. Therefore, this court would greatly appreciate an opinion from your office."

Section 2 of Article I, Chapter 1, R.S. Mo. 1929 provides as follows:

"The probate court, or the judge thereof in vacation, in its or his discretion, may refuse to grant letters of administration on estates of deceased persons not greater in amount than is allowed by law as the absolute property of the widower, widow or minor children under the age of eighteen years. Proof may be allowed by or on behalf of such widower, widow or minor children before the probate court or judge thereof of the value and nature of such estate, and if such court or judge shall be satisfied that no estate will be left after allowing to the widower, widow or minor children their absolute property, he or it shall order that no letters of administration shall be issued on such estate, unless, on the application of creditors or other parties interested, the existence of other or further property be shown. And after the making of such order, and until such time as the same may be revoked, such widower, widow or minor children shall be authorized to collect, sue for and retain all the property belonging to such estate; if a widower or widow, in the same manner and with the same effect as if he or she had been appointed and qualified as executor or executrix of such estate; if minor children under the age of eighteen years, in the same manner and with the same effect as now provided by law for proceedings in court by infants in bringing suits."

In the case of Perkins v. Goddin, 111 Mo. App. 429, l.c. 438, the Court said:

"Under the well-settled law of this state, on the death of a party, the personal property passes to the administrator, not to the heir, unless it be where the probate court, by order dispenses with an administrator under Section 2 of the Administration Statute. R.S. 1899. There was nothing of that kind in this case as shown by the fact that the Boone County Probate Court took up the administration and granted letters to appellant thereon."

In the case of Estate of Ulrici v. Johnston, 177 Mo. App. 584, the question was whether the costs of administration should first be paid and then the residue turned over to the widow as her absolute allowance when such residue would thereby be depleted to an amount less than the amount allowed as the absolute allowance to the widow. The Court held that the \$400 absolute allowance went direct to the widow and was her property stripped of the payment of the costs of litigation, and said (l.c. 589):

"It is not essential to consider the matter of good faith of the administrator here, as these allowances are given by the statute to the widow first of all other claims, and this includes the expense of administration, for they are not of the estate. Indeed, if there is not sufficient to pay them and the expense of administration besides, then no administration should be had."

And at page 590, the following:

" \* \* \* but the Supreme Court has declared in plain terms, time and again, that the property enumerated in the statute and the allowance provided for are the absolute property of the widow and not parcel of the decedent's estate."

And at page 592, speaking of the Administration Law, the Court says:

" \* \* \* it provides that if the estate is no greater in amount than

is allowed by law as the absolute property of the widow, administration shall be dispensed with entirely. It is certain that, under the established rule of decision in this state, the widow's allowances are regarded as her absolute property and not to be considered as assets of the estate. The cases are multiplied which declare such to be true. In those states where the courts so construe these statutes, the rule obtains as well that the allowances go free to the widow first of the expenses of administration of the estate."

In the case of *Jacobs v. Maloney*, 64 Mo. App. 270, l.c. 272, the Court says:

"Neither the plaintiff nor anyone else, at the time of the transaction just stated, had been appointed or qualified as administrator of the estate of said deceased, nor does it appear that the probate court had made an order as provided in Section 2, Revised Statutes, authorizing plaintiff to collect, sue for, and retain all the property belonging to the estate of his father, \* \* \* "

In the case of *McMillan v. Wacker*, 57 Mo. App. 220, l.c. 222, the Court says:

"On the death of a party the personal property passes to the administrator, and he alone has a right to the possession thereof, unless indeed the probate court shall, by order, dispense with any administration, as provided for by section 2 of the administration statute. It is only 'after making such order such widow or minor children shall be authorized to collect, sue for and retain the property belonging to such estate.' R.S. 1889, Sec. 2. The probate court is the only tribunal having original jurisdiction to determine the question as to whether or not an administration is necessary."

CONCLUSION

It is our opinion that upon the death of the deceased, T.F. Pierson, the question of administration on his estate was properly brought to the attention of the Probate Court having jurisdiction thereof, and that Probate Court was invested with the authority to determine whether there should be administration granted upon said estate, and that when said Probate Court was "satisfied that no estate will be left after allowing to the widower, widow or minor children their absolute property, he or it shall order that no letters of administration shall be issued on such estate", and that T.F. Pierson, late of Callaway County, died having at the time of his death personal property in this state not greater in amount than is allowed by law as the absolute property of the widow, and made the further order that the said widow, Flossie Pierson, as such widow, is authorized and empowered to collect, sue for and retain said property as her absolute property, as provided by law, and ordered that letters of administration on said estate be refused unless on the application of creditors or other parties interested the existence of other or further property be shown; that thereupon, said widow, Flossie Pierson, became invested with the authority to transfer the title to the automobile in question.

Respectfully submitted,

DRAKE WATSON,  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.

DW:AH