

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

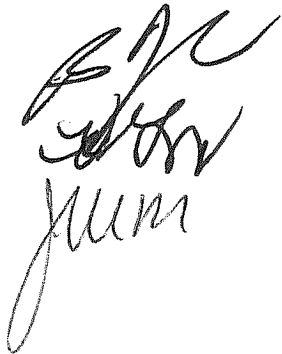
FIRST CIRCUIT

NO. 2006 CA 0791

IN THE MATTER OF  
THE SUCCESSION OF  
JOHN WESLEY GRISSOM, SR.

Judgment Rendered: February 9, 2007.

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On Appeal from the  
18th Judicial District Court,  
In and for the Parish of Iberville,  
State of Louisiana  
Trial Court No. 8735

Honorable James Best, Judge Presiding

\* \* \* \* \*

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Baton Rouge, LA

Attorney for Appellants,  
John W. Grissom, Jr., and  
Steven C. Grissom

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Attorney for Appellee,  
Betty H. Grissom

\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

CARTER, C. J.

John Wesley Grissom, Sr., died on December 12, 2002, leaving an olographic will that contained bequests to his sons, John and Steve, and his second wife, Betty.<sup>1</sup> The sons were named administrators of the succession and sought to have the will annulled or alternatively, to have various bequests made in the will declared invalid. The trial court rendered judgment in June 2004, declaring that the will is valid, that the will grants Betty a right of habitation of the family home and yard comprising the family home (which was undisputedly Mr. Grissom's separate property), and that certain other provisions of the will are invalid.<sup>2</sup> Later, the sons again sought judicial review of the will and the disposition of the estate. Specifically, they questioned the classification and distribution of life insurance proceeds, the classification and distribution of disability and retirement benefit payments, and the extent of Betty's right of habitation. After a hearing, the trial court took the matter under advisement. The resulting judgment is the subject of this appeal, taken by the sons.

The trial court determined that the right of habitation granted to Betty in the will gives her exclusive use of the house and garage. We find no error in this determination. See LSA-C.C. art. 634. The trial court then determined that the will additionally grants Betty a right of use over the remainder of Mr. Grissom's property, which includes the exclusive use of a metal shed, built on a concrete slab that is located on the property approximately 60-70 feet from the garage, as well as a lawnmower and some lawn tools. The trial court further determined that under the terms of the

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<sup>1</sup> The other bequests contained in the will are not pertinent to this appeal.

<sup>2</sup> The parties did not seek review of this judgment.

will, the right of use will terminate if either son elects to build a home on the property. We find no error in the trial court's interpretation of the will.

Prior to his death, Mr. Grissom received long-term disability payments, social security disability payments, pension plan payments, and social security retirement. The trial court correctly determined that the long-term disability payments and social security disability payments are community property. LSA-C.C. art. 2344. The trial court also correctly determined that the pension plan and social security retirement payments, although separate property when received, were indiscriminately commingled with a substantial amount of community funds when deposited into the bank account, thereby making them community property as well. See Tolar v. Tolar, 28,202 (La. App. 2 Cir. 4/3/96), 671 So.2d 1234, 1237.

The final issues on appeal relate to \$36,800.00 in life insurance proceeds paid to Betty, as the policy beneficiary. Since these proceeds were payable to Betty, and form no part of Mr. Grissom's estate, the trial court was correct in ruling that the will's provision for equal distribution of the life insurance proceeds between Betty and the sons is null and void. See In re Succession of Halligan, 03-1168 (La. App. 1 Cir. 9/17/04), 887 So.2d 109, 113, writ denied, 04-2619 (La. 12/17/04), 888 So.2d 875.

Considering the foregoing, the judgment appealed from is affirmed. This memorandum opinion is issued in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to John W. Grissom, Jr., and Steven C. Grissom.

**AFFIRMED.**