

IF YOU KILL YOUR HONEY, DON'T EXPECT THE MONEY: THE RIGHTS OF A KILLER IN TEXAS TO SHARE IN HIS VICTIM'S ESTATE

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I. DEATH BY SLEDGEHAMMER

On October 25, 2013, Steven and Laquita Lawrence left their home in Fort Bend County, Texas to purchase a new phone for their son, and only child, twenty-seven-year-old, Ross Patrick Lawrence.¹ Ross had recently returned home from Burbank, California, where he had relocated, purportedly to pursue a career in movie production.² While in Burbank, Ross was arrested for driving under the influence and for obstructing a police officer.³ According to police reports, Ross was psychotic when police arrived at his hotel room.⁴ The police also found notes in the hotel room that said his parents were trying to kill him.⁵ With his parents’ assistance, and their insistence, Ross returned to Fort Bend County, Texas in February 2013.⁶ Laquita was concerned, and somewhat fearful, because Ross resented the fact that he was returned home, and he apparently blamed his mother for his apprehension and arrest in California.⁷ Ross saw a psychiatrist who diagnosed him with attention deficit hyperactive disorder (ADHD).⁸ However, Ross’s behavior became increasingly bizarre and not totally consistent with a diagnosis of ADHD.⁹ For example, his parents told a friend

1. See Moeller Aff., at 9, *Lawrence v. Lawrence*, 2018 No. 15-DCV-227034 (268th Dist. Ct., Fort Bend County, Tex. Nov. 16, 2018).

2. See *id.* at 11.

3. See *id.*

4. See *id.*

5. See Bailey Aff., at 68, *Lawrence v. Lawrence*, 2018 No. 15-DCV-227034 (268th Dist. Ct., Fort Bend County, Tex. Nov. 16, 2018).

6. See Moeller Aff., *supra* note 1, at 11.

7. See *id.*

8. See *id.*

9. See *id.*

that one night Ross was pounding the floor with a sledgehammer.¹⁰ The doctor then prescribed anti-psychotic medication.¹¹

When Steven and Laquita returned to the house on October 25, 2013, a confrontation arose.¹² Ross told one doctor that he thought his father had his phone so he tried to grab it.¹³ Steven became upset.¹⁴ Ross claimed he followed his father to the garage to “calm his father down.”¹⁵ However, according to Ross, his father began to strike him in the face.¹⁶ Allegedly, Laquita then approached and jumped on Ross trying to “gouge his eyes out.”¹⁷ Ross told police at that point there was “hand-to-hand combat.”¹⁸ Ross then “laid them both out.”¹⁹ He said he could tell that his parents were suffering and incapacitated, so he took a sledgehammer, struck them in the head, and killed them both in the driveway of their home.²⁰ Ross later described his actions as a “mercy killing,” apparently believing it was the right thing for him to do to put them out of their misery.²¹ Ross later told his lawyer that “anyone would have done the same thing in his situation.”²² Shortly thereafter, the police arrived and found Ross in black underpants with blood splattered all over his body.²³ They first took Ross to a hospital, where tests found traces of methamphetamine and cannabis in his system.²⁴ He was noted to be psychotic at the time of his evaluation at the hospital.²⁵

Ross was charged with two counts of first degree murder.²⁶ Ross’s adjudication in the criminal court has been delayed because several psychiatrists have found Ross incompetent to stand trial.²⁷ During his stay in jail, Ross has been committed, on several occasions, to a state mental hospital.²⁸ While his criminal case was pending, relatives of both Steve and Laquita filed a civil lawsuit against Ross for wrongful death and under the

10. *See id.*

11. *See id.*

12. *See* Axelrad Aff., at 42, Lawrence v. Lawrence, 2018 No. 15-DCV-227034 (268th Dist. Ct., Fort Bend County, Tex. Nov. 16, 2018).

13. *Id.* *See* Bailey Aff., *supra* note 5, at 63.

14. *See* Moeller Aff., *supra* note 1, at 9.

15. *See* Axelrad Aff., *supra* note 12, at 42.

16. *See id.* at 32.

17. *See id.* at 42.

18. *See* Bailey Aff., *supra* note 5, at 62; Axelrad Aff., *supra* note 12, at 42.

19. *See* Moeller Aff., *supra* note 1, at 9.

20. *See* Axelrad Aff., *supra* note 12, at 42.

21. *See id.*

22. *See* Bailey Aff., *supra* note 5, at 63.

23. *See* Axelrad Aff., *supra* note 12, at 42.

24. *See id.*

25. *See id.*

26. *See* Lawrence v. Lawrence, No. 15-DCV-227034 (268th Dist. Ct., Fort Bend County, Tex. Nov. 16, 2018) (noting that this case was originally in the 268th court of Fort Bend County, Texas but was later transferred).

27. *See* Axelrad Aff., *supra* note 12, at 11.

28. *See* Orders, State v. Lawrence, No. 13-DCR-064623 (268th Dist. Ct., Fort Bend County, Tex. June 3, 2019).

“slayer’s statute,” claiming that Ross willfully and wrongfully took the lives of his parents and seeking to recover both life insurance proceeds and probate assets.²⁹ In a separate action, the life insurance company filed a petition in interpleader due to competing claims to the insurance policy.³⁰ The cases were sidetracked by an appeal involving the issue of the standing of Steven’s brother, Robert Lawrence, to make a claim to the life insurance policy proceeds.³¹ After finding that Robert Lawrence had standing to pursue a claim to the insurance proceeds, the case was remanded to the trial court.³² However, the cases remained stalled because the trial judge apparently believed that a resolution of the civil cases was contingent upon a resolution of the criminal case.³³

Finally, the cases were brought to a head.³⁴ The last will of Steven Lawrence was admitted to probate.³⁵ An order was also entered declaring Ross as the sole heir of Laquita’s estate.³⁶ In a separate guardianship proceeding, originally initiated by Robert Lawrence, the court found Ross to be incapacitated, as that term is defined in the Texas Estates Code, and a management trust was set up to receive Ross’s share of his parents’ estate or of any settlement.³⁷ However, payment of the funds or any distributions to Ross were held in abeyance pending a resolution of the slayer’s case and the insurance case.³⁸

After the slayer’s case became active again, Ross’s attorney secured affidavits from three different psychiatrists who had given opinions in the criminal case regarding Ross’s inability to stand trial.³⁹ All three doctors

29. See Petition, Lawrence v. Lawrence, No. 15-DCV-227034 (400th Dist. Ct., Fort Bend County, Tex. July 14, 2016). Steven Lawrence had an undated will which was filed for probate. *In re* Est. of Steven Ross Lawrence, No. 13-CPR-026276 (Co. Ct. at Law No. 3, Fort Bend County, Tex.). In his will, Steven left his estate to his wife, Laquita. *Id.* In the event Laquita failed to survive him, he left his estate to Ross in trust, until Ross turned 25. *Id.* Laquita died intestate. *Id.* An application for determination of heirship was filed. *In re* Est. of Laquita Sue Baldaree Lawrence, No. 13-CPR-026277 (Co. Ct. at Law No. 3, Fort Bend County, Tex.). In light of Steven’s contemporaneous death, Ross was Laquita’s sole heir at law. *Id.*

30. See Petition, Hartford Life & Accident Ins. Co. v. Lawrence, 15-DCV-054719 (434th Dist. Ct., Fort Bend County, Tex. Mar. 24, 2015) (noting the insurance policy was on the life of Steven Lawrence and named LaQuita as the primary beneficiary and Ross as the contingent beneficiary).

31. Lawrence v. Bailey, No. 01-19-00799-CV, 2021 WL 2424935 (Tex. App.—Houston [1st Dist.] June 15, 2021, no pet.).

32. *Id.* at 8, 11.

33. See Lawrence v. Lawrence, No. 15-DCV-227034 (400th Dist. Ct., Fort Bend County, Tex. July 14, 2016).

34. *Id.*

35. See Order Admitting Will to Probate, *In re* Est. of Steven Ross Lawrence, No. 13-CPR-026276 (Fort Bend Co. Ct. at Law No. 3, Tex. Apr. 6, 2023).

36. See J. Declaring Heirship, *In re* Est. of LaQuita Sue Baldaree Lawrence, No. 13-CPR-026277 (Fort Bend Co. Ct. at Law No. 3, Tex. Apr. 3, 2023).

37. See Order Creating Management Trust, *In re* Guardianship of Ross Patrick Lawrence, an Incapacitated Person, No. 22-CPR-037699 (Fort Bend Co. Ct. at Law No. 3, Tex. June 20, 2023).

38. *Id.*

39. See Moeller Aff., *supra* note 1, at 11; Bailey Aff., *supra* note 5, at 63; and Axelrad Aff., *supra* note 12, at 42.

opined that Ross was legally insane and that he was legally insane at the time of the killings of his parents.⁴⁰ The doctors believed that, as a result of his severe schizophrenia and mental disease, Ross did not know his conduct was wrong at the time his parents were killed.⁴¹ Prior to trial, and prior to the court's ruling on competing motions for summary judgment, the Lawrence family, Ross, through his guardian *ad litem* (the author of this Article), and Ross's attorney reached a settlement of the civil case, which the court approved.⁴² The criminal case remains at a standstill due to the fact that Ross remains incompetent to stand trial.⁴³

II. SCOPE OF THIS ARTICLE

The *Lawrence* case raises a number of issues which are common to slayer's cases:

- (1) Does Texas have a "slayer's statute" or "slayer's rule," and, if so, what are the parameters?⁴⁴
- (2) What is the process for prosecution of a slayer's case and, related, who has standing to bring a slayer's case?⁴⁵
- (3) What is the relationship, if any, between the criminal case and the civil case?⁴⁶
- (4) Are there defenses to the "slayer's rule," such as self-defense or insanity?⁴⁷
- (5) Who receives the decedent's life insurance proceeds or probate estate if the person is, in fact, found to be a slayer?⁴⁸

These questions will provide the outline for the remainder of this Article.⁴⁹

40. Moeller Aff., *supra* note 1, at 2; Bailey Aff., *supra* note 5, at 2; Axelrad Aff., *supra* note 12, at 2.

41. Moeller Aff., *supra* note 1, at 2; Bailey Aff., *supra* note 5, at 2; Axelrad Aff., *supra* note 12, at 2.

42. See Order Approving Settlement, *Lawrence v. Lawrence*, No. 15-DCV-227034 (400th Dist. Ct., Fort Bend County, Tex. July 14, 2016).

43. See *State v. Lawrence*, No. 13-DCR-064623 (268th Dist. Ct., Fort Bend County, Tex. June 3, 2019).

44. Author's original thought.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

III. HISTORY OF THE SLAYER'S RULE IN TEXAS

A. Vesting of Title to an Estate

The identity of a decedent's heirs is generally determined at the time of the decedent's death.⁵⁰ The decedent's estate is said to "vest" in the beneficiaries (if there is a valid will) or in the heirs (if the decedent died intestate) at the time of the decedent's death, subject to the right of the personal representative to take possession of the estate during the period of administration and the payment of validly presented claims and debts.⁵¹ However, any heir who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent.⁵²

But what, if anything, happens to the share of an heir or devisee who is found to be responsible for the death of the decedent?⁵³ Is the person deprived of their status as an heir or as a beneficiary under the will?⁵⁴ The answers to these questions require a journey through the history of what is known as the "slayer's rule."⁵⁵

B. Early Texas Law: The Killer Takes the Estate Regardless of His Conduct

At common law, when a person was convicted of a capital offense they were placed in a state of attainder.⁵⁶ As a result, the blood of the attained person was "corrupted" so they could not inherit from their ancestors nor transmit their estate to their heirs and their estate was forfeited to the king.⁵⁷ However, the general rule in Texas is that the denial of a person's right to inherit or to transmit their property violates the Texas constitution.⁵⁸ Specifically, Article 1, Section 21 of the Texas constitution, originally adopted in 1876, provides: "No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death."⁵⁹

50. TEX. EST. CODE ANN. § 101.001.

51. *Id.* §§ 101.001, 101.003, 101.051.

52. *Id.* § 121.052.

53. Author's original thought.

54. *Id.*

55. Carla Spivack, *Killers Shouldn't Inherit from Their Victims—or Should They?*, 48 GA. L. REV. 145, 152 (2013).

56. *Id.* (citing Alison Reppy, *The Slayer's Bounty—History of Problem in Anglo-American Law*, 19 N.Y.U. L.Q. REV. 229, 241 (1942) (noting that before the rejection of criminal forfeiture "attainder, forfeiture, corruption of blood and escheat . . . constituted a fairly satisfactory . . . solution to the problem of the slayer and his bounty"))).

57. THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 713 (5th ed. 1956).

58. See TEX. CONST. art. 1, § 21.

59. *Id.*; Davis v. Laning, 19 S.W. 846, 847 (Tex. 1892) (quoting TEX. CONST. art. 1, § 21) (holding that conviction and sentence to prison does not affect the right to inheritance).

Article I, Section 21 of the Texas constitution, on its face, prohibits corruption of blood.⁶⁰ Accordingly, an imprisoned person, even one on death row, may inherit property or bequeath property.⁶¹ In 1879, the early version of what later became subsection 41(d) of the Texas Probate Code provided: “No conviction shall work corruption of blood, or forfeiture of estate, nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in case of natural death.”⁶² Again, on its face, this early predecessor to the Texas Estates Code appears to allow a killer to inherit from their victim’s estate.⁶³ Or, stated another way, the statute does not appear to bar someone who is convicted for taking the life of the decedent from inheriting from that decedent.⁶⁴

This interpretation was borne out in *Hill v. Noland*.⁶⁵ In *Hill*, the brothers and sisters of Mack Noland filed suit against Mack’s wife, Patsy, for title and possession and to remove the cloud from the title of a one-half undivided interest in the community property of the deceased and Patsy; they alleged that Patsy had murdered Mack for the sole purpose of vesting herself with the title to his property.⁶⁶ Mack’s family claimed that the community property interest of Mack Noland did not pass and descend to Patsy, but the title and right to possession passed and descended to the brothers and sisters as the sole remaining next of kin.⁶⁷ The trial court ruled in Patsy’s favor.⁶⁸ The court of appeals reviewed the statute and concluded that Patsy inherited Mack’s estate because the legislature had “spoken with one voice in opposition to the exclusion of an heir from taking an estate, where the statute in plain terms designates him as one entitled to inherit.”⁶⁹ Thus, as was mentioned above, the court applied the “vesting” statute, concluding that even someone who takes the life of the decedent does not lose their status as a legal heir.⁷⁰

C. The Killer Does Not Inherit . . . But Wait, She Inherits!

Several years later, in *Murchison v. Murchison*, Margurite Murchison was accused of murdering her husband, R.H. Murchison, with the intention and purpose of securing and obtaining the proceeds of a life insurance

60. TEX. CONST. art. 1, § 21.

61. *Davis*, 19 S.W. at 846.

62. TEX. EST. CODE ANN. § 201.058 (quoting TEX. PROB. CODE ANN. § 41(d) (repealed 2014)).

63. *Id.*

64. *Id.*

65. *Hill v. Noland*, 149 S.W. 288, 288 (Tex. App.—Texarkana 1912, no writ).

66. *Id.* at 288–90.

67. *Id.*

68. *Id.*

69. *Id.* at 289 (quoting *McAllister v. Fair*, 84 P. 112, 114 (Kan. 1906)).

70. *Id.*

policy.⁷¹ R.H.'s other heirs (his father, brothers, and sister) claimed that Margurite forfeited all rights and interests she otherwise might have had in and to the proceeds of said policy.⁷² Further, because of the fact she murdered R.H., they contended that she also forfeited any part of R.H.'s estate to which she would have been entitled under the intestacy statute.⁷³

The court in *Murchison* first addressed the issue of the insurance policy.⁷⁴ Finding no Texas Supreme Court case on point, the court looked to the United States Supreme Court, which stated in *New York Mutual Life Insurance Co. v. Armstrong*: "It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired."⁷⁵ The *Murchison* court found the United States Supreme Court's analysis persuasive and concluded that it violated public policy to permit a beneficiary to recover life insurance money upon the insurance contract itself after having feloniously killed the insured with the intention and for the purpose of accelerating the due date of such policy and obtaining possession of such money.⁷⁶

In response, Margurite's lawyers pointed out that the plain language of Article 1, Section 21 of the Texas constitution states that "no conviction shall work forfeiture of estate" and that, therefore, the legislature had declared the public policy to be in favor of permitting such a beneficiary to recover upon the terms of the contract of insurance.⁷⁷ The court responded bluntly: "We cannot accept the correctness of this contention by counsel."⁷⁸ Therefore, Margurite could not recover the insurance proceeds based upon her status as a beneficiary of the insurance contract itself.⁷⁹

But that was not the end of the story.⁸⁰ The insurance policy named no contingent beneficiary therefore the policy provided that the proceeds were payable to R.H.'s estate.⁸¹ Reviewing the intestacy statutes, the court found that Margurite was R.H.'s sole heir and reluctantly concluded it was bound by the statute of descent and distribution "regardless of the fact that the death of the owner was intentionally caused by one to whom his property is made to descend and vest."⁸² Therefore, Margurite lost the battle but won the war.⁸³ She received the proceeds *not* as a beneficiary under the insurance policy but

71. *Murchison v. Murchison*, 203 S.W. 423, 424 (Tex. App.—Beaumont 1918, no writ).

72. *Id.*

73. *Id.*

74. *Id.* at 425.

75. *Id.*

76. *Id.*

77. *Id.* at 426.

78. *Id.*

79. *Id.*

80. *See id.*

81. *Id.*

82. *Id.*

83. *Id.*

based upon her status as R.H.'s *legal heir*, which could not be taken away from her.⁸⁴

D. Legislature Adopts Slayer's Statute Regarding Insurance Policy Proceeds

In 1919, likely in response to the result in *Murchison*, the Texas Legislature adopted the predecessor of Article 21.23 of the Texas Insurance Code, stating that a beneficiary would lose their rights to life insurance proceeds if they were the principal or an accomplice in "willfully bringing about the death of the insured."⁸⁵ Thus, for the first time in Texas legal history, a statute was enacted that specifically prohibited a killer from recovering benefits from their victim, although it was limited to insurance proceeds only.⁸⁶ Article 21.23 has been re-codified.⁸⁷ Section 1103.151 of the Texas Insurance Code now provides: "A beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in willfully bringing about the death of the insured."⁸⁸

Section 1103.152 of the Texas Insurance Code currently provides:

- (a) Except as provided by Subsection (b), if a beneficiary of a life insurance policy or contract forfeits an interest in the policy or contract under Section 1103.151, a contingent beneficiary named by the insured in the policy or contract is entitled to receive the proceeds of the policy or contract.
- (b) A contingent beneficiary is not entitled to receive the proceeds of a life insurance policy or contract if the contingent beneficiary forfeits an interest in the policy or contract under Section 1103.151.
- (c) If there is not a contingent beneficiary entitled to receive the proceeds of a life insurance policy or contract under Subsection (a), the nearest relative of the insured is entitled to receive those proceeds.⁸⁹

In *Greer v. Franklin Life Insurance Co.*, the Texas Supreme Court construed the original version of the Insurance Code statute and upheld the validity of the statute, stating that it, in effect, merely restated the common law to the extent that insurance policies were involved.⁹⁰ The court found the statute did not violate the constitutional provision relating to corruption of blood or forfeiture of estate.⁹¹ The apparent reasoning is that it is not the

84. *Id.* (emphasis added).

85. TEX. REV. CIV. STAT. ANN. art. 5047.

86. *Id.*

87. See TEX. INS. CODE ANN. § 1130.151.

88. *Id.*

89. *Id.* § 1103.152.

90. *Greer v. Franklin Life Ins. Co.*, 221 S.W.2d 857, 859 (Tex. 1949).

91. *Id.*

conviction that the forfeiture of the insurance proceeds occurs, but the fact of the *murder* that gave rise to the conviction.⁹²

E. Probate Code (Now Known as the Estates Code) Follows Suit

In 1955, the Texas Legislature repealed the predecessors to the previously mentioned Article 1649 and enacted subsection 41(d) of the Texas Probate Code.⁹³ Subsection 41(d) of the Texas Probate Code essentially combined the constitutional provision with the Insurance Code provision.⁹⁴ The current version, now a part of the Texas Estates Code, provides:

- (a) No conviction shall work corruption of blood or forfeiture of estate except as provided by Subsection (b).
- (b) If a beneficiary of a life insurance policy or contract who is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, the proceeds of the insurance policy or contract shall be paid in the manner provided by the Insurance Code.⁹⁵

Comparing the two statutes, it appears there is a conflict between the current Estates Code provision and the Insurance Code provision with regard to whether a conviction is required in order to invoke the forfeiture rule.⁹⁶ However, there is no indication the legislature intended to change the Insurance Code provision and, in fact, reference is made to it in the statute.⁹⁷ The purpose of subsection 201.058(b) of the Texas Estates Code appears to be to create an exception to subsection 201.058(a) that no conviction causes forfeiture of an estate.⁹⁸ If that conviction is for willfully bringing about the death of an insured, the killer then forfeits the life insurance proceeds.⁹⁹ Therefore, read together, the Texas Insurance Code and the Texas Estates Code would cause forfeiture of life insurance proceeds if there is either a conviction for or a finding of “willfully bringing about the death of the insured.”¹⁰⁰

92. See *Travelers Ins. Co. v Thompson*, 184 N.W.2d 430, 432 (Minn. 1971).

93. TEX. PROB. CODE ANN. § 41(a) (repealed 2014).

94. *Id.*

95. TEX. EST. CODE ANN. § 201.058.

96. INS. § 1103.151.

97. EST. § 201.058.

98. *Id.*

99. See *id.*

100. *Id.*

F. Enter the Constructive Trust to Address Assets Other Than Insurance Proceeds

To this point in the Texas history of the slayer's rule, the only assets which were subject to being forfeited were the proceeds of life insurance policies.¹⁰¹ Frustrated with the results of the application of the plain language of the constitutional and Estates Code provisions on the rights of a killer to inherit their victim's assets (other than insurance proceeds), lawyers and judges turned from law to equity to apply the slayer's rule to other assets.¹⁰² In *Pritchett v. Henry*, the court squarely addressed the question of whether a person who willfully and unlawfully kills another may take title as an heir or legatee of their victim and retain it.¹⁰³ The court held that although the killer acquired "legal title" to the property of their victim, the law imposed a "constructive trust" thereon for the heirs other than the killer.¹⁰⁴ In other words, by law, legal title of the assets would pass to the killer.¹⁰⁵ However, in equity, the killer was not allowed to retain the assets.¹⁰⁶ The court imposed a fictional trust for the benefit of the innocent heirs.¹⁰⁷ The court noted that by imposing a constructive trust upon the murderer, the court was not making an exception to the provisions of the intestacy statutes but merely compelling a murderer to surrender the profits of their crime to prevent their unjust enrichment.¹⁰⁸

A few years later, in *Parks v. Dumas*, the parties stipulated that "James Clifford Parks willfully, voluntarily and unlawfully killed and murdered his parents, Luther E. and Eunice Parks, by shooting them with a gun."¹⁰⁹ James Parks was convicted of the felony offense of murdering his mother, Eunice, and received a twenty-year sentence in the penitentiary.¹¹⁰ Both parents died intestate.¹¹¹ The brothers of Luther Parks and the father and sister of Eunice Parks, the sole surviving heirs of James's parents other than James, filed suit for the purpose of imposing a constructive trust on the estate of the parents.¹¹² The trial court found that in equity a constructive trust should be imposed upon all the property belonging to the estates of Luther and Eunice Parks in favor of their lawful heirs other than James, who took their lives.¹¹³ On appeal, based upon the same rationale as *Pritchett*, the court stated that the

101. *Id.*; INS. § 1103.151.

102. *Pritchett v. Henry*, 287 S.W.2d 546, 546 (Tex. App.—Beaumont 1955, writ dismissed).

103. *Id.* at 549.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Parks v. Dumas*, 321 S.W.2d 653, 654 (Tex. App.—Fort Worth 1959, no writ).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

imposition of a constructive trust does not violate the statutes of descent and distribution because it is "a creature of equity," which prevents a slayer from using the intestacy statute as a vehicle to acquire property through parenticide.¹¹⁴ Therefore, although James inherited the property of his parents, "the law imposed a constructive trust thereon in favor of the heirs other than [him]."¹¹⁵

A number of courts have accepted and applied the constructive trust as a remedy to prevent the killer from benefitting from their action in taking the life of the decedent.¹¹⁶ In *Thompson v. Mayes*, one of the beneficiaries of the testator's will intentionally and wrongfully caused the testator's death by shooting him with a gun.¹¹⁷ In accord with prior cases, the court held that a constructive trust was the proper remedy and permitted the property to pass to the other beneficiary of the will.¹¹⁸

In *Ford v. Long*, the court addressed a claim by the husband that the court could not partition the homestead and refused to set aside the exempt property to him, even though he had murdered his wife, had been convicted of the crime, and was presently in the penitentiary.¹¹⁹ The husband argued that the granting of a partition was an unconstitutional punishment for his crime.¹²⁰ The court disagreed and imposed a constructive trust in favor of the sister of the slain wife, granting the partition and possession of the partitioned share of the homestead and exempt property to the decedent's beneficiary.¹²¹ The court reasoned that if the husband had died before the wife, he would not have received the right of a survivor's homestead and exempt property.¹²² Therefore, he should not be allowed to benefit from his wrongful act which assured that he would live beyond the death of the wife.¹²³

In *Ragland v. Ragland*, a constructive trust was imposed on the husband's profit sharing plan to prevent his common law wife, who had murdered him, from being unjustly enriched by her wrongful act.¹²⁴ The court held that the imposition of the constructive trust on the one-half interest the husband owned in this community property asset was proper, but the court did not impose a constructive trust on the one-half interest which the wife already owned under the law of community property.¹²⁵

114. *Id.* at 655.

115. *Id.*

116. See *Pritchett v. Henry*, 287 S.W.2d 546, 548 (Tex. App.—Beaumont 1955, writ dismissed).

117. *Thompson v. Mayes*, 707 S.W.2d 951, 953 (Tex. App.—Eastland 1986, writ refused n.r.e.).

118. *Id.* at 955.

119. *Ford v. Long*, 713 S.W.2d 798, 798 (Tex. App.—Tyler 1986, writ refused n.r.e.).

120. *Id.* at 799.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Ragland v. Ragland*, 743 S.W.2d 758, 759 (Tex. App.—Waco 1987, no writ).

125. *Id.*

At this point in the history of the slayer's rule, Texas still had not passed a statute that addressed what happens to the slayer's share of a probate estate or other non-insurance assets.¹²⁶ However, many states have passed what are known as "slayer statutes," codifying the slayer's rule.¹²⁷

G. Federal Law Follows Suit

Benefits that a person gets through their employer are generally governed by the Employee Retirement Income Security Act (ERISA), a federal statute, and not by state law.¹²⁸ It would appear then, that there could be a "hole" in slayer's law, allowing a killer to keep assets governed by federal law.¹²⁹ However, federal courts have also adopted a slayer's rule.¹³⁰

In *Metropolitan Life Insurance Co. v. White*, Terri Yohey was the named insured under a group life insurance policy issued by Metropolitan under the Federal Employees Group Life Insurance Act (FEGIA).¹³¹ At the time of her death, she had not designated a beneficiary.¹³² Her widower,

126. See *Bounds v. Caudle*, 560 S.W.2d 925, 928 (Tex. 1977) ("Texas courts have taken the position that the law will impose a constructive trust upon the property of a deceased which passed either by inheritance or by will if the beneficiary wilfully and wrongfully caused the death of the deceased.").

127. ALA. CODE ANN. § 43-8-253 (1975); ALASKA STAT. § 13.12.803 (1996); ARIZ. REV. STAT. ANN. § 14-2803 (2012); CAL. PROB. CODE § 250 (West 2016); COLO. REV. STAT. § 15-11-803 (2022); CONN. GEN. STAT. § 45a-447 (2016); DEL. CODE ANN. tit. 12, § 2322, tit. 25, § 744 (2008); D.C. CODE § 19-320 (1965); FLA. STAT. § 732.802 (1982); GA. CODE ANN. § 53-1-5 (2022); HAW. REV. STAT. § 560:2-803 (1996); IDAHO CODE § 15-2-803 (1971); 755 ILL. COMP. STAT. 5/2-6 (1990); IND. CODE § 29-1-2-12.1 (2022); IOWA CODE § 633.535 (2017); KAN. STAT. ANN. § 59-513 (2023); KY. REV. STAT. ANN. § 381.280 (West 2012); LA. CIV. CODE ANN. arts. 941, 945, 946 (1997); ME. STAT. tit. 18A, § 2-803 (2019); MASS. GEN. LAWS ch. 190B, § 2-803 (2012); MICH. COMP. LAWS § 700.2803 (2016); MINN. STAT. § 524.2-803 (2013); MISS. CODE ANN. §§ 91-1-25, 91-5-33 (1992); MONT. CODE ANN. § 72-2-813 (2019); NEB. REV. STAT. § 30-2354 (2012); NEV. REV. STAT. § 41B.200 (1999); N.J. STAT. ANN. § 3B:7-1.1 (West 2006); N.M. STAT. ANN. § 45-2-803 (2012); N.C. GEN. STAT. §§ 31A-3, 31A-15 (2006); N.D. CENT. CODE § 30.1-10-03 (2007); OHIO REV. CODE ANN. § 2105.19 (West 2019); OKLA. STAT. tit. 84, § 231 (2015); OR. REV. STAT. §§ 112.455, 112.465, 112.475, 112.485, 112.496, 112.505, 112.515, 112.525, 112.535, 112.545, 112.555 (2021); 20 PA. CONS. STAT. §§ 8801-8815 (1972); 33 R.I. GEN. LAWS §§ 33-1.1-1-33-1.1-15 (1962); S.C. CODE ANN. § 62-2-803 (2014); S.D. CODIFIED LAWS § 29A-2-803 (1995); TENN. CODE ANN. § 31-1-106 (2019); UTAH CODE ANN. § 75-2-803 (West 2022); VT. STAT. ANN. tit. 14, § 1971 (2009); VA. CODE ANN. § 64.2-2501 (2012); WASH. REV. CODE §§ 11.84.010-900 (2016); W. VA. CODE § 42-4-2 (2017); WIS. STAT. § 854.14 (2005); WYO. STAT. ANN. § 2-14-101 (2021) (noting that in Texas, there exists no slayer's act other than for life insurance proceeds. Texas law regarding legacies, intestate succession, succession to jointly held property and succession to community property is governed by *Pritchett v. Henry*, which held that estate assets normally passing to the decedent's slayer were subject to a constructive trust in favor of other beneficiaries. In order to prevent assets of the decedent passing to the decedent's killer, a party with standing must file a petition to impose a constructive trust on the assets).

128. *Gorman v. Life Ins. Co. of N. Am.*, 811 S.W.2d 542, 545 (Tex. 1991) (noting ERISA explicitly supersedes or "preempts" state laws to the extent that they "relate to" employee benefit plans not exempt from federal regulation).

129. Author's original thought.

130. See *Metro. Life Ins. Co. v. White*, 972 F.2d 122, 123-24 (5th Cir. 1992).

131. *Id.* at 123.

132. *Id.*

Leslie Yohey, was convicted of her murder.¹³³ Under both the policy and FEGLIA, insurance proceeds are payable to an insured's widow or widower in the absence of a designated beneficiary.¹³⁴ Yohey contended that Texas law could not be used to disqualify him from a federal statutory right granted in FEGLIA."¹³⁵ The court disagreed, stating that the federal common law provides the same bar to recovery of life insurance proceeds by the murderer of the insured.¹³⁶

In *Administrative Committee for the H.E.B. Investment and Retirement Plan v. Harris*, Mary K. Graham Harris worked for H.E. Butt Grocery Company, Inc. and was covered by her employer's Investment and Retirement Plan (Plan).¹³⁷ Her husband, Alfred David Harris, was named as the sole beneficiary, and no contingent beneficiary was named.¹³⁸ Mary died.¹³⁹ Alfred David Harris was indicted for murder and manslaughter in connection with his wife's death.¹⁴⁰ Alfred David Harris pled guilty to murder and manslaughter, a second degree felony, and was later sentenced to ten years in prison.¹⁴¹ At the time of Mary's death, her husband and four children survived her.¹⁴² The Plan did not contain a provision directing the payment of benefits in situations where the beneficiary had been convicted of intentionally killing the insured.¹⁴³ H.E.B. sought a declaratory judgment stating its obligations under the Plan—should it pay the husband as the beneficiary under the Plan, or should it pay the children because of Texas's slayer's statute?¹⁴⁴

The court found authority holding that ERISA does not preempt a state's slayer statute.¹⁴⁵ However, even if ERISA preempted Texas's slayer's statute, the court found it would be inappropriate to allow a slayer to benefit from his wrongdoing under ERISA.¹⁴⁶ In deciding who is entitled to ERISA benefits between the innocent children of a murdered spouse and the intentional killer of one's spouse, the court held that federal common law, influenced by state slayer's statutes, cannot allow the murderer to be rewarded with entitlement to ERISA benefits.¹⁴⁷ In so deciding, the court agreed with the conclusion of

133. *Id.*

134. *Id.*

135. *Id.* at 124.

136. *Id.*

137. Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris, 217 F. Supp. 2d 759, 760 (E.D. Tex. 2002).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 761.

146. *Id.*

147. *Id.*

other courts that in enacting ERISA, Congress could not have intended to ensure recovery of ERISA benefits when one spouse intentionally kills the other spouse.¹⁴⁸ Thus, because federal common law would not allow a slayer to recover ERISA benefits, a similar conclusion will be reached whether the court finds ERISA preemption exists or not—Alfred David Harris will not receive the proceeds of his wife's ERISA benefits.¹⁴⁹

H. Texas Expands Forfeiture Rule to “Bad Parents”

Texas law has become more expansive in its attempt to prevent a wrongdoer from profiting from their wrongful act when it comes to inheriting from the victim.¹⁵⁰ In 2009, the Texas Legislature passed Section 201.062 of the Texas Estates Code, sometimes called the “bad parent” statute, which could work to disinherit a parent from their child even if they did not directly cause the child's death.¹⁵¹ Section 201.062 of the Texas Estates Code currently provides as follows:

(a) A probate court may enter an order declaring that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

(1) voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;

(2) voluntarily and with knowledge of the pregnancy:

(A) abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth;

(B) failed to provide adequate support or medical care for the mother during the period of abandonment before the child's birth; and

(C) remained apart from and failed to support the child since birth; or

(3) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of the Penal Code:

148. *Id.*

149. *Id.*

150. TEX. EST. CODE ANN. § 201.062.

151. *Id.*

- (A) Section 19.02 (murder);
 - (B) Section 19.03 (capital murder);
 - (C) Section 19.04 (manslaughter);
 - (D) Section 21.11 (indecent with a child);
 - (E) Section 22.01 (assault);
 - (F) Section 22.011 (sexual assault);
 - (G) Section 22.02 (aggravated assault);
 - (H) Section 22.021 (aggravated sexual assault);
 - (I) Section 22.04 (injury to a child, elderly individual, or disabled individual);
 - (J) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);
 - (K) Section 25.02 (prohibited sexual conduct);
 - (L) Section 43.25 (sexual performance by a child); or
 - (M) Section 43.26 (possession or promotion of child pornography).
- (b) On a determination under Subsection (a) that the parent of a child may not inherit from or through the child, the parent shall be treated as if the parent predeceased the child for purposes of:
- (1) inheritance under the laws of descent and distribution; and
 - (2) any other cause of action based on parentage.¹⁵²

The author is not aware of any reported cases interpreting or applying this statute as of the date of this Article.¹⁵³ However, one court found the statute to be inapplicable to a case involving disinheritance of a victim from her abuser's last will.¹⁵⁴ In *Merrick v. Helter*, a daughter sought to have her father's will invalidated on the ground that it violated public policy.¹⁵⁵ The daughter claimed that the father had excluded her from his will after she confronted him with his sexual abuse of her when she was a child.¹⁵⁶ The court of appeals affirmed the dismissal of her case, noting that she was not entitled to inherit from her father and that Texas law does not prevent a testator from disinheriting a child.¹⁵⁷ The court of appeals noted that the Texas Legislature had enacted the above-described law but had not extended that rule to testators.¹⁵⁸ The following are some observations about the bad parent statute.¹⁵⁹

152. *Id.*

153. Author's original thought.

154. *Merrick v. Helter*, 500 S.W.3d 671, 672 (Tex. App.—Austin 2016, pet. denied).

155. *Id.*

156. *Id.* at 675.

157. *Id.* at 672.

158. *Id.* at 676.

159. TEX. EST. CODE ANN. § 201.062(a)(1)–(3).

1. The Bad Acts Can Be Toward the Child and “Any” Child

Note that the subsections (a)(1) and (2) apply to conduct toward the deceased child himself, but subsection (a)(3) refers to conduct to any child (and now elderly or disabled persons) against whom the perpetrator has committed the listed acts that caused the death or the serious injury.¹⁶⁰ Whether subsection (a)(3) can survive a constitutional challenge given its broadness is not clear.¹⁶¹ The Texas attorney general has opined that absent the Texas Supreme Court’s expansion of these two exceptions, a court would likely find that the third exception contravenes Article I, Section 21 of the Texas constitution when applied to bar a person’s inheritance from their own child under circumstances not within either the slayer’s rule or the constructive trust doctrine.¹⁶²

2. Statute Only Applies to Children Who Die Before Age Eighteen

If the deceased child lives until age eighteen, disinheritance does not occur regardless of the parent’s bad acts.¹⁶³ The reasoning for this is that at age eighteen, the child could disinherit the parent through their will.¹⁶⁴

3. Higher Evidentiary Standard Is Required

The court must make the finding of bad acts by “clear and convincing evidence,” rather than preponderance of the evidence, and must enter a court order.¹⁶⁵ Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.¹⁶⁶

4. No Application to Non-Parents

The statute only applies to a “parent” and does not include other relatives who may have been abusive toward the deceased child.¹⁶⁷

160. *Id.*

161. *Id.*

162. Tex. Att’y Gen. Op. No. GA-0632 (2008).

163. EST. § 201.062.

164. *See id.*

165. *Id.*

166. *In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002).

167. EST. § 201.062.

IV. MECHANICS OF IMPOSING A CONSTRUCTIVE TRUST

When facts are present which suggest someone wrongfully and willfully took the decedent's life, how does one seek to prevent that person from inheriting proceeds?¹⁶⁸ The first inquiry is whether that person has a stake in the proceeding, that is, standing to even bring the suit.¹⁶⁹

A. Person Seeking Constructive Trust or Forfeiture Must Have Standing

As previously mentioned, there was an appeal in *Lawrence v. Bailey* regarding the standing of the decedent's brother to make a claim to life insurance proceeds under the slayer's statute.¹⁷⁰ The insurance company filed an interpleader action regarding the life insurance proceeds.¹⁷¹ The trial court awarded the proceeds to the father's estate.¹⁷² The father's brother filed a motion for new trial, alleging that under the slayer's statute, he was entitled to the proceeds.¹⁷³ The trial court denied the motion, and the brother appealed.¹⁷⁴

The court of appeals reversed, holding that the brother had standing to seek a declaration regarding the ownership of the insurance proceeds.¹⁷⁵ Section 1103.151 of the Texas Insurance Code provides that if there is no contingent beneficiary entitled to receive the proceeds of a life insurance policy or contract, the "nearest relative of the insured" is entitled to receive the proceeds.¹⁷⁶ The father's brother was the closest relative to the father, therefore, he had standing to assert a claim for the proceeds.¹⁷⁷ The court also held that the father's brother had standing even though an heirship proceeding in probate court had not yet been completed.¹⁷⁸

In *Gordy v. Alexander*, a dispute over who should take the probate estate of a deceased victim, the trial court found that Gordy, the contingent beneficiary named in the decedent's will, had no justiciable interest in the controversy.¹⁷⁹ Citing *Pritchett v. Henry*, the court of appeals stated that to prevent a murderer from profiting by their own wrong, equity will impress a

168. *Lawrence v. Bailey*, No. 01-19-00799-CV, 2021 WL 2424935, at *1 (Tex. App.—Houston [1st Dist.] June 15, 2021, no pet.) (mem. op.).

169. *Id.* at *5.

170. *Id.* at *1.

171. *Id.*

172. *Id.*

173. *Id.* at *2.

174. *Id.* at *5.

175. *Id.* at *6.

176. TEX. INS. CODE ANN. § 1103.151.

177. *Lawrence*, 2021 WL 2424935, at *6–8.

178. *Id.*

179. *Gordy v. Alexander*, 550 S.W.2d 146, 148 (Tex. App.—Amarillo 1977, writ ref'd n.r.e.).

constructive trust upon any assets they received through their victim's will.¹⁸⁰ However, "[w]hether the trust will be impressed in favor of the heirs of the murder victim or the contingent beneficiary named in the will should be determined according to the intent of the murder victim."¹⁸¹ Unless established as a matter of law, this intent question is one for the trier of fact, and both the heirs of the murder victim and the contingent beneficiary named in the will have a justiciable interest in the controversy.¹⁸² Therefore, the court found that both Looney, the sole eligible heir at law, and Gordy, the contingent beneficiary named in the will, had a justiciable interest in the case.¹⁸³

B. There Must Be a Pleading Requesting the Imposition of a Constructive Trust

Just as in any other kind of lawsuit, there must be both pleadings and proof.¹⁸⁴ One seeking to impose a constructive trust upon an heir must plead for the imposition of a constructive trust over the property to be inherited by the murderer.¹⁸⁵ One option would be to make the request a part of the application for the determination of heirship.¹⁸⁶ Because the law is clear that the slayer is not denied their legal status as an heir, there could still be judgment declaring heirship which would name the slayer as a legal heir.¹⁸⁷ However, the same judgment would then impose a constructive trust upon the heir's share, making it clear that the slayer will not be allowed to retain the benefit of the assets they would otherwise inherit.¹⁸⁸ Another option would be to file a separate petition for the imposition of a constructive trust or, perhaps, a petition for declaratory judgment requesting that the court declare a constructive trust should be imposed upon the heir who caused the decedent's death.¹⁸⁹

A similar procedure will be necessary to disinherit a beneficiary under a will who willfully and wrongfully caused the decedent's death.¹⁹⁰ The will would still be admitted to probate, but there would need to be a finding that the killer should not be able to retain the devise under the will and that it

180. *Id.* at 149 (citing *Pritchett v. Henry*, 287 S.W.2d 546, 549 (Tex. App.—Beaumont 1955, writ dismissed)).

181. *Id.* (citing *In re Wilson's Will*, 92 N.W.2d 282, 287 (Wis. 1958)).

182. *Id.* at 149–50.

183. *Id.* at 150.

184. *See Est. of Huffhines*, No. 02-15-00293-CV, 2016 WL 1714171, at *9 (Tex. App.—Fort Worth Apr. 28, 2016, pet. denied) (mem. op.).

185. *Id.* at *7.

186. *Lawrence v. Bailey*, No. 01-19-00799-CV, 2021 WL 2424935, at *7 (Tex. App.—Houston [1st Dist.] June 15, 2021, no pet.) (mem. op.).

187. *Id.* at *6.

188. *Id.* at *8.

189. *Est. of Huffhines*, 2016 WL 1714171, at *9.

190. *Lawrence*, 2021 WL 2424935, at *1.

should be held in constructive trust.¹⁹¹ An application to probate the will may be combined with a request for the imposition of constructive trust.¹⁹² In the alternative, a second action could be filed as described above.¹⁹³

C. Proponent of Constructive Trust Must Strictly Prove the Elements

Regardless of the type of pleading filed, a person attempting to impose a constructive trust must prove that a constructive trust should be imposed.¹⁹⁴ It may not be as simple as it appears on the surface.¹⁹⁵ The simple fact of the killing may not be enough.¹⁹⁶ In *Medford v. Medford*, Roger Medford and his mother, Carolea, got into a fight which resulted in his mother suffering serious injuries from which she eventually died.¹⁹⁷ Roger was tried and convicted of causing serious bodily injury to an elderly person, but he was not convicted for her death.¹⁹⁸ As a result of their mother's death, Roger and his brother, William, became tenants in common of their mother's home.¹⁹⁹ When William decided to rent out the home, Roger filed suit from prison to recover his half of the rental income.²⁰⁰ William argued that a constructive trust should be imposed on Roger's inheritance due to his conduct leading to his mother's death.²⁰¹ Both parties filed for summary judgment.²⁰² The court granted Roger a "take nothing judgment" against William.²⁰³

William presented summary judgment evidence establishing a prima facie case for Roger's responsibility for Carolea's death.²⁰⁴ The criminal trial transcript reflected medical testimony that Carolea's many injuries were consistent with a blow from a hand and with either being hit with or pushed into a hard object.²⁰⁵ The doctor further testified that Carolea suffered cerebral contusions and broken bones, classifying these injuries as serious bodily injuries, and opined that they ultimately caused Carolea's death.²⁰⁶ Despite his protestations of innocence, Roger was found guilty by a jury of causing these same injuries.²⁰⁷

191. See *Bounds v. Caudle*, 560 S.W.2d 925, 928 (Tex. 1977).

192. *Id.* See discussion *supra* Section IV.B.

193. *Bounds*, 560 S.W.2d at 928. See discussion *supra* Section IV.B.

194. *Medford v. Medford*, 68 S.W.3d 242, 249–50 (Tex. App.—Fort Worth 2002, no pet.).

195. *Id.*

196. *Id.*

197. *Id.* at 245.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 248.

202. *Id.* at 245.

203. *Id.*

204. *Id.* at 249.

205. *Id.*

206. *Id.*

207. *Id.*

While acknowledging the proof was substantial, the court found that it was not sufficient alone to support the imposition of a constructive trust denying Roger beneficial interest in property he came to possess through his act of violence against his mother.²⁰⁸ The court opined that the proponent of a constructive trust must strictly prove the elements necessary for the imposition of the trust.²⁰⁹ The party seeking to impose the constructive trust must prove unfair conduct or unjust enrichment on the part of the wrongdoer.²¹⁰ William presented neither evidence regarding why he should be beneficiary of a constructive trust or, alternatively, in whose benefit a trust should be formed, nor did he present evidence regarding the very existence of the assets for which Roger sued, rents collected on the home.²¹¹ Without an accounting and without evidence addressing who might be entitled to the beneficial use of Roger's property, the trial court was unable to grant the specific relief William requested.²¹² The court stated that, in other words, while a constructive trust is appropriate given Roger's involvement in his mother's death, William's proof was insufficient to enable the trial court to enter a clear order imposing a constructive trust and defining its terms.²¹³ The court reversed the summary judgment and remanded the case to the trial court for further proceedings.²¹⁴

*D. There Is No "Unyielding Formula" to Establish a Constructive Trust;
Proof Is By Preponderance of the Evidence*

While the *Medford* court did not affirm the judgment in favor of William, the court refuted Roger's contention that he must be convicted of murder in order for a constructive trust to be imposed.²¹⁵ The court stated that it found no authority that requires a murder conviction as a prerequisite to recovery under a civil equity claim.²¹⁶ The court pointed out that there is no unyielding formula to which a court of equity is bound in decreeing a constructive trust since the equity of the transaction will shape the measure of relief granted.²¹⁷ Further, a party need only prove facts that warrant imposition of a constructive trust by a preponderance of evidence.²¹⁸

208. *Id.*

209. *Id.* at 249–50.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 249 n.3.

217. *Id.* at 249–50.

218. *See id.* (noting that disinheriting a parent under TEX. EST. CODE ANN. § 201.062 (the bad parent statute) requires proof by clear and convincing evidence, a higher evidentiary standard, in reference to footnote 104).

I. Criminal Case Is Not Binding on the Civil Case

In *Bounds v. Caudle*, Dr. Bounds pled *nolo contendere* to his wife's shooting death and was convicted of negligent homicide in the first degree.²¹⁹ It was not known whether he intentionally or unintentionally shot her while wrestling the gun away from her.²²⁰ Bounds argued that his conviction for negligent homicide implied that he killed without intent, and, therefore, a constructive trust should not be imposed.²²¹ The court disagreed, stating that although the conviction for negligent homicide implied that the killing was without intent, it is still settled law that the criminal case is not binding upon the court in a civil proceeding.²²² The court pointed out that this was particularly true when the conviction was based upon plea bargaining.²²³ The court concluded that the imposition of a constructive trust was not inconsistent with what is now Section 201.058 of the Texas Estates Code.²²⁴ Because the jury found that (1) Bounds shot and killed his wife; (2) the action was intentional; and (3) such action was wrongful, the findings supported the judgment of the trial court forfeiting Bounds's interest in the insurance policy on the life of his wife and imposing a constructive trust on the property devised to him under her will.²²⁵

As previously stated, the court in *Medford v. Medford* stated that a murder conviction is not a prerequisite for a constructive trust to be imposed.²²⁶ On the other hand, a federal district court found that because a criminal conviction entailed that the alleged slayer be found guilty beyond a reasonable doubt, which is well beyond the statutory standard of preponderance of the evidence, this is a sufficient showing that the alleged slayer has forfeited his entitlement to the insurance policy benefits.²²⁷ Further, the court need not wait until the alleged slayer's criminal appeal has run its course before making such a finding.²²⁸

The criminal court finding insanity was implicated in *Hair v. Pennsylvania Life Insurance Co.* during the probate proceeding.²²⁹ Those defending the alleged slayer argued that this prevented her from "willfully

219. *Bounds v. Caudle*, 560 S.W.2d 925, 926 (Tex. 1977) (holding modified by *Price v. Price*, 732 S.W.2d 316, 317–20 (Tex. 1987)).

220. *Id.*

221. *Id.*

222. *Id.* at 928.

223. *Id.*

224. *Id.*

225. *See id.*; *Ovalle v. Ovalle*, 604 S.W.2d 526, 527–30 (Tex. App.—Waco 1980, no writ).

226. *See Medford v. Medford*, 68 S.W.3d 242, 245 (Tex. App.—Fort Worth 2002, no pet.); *Lawrence v. Bailey*, No. 01-19-00799-CV, 2021 WL 2424935, at *1–11 (Tex. App.—Houston [1st Dist.] June 15, 2021, no pet.).

227. *Hartford Life & Accident Ins. Co. v. Cuellar*, EP-17-CV-00096-DCG, 2018 WL 11346753, at *2 (W.D. Tex. July, 25 2018).

228. *Id.*

229. *Hair v. Pa. Life Ins. Co.*, 533 S.W.2d 387, 388 (Tex. App.—Beaumont 1975, writ ref'd n.r.e.).

bringing about” the death of her husband.²³⁰ However, the court pointed out that a prior adjudication of an issue in a criminal matter is not *res judicata* or estoppel by judgment to a subsequent civil action involving the same fact issue.²³¹ Therefore, the finding made by the trial court in the criminal proceeding did not establish, as a matter of law in the present case, that Jonell Hair was not the principal or an accomplice in willfully bringing about the death of the insured.²³² Essentially, the issue had to be tried again in the civil court.²³³

2. Constructive Trust Can Still Be Imposed Even If the Criminal Case Is On Appeal

The beneficiary of a decedent’s life insurance policy, who has been convicted of murdering the decedent, forfeits the beneficiary’s interest in the policy even though the appeal of the beneficiary’s conviction is still pending.²³⁴ This is because the statute governing forfeiture of life insurance policies by a beneficiary who is a party to willfully causing the insured’s death does not require that a murder conviction be “final” before a beneficiary forfeits rights to the proceeds.²³⁵

3. No Intent to Kill Required

It is not necessary that a beneficiary intended to kill in order to have willfully brought about an insured’s death where the action of shooting was intentional.²³⁶

4. Gross Negligence Not Enough

The statute disallowing recovery of life insurance proceeds by a beneficiary who is a party to willfully causing the insured’s death does not include gross negligence within the meaning of willfulness.²³⁷ In *Rumbaut v. Labagnara*, a wife died on a sailing trip with her husband when a sudden

230. *Id.*

231. *Id.* (citing *State v. Benavidez*, 365 S.W.2d 638, 640 (Tex. 1963)); *Shook v. Peters*, 59 Tex. 393, 393–97 (1883); *Landa v. Obert*, 14 S.W. 297, 297–303 (Tex. 1890); *Pittman v. Stephens*, 153 S.W.2d 314, 316 (Tex. App.—Eastland 1941, writ ref’d n.r.e.).

232. *Hair*, 533 S.E.2d at 398.

233. *Id.*

234. See *In re Est. of Stafford*, 244 S.W.3d 368, 369 (Tex. App.—Beaumont 2008, no pet.); *Hartford Life & Accident Ins. Co. v. Cuellar*, EP-17-CV-00096-DCG, 2018 WL 11346753, at *2 (W.D. Tex. July 25, 2018).

235. See *In re Est. of Stafford*, 244 S.W.3d at 369–70.

236. *Seedig v. Dennis*, 701 S.W.2d 354, 356 (Tex. App.—Fort Worth 1986, writ ref’d n.r.e.).

237. *Rumbaut v. Labagnara*, 791 S.W.2d 195, 198 (Tex. App.—Houston [14th Dist.] 1990, no writ).

storm arose in the Gulf of Mexico where the two were sailing.²³⁸ The wife fell overboard, and the husband's rescue efforts, assisted by the Coast Guard, were to no avail.²³⁹ The wife's children by a prior marriage sued to recover the insurance benefits, claiming that the husband willfully caused their mother's death.²⁴⁰ The jury issue was conjunctive and included a definition of "willfully" which tracked the definition of gross negligence.²⁴¹ The court of appeals found that the definition was wrongly submitted, reversed a finding in favor of the wife's children, and remanded the case.²⁴²

E. Circumstantial Evidence Can Support the Imposition of the Constructive Trust

The facts supporting the imposition of the constructive trust may be based on circumstantial evidence.²⁴³ *Thompson v. Mayes* was a suit to impose a constructive trust on the assets which passed to Donald Thompson (Don) under the will of his father, Jo B. Thompson.²⁴⁴ The other devisee under Jo's will was his sister, Leonette Mayes.²⁴⁵ The jury found that Don "intentionally and wrongfully caused the death" of his father by gunshot.²⁴⁶ Don's representative argued that because Don was never indicted for his father's death, no constructive trust should be imposed.²⁴⁷ Further, because the evidence that linked Don to his father's death was circumstantial, imposition of a constructive trust was not an appropriate remedy.²⁴⁸ The court held that because the jury found Don had intentionally and willfully caused his father's death—the fact that the jury's finding came from circumstantial evidence was irrelevant to the imposition of the constructive trust.²⁴⁹

While circumstantial evidence may be used to establish a constructive trust, the evidence must transcend mere suspicion.²⁵⁰ In *Johnson v. Felts*, the husband's relatives alleged that his wife caused his death.²⁵¹ The trial court granted the wife's no evidence motion for summary judgment.²⁵² On appeal,

238. *Id.* at 196.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 199.

243. *Medford v. Medford*, 68 S.W.3d 242, 249 n.3 (Tex. App.—Fort Worth 2002, no pet.).

244. *Thompson v. Mayes*, 707 S.W.2d 951, 953 (Tex. App.—Eastland 1986, writ ref'd n.r.e.).

245. *Id.*

246. *Id.*

247. *Id.* at 955.

248. *Id.*

249. *Id.*; *Reliastar Life Ins. Co. v. Milleni*, No. 4:17-CV-02818, 2019 WL 1112424, at *2 (S.D. Tex. Mar. 11, 2019) (discussing one court has held that circumstantial evidence can be the *sole* basis for a judgment that a potential beneficiary killed the insured and consequently is not entitled to life insurance proceeds).

250. *Johnson v. Felts*, 140 S.W.3d 702, 707 (Tex. App.—Houston [14th Dist.] 2004, pet. denied).

251. *Id.* at 702.

252. *Id.* at 707–08.

the court reviewed voluminous testimony indicating that the wife's version of the events of her husband's death had numerous inconsistencies, and further, that the wife was having an affair.²⁵³ However, the court concluded that while the "sum total" of the voluminous testimony presented may constitute evidence that some wrongful act had been committed, "not one scintilla of causation evidence was ultimately produced."²⁵⁴ A conclusion that the wife "caused the death of her husband would be based on nothing but mere possibility, speculation, and surmise."²⁵⁵ The court affirmed the summary judgment in the wife's favor.²⁵⁶

F. What Does "Willfully" Mean Under the Insurance Code?

As stated above, Section 1103.151 of the Texas Insurance Code provides that "a beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in willfully bringing about the death of the insured."²⁵⁷ However, the word willfully is not defined.²⁵⁸

The leading case on the issue is *Greer v. Franklin Life Insurance Co.*²⁵⁹ In *Greer*, a woman stabbed and killed her husband and pled guilty to murder without malice.²⁶⁰ Although she was a beneficiary under her husband's insurance policy, the court pointed out that the Texas Insurance Code barred recovery when a beneficiary willfully caused the insured's death.²⁶¹ Members of the husband's family brought suit against the wife and the insurer, and the wife in turn asserted her claim to proceeds.²⁶² At trial, the wife admitted that the killing was not in self-defense.²⁶³ The Texas Supreme Court held that she could not recover on the policy.²⁶⁴

Upon examination of Texas cases, the court concluded that willfully connotes something more than that the beneficiary intended the death of the insured to result from the actions.²⁶⁵ The factor of "illegality" must also be present.²⁶⁶ However, the court made clear that the word does not mean "maliciously."²⁶⁷ The court stated that illegality is based on intent and is

253. *Id.* at 707.

254. *Id.* at 708.

255. *Id.*

256. *Id.* at 704.

257. TEX. INS. CODE ANN. § 1103.151.

258. *See id.*

259. *Greer v. Franklin Life Ins. Co.*, 221 S.W.2d 857, 858 (Tex. 1949).

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.* at 859.

266. *Id.*

267. *Id.*

distinguished from malice.²⁶⁸ The court in *Greer* concluded that the killer not only offered no substantial evidence of a lack of deadly intent or of legal justification of her act but expressly admitted it was not done in self-defense or even against resistance on the part of the victim.²⁶⁹ Further, prior to the trial, she had pled guilty to murder without malice, making no suggestion that the circumstances of the plea were such as to give it less than the conviction's normal effect.²⁷⁰ Therefore, the wholly unqualified admission of a plea of guilty, with the other evidence and in the absence of contrary evidence, established intent and illegality as a matter of law.²⁷¹ Judgment was therefore rendered in favor of the next of kin and against the killer.²⁷²

V. DEFENSES TO IMPOSITION OF CONSTRUCTIVE TRUST

In addition to being able to force the plaintiff to meet their burden of proof to impose a constructive trust, the alleged killer may have several defenses available to them.²⁷³

A. Insanity

The issue of whether Ross Patrick Lawrence was insane at the time his parents were killed was the primary issue in the civil suit.²⁷⁴ The family members contended that the insanity defense was not applicable in the civil case.²⁷⁵ Those defending Ross argued otherwise.²⁷⁶ In *Greer v. Franklin Life Insurance Co.*, an insured was killed by his wife.²⁷⁷ The court held "where the beneficiary intends to kill the insured and the killing is illegal, the beneficiary loses his or her rights under the policy."²⁷⁸ Conversely, where the beneficiary intends to kill the insured and the killing is legal, the beneficiary does not lose his rights under the policy.²⁷⁹ The court made clear that the term willfully "connotes something more than that the beneficiary shall have intended the death of the insured to result from his or her act."²⁸⁰ The factor

268. *Id.* at 860.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.* at 861.

273. Jennifer Piel & Gregory B. Leong, *The Slayer Statute and Insanity*, 38 J. AM. ACAD. PSYCHIATRY & L. 258, 260 (2010).

274. State v. Lawrence, No. 13-DCR-064623 (268th Dist. Ct., Fort Bend County, Tex. June 16, 2017).

275. *See id.*

276. *See id.*

277. *Greer*, 221 S.W.2d at 858.

278. *Id.* at 860.

279. *Id.*

280. *Id.*

of illegality must also be present.²⁸¹ In other words, the slayer's rule is not a strict liability rule.²⁸² The circumstances matter.²⁸³

In *Simon v. Dibble*, Orlando V. Dibble, Jr., while insane, shot and killed his wife, Sabina Julia Dibble.²⁸⁴ “She left two insurance policies in which he was the beneficiary, and the insurance companies paid into the court registry the proceeds of these policies with the request that the court determine who should receive them.”²⁸⁵ After citing what was then Article 21.23 of the Texas Insurance Code, the court stated that it was quite clear that under the provisions of the Article, a husband who willfully killed his wife cannot receive the proceeds of an insurance policy taken out by her with him as the beneficiary.²⁸⁶ However, a different situation was presented when “the husband [was] insane and, therefore not capable of willfully taking the life of his wife.”²⁸⁷ Orlando “was tried for the murder of his wife, and was acquitted upon the ground that he was insane at the time he did so.”²⁸⁸ In the civil case, the parties stipulated that Dibble was insane at the time he killed his wife.²⁸⁹ Dibble was found to be entitled to the policy proceeds.²⁹⁰ While the parties can stipulate to a fact, they cannot stipulate to the law.²⁹¹ Therefore, *Dibble* clearly recognized that a finding of insanity had an effect on the finding of liability under the slayer's rule.²⁹²

As mentioned above, findings made by the trial court in the criminal proceedings do not establish as a matter of law the issue in the civil slayer's case.²⁹³ In *Hair v. Pennsylvania Life Insurance Co.*, the court found that the determination of insanity in the criminal proceeding was “not res judicata or estoppel by judgment to a subsequent civil action involving the same fact issue.”²⁹⁴ However, the court implied that insanity can be a defense in the civil case if properly proven.²⁹⁵

281. *Id.* at 859.

282. *See id.*

283. *See id.*

284. *Simon v. Dibble*, 380 S.W.2d 898, 899 (Tex. App.—San Antonio 1964, writ ref'd).

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *See id.*

292. *See id.*

293. *See id.*; *Hair v. Pa. Life Ins. Co.*, 533 S.W.2d 387, 388 (Tex. App.—Beaumont 1975, writ ref'd n.r.e.) (quoting *State v. Benavidez*, 365 S.W.2d 638, 640 (Tex.1963)).

294. *Hair*, 533 S.W.2d at 388.

295. *See id.* at 389.

B. Self-Defense

In *Giles v. Wiggins*, Vergia L. Giles, the insured, was shot by his wife, Evelyn Jean Wiggins, née Evelyn Jean Giles, the primary beneficiary of the policy.²⁹⁶ Vergia died as result thereof.²⁹⁷ The insurance company deposited the proceeds into the registry of the court for determination as to who was entitled thereto.²⁹⁸ The court, contrary to the claims of the decedent's next of kin, found that Evelyn, at the time of the shooting, was acting in self-defense and that therefore she did not willfully bring about the death of the insured and was entitled to the proceeds of the policy.²⁹⁹ The court of appeals affirmed the judgment, pointing out that where the killing is legal, the beneficiary does not lose their rights under the policy.³⁰⁰

In *Ovalle v. Ovalle*, Roberto Ovalle, Sr. died leaving five children and a wife, not the mother of his children.³⁰¹ His brother, Raul G. Ovalle, was appointed administrator of his Estate.³⁰² His widow, Anita, made application to the probate court for (1) family allowance, (2) exempt property allowance and (3) furniture, automobile, personalty, and use of the parties' homestead.³⁰³ The administrator and deceased's children opposed the applications alleging (1) Anita intentionally killed the decedent, and (2) that because of Anita's action in wrongfully bringing about the death of decedent, she should not be allowed to collect any proceeds from his estate.³⁰⁴

The trial court ruled in favor of Anita, finding that in causing the death of her husband, Anita "was justified in using deadly force against her husband, because she reasonably believed that such force was immediately necessary to protect herself against the use by Roberto Ovalle of unlawful force."³⁰⁵ The administrator appealed, contending such finding was against the great weight and preponderance of the evidence.³⁰⁶

Reviewing the facts, the court noted that Anita "was indicted for murder of her husband, but convicted of voluntary manslaughter, and sentenced to [ten] years of probation as a result of plea bargaining."³⁰⁷ The court stated that a "judgment in a criminal case is not binding upon the court in a civil proceeding, and that this rule is particularly applicable where the conviction

296. *Giles v. Wiggins*, 442 S.W.2d 839, 840 (Tex. App.—Fort Worth 1969, writ ref'd n.r.e.).

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Ovalle v. Ovalle*, 604 S.W.2d 526, 527 (Tex. App.—Waco 1980, no writ).

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.* at 528.

307. *Id.* (quoting *Bounds v. Caudle*, 560 S.W.2d 925, 926 (Tex. 1977) (holding modified by *Price v. Price*, 732 S.W.2d 316, 317–20 (Tex. 1987))).

is based upon plea bargaining.”³⁰⁸ The court went into detail as to the facts surrounding the killing.³⁰⁹ The court noted that although the

[D]eceased’s actions amounted to unlawful force or threat of unlawful force, he afterwards said he was sorry. It was thereafter [Anita] got the gun and stood in the doorway of the bedroom. [Anita] had more than adequate time to have left the house and retreated; and [Anita] fired four shots into deceased—any one of which shots the pathologist medical examiner of Travis County testified would have been fatal.³¹⁰

Based upon such evidence as a whole, the court concluded that “the trial court’s finding that Anita was justified in using deadly force against her husband to protect herself against the abuse by her husband of unlawful force was against the great weight and preponderance of the evidence.”³¹¹

C. Statute of Limitations

“A suit to impose a constructive trust is not an [action] for injury done to the person of another, rather, it is an action in equity to prevent unjust enrichment of a person who has wrongfully acquired property.”³¹² Therefore, the two-year statute of limitations under Section 16.003 of the Texas Civil Practice and Remedies Code does not apply.³¹³ Unfortunately, the court in *Thompson* did not make clear which statute of limitations applied.³¹⁴

If an action to impose a constructive trust is not one for personal injury, such suit may be governed by the four-year residual statute of limitations period set forth in Section 16.051 of the Texas Civil Practice and Remedies Code.³¹⁵ Generally, actions to establish a constructive trust based on fraud are governed by the four-year statute of limitations.³¹⁶ However, fraud is not usually involved in a suit to impose a constructive trust based upon the killing of a testator.³¹⁷

On the other hand, with regard to inheritance, there is no statute of limitations for a determination of heirship.³¹⁸ Therefore, it could be argued that an interested person could seek to impose a constructive trust on an heir

308. *Id.* at 527.

309. *Id.* at 528–29.

310. *Id.* at 529.

311. *Id.*

312. *Thompson v. Mayes*, 707 S.W.2d 951, 954 (Tex. App.—Eastland 1986, writ ref’d n.r.e.).

313. *Id.*

314. *Id.*

315. TEX. CIV. PRAC. & REM. CODE ANN. § 16.051. *See Mayo v. Hartford Life Ins. Co.*, 220 F. Supp. 2d 714, 769 (S.D. Tex. 2002).

316. *Brupbacher v. Raneri*, No. CIV.A. 3:98–CV–1174, 2000 WL 665560, at *4 (N.D. Tex. Mar. 17, 2000). *See Austin Lake Ests., Inc. v. Meyer*, 557 S.W.2d 380, 383 (Tex. App.—Austin 1977, no writ).

317. *See Brupbacher*, 2000 WL 665560, at *4; *Austin Lake Ests., Inc.*, 557 S.W.2d at 383.

318. TEX. EST. CODE ANN. § 202.0025.

at the time the application for determination of heirship is filed regardless of when it is filed.³¹⁹ However, the more prudent course would be for the proponent to file the heirship proceeding and request for imposition of a constructive trust promptly because the result in the civil case is not dependent on what happens in the criminal case.³²⁰ On the other hand, if a conviction is likely, the result of the criminal case could certainly assist in the civil case.³²¹ The civil case might be filed within four years, but it might be abated pending the result of the criminal case.³²²

If a constructive trust is sought upon someone who would inherit under a will, it is likely that the request should be filed within the four-year period for the probate of a will.³²³ However, the author has found nothing definitive on this issue.³²⁴

With regard to accrual, the statute of limitations in a case involving a constructive trust does not begin to run until the beneficiary knew or should have known that they had a cause of action.³²⁵

VI. WHO TAKES THE SLAYER'S SHARE?

A. Probate Estate

As has been shown herein, the slayer does not lose their status as an heir by virtue of their act in taking the life of the decedent.³²⁶ If it is shown that the slayer willfully and wrongfully took the life of the decedent, then the slayer may have a constructive trust imposed upon them whereby they "hold" their share of the estate for the rightful heirs.³²⁷ The question arises whether the slayer's children or other descendants should profit from their parent's wrongdoing.³²⁸ If the slayer were treated as having predeceased the decedent, then it would appear their descendants would inherit in their place.³²⁹ However, since the slayer retains their status as an heir, their children would not take their share unless they otherwise take as an heir of the decedent.³³⁰ For example, if a husband slays his wife, leaving three children who are each

319. *Id.*

320. *See Civil vs. Criminal Case Guide: The Plaintiff, Defendant, and Burden of Proof*, BELSKY & HOROWITZ, LLC (Sept. 21, 2023, 7:13 PM), <https://www.belsky-weinberg-horowitz.com/civil-vs-criminal-case-guide-the-plaintiff-defendant-and-burden-of-proof/> [<https://perma.cc/D9KN-DF49>].

321. *See* EST. § 216.003.

322. *See id.*

323. *Id.*

324. Author's original thought.

325. *Knesek v. Witte*, 754 S.W.2d 814, 815 (Tex. App.—Houston [1st Dist.] 1988, writ denied).

326. *See* EST. § 201.058.

327. *Bounds v. Caudle*, 560 S.W.2d 925, 926 (Tex. 1977) (holding modified by *Price v. Price*, 732 S.W.2d 316, 317–20 (Tex. 1987)).

328. *Pritchett v. Henry*, 287 S.W.2d 546, 548 (Tex. App.—Beaumont 1955, writ dismissed).

329. *See id.*

330. *See id.*

a product of the marriage, then the children of the marriage would take the slayer's share since they are the other surviving heirs of the decedent.³³¹ If the couple had no children, but the slayer had a child by another marriage who was not adopted by the slain wife, then the wife's family (parent, siblings, nieces, and nephews) would inherit in place of the slayer because the slayer's child would not have been an heir of the deceased spouse.³³² In *Pritchett v. Henry*, the court stated that legal title does pass to the murderer but equity treats the murderer as a constructive trustee of the title because of the unconscionable mode of its acquisition and then compels the murderer to convey it to the heirs of the deceased, exclusive of the murderer.³³³ Therefore, it appears that in the case of intestacy, the slayer is treated as having predeceased the decedent, and the heirs are determined accordingly.³³⁴

The situation regarding who gets the probate estate when there is a valid will is not clear.³³⁵ As previously mentioned, in *Gordy v. Alexander*, in a dispute over who should take the probate estate of a deceased victim, the trial court found that Gordy, the contingent beneficiary named in the decedent's will, had no justiciable interest in the controversy.³³⁶ The court of appeals found, however, that whether a constructive trust will be impressed in favor of the heirs of the murder victim or the contingent beneficiary named in the will should be determined according to the intent of the murder victim.³³⁷ Unless established as a matter of law, this intent question is one for the trier of fact, and both the heirs of the murder victim and the contingent beneficiary named in the will have a justiciable interest in the controversy.³³⁸ Therefore, the court found that both Looney, the sole eligible heir at law, and Gordy, the contingent beneficiary named in the will, had a justiciable interest in the case.³³⁹

Whether one has a justiciable interest and whether one actually takes property are two different things.³⁴⁰ The court's ruling in *Gordy* appears to require a determination as to the testator's intent in the event someone wrongfully took their life.³⁴¹ It seems odd that a testator would actually contemplate that the primary beneficiary of a will would wrongfully take their life.³⁴² It would seem that the testator has already spoken when they name a contingent beneficiary in their will.³⁴³ After all, a will is the primary

331. Author's original hypothetical.

332. See *Pritchett*, 287 S.W.2d at 550.

333. *Id.* at 549.

334. *Id.*

335. See *Gordy v. Alexander*, 550 S.W.2d 146, 148 (Tex. App.—Amarillo 1977, writ ref'd n.r.e.).

336. *Id.*

337. *Id.* at 149.

338. *Id.* at 150.

339. *Id.*

340. *Id.* at 149.

341. *Id.*

342. Author's original thought.

343. *Id.*

method to express someone's testamentary intent and to exercise their freedom of disposition.³⁴⁴ In *Thompson*, the beneficiary of the constructive trust was the other beneficiary of the will.³⁴⁵ This seems to be the proper result.³⁴⁶ However, it could be imagined that the testator may not want the blood kin of the slayer to take their estate.³⁴⁷ On the other hand, it seems to be a stretch to state that the testator would blame the slayer's children or descendants for their wrongful actions.³⁴⁸

B. Insurance Proceeds

In *Crawford v. Coleman*, the court overruled *Deveroex v. Nelson*, holding that the nearest relative, rather than the contingent beneficiary of the policy, received the proceeds.³⁴⁹ The Texas Legislature responded by amending the statute which, as shown above, provides that a contingent beneficiary is in line to receive the policy proceeds ahead of the nearest relative.³⁵⁰ Subsection 1103.152(c) of the Texas Insurance Code provides that if there is not a contingent beneficiary entitled to receive the proceeds of a life insurance policy or contract, the "nearest relative" of the insured is entitled to receive those proceeds.³⁵¹

Who is the nearest relative?³⁵² In *Clifton v. Anthony*, the court started with the Texas Code of Construction Act, which states that in cases when there is no defined meaning of a word in the relevant code, "words and phrases shall be read in context and construed according to the rules of grammar and common usage."³⁵³ A relative has been defined as "a person connected with another by blood or affinity; a person who is kin with another."³⁵⁴ The court stated that this definition of relative is consistent with other statutes, citing Texas Business and Commerce Code subsection 24.002(11) (a relative is "an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual

344. Robert Andrew Branan, *The Last Will and Testament: A Primer*, NC STATE EXTENSION (Mar. 30, 2022), <https://content.ces.ncsu.edu/the-last-will-and-testament-a-primer> [<https://perma.cc/2G4F-W7JJ>] ("A will is a legal document that expresses—to the best of one's ability in written language—how they want their property distributed after their death. The language a person chooses in their will is the final expression of their intent, which is considered paramount in any dispute over distribution of a decedent's property.").

345. *Thompson v. Mayes*, 707 S.W.2d 951, 953 (Tex. App.—Eastland 1986, writ ref'd n.r.e.).

346. *See id.*

347. Author's original thought.

348. *Id.*

349. *Crawford v. Coleman*, 726 S.W.2d 9, 11 (Tex. 1987); *Deveroex v. Nelson*, 529 S.W.2d 510, 513 (Tex. 1975).

350. TEX. INS. CODE ANN. §1103.152(c).

351. *Id.*

352. *See Clifton v. Anthony*, 401 F. Supp. 2d 686, 689 (E.D. Tex. 2005).

353. *Id.*

354. *Id.* (citing *Relative*, BLACK'S LAW DICTIONARY (8th ed. 2004)).

related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree”) and Texas Property Code subsection 111.004(13) (a relative is “a spouse or, whether by blood or adoption, an ancestor, descendant, brother, sister, or spouse of any of them”).³⁵⁵ The term does not depend on one’s status as an heir or whether one was born in wedlock.³⁵⁶ In *Lawrence*, when the primary beneficiary had been killed, and the contingent beneficiary was the alleged slayer, the court found that the brother of the policy holder had standing to make a claim to the insurance proceeds.³⁵⁷

VII. CONCLUSION

Although the Texas rule that a convicted person should be able to inherit and devise property appears to be fair and sound, it is a bit surprising that it took the law a while to create a remedy when that convicted person actually caused the death of the person from whom they would be inheriting.³⁵⁸ Lawyers almost always rely on legal arguments and sometimes forget equitable remedies.³⁵⁹ One of the reasons stated by the Texas Supreme Court in abolishing the cause of action of tortious interference with inheritance rights in Texas is that the alleged victim can make a claim in equity for unjust enrichment.³⁶⁰ The remedy of a constructive trust is often overlooked.³⁶¹ However, when the Texas Legislature failed to codify the slayer’s rule for assets other than insurance, courts stepped in and employed the constructive trust to prevent unjust enrichment of those who willfully and wrongfully take the life of the one from who they would otherwise inherit.³⁶² Thus, the courts found a way for the alleged slayer to retain their status as an heir but not retain the assets they would have received had they not otherwise taken the decedent’s life.³⁶³ As was shown with respect to the bad parent statute, the

355. *Id.*

356. *Id.*

357. *Lawrence v. Bailey*, No. 01-19-00799-CV, 2021 WL 2424935, at *8 (Tex. App.—Houston [1st Dist.] June 15, 2021, no pet.).

358. Author’s original thought.

359. *Id.*

360. *Archer v. Anderson*, 556 S.W.3d 228, 236 (Tex. 2018) (noting that a court has broad authority to rectify inequity using a constructive trust in an action for restitution to prevent unjust enrichment).

361. See Gary E. Bashian, *Constructive Trusts and the “Elastic” Power of Equity*, BASHIAN P.C., <https://www.bashian-law.com/blog/2016/01/constructive-trusts-and-the-elastic-power-of-equity/> (last visited Jan. 23, 2024) [<https://perma.cc/UPG7-YKAM>] (noting that attorneys ought not to overlook the equitable remedy of constructive trusts).

362. See *Bounds v. Caudle*, 560 S.W.2d 925, 928 (Tex. 1977). See also *Greer v. Franklin Life Ins. Co.*, 221 S.W.2d 857, 859 (Tex. 1949).

363. See *Pritchett v. Henry*, 287 S.W.2d 546, 551 (Tex. App.—Beaumont 1955, writ dismissed) (noting that title to the inheritance still passed to the killer as an heir).

trend appears to be to expand the scope of what may disqualify someone from inheriting from another.³⁶⁴

VIII. AFTERMATH: THE CONTINUED PLIGHT OF ROSS LAWRENCE

As can be seen from the study of the case of Ross Patrick Lawrence, whether the slayer should be denied inheritance is not a simple analysis as some might contend.³⁶⁵ While many jurors may be skeptical about the insanity defense, there is strong medical evidence that a person's mental disease can affect their ability to appreciate the wrongfulness of their actions.³⁶⁶ Thus, Texas law correctly requires a finding of both willful and wrongful conduct when determining whether a slayer should be denied inheritance.³⁶⁷ Knowing their son was mentally ill, would not Steven and Laquita Lawrence have wanted Ross to receive his inheritance?³⁶⁸ After all, the funds could be used to help in his medical treatment.³⁶⁹ Would a jury have chosen to allow Ross Patrick Lawrence to inherit in spite of the fact that he swung the sledgehammer which took the lives of his parents?³⁷⁰ We will never know due to the fact the case was settled out of court.³⁷¹ We do know, however, that taking the life of someone can impact whether the killer can receive any financial benefit as a result of the death of the deceased.³⁷² In the case of Ross Lawrence, whether he will actually be able to benefit from the funds placed in trust on his behalf as a result of the settlement remains to be seen.³⁷³ Ross remains either in the county jail in Fort Bend County, Texas or in the state mental hospital, depending on the availability of a bed, awaiting a determination as to whether he will ever be found competent to stand trial.³⁷⁴

364. See discussion *supra* Section III.H. See also *supra* text accompanying note 151.

365. See Philip Silberman, *The Texas Slayer's Rule Applied to Intestate Succession*, SILBERMAN L. FIRM, PLLC (Mar. 27, 2021), <https://silblawfirm.com/probate/the-texas-slayers-rule-applied-to-intestate-succession/> [https://perma.cc/4PNH-JNR9] (noting that this type of inheritance analysis is complicated).

366. See Andrew Donohue et al., *Legal Insanity: Assessment of the Inability to Refrain*, PUBMED CENT. (Mar. 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2710106/> [https://perma.cc/H84R-5X2U].

367. See *Bounds v. Caudle*, 560 S.W.2d 925, 928 (Tex. 1977).

368. Author's original thought.

369. *Id.*

370. *Id.*

371. *Id.*

372. TEX. INS. CODE ANN. § 1103.152.

373. Author's original thought.

374. *State v. Lawrence*, No. 13-DCR-064623 (268th Dist. Ct., Fort Bend County, Tex. June 16, 2017).