Is it Time to Expand Florida's Slayer Statute?

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Florida's Slayer Statute[2] has stood on the books virtually unchanged over the past 40 plus years. It has literally been untouched for over 30 years, except for its adoption in the Florida Trust Code. While the public policy expressed by the statute (that a killer ought not to be entitled to inherit from the estate of the one murdered) has not changed during those years, a number of ancillary issues relating to the statute have led other states to expand their Slayer Statute in interesting ways. Given the new and interesting issues being addressed by other state Slayer Statutes, and the 30-40 plus year hiatus in revising Florida's Slayer Statute, it seems time to reconsider the statute and possibly expand its scope and reach.

Some commentators have suggested most state Slayer Statutes do not go far enough by failing to remove the rights of the collateral heirs (e.g., children) of the killer to inherit. Other commentators have questioned the wisdom of Slayer Statutes in existence today. Some argue the reach of these statutes extends too far, ensnaring individuals that should not be deprived of their inheritance rights.[3] For example, should someone who kills in self-defense or by reason of insanity be precluded from inheriting? And yet, other commentators argue that Slayer Statutes should also remove the inheritance rights of someone who has engaged in elder abuse or financially exploited the decedent.[4]

Many commentators suggest that if the Florida Slayer Statute is re-examined, there are at least three questions that should be considered:

(i) Should collateral heirs of the killer be permitted to inherit?

(ii) Should self-defense or mental illness be considered by the Slayer Statute?

(iii) Should the category of those punished by the statute be expanded to deny inheritance rights to those who commit elder abuse or exploitation upon the deceased?

Collateral Beneficiaries/Heirs – Should they be excluded by the Slayer Statute?

Florida's Slayer Statute clearly severs the rights of a murderer to inherit from the victim under a will, joint tenancy, and/or contractual arrangement (including beneficiary designation). However, the current statute does not address the rights of the collateral beneficiaries/heirs. The statute reads in pertinent part:

732.802 Killer not entitled to receive property or other benefits by reason of victim's death.—

(1) A surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of coownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of murder in any degree is conclusive for purposes of this section. In the absence of a conviction of murder in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section.

This same slayer rule is similarly applied to sever a murderer's beneficial interests in revocable trusts under § 736.1104, F.S. (2015). Yet again, the statute applies to the murderer, not to collateral heirs of the murderer. As quoted above, the Slayer Statute is limited to severing the rights of a surviving person who unlawfully and intentionally kills another (i.e., the killer). In that event, the murderer is treated as predeceasing the victim. However, there is no mention of excluding anyone other than the murderer from a will, trust, joint account or otherwise.

Consider the following scenarios:

A. If a wife kills her husband and his will leaves his entire estate to his wife or if she predeceases to his children (or generically to persons who may be considered the natural objects of his bounty), is it sufficient for the Slayer Statute to treat only the wife as predeceased?

B. If a wife kills her husband and his will leaves his entire

estate to his wife or if she predeceases to her children (or generically to persons who may not be considered the natural objects of his bounty), is it sufficient for the Slayer Statute to treat only the wife as predeceased?

In Scenario A, a Slayer Statute that "only" disinherits the slayer/spouse is probably adequate. But in Scenario B, that same statute perhaps fails to accomplish its policy and purposes in the majority of cases.

The Fourth District Court of Appeal considered Scenario B in *Fiel v. Hoffman,*[5] also known as the Ben Novack, Jr. case, and held that Florida's Slayer Statute only disinherits the slayer/murderer (in this case, the wife) and not the other beneficiaries (the wife's children) even if they were not the natural objects of the victim's bounty. The Fourth DCA noted there may be public policy issues exposed by the facts of the case, but declined to "legislate" a result, relying instead on the plain meaning of the statute.

Facts of the *Fiel* case

The underlying case that led to this appeal is the ongoing and fascinating probate of Ben Novack, Jr ("Ben"), an heir to the fortune of the developer of the iconic Fontainebleau hotel on Miami Beach. Ben Novack, Sr. was the primary developer and initial operator of the Fontainebleau hotel until it was lost in bankruptcy in 1977.

Ben was murdered in a particularly gruesome and sordid manner in July, 2009. Details of his torture and murder made national news. After Ben's murder, a subsequent investigation into the prior death of his mother, Bernice Novack, revealed that she too was murdered, although her death in April, 2009, was initially ruled accidental.

In 2012, Ben's wife, Narcy Novack, was convicted of the crimes and sentenced to life in prison for paying hitmen to torture and kill her husband and mother-in-law, Ben and Bernice.

In this probate case, Ben's wife, Narcy, had been treated as predeceased by the application of the Florida Slayer Statute,[6] which prohibits a murderer from inheriting from the estate of the person she killed. However, the alternate beneficiaries of Ben's will, if Narcy and his mother predeceased him, were Narcy's daughter, May Abad (who of course was also Ben's step-daughter), receiving a pecuniary bequest and trusts for May's children Marcello and Patrick (Narcy's two adult grandsons) as the residuary beneficiaries.

Two of Ben's cousins, Meredith and Lisa Fiel, who (according to the Fourth DCA's holding) were beneficiaries under Ben's prior will (the "2002 Will") sued to invalidate the probated, last will (the "2006 Will") alleging: (a) the 2006 Will was the product of undue influence and (b) the Slayer Statute should be applied to exclude not only Narcy as a beneficiary under the 2006 Will, but it should also exclude her daughter and grandchildren (which would then leave the disposition in the 2006 Will invalid and thus either the estate would pass to the cousins as heirs at law or under the prior 2002 Will). The trial court dismissed the two claims, and the two issues were heard on appeal by the Fourth DCA.

The Fourth DCA overturned the dismissal of the undue influence claims, and thus the cousins may still ultimately prevail in the case. However, the Fourth DCA upheld the dismissal of the cousins' claims under the Slayer Statute.

The Fourth DCA held the Slayer Statute was clear and the court had no discretion to disinherit anyone other than the murderer (there, the wife/spouse/Narcy). The appellate panel indicated its hands were tied due to the unambiguous statute. Further, the opinion noted, it is the purview of the legislature to address whether or not to expand the Slayer Statute's reach. Thus, the Fourth DCA didn't say the statute shouldn't be expanded to disinherit collateral beneficiaries as well as the murderer, but in its ruling, the court said it couldn't hold that way under the statute as it was presently constituted.

The holding seems to invite discussion of legislation to address the collateral heirs/beneficiaries issue.

Discussion

Today, nearly all states have some sort of Slayer Statute or common law doctrine prohibiting a murderer from inheriting from his or her victim's estate.[7]

Slayer Statutes were enacted to fill the gap created when English common law doctrines of attainder, forfeiture and corruption of blood were not carried over into the American legal system.[8] Florida has a similar statute, which prohibits a surviving spouse from directing how the remains of his or her spouse are to be disposed if the surviving spouse has been arrested for committing an act of domestic violence against the deceased (as defined under§ 741.28, F.S., that resulted in or contributed to the death of the deceased).[9]

However, a gap still exists regarding whether it ought to be the public policy to disinherit collateral beneficiaries, at least those who are not also related to the victim. Ben Novack's case also highlights why discussions of this issue are so difficult.

On the one hand, since Ben's wife, Narcy, murdered him, she is treated as predeceasing Ben; however, to some it is odd that Narcy's descendants (the children and grandchildren of the murderer) may walk away with Ben's entire estate. This result may be difficult to accept when considering Narcy's daughter and grandchildren were not Ben's child and grandchildren and were not adopted or otherwise related to Ben.

On the other hand, however, based on the statements of Carl Schuster (Ben's estate planning counsel), Ben had genuine affection for May and her children. Further, Ben very explicitly did not want to leave anything to his cousins (the Plaintiffs seeking his entire estate). Thus, if the Slayer Statute had been expanded to automatically disinherit Narcy's daughter and grandchildren, it appears that result would have been inapposite to Ben's real intentions. It seems fair to wonder

if Ben's assertions (even to his estate planning attorney) regarding his intentions for his estate might have been different if he knew that Narcy would murder him.

The bottom line is that there are a lot of assumptions that would have to be made if the Slayer Statute was to be expanded to cover collateral heirs. Had the deceased actually known all of the facts, what would the deceased have done in his or her will? Perhaps that is impossible to discern or assume. Or perhaps that is just the type of public policy decision the legislature should be making.

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In *Fiel v. Hoffman*, citing to prior Florida case law on the Slayer Statute, the Fourth DCA refused to extend the Slayer Statute's reach to other beneficiaries of the estate plan. In its holding, the Fourth DCA approvingly quoted from *In re Estate of Benson*[10]:

> We have no difficulty in rejecting appellant's contention that there exists a public policy in Florida that would extend Florida's Slayer Statute so as to disinherit the natural and/or statutory heirs of a killer who except for his murderous act would have been a beneficiary of his victims' estates. We find the statutory language clear and unambiguous. If there is to be declared in Florida such a public policy as appellant urges, it must be accomplished by a legislative amendment to the Slayer Statute and not by a pronouncement of this court.... It is difficult to advance a credible argument as to any ambiguity in the statute or how the legislature could have more clearly spoken. It is the 'surviving person who . . . kills' who is prohibited from benefiting from the act of killing. The statute clearly states without any exceptions that the property of the decedent 'passes as if the killer had predeceased the decedent.'

While the issue of a killer's heirs inheriting is not necessarily a new one, perhaps the *Fiel* case offers the Florida Bar and legislature a valid reason to give the issue a fresh look - which seems to be invited by the Fourth DCA.

Indeed, while the Slayer Statute may be clear and unambiguous, and thus the results in the *Benson* and *Fiel* cases may be proper (based on the law as it presently exists), should the public policy be revisited in light of their holdings? Does it make sense that heirs of the murderer should inherit from the victim's estate?

To make the facts simpler, suppose a man's will (let's call him Joe) left a pecuniary bequest to his children and the residue of his estate to his friends and caregivers, Bob and Betty Jones, husband and wife, or all to the survivor of them. If it later turns out Betty killed Joe by slowly poisoning him, and as a result she is treated as predeceased by the Slayer Statute, should public policy permit Joe's entire estate to pass Betty's spouse, Bob, instead of Joe's children? Or should public policy presume the bequest was conditioned on Joe's belief that Bob and Betty were helping him, and if Joe knew Betty was instead killing him, then Joe likely would not have benefited either of them in his plan?

At a minimum, this issue seems worthy of some consideration by the RPPTL Section of the Florida Bar and perhaps ultimately by the Florida legislature if it is deemed appropriate that the state's public policy should be revisited.

Collateral Beneficiaries Issue Exists in Many States

This is not a uniquely Florida issue, as several other states have similar statutes. If the Florida statute is to be expanded, there are models worthy of consideration. The Fourth DCA notes the appellants cited several cases from other states with laws that may be more progressive on this issue.

According to the decision, the appellants cited to state Slayer Statutes and cases in Rhode Island, Indiana and Illinois, all of which precluded stepchildren from inheriting where their parent was the killer.[11]

The Fourth DCA quoted from the Rhode Island Act, which in pertinent part provides that "[n]either the slayer *nor any person claiming through him or her* shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but the property shall pass as provided in this chapter." Quoting *Swain v. Estate of Tyre ex rel. Reilly*,[12] the court held that the Rhode Island statute precluded stepchildren of the deceased from inheriting from her, when their father was charged with her murder, and the children stated that they would use their inheritance to pay for their father's criminal defense.

The Fourth DCA also cited to an Illinois case, *In re Estate of Mueller*,[13] noting the Illinois Slayer Statute provides that a slayer should not receive "any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary... or in any other capacity ...." In *Mueller*, the court construed this language as prohibiting the slayer/wife's children from their share of her husband's estate, because the wife could receive a benefit in her capacity as guardian of her minor child.[14]

Perhaps the slayer statutes in Rhode Island, Indiana or Illinois offer helpful examples.

Public Policy Implications: Should Slayer Statutes Exclude Those Who Commit Murder in Self-Defense or Because of Mental Illness?

If an abused spouse (or child) takes the life of the abuser in self-defense, should that spouse or child be deprived of the right to inherit from the victim's estate?

A similar question arises if the wrongdoer committed the act as the result of mental illness. Would a parent want to deprive their mentally ill child of any funds to pay for mental health treatment?

While these issues are not addressed in *Fiel*, and one may think these cases would be rare, at least one commentator believes them prevalent enough that they need to be addressed.[15]

Bright line rules have the benefit of creating clear results. Unfortunately, in an effort to ensure that individuals like Narcy Novack (or her heirs) do not inherit for their wrongdoing, these rules can also trap individuals who were not contemplated at the time of enactment. For this reason, perhaps it makes sense to also give a court discretion to avoid a manifest injustice

Thus, one option might be to adopt a bright-line test, but also add a provision to the Slayer Statute allowing a court to disregard the statute if the preponderance of the evidence indicates application of the statute would cause a manifest injustice. That's an approach worthy of consideration.

Public Policy Implications: Should Slayer Statutes Exclude those who commit Elder Abuse and Exploitation?

Although this issue was also not presented in *Fiel*, a subject worthy of consideration is whether or not to expand the class of persons triggering the exclusions of the Slayer Statute beyond those who have killed (murderers).[16]

For example, recently eight states have expanded their Slayer Statutes to broaden the categories of persons triggering the statute beyond murderers, to cover those who abused or financially exploited a decedent.

In 2009, the state of Washington expanded its Slayer Statute to disqualify heirs who are "abusers" and took advantage of a vulnerable adult. The obvious intention of the legislation was to protect victims from financial exploitation and abuse.

The states that broadened their Slayer Statutes to apply to abusers are: Arizona, Oregon, California, Illinois, Kentucky, Maryland, Michigan and Washington. Some of these states require only financial exploitation (Arizona, Maryland and Washington), while others require both physical and financial abuse (Oregon, California, Illinois, Kentucky, and Michigan).

Some states also do not require a criminal conviction, but only require clear and convincing evidence of abuse (California and Washington); whereas the other states require a criminal conviction as a basis for triggering the disqualification of the Slayer (and abuser) Statutes.

The public policy of most (if not all) states has long held that a killer should not inherit from the victim's estate, based on a theory that the wrongdoer shouldn't benefit from his or her wrongdoing. Now that eight states have already done so, perhaps it is time for Florida to consider expanding the class of wrongdoers who are disinherited by statute to include various forms of financial abuse and exploitation of vulnerable seniors.

A way to ameliorate the potentially harsh results of such an expansion of the Slayer Statute is to consider also adopting a statutory "escape clause" allowing a court not to apply the Slayer Statute if the preponderance of the evidence indicates application of the statute would cause a manifest injustice.

Conclusion

Developments in other states as well as interesting Florida cases such as the *Fiel* case should lead the Florida Bar to review the current Slayer Statute and consider if some expansion and modernization is in order. Any expansion of the statute should also consider the addition of an option for a court to avoid the application of the statute if the preponderance of the evidence indicates application of the statute would cause a manifest injustice.

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Endnotes

1 A prior and quite different article on this subject was published in Leimberg Information Systems, Inc. (LISI) as a Newsletter. That newsletter has been significantly altered in this article but to the extent any text is shared with that article, it is republished with permission of Steve Leimberg.

2 § 732.802, F.S. (2015).

3 *See* Carla Spivack, *Killers Shouldn't Inherit from Their Victims – Or Should They?*, Georgia L. Rev. 145 (2013).

4 Jennifer Piel, JD, MD, *Expanding Slayer Statutes to Elder Abuse*, J. Am. Acad. of Psychiatry Law, Vol. 43, No. 3, p. 369-76 (2015).

5 169 So. 3d 1274 (Fla. 4th DCA 2015).

6 § 732.802, F.S. (2015).

7 *See* Ala. Code § 43-8-253 (2015); Alaska Stat. Ann. §13.12.803 (West 2015); Ariz. Rev. Stat. Ann. §14-2803 (2015); Ark. Code Ann. §28-11-204 (West 2015); Cal. Prob. Code §§250-258 (West 2016); Colo. Rev. Stat. Ann. §15-11-803 (West 2015); Conn. Gen. Stat. Ann. §45a-447 (West 2015); Del. Code Ann. tit. 12, §2322 (West 2015); D.C. Code §19-320 (2016); Fla. Stat. Ann. §732.802 (West 2015); Ga. Code Ann. §53-1-5 (West 2015); Haw. Rev. Stat. Ann. §560:2-803 (West 2015); Idaho Code Ann. §15-2-803 (2016);755 Ill. Comp. Stat. Ann. 5/2-6 (West 2015); Ind. Code Ann. §29-1-2-12.1 (West 2016); Iowa Code Ann. §633.535 (West 2015); Kan. Stat. Ann. §59-513 (West 2015); Ky. Rev. Stat. Ann. §381.280 (Baldwin 2015); La. Civ. Code Ann. art. 946 (West 2015); Me. Rev. Stat. Ann. tit. 18-A, §2-803 (West 2015); Mass. Gen. Laws Ann. ch. 265, §46 (West 2016); Mich. Comp. Laws Ann. §700.2803 (West 2016); Minn. Stat. Ann. §524.2-803 (West 2015); Miss. Code Ann. §91-1-25 (West 2015); Mo. Ann. Stat. §461.054 (Vernon 2015); Mont. Code Ann. §72-2-813 (West 2015); Neb. Rev. Stat. §30-2354 (West 2015); Nev. Rev. Stat. Ann. §41B.200 (West 2015); N.J. Stat. Ann. §§3B:7-1.1 to 7-7 (West 2015); N.M. Stat. Ann. §45-2-803 (West 2015); N.Y. Est. Powers & Trusts Law §4-1.6 (McKinney 2015) (only applies to joint accounts); N.C. Gen. Stat. Ann. §§31A-3 to A-12 (West 2015); N.D. Cent. Code §30.1-10-03 (West 2015); Ohio Rev. Code Ann. §2105.19 (Baldwin 2015); Okla. Stat. Ann. tit. 84, §231 (West 2015); Or. Rev. Stat. Ann. §§112.455-112.555 (West 2015); 20 Pa. Cons. Stat. Ann. §§8801-8815 (Purdon 2016); R.I. Gen. Laws Ann. §§33-1.1-1 to 33-1.1-16 (2015); S.C. Code Ann. §62-2-803 (West 2015); S.D. Codified Laws §29A-2-803 (West 2015); Tenn. Code Ann. §31-1-106 (West 2015); Tex. Stat. and Code Ann. §201.058 (Vernon 2015) (only applies to insurance); Utah Code Ann. §75-2-803 (West 2015); 14 Vt. Stat. Ann. §322 (West 2015); Va. Code Ann. §64.2-2501 (West 2012); Wash. Rev. Code Ann. §11.84.010-11.84.020 (West 2016); W. Va. Code Ann. §42-4-2 (West 2015); Wis. Stat. Ann. §§852.01(2m), 854.14 (West 2015); Wyo. Stat. Ann. §2-14-101 (West 2015). Common-law Slayer Rules exist in Maryland, see *Price v. Hitaffer*, 165 A. 470 (Md.1933) and *Cook v. Grierson*, 845 A.2d 1231 (Md. 2004); Missouri, see *Perry v. Strawbridge*, 108 S.W. 641, 648 (Mo. 1908); and New York, see *Riggs v. Palmer*, 22 N.E. 188, 190-91 (N.Y. 1889).

8 *See* Alison Reppy, *The Slayer's Bounty – History of Problem in Anglo-American Law*, 19 N.Y.U. L. Q. Rev. 229, 232-33 (1942).

9 *See* § 497.005(37), F.S. (2015). Note, this statute only appears to apply if the decedent's body is with a funeral home.

10 548 So. 2d 775 (Fla. 2d DCA 1989).

11 The court cited to the Appellants' brief noting they relied on several cases from other states which concluded that their Slayer Statutes precluded stepchildren from inheriting. *See* Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283, 292-94 (R.I. 2012); Heinzman v. Mason, 694 N.E.2d 1164, 1167-68 (Ind.Ct.App.1998); In re Estate of Mueller, 275 Ill.App.3d 128, 211 Ill.Dec. 657, 655 N.E.2d 1040 (1995).

12 57 A.3d 283 at 291 (R.I. 2012).

13 655 N.E.2d 1040, at1043 (Ill. App. 1 Dist. 1995).

14 *Id.* at 1046.

15 *See* Carla Spivack, *Killers Shouldn't Inherit from Their Victims – Or Should They?*, Georgia L. Rev. 145 (2013).

16 "Expanding Slayer Statutes to Elder Abuse" by Jennifer Piel, JD, MD, in the Journal of the American Academy of Psychiatry and the Law, 43:369-76, 2015.