

Circuit Court for Howard County
Sitting as the Orphans' Court
Case No: 33610

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 827

September Term, 2023

IN RE: THE ESTATE OF
MYRA DENISE MCINTOSH WILLIAMS

Friedman,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 24, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

The sole question in this appeal is whether a written agreement entered into by Ronald Williams and Myra Powell before their marriage effectively waived each of their right to take the statutory elective share of the other's estate on death. The Orphans' Court for Howard County found that the written agreement unmistakably waived the right to take the statutory elective share. As this opinion explains, we agree with the orphans' court, although for reasons that are slightly different. As a result, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2015, Ronald Williams and Myra Powell were married. Before their marriage, they entered into a written agreement, which we call the prenuptial agreement, which waived their rights in much of each other's property. After Myra died in 2022, her personal representatives, Mai-Tai Galloway, Anthony Powell, and Derrick Powell, opened an estate in the orphans' court. Thereafter, Ronald filed papers purporting to elect his statutory elective share.¹ The personal representatives contested Ronald's election, arguing that the prenuptial agreement operated to waive his statutory elective share. After a hearing, the orphans' court issued an oral ruling finding that, taken as a whole, the prenuptial agreement

¹ The statutory elective share is provided in subtitle 4 of Title 3 of the Estates & Trusts Article of the Maryland Code. MD. CODE, ESTATES & TRUSTS ("ET") §§ 3-401 to -413. The amount of the statutory elective share is as follows:

- (1) If there is surviving issue, the elective share shall equal one-third of the value of the estate subject to election, reduced by the value of all spousal benefits; or
- (2) If there is no surviving issue, the elective share shall equal one-half of the value of the estate subject to election, reduced by the value of all spousal benefits.

served to waive Ronald’s right to the statutory elective share. Pursuant to Section 12-501(a) of the Courts and Judicial Proceedings Article of the Maryland Code, Ronald noted a timely appeal directly to this Court.

LEGAL STANDARDS

A spouse’s statutory right to an elective share may be waived in a prenuptial agreement. MD. CODE, ESTATES & TRUSTS (“ET”) § 3-406(a) (“The right of election of a surviving spouse may be waived before or after marriage by a written contract, agreement, or waiver signed by the party waiving the right of election.”). The highest court of this State has adopted a specific rule for the interpretation of contractual provisions (including prenuptial agreement provisions) purporting to waive a spouse’s statutory elective share. *See, e.g., Pulaski v. Riland*, 199 Md. 426 (1952). Under this so-called *Pulaski* rule, a court will only find that a spouse has waived the right to take a statutory elective share if, in the contract, there is a “clear statement to that effect,” *id.* at 434, or if such a waiver is the “necessary implication” of the contract. *Id.* The Court has also explained this high standard, saying that a necessary implication is “so strong a probability of intention that an intent to the contrary ... cannot be reasonably supposed.” *Hewitt v. Shipley*, 169 Md. 221, 225 (1935). We review decisions applying the *Pulaski* rule as we do all other matters of contract interpretation: without deference to the lower court. *Plank v. Cherneski*, 469 Md. 548, 569 (2020).²

² The orphans’ court based its interpretation on the “totality” of the prenuptial agreement and in its opinion, discussed several different provisions of that agreement as supporting its interpretation that the parties, by necessary implication, had waived the right to a statutory elective share. Our appellate courts have been clear, however, that only a

ANALYSIS

There is no provision of the prenuptial agreement that is a “clear statement” of the parties’ waiver of the statutory elective share. Thus, the question presented is whether the “necessary implication” of any provision of the prenuptial agreement is that the parties intended to waive their right to take the statutory elective share. We hold that Paragraph 12 of the prenuptial agreement creates the necessary implication—and there is no reasonable supposition to the contrary—that the parties intended to waive their respective rights to take statutory elective shares.

We set forth Paragraph 12 of the prenuptial agreement in its entirety:

Except as otherwise provided in this Agreement, each party renounces any interest by way of *curtesy, dower, homestead or similar rights* in and to any property of the other now owned or hereafter acquired by either party whether such rights arise pursuant to the laws of Maryland or the laws of any other State or Commonwealth or Territory of the United States or any other country. Each party shall execute, acknowledge and deliver, from time to time, at the request of the other party, any and all conveyances and documents of every kind and character, necessary for the proper effectuation of this Paragraph.

specific provision or language may waive the right to a statutory elective share in a spouse’s estate; a court cannot find a waiver by grouping separate provisions and viewing those separate provisions in totality. *See Pulaski*, 199 Md. at 427-28, 431 (reviewing an introductory recital and a dower provision of a marital agreement individually to determine if a waiver occurred); *Hewitt*, 169 Md. at 223-24, 226 (reviewing language of two separate provisions of a separation agreement in isolation to determine if a waiver occurred and noting that a court cannot “incorporate into [an agreement] terms and language which the parties have not used” (citation omitted)). We are a little uncertain about the reasoning behind this rule and, as a result, about its continuing vitality in light of the modern rules governing contract interpretation. Nevertheless, because we are conducting a nondeferential review and, because we hold that Paragraph 12 alone, by necessary implication, constitutes a waiver, we can, and do, affirm.

Prenuptial Agreement at ¶ 12 (emphasis added). We begin by observing that curtesy, dower, and homestead were common law estates that operated to protect some portion of a decedent’s estate for the benefit of a surviving spouse. *See* Richard F. Storrow, *Family Protection in the Law of Succession: The Policy Puzzle*, 11 NE. U. L. REV. 98, 103-05 (2019) (describing curtesy, dower, and homestead as “family protection regimes”). More specifically, *curtesy* was the common law right of a surviving husband to a life estate in his wife’s property; *dower* was the common law right of a surviving wife to a life estate in one-third of her deceased husband’s property; and *homestead* was a common law right of a surviving spouse and dependent children to continue to live on the property owned by the decedent. 2 TIFFANY REAL PROP. §§ 552, 487, 576 (3d ed. Supp. 2024). Curtesy and dower were statutorily abolished in 1969. 1969 Md. Laws ch. 3 (codified at ET § 3-202) (“The estates of dower and curtesy are abolished.”). Homestead was never even a part of the common law of Maryland. LAWRENCE P. KELLER & MARTIN W. O’TOOLE, *Appendix M. Elective Share, Dower, Curtesy, Homestead Allowances, Family Allowances, Forced Heir Statutes*, in WILLS (2024) (surveying state homestead allowances and stating Maryland does not have one). Thus, at the time this prenuptial agreement was drafted and executed, the parties were expressly waiving common law rights that did not exist in Maryland and hadn’t existed in decades.³ As a result, the question in this case is really

³ Of course, the common law rights of curtesy, dower, and homestead may continue in other jurisdictions, and the prenuptial agreement was drafted in such a way that had the parties moved to a jurisdiction in which those common law rights still applied, the parties’ waiver of those rights was still effective. It was, nevertheless, a cumbersome and old-fashioned way of drafting a prenuptial agreement in Maryland in 2015.

whether the statutory elective share under ET §§ 3-401 to -413 grants “similar rights” in the property of the decedent spouse as were granted by the common law rights of curtesy, dower, and homestead.

In answering this question, we need not engage in a lengthy historical account. That is because in *Karsenty v. Schoukroun*, Judge Glenn T. Harrell, Jr., in his customary careful and thoughtful way, has already done that work. 406 Md. 469 (2008). In *Karsenty*, Judge Harrell reviewed the history of the common law estates of curtesy and dower and their eventual replacement by the statutory elective share. *Id.* at 503-05. The *Karsenty* opinion makes clear that the General Assembly enacted the statutory elective share to grant similar rights, *see id.* at 487, 503 (describing how curtesy, dower, and the statutory elective share grant rights to a portion of decedent’s property), to similar persons, *see id.* at 503 (noting curtesy, dower, and the statutory elective share are spousal rights), in similar situations to the common law estates of curtesy and dower. *See id.* at 487, 503 (indicating curtesy, dower, and the statutory elective share vest upon spouse’s death). Even the ratios granted are similar. *Compare* ET § 3-403 (quoted *supra* note 1) (establishing that statutory elective share grants either one-third or one-half of decedent’s estate depending on the existence of issue), *with Karsenty*, 406 Md. at 503 (noting that dower provided surviving wife with one-third of decedent husband’s estate). More still, minor differences between the statutory elective share and the common law estates that it replaced are attributable to the General Assembly’s desire to improve and make it fairer than the prior common law estates. *See Karsenty*, 406 Md. at 504 (describing how the statutory elective share grants money equivalent to the value of property rather than granting real property, as had curtesy and

dower, because “it was perceived that the nature of wealth began to shift from real to personal property”). After *Karsenty*, it is unmistakably clear that the rights granted in the statutory elective share in ET §§ 3-401 to -413 are “similar to” the rights granted in the common law estates of curtesy, dower, and homestead. As a result, by necessary implication, Paragraph 12 of the prenuptial agreement is a waiver of each party’s right to claim a statutory elective share in the estate of the other.

**JUDGMENT OF THE ORPHANS’
COURT FOR HOWARD COUNTY
AFFIRMED. COSTS TO BE
ASSESSED AGAINST APPELLANT.**