Wills, Trusts, and Administration of Estates

James C. Rehberg
I. RECENT DECISIONS—WILLS AND ADMINISTRATION

A. Multiple-Party Accounts

The only use of a will substitute during this survey period appeared in a case involving the disposition of the proceeds of several certificates of deposit. Whenever a decedent is at death a party to a multiple-party account, the personal representative must determine what, if any, interest in the account survived in the estate. A failure to pursue such an interest, if there is one, could well be a breach of the duty to collect and protect estate assets. Since these accounts are basically contractual, the rights of the parties may be terminated or modified by contract.

Lowe v. Barnett Bank of Atlanta is instructive as to the advantages and disadvantages of a will substitute. The intestate had purchased five certificates of deposit, four of them in the name of intestate or a named sister and one in the name of intestate or her husband. Two of these five certificates expressly created a right of survivorship; the other three did not. The intestate, along with her brother and another sister, later...
went to the issuing bank and instructed it to remove the names of her husband and the named sister, both of whom had died. Then, the intestate instructed the issuing bank to add her brother to her safety deposit account and her money market account, and to add the name of another sister to the fifth certificate. The bank made all these changes pursuant to its established practices. All personal information as to these various payees and the certificate changes mentioned were entered into the bank's central computer system. The bank required the intestate to produce the death certificates of the deceased payees, but did not require her to sign any other bank forms to effectuate the changes. The bank then typed a memorandum to the data processing system requesting the changes and gave the intestate a copy of the memorandum.3

The intestate died six days later, and it was not until the following day that the data was entered into the bank's data processing system. When the administrator of the decedent's estate went to the bank to claim the proceeds of the certificates as assets of the estate, the bank refused to pay the proceeds. Instead, the bank paid those proceeds to the payees named in the changes which had been entered into the data processing system.4 On an interlocutory appeal, the Georgia Court of Appeals held in favor of the bank.5 Neither the statute stating that the funds on deposit in a joint account at the death of a party to the account belong to the surviving party or parties as against the estate,6 nor the statute stating how the terms of a joint account may be changed7 was applicable to the facts of this case.8 When the intestate made the changes at the bank, she was the only person with a present right of withdrawal, because at that point the other parties to the joint certificates had died. No written authorization from the intestate was required. The deaths left her as the only party to the accounts. When she produced the death certificates of the other parties and had their names removed, the accounts were no longer joint, but became individual accounts in her name only. However, the joint and survivor accounts she created were valid and at her death passed to the surviving parties to the new accounts.9

3. Id. at 113, 433 S.E.2d at 295.
4. Id.
5. Id. at 114, 433 S.E.2d at 296.
7. Id. § 7-1-814.
9. Id.
B. Administration of Estates

Appointment of Administrator. Both the Georgia Court of Appeals and the Georgia Supreme Court carefully reconsidered the rules for granting letters of administration. The reconsideration resulted in a thinly veiled suggestion by the latter that the General Assembly might similarly reconsider these rules. 

prompted this reconsideration. There, after the death of the wife and the appointment of her father as temporary administrator, the husband filed a caveat and a petition that he be appointed administrator. It was undisputed that the wife died intestate and that she was survived by her husband, her father and mother, and two siblings, but by no descendants. The problem was that she had an action for divorce pending at her death. 

The probate court barred the husband's appointment, denied the father's petition for appointment, and instead, appointed the county administrator. The father did not appeal, in his own right, the denial of his appointment. Instead, he petitioned for his appointment on the ground that he, his wife, and the two siblings were the "next of kin" under O.C.G.A. subsection 53-6-24(a)(2) and that they had selected him for appointment pursuant to O.C.G.A. subsection 53-6-24(a)(3).

The court of appeals, in a five-to-four decision, affirmed the appointment of the county administrator, holding that the father, mother, and siblings could not qualify as next of kin because the husband survived as sole heir. Since the husband was barred from qualifying by virtue of the 1986 amendment and there was no other person properly before the probate court for appointment, the probate court correctly appointed the county administrator. However, the minority on the court of appeals was convinced that by disqualifying the divorcing spouse and

13. Id. at 411, 430 S.E.2d at 796.
15. 208 Ga. App. at 413, 430 S.E.2d at 797.
16. Id. at 411, 430 S.E.2d at 796.
17. Id.
18. Id. at 412, 430 S.E.2d at 796.
19. Id.
then declaring that the next of kin should be next entitled, the Georgia Legislature was referring to the next of kin after the surviving spouse. Therefore, only after exhausting the possibility of a qualified person from that group would it be appropriate to appoint the county adminis-

The Georgia Supreme Court affirmed, specifically addressing the argument that the father of the decedent should have been appointed, as next of kin, because he was next in line to inherit from the dece-

That argument, the supreme court noted, erroneously assumed that the husband's disqualification to serve as administrator also served to disinherit him and put the father next in line to inherit from his deceased daughter. It did not have that effect. While O.C.G.A. subsection 53-6-24(a)(1) disqualified the husband from serving as administrator, it did not change his status as sole heir of his wife, who left no descendants.

Looking beyond this case, the supreme court agreed with the court of appeals that the entire O.C.G.A. section 53-6-24 "leaves much to be desired in regards to the issue raised in the appeal." The court, in a footnote, suggested two issues it did not have to address in this case but which are left open by the present statute. These issues are: first, whether a surviving spouse who is disqualified to serve because of a pending divorce proceeding has the right to select the administrator; second, whether a surviving spouse who is sole heir is barred from selecting a qualified disinterested person when that surviving spouse is himself or herself disqualified. It thus appears that O.C.G.A. section 53-6-24 is in for more changes. Indeed, the supreme court concluded its opinion with the following suggestion: "Rather than wait for further judicial interpretation, the General Assembly may desire to address this issue in a more definitive manner."

22. Id. at 712, 438 S.E.2d at 73.
23. Id.
24. Id.
25. Id. The court cited Headman v. Rose, 63 Ga. 458(6) (1879), which held that if a surviving widow were disqualified "for any cause" she would, as widow, have the right to name a qualified person. Id.
26. McClinton, 263 Ga. at 712, 438 S.E.2d at 73 n.2.
27. Id. at 712, 438 S.E.2d at 73.
28. Id.
Succession to Property. Georgia's "slayer statute"\(^\text{29}\) denies the right of a killer to inherit or otherwise succeed to the property of the victim.\(^\text{30}\) Such statutes, being in derogation of the common law, are strictly construed.\(^\text{31}\) This survey period saw two cases reach the court of appeals for decision as to the applicability and construction of this statute. In *Hammond v. Sanders*\(^\text{32}\) a husband shot and killed his wife and almost immediately shot and killed himself. A declaratory judgment action was brought by the husband's administrator for determination as to whether the wife predeceased the husband.\(^\text{33}\) Instead of passing on this issue, the trial court granted summary judgment in favor of the wife's estate, reasoning that the husband's estate would be barred by the "slayer statute" from inheriting from the wife.\(^\text{34}\) On appeal, the court of appeals vacated the judgment and did not reach any of the substantive issues.\(^\text{35}\) Instead, the court held that the petition simply failed to make out a case for a declaratory judgment.\(^\text{36}\) The petition failed to allege that the administrator of the husband's estate faced any uncertainty or that he needed any direction from the court to prevent action which would jeopardize the interests of the husband's estate.\(^\text{37}\) While administrators may be entitled to judicial guidance in the form of a declaratory judgment, this case did not set forth the preconditions for such relief.\(^\text{38}\) The court apparently reasoned that there was simply no justiciable controversy before it. As it pointed out, the matters sought by the petition are normally resolved in probate court during administration of the husband's estate or in a claim for the proceeds of the husband's life insurance.\(^\text{39}\)

*Keith v. Johnson*,\(^\text{40}\) however, got to the very purpose of the "slayer statute." There, a husband killed his wife and himself in an apparent murder-suicide plot. The executor of the wife's estate filed for a declaratory judgment that the wife's estate was the sole heir of the

---

29. O.C.G.A. § 53-4-6 (1982).
30. Id.
31. See, e.g., O.C.G.A. § 33-25-13 (1990), likewise bars a murderer from collecting insurance benefits on the life of his victim.
33. Id. at 307, 436 S.E.2d at 46.
34. Id.
35. Id. at 308, 436 S.E.2d at 47.
36. Id.
37. Id., 436 at 46.
38. Id., 436 S.E.2d at 47.
39. Id., 436 S.E.2d at 46.
husband because the statute provides that the killer shall be treated as though he had predeceased the victim. The trial court so held, but was reversed on appeal. The court of appeals held the purpose of the statute was clearly to deprive the killer and his heirs of any property of the victim. In this case, neither the killer nor his heirs claimed any property of the victim. The presumptions in the order of the deaths of the killer and the victim address the distribution of the victim's, not the killer's, estate.

**Virtual Adoption.** The claim that one is entitled to share in the distribution of a decedent's estate is usually raised, if at all, prior to or in the early stages of an administration proceeding. This applies to the claim that one is a virtually adopted heir of an intestate. Two recent cases emphasized that regardless of the form of action in which the claim is asserted, its validity ultimately will rest on the proof of a contract to adopt, be it oral or written, express or implied.

In *Davis v. Bennett* the claimants were children of the decedent's first wife by her previous marriage. She married the decedent in 1926, and they remained married until her death in 1967. The decedent then married the defendant and, at his death, was survived by her as his widow. In the 1940s he had acquired title to a six-acre tract, where the family lived until his death in 1989. The tract was awarded to the widow as year's support. The claimants then sued to impress a trust on the tract, basing their claim upon the alleged fact that they were virtually adopted children of the decedent and, as such, were heirs entitled to share in his intestate estate. A jury verdict in their favor, however, was reversed by the supreme court on the ground that the evidence in the record failed to show the existence of a specific contract to adopt. Absent such a showing, a virtual adoption is not shown. The only evidence offered by the claimants was their own testimony that they considered the decedent to be their father and that their mother cared for him when he was ill. They admitted that they had never talked with him about an adoption. The claimants did offer evidence

---

41. *Id.* at 681, 440 S.E.2d at 233 (citing O.C.G.A. § 53-4-6 (1982)).
42. *Id.* at 682, 440 S.E.2d at 234.
43. *Id.* at 681, 440 S.E.2d at 233.
44. *Id.*
47. *Id.* at 714, 438 S.E.2d at 74.
48. *Id.* at 715, 438 S.E.2d at 74.
49. *Id.*
that they were listed as his children in his obituary, but that is not
evidence of a contract to adopt. There being no evidence of such a
contract, a judgment notwithstanding the verdict was not supported by
the evidence.

Not only must there be a contract to adopt before a virtual adoption
may be decreed, but the contract must also be between parties each of
whom had legal authority to make such a contract. The plaintiff in
*O'Neal v. Wilkes* was born out of wedlock in 1949. Her biological
father never recognized her as his daughter, never supported her, and
never took any steps to legitimate her. For four years after her mother's
death, plaintiff passed through the physical custody of three different
individuals before ending with a Mr. and Mrs. Cook. The Cooks never
statutorily adopted plaintiff, but they reared her and provided for her
education until she married in 1975. She never took the last name of
Cook, but Mr. Cook referred to her as his daughter and later identified
her children as his grandchildren. After Mr. Cook's intestate death in
1991, his administrator refused to recognize plaintiff's asserted interest
in the estate. Plaintiff filed a bill for a declaration of virtual adoption
that would entitle her to take as an heir.

Plaintiff's argument concerning the existence of a contract to adopt
was based on the assertion that the last person who had physical
custody of her, prior to the Cooks, was her paternal aunt, who agreed to
and did turn her over to the Cooks in 1961. The supreme court, with
two justices dissenting, agreed with the trial court's finding that there
was never a valid contract to adopt and, therefore, no virtual adoption.
Only the mother of a child born out of wedlock is legally
entitled to custody of the child, unless the father has legitimated the
child. Admittedly, the father had not legitimated this child. Plaintiff
conceded that, after her mother's death, no guardianship
petition was filed by her relatives, nor had any person petitioned for
appointment as her legal custodian. It followed that the obligation
assumed successively by the various persons who had custody was not

50. *Id.*, 438 S.E.2d at 75.
51. *Id.*
54. *Id.* at 851, 439 S.E.2d at 491.
55. *Id.* at 852, 439 S.E.2d at 491.
56. *Id.*
57. *Id.*, 439 S.E.2d at 492.
58. *Id.*
59. *Id.* at 853, 439 S.E.2d at 492.
a legal obligation, but a familial one, carrying no authority to contract for plaintiff's adoption. 60

Admitting that the majority correctly stated the current judge-made rule in Georgia, the dissenting justices reasoned that when the child, though technically not a party to it, has fully performed the alleged contract, then equity should enforce it, notwithstanding the fact that the contract is unenforceable because the person who consented to the adoption had no legal authority to do so. 61

C. Will Contests

The basic rules for a valid execution of a will are that the attesting witnesses must sign in the presence of the testator, that the testator must either sign in the presence of the witnesses or acknowledge his signature to any witnesses not in his presence when he signed, and that the witnesses need not sign in the presence of each other. 62 The caveators in In re Estate of Edith Brown Brannon 63 did not deny that the will satisfied those requirements. Instead, they argued that an unusual feature of the will was itself sufficient to create an opportunity for fraud and thus to raise a triable issue of fact, which in turn, would make it erroneous for the court to grant summary judgment. 64 The supreme court, though, affirmed the trial court's disposition of the case. 65 The unusual feature asserted by the caveator was that the signature of the testatrix and those of the witnesses appeared on different pages of the will. 66 Holding this insufficient to raise a triable issue of fraud, the supreme court stressed that where all the pages of the will are physically connected, as was apparently the case here, the mere fact that the testatrix' signature does not appear on the same page as do those of the witnesses is not sufficient to raise a triable issue of fraud. 67

D. Construction Problems

The case of In re Last Will & Testament of Julia D. Lewis 68 afforded an excellent opportunity to review the law of future interests, as well as

60. Id.
61. 263 Ga. at 854, 439 S.E.2d at 493 (Sears-Collins, J., dissenting).
63. 264 Ga. 84, 441 S.E.2d 248 (1994).
64. Id. at 84, 441 S.E.2d at 249.
65. Id., 441 S.E.2d at 248.
66. Id., 441 S.E.2d at 249.
67. Id.
the rules of evidence which a court may have to apply in construing a will creating such interests. Item 2 (c) of the will left the residue, one-fourth to the sister Hattie “if she survive me,” one-fourth to the sister Pearl “if she survive me,” and the remaining one-half to the nine named children of testatrix’ two deceased brothers, William and Horace, “share and share alike, per stirpes.” It then provided that if either of the sisters predeceased the testatrix, her share would be added to the remainder interest going to the nine children of the two deceased brothers, but added to that group would be the names of the children of any such deceased sister.69

Of the deceased brothers’ nine children, three were William’s and six were Horace’s. Claiming that the words “share and share alike, per stirpes” were ambiguous, the executor filed a bill for construction.70 William’s three children argued for a per stirpes construction in line with the Georgia statute of distribution, under which they would get, as representatives of William, the one-half of the remainder which he would have taken.71 Horace’s six children argued, however, for a per capita construction, under which, all the children of these two brothers would take equally.72 The two groups each filed affidavits in support of their respective claims. The trial judge concluded that the testatrix’ intention could be ascertained from the language of the will alone, construed in its entirety and without the need of parol evidence or of the affidavits. He then concluded that the remainder should be distributed per capita among all the children of the two brothers.73

The supreme court affirmed the decision.74 Absent a contrary intention expressed in the will, a testator is presumed to have intended a per stirpes distribution; however, a cardinal rule of construction is that the intention is found, not in any particular part of the will, but rather by a “four-corners” examination of the entire document.75 The trial court, then, did not err in construing the apparently inconsistent language in light of the entire will.76

The supreme court, quite helpfully, elaborated upon the application of the “four corners” rule to this will.77 Evidence of the testatrix’ scheme of distribution first appeared in the gifts of one-fourth to each of the two

---

69. Id. at 350, 434 S.E.2d at 473.
70. Id.
71. 263 Ga. at 351, 434 S.E.2d at 473 (citing O.C.G.A. § 53-4-2(5) (1994)).
72. Id. at 350, 434 S.E.2d at 473.
73. Id.
74. Id. at 353, 434 S.E.2d at 475.
75. Id. at 351, 434 S.E.2d at 473.
76. Id.
77. Id.
sisters. These were made expressly contingent upon a sister's surviving the testatrix. Had that condition not been included, the share of a predeceased sister would have gone, under the lapse statute,⁷⁸ to the issue of that sister.⁷⁹ However, in directing that the issue of a predeceased sister then be added to the original list of the issue of the two predeceased brothers, the testatrix showed an intention, through per capita distribution, to treat equally all the children of her predeceased siblings.⁸⁰

E. Renunciation

The right of a legatee or devisee to renounce a testamentary gift has long been recognized. Whether that right has been properly exercised, however, is often not clear. The most recent illustration of this problem is found in *Jordan v. Trower*.⁸¹ The testator was survived by his daughter as sole heir, but his will left the entire estate in trust for the twenty-year old child of that daughter. The will was probated in April of 1990, and on the following May 1, the granddaughter filed her renunciation of any interest in the estate, as authorized by the terms of Georgia's renunciation statute.⁸² There being no other beneficiary named in the will, the daughter requested that the co-executors/trustees relinquish the entire estate to her as sole heir. They refused to do so on the ground that the granddaughter, sole taker under the will, was barred from renouncing because earlier she had accepted $490 from the estate to purchase clothing for the funeral and other expenses.⁸³

The supreme court affirmed the lower court's judgment that there had been no valid renunciation by the granddaughter.⁸⁴ The statute does not contemplate the beneficiary's accepting such a de minimis amount that was never intended as an assertion of an ownership claim of any estate assets.⁸⁵ The alternative argument against allowing the granddaughter to take under the will was that it would frustrate the testator's intention to leave his entire estate to the granddaughter.⁸⁶ This argument was held to be groundless.⁸⁷ Every testator is presumed to know when he executes his will that the law allows a beneficiary to

⁷⁹. 263 Ga. at 352, 434 S.E.2d at 473.
⁸⁰. Id., 434 S.E.2d at 474.
⁸². Id. at 552, 431 S.E.2d at 162 (citing O.C.G.A. § 53-2-115 (Supp. 1994)).
⁸³. Id.
⁸⁴. Id. at 555, 431 S.E.2d at 164.
⁸⁵. Id. at 553, 431 S.E.2d at 162.
⁸⁶. Id.
⁸⁷. Id., 431 S.E.2d at 163.
renounce benefits under it, and to that extent, to vary dispositions made by the will.88

II. RECENT DECISIONS—TRUSTS

A. Private Trusts

Family Trusts—Successor Trustees. An inter vivos family trust, likely to last for decades and with various family members being both co-trustees and co-beneficiaries, is a fit subject for litigation no matter how carefully the trust instrument is drafted. *Ferst v. Ferst*89 involved such a trust. That trust was established by the settlor in 1937, naming his wife, Helen, both as the sole life beneficiary and as one of three trustees, and providing that his son, Robert, should become a co-trustee upon reaching the age of twenty-one. Remainder beneficiaries were a daughter of the settlor and the two daughters of Robert. The settlor and two of the trustees died some years later, leaving the settlor's wife, Helen, and his son, Robert, as trustees.90

Early in 1991, one month prior to his death, Robert purported to appoint his wife, Jeanne, to succeed him as trustee in the event of his inability or unwillingness to serve. The record does not show that Helen concurred. Jeanne petitioned for confirmation of her appointment and for removal of Helen, her mother-in-law, as a trustee. The remainder beneficiaries counterclaimed for their appointment as trustees and for the removal of Helen as trustee because of her age and diminishing capacity.91

The court of appeals affirmed the trial court's removal of Helen as a trustee.92 The court then appointed three of the other beneficiaries as trustees, but refused to qualify Jeanne because her appointment by the son, Robert, was not authorized by a majority of the surviving trustees.93 The 1937 trust instrument specified that a majority of the trustees should control in all matters, including the naming of successor trustees; hence, Robert's attempt to appoint his wife Jeanne was ineffective. The result was that Robert continued as a trustee until his death.94

88. *Id.*, 431 S.E.2d at 162.
90. *Id.* at 846, 432 S.E.2d at 228.
91. *Id.* at 846-47, 432 S.E.2d at 228.
92. *Id.* at 847, 432 S.E.2d at 229.
93. *Id.*
94. *Id.*
The court apparently reasoned that this was a family dispute over a trust which had been active for well over fifty years and never should have found its way into the courts. The opinion strongly suggests this possibility by statements that the express language of the trust instrument was unambiguous, and the “clear meaning” was that a majority of the serving trustees should appoint a successor to any deceased trustee.95

Spendthrift Trusts—Creditors’ Rights. The case of Speed v. Speed96 gave the supreme court its first opportunity to construe the spendthrift trust provisions of the Georgia Trust Act.97 In that case, a husband and wife had been seriously injured in an automobile accident and had obtained a large settlement with the automobile manufacturer. The husband transferred his portion into an irrevocable trust for himself as sole beneficiary. The trust instrument gave the trustee discretion to pay trust principal or interest for the husband’s maintenance and support, and any remainder at his death to be distributed pursuant to the terms of his will. Finally, this instrument contained a spendthrift clause that prohibited involuntary alienation of trust property for satisfaction of the debts or obligations of the husband.98 In a subsequent divorce action, the trial court held that since the husband’s interest in the trust property had been irrevocably transferred out of his estate, it was no longer his property and was not subject to the wife’s claims for alimony and equitable distribution.99

In reversing the trial court, the supreme court specifically addressed the language of the new Georgia Trust Act dealing with spendthrift trusts.100 The cited subsection first recognized the validity of a spendthrift trust provision prohibiting involuntary alienation of the beneficiary’s interest by stating “[e]xcept as otherwise provided in this subsection . . . .”101 The next sentence declared such a spendthrift provision invalid if the beneficiary is the settlor.102 The following sentence declared any such spendthrift provision invalid as to claims for alimony against the interest of such a beneficiary, other than one whose physical or mental disability substantially impairs his ability to provide

95. Id.
98. 263 Ga. at 167, 430 S.E.2d at 348-49.
99. Id. at 166, 430 S.E.2d at 348.
100. Id. at 167, 430 S.E.2d at 349 (citing O.C.G.A. § 53-12-28(c) (Supp. 1994)).
101. O.C.G.A. § 53-12-28(c) (Supp. 1994).
102. Id.
for his care and custody.103 The husband relied on this "other than" language, arguing that because this exception did not apply to disabled beneficiaries like himself, his interest was completely protected.104 The supreme court, though, emphasized the previous independent sentence, holding that it prohibited any settlor, disabled or not, from protecting his assets by simply putting them in a spendthrift trust.105 The supreme court further explained that holding otherwise would be contrary to prior trust law in Georgia and to the express language of the new Georgia Trust Act that a spendthrift clause is not valid if the beneficiary was also the settlor.106

B. Charitable Trusts

Exemption of Property from Ad Valorem Taxation. In 1993 the issue of the exemption from ad valorem taxation of two Masonic lodges reached a Georgia appellate court for the third time.107 On the first appearance, the court of appeals held the lodges not entitled to the exemption because they were not used exclusively for charitable purposes, they were used only by members of the lodges, and they were not open to the public.108 The supreme court reversed this decision and remanded the case to the trial court for an evidentiary hearing on whether the lodges qualified as institutions of "purely public charity" under the language of the Georgia exemption statute.109 In this opinion, the supreme court named three factors that must be considered by the trial court and which must be found to coexist in order to qualify the property for ad valorem tax exemption.110 They were: (1) the institution must be devoted entirely to charitable pursuits; (2) these pursuits must be for the benefit of the public; and (3) "the use of the property must be exclusively devoted to those charitable pursuits."111 On remand, the trial court applied this test and concluded that the

103. Id.
105. Id. at 168, 430 S.E.2d at 349.
106. Id. at 167, 168, 430 S.E.2d at 349 (citing Sargeant v. Burdett, 96 Ga. 111, 117, 22 S.E. 667 (1895)).
110. 261 Ga. at 558, 408 S.E.2d at 700.
111. Id.
lodges were entitled to the exemption as institutions of "purely public charity." 112

On the appeal of this decision, the court of appeals reversed the trial court, finding the trial court's decision "clearly erroneous." 113 Undisputed evidence showed that the property was not "exclusively" devoted to charitable purposes. Instead, the evidence showed only fifty-eight percent of the total philanthropic dollars were used to benefit the general public, while forty-two percent were used for the benefit of Masons only. 114 The court stressed that nothing in its opinion contradicts the benevolent purposes served by Masonic organizations. 115 Instead, the court stressed that usage of these funds did not constitute an "exclusive" use for charitable purposes. 116 In short, "benevolence" is not synonymous with "charitable" under the language of the tax exemption provision.

**Termination of a Charitable Trust.** While a charitable trust may last forever, it may also be subject to a reverter clause which terminates its existence. 117 Whether such a clause had been activated was the issue in *First Rebecca Baptist Church, Inc. v. Atlantic Cotton Mills & Rivoli Crossing Baptist Church, Inc.* 118 Plaintiff, Atlantic Mills, conveyed a tract of land to "Rebecca Baptist Church" in 1947 for its sole use as a place of worship by the congregation of said church, "but only so long as said lot is used for such church purposes," and if it should ever cease to be so used, then all right, title and interest in the property shall revert to the grantor. 119 Until 1979 the named grantee used the tract and the church constructed on it as its place of worship. In that year, the majority of the congregation voted to move to another location, at Rivoli Crossing. However, the minority, with the permission of the majority (the Rivoli Crossing group), continued to worship on the tract under the new name of "First Rebecca Baptist Church." 120

The grantor, Atlantic Mills, sued for a declaration that the cessation of the use of the tract by the original grantee, Rebecca Baptist Church, activated the reverter clause putting the fee simple title back in the
grantor. The trial court found that the Rivoli Crossing group and their new church did not activate the reverter clause by allowing the “First Rebecca Baptist Church” to continue worshiping at the original site. The supreme court reversed this finding, stressing certain words and phrases used in the reverter clause. The term “sole use,” for example, referred to sole use by the grantee, Rebecca Baptist Church, now Rivoli Crossing Baptist Church. The court found the use by “First Rebecca Baptist Church,” created by the minority group, is not a use by Rivoli Crossing Baptist Church.

III. RECENT LEGISLATION

The 1994 session of the General Assembly addressed several subjects which are of some importance to fiduciary lawyers. These will be discussed only briefly.

A. Service Upon Minors and Incapacitated Adults

The methods of effecting service upon a minor or an incapacitated adult in a probate court proceeding were clarified by the enactment of a new section dealing only with such persons. This section provides that when service on such a person is required it may be made either by the probate court’s certified mailing of a copy of the document to the minor or incapacitated adult, or by its service upon the legal guardian or guardian ad litem of such person. The guardian must acknowledge receipt of the service and certify that he or she will actually deliver a copy of the document to the ward. The acknowledgment and certification shall then be filed as proof of such service.

B. Fiduciary Bonds

Former O.C.G.A. section 53-7-50 provided simply that a judgment against the principal or the surety on the bond of a fiduciary could be levied upon any property of any defendant in fi fa. The new section expands to authorize the probate judge to enter a judgment and to issue execution against the principal and surety, and further, to grant

121. Id.
122. Id.
123. Id.
124. Id. at 689, 440 S.E.2d at 160.
127. Id.
128. Id.
129. Id. § 53-7-50.
judgment and execution in favor of the surety against the principal upon payment of the judgment by the surety.\textsuperscript{130}

C. Temporary Administrator

Traditionally, the temporary administrator was little more than a custodian of estate assets until the qualification of a permanent administrator.\textsuperscript{131} Regarding an administrator's power to sell realty, the prior law, coupled with the recognition of a temporary administrator as only a custodian, provided that only the "administrator or executor" could petition for authority to sell assets.\textsuperscript{132} This power has now been expanded to allow the same privilege to a temporary administrator.\textsuperscript{133} The same enactment similarly expanded O.C.G.A. section 53-8-34 to allow authorization of a private sale by a temporary administrator.\textsuperscript{134}

D. Transferability of Certain Future Interests

At least since Georgia's first complete code, a contingent remainder was descendible only if the contingency was as to an event and not as to the person, that is as to the identity of the remainderman.\textsuperscript{135} The same logic has been applied to the alienability and devisability of such an interest.\textsuperscript{136} For the stated purpose of clarifying the law regarding the alienability of future interests, the General Assembly deleted one section of the code\textsuperscript{137} and amended another\textsuperscript{138} to provide simply that "[f]uture interests or estates are descendible, devisable, and alienable in the same manner as estates in possession."\textsuperscript{139}

IV. CONCLUSION

The appellate courts of Georgia and the General Assembly brought many aspects of fiduciary law under scrutiny. For example, in the area of trust law, the courts addressed the applicability of the 1991 Georgia Trust Act to spendthrift trusts.\textsuperscript{140} Also, in the area of property law,
the General Assembly clarified the 1860 statute governing the descendability and devisability of future interests. These serve as examples of the continuing evolvement of Georgia's fiduciary law.

141. See supra note 138.