

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120265-U
NO. 4-12-0265
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 15, 2012
Carla Bender
4th District Appellate
Court, IL

JUNE BRUNTON,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	McLean County
ROBERT T. KRUGER, as Trustee of the Helen P. Kruger)	Nos. 11P113
Trust Dated December 7, 2005, and as Executor of the)	11P245
Estate of Helen P. Kruger, and as Trustee of the Gordon J.)	
Kruger Trust Dated December 7, 2005, and as Executor of)	Honorable
the Gordon J. Kruger Estate,)	Elizabeth A. Robb,
Respondent-Appellee.)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by ordering the sale of the decedent's intangible personal property, because proper administration of the estate necessitated the sale, given the beneficiaries' disagreement over how the tangible personal property should be distributed.

¶ 2 Petitioner, June D. Brunton, appeals pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010) because the trial court denied her motion for an in-kind distribution of the decedent Gordon J. Kruger's tangible personal property, instead granting a motion by respondent, Robert T. Kruger, the executor, to sell the tangible personal property and to treat the sale proceeds as part of the residue of the estate. We find no error in the court's decision, considering that the beneficiaries of the estate are unable to agree on how the tangible personal property should be distributed. Therefore, we affirm the trial court's judgment—but with a slight modification allowing

a private auction among the heirs prior to the public auction.

¶ 3

I. BACKGROUND

¶ 4 In February 2011, Gordon J. Kruger died, leaving both a will and a trust. His wife, Helen P. Kruger, predeceased him. He is survived by four children: petitioner; respondent; Gordon J. Kruger, Jr.; and David G. Kruger.

¶ 5 In November 2011, petitioner filed a motion seeking access to the marital residence of her deceased parents. The next month, respondent filed a motion to "quash" petitioner's motion.

¶ 6 In January 2012, petitioner filed a petition to set aside Gordon J. Kruger's will and trust, on the grounds of lack of capacity and undue influence, among other grounds.

¶ 7 In February 2012, respondent filed a motion for permission to sell Gordon J. Kruger's tangible personal property, alleging that the surviving children were unable to agree on an in-kind distribution of this property. Petitioner responded by arguing that the trial court should make an in-kind distribution of the tangible personal property, in accordance with "both the spirit and letter of [Gordon J. Kruger's] Will."

¶ 8 The will provided as follows:

"I give and bequeath all of the tangible personal property that I own at my death *** to HELEN P. KRUGER ('my spouse') ***. If my spouse does not survive me, or in the event that she and I should meet death under circumstances wherein it cannot be determined which of us survived the other, then I give all of said tangible personal property in accordance with a list to be found in my safe deposit box at the time of my death ***. As to any items of tangible

personal property which are not mentioned in said list, I give and bequeath the same to my children, JUNE BRUNTON ***, ROBERT KRUGER ***, JAMES KRUGER ***, and DAVID KRUGER ***, in shares of substantially equal value, to be divided in such manner as they shall agree or, if they shall fail to agree upon a division within three (3) months following my death, then my Executor shall sell said articles and apply the proceeds of sale to my residuary estate."

The will then gave the residuary estate to the Gordon J. Kruger Trust.

¶ 9 Although petitioner sought an in-kind distribution of tangible personal property, in "both the spirit and letter of [Gordon J. Kruger's] Will," she requested the trial court to find that she was not thereby "waiving her right to contest [Gordon J. Kruger's] Will and Trust in this case by electing to claim under the Will."

¶ 10 In March 2012, the trial court entered an order, which, *inter alia*, did the following: (1) denied petitioner's request for access to the marital residence; (2) granted respondent's motion to sell the tangible personal property; (3) ordered the tangible personal property to be sold at a public auction; (4) ordered respondent to provide an inventory of the items of tangible personal property at the marital residence, including any unsellable items; (5) ordered respondent's and petitioner's attorneys to discuss the possible distribution of the unsellable items; and (6) ordered that the sale proceeds be treated as part of Gordon J. Kruger's residuary estate, to be deposited into his trust.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Petitioner argues that section 19-1(a) of the Probate Act of 1975 (755 ILCS 5/19-1(a))

(West 2010)) required the trial court to grant her motion to view the chattels inside the marital residence and to receive her share of the chattels in the form of an in-kind distribution.

¶ 14 Section 19-1(a) provides as follows:

"By leave of court, a representative may lease, sell, mortgage or pledge the personal estate of the decedent when it is necessary for the proper administration of the estate. Personal property selected by the surviving spouse or child or specifically bequeathed or directed by the testator not to be sold may not be sold, mortgaged or pledged unless necessary for the payment of claims, expenses of administration, estate or inheritance taxes or the proper administration of the estate." *Id.*

¶ 15 Granted, this statute says that "[p]ersonal property selected by the *** child *** may not be sold," but that interdiction is qualified by the next subsection of section 19-1, which says: "If the sale of the personal estate is not necessary for *** the proper distribution of the estate, the court may order the personal estate to be distributed in kind." 755 ILCS 5/19-1(b) (West 2010). Sometimes, the sale of the personal estate is necessary for the proper distribution of the estate, particularly if the heirs do not agree on an in-kind distribution of the personal estate.

¶ 16 We refer to "heirs" because, for the sake of argument, we are taking petitioner's view of the case. Assuming that Gordon J. Kruger's will is invalid, section 2-1(b) of the Probate Act of 1975 (755 ILCS 5/2-1(b) (West 2010)) would determine the disposition of his estate. That section provides as follows:

"The intestate real and personal estate of a resident decedent

and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows:

(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the decedent's descendants per stirpes."

Id.

Thus, if the personal estate is intestate, that is, not disposed of by a will, and if the decedent has no surviving spouse, the "entire" personal estate is to be distributed to the decedent's descendants. *Id.*

¶ 17 Case law teaches that if the estate has debts, legal title to the decedent's personal property vests in the administrator and the equitable title vests in the heirs. "While the naked legal title to the personal property of an intestate vests in the administrator, the equitable interests vest[] in the heirs and the administrator holds the property in trust for the payment of debts. The residue after the payment of debts belongs to the distributees." *Moore v. Brandenburg*, 248 Ill. 232, 236 (1910). See also *People ex rel. Foreman v. Estate of Kawa*, 152 Ill. App. 3d 792, 800 (1987). *Moore* seems to suggest that if there are no debts or claims against the estate and hence no need to appoint an administrator, legal and equitable title to the decedent's personal property vests immediately in the heirs. *Moore*, 248 Ill. at 236.

¶ 18 Thus, at the death of the decedent who leaves descendants but no surviving spouse, the descendants at a minimum have an equitable interest in the personal property that is not used to pay off debts. Because "the entire estate" passes to the descendants, the entire personal estate passes to them, and therefore they have a property interest in each and every item of personal property

(subject to the payment of "all just claims," of course). 755 ILCS 5/2-1(b) (West 2010). The descendants have an interest in each chattel.

¶ 19 It follows that if, after the payment of all just claims, a quilt and a rocking chair are left over and there are two heirs, the trial court should not, without the heirs' consent, order the distribution of the quilt to one heir and the distribution of the rocking chair to the other heir, even if the quilt and the rocking chair are of equal value. The reason is that each heir has a property interest in each item. Consequently, if, as in the present case, the heirs cannot agree on an in-kind distribution, "the proper distribution of the estate" will necessitate "the sale of the personal estate." 755 ILCS 5/19-1(b) (West 2010). See also 2 John Norton Pomeroy, A Treatise on Equitable Remedies § 2127, at 4787 (2d ed. 1919) (if a literal partition of chattels is impracticable, a court of equity will order a sale).

¶ 20 Therefore, in our *de novo* review (which, the parties agree, is our standard of review in this case), we find no error in the trial court's apparent conclusion that "the proper administration of the estate" necessitates the sale of Gordon J. Kruger's tangible personal property at public auction. 755 ILCS 5/19-1(a) (West 2010). However, we modify the trial court's order to provide that, prior to the auction of the estate's personal property open to the public, the executor shall schedule a private auction of that personal property, with notice to the heirs, prior to the scheduled public auction.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's judgment as modified.

¶ 23 Affirmed.