January 2002

The Need for a New Slayer Statute in North Carolina

Julie Waller Hampton

Follow this and additional works at: http://scholarship.law.campbell.edu/clr
Part of the Legal Remedies Commons

Recommended Citation

This Comment is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.
THE NEED FOR A NEW SLAYER STATUTE IN NORTH CAROLINA*

I. INTRODUCTION

A forty-year-old woman drove her elderly mother to the doctor as she did every week. They were running behind schedule when the daughter briefly stopped at an intersection and looked for oncoming traffic. As the daughter pushed through the intersection, a truck struck her car on the passenger side. As a result of the accident, the woman's elderly mother died. Assuming her actions were negligent, should the daughter's failure to see the truck preclude her from inheriting from her mother as a natural object of her bounty?

The common sense answer is no. The daughter did not intentionally kill her mother. In fact, the daughter is fortunate that her negligence did not kill her. The mother probably would not wish to disinherit the daughter in light of the circumstances. In North Carolina, the daughter could be disqualified from inheriting—not as a "slayer," but rather as one that should not profit from her own wrong. North Carolina courts have circumvented the slayer statute and wrongly interpreted the common law on this subject, which has led to such unintended consequences.

A. Outline of North Carolina Slayer Statute—Chapter 31A

The North Carolina slayer statute is codified as Chapter 31A of the General Statutes of North Carolina. The statute is relatively comprehensive, considering some states do not have any codified provision for the forfeiture of property by slayers. Section 31A-3 marks the start of the slayer rule, setting out important definitions of "decedent," "property," and "slayer." "Slayer" means any person who by a court of competent jurisdiction shall have been

* The author wishes to express her gratitude to Professor James B. McLaughlin, Jr. for his helpful insight in regard to the issues discussed in this comment.

1. N.C. Gen. Stat. § 31A-3(3) (1999). "'Slayer' means any person who by a court of competent jurisdiction shall have been convicted as a principal or accessory before the fact of the willful and unlawful killing of another person."


convicted, entered a plea of guilty, or tendered a plea of nolo contendere upon indictment, as a principal or accessory before the fact of the willful and unlawful killing of another person. In addition,

[a] slayer can also be one that has been found in a civil action or proceeding brought within one year after the death of the decedent to have willfully and unlawfully killed the decedent or procured his killing, and who shall have died or committed suicide before having been tried for the offense and before the settlement of the estate.

Section 4 outlines the alternative distribution of the decedent's estate due to the slayer's forfeiture. The slayer will be deemed to have died just prior to the death of the decedent. Therefore, the slayer cannot acquire any benefit from the decedent, whether it is by testate or intestate succession, common law, or statutory right. However, the slayer's living issue are entitled to the interest if the decedent dies intestate, and the property shall be distributed per stirpes. If there are no such living issue, the property passes as if the slayer predeceased the decedent. If the decedent dies testate, the property which would pass to the slayer pursuant to a will shall be devised in accordance with the lapse statute under the presumption that the slayer predeceased the decedent.

Sections 5 and 6 explain the consequences to the slayer's rights regarding joint property held by the slayer and decedent as tenants by the entirety and joint tenants with right of survivorship, respectively. Both sections provide that the portion of the property possessed by the slayer will continue to be held by the slayer for his lifetime. The decedent's property share will pass to his estate upon his death. When the slayer dies, his or her property will pass to the estate of the decedent.

6. N.C. Gen. Stat. § 31A-3(d) (1999). There is an inherent mistake in this statute because it requires death or suicide of the killer to accompany the civil action in order for the killer to be deemed a slayer. This problem was, in effect, corrected by the court in Jones v. All American Life Ins. Co., 312 N.C. 725, 325 S.E.2d 237 (1985). See also infra notes 150, 151 and accompanying text.
9. § 31A-4(2).
10. § 31A-4(2).
15. §§ 31A-5 and 31A-6
Sections 7 and 8 determine the result of future interests held by the slayer that were subject to the death of the decedent. Section 7 states that where a vested future interest of the slayer, that was subject to the intervening life estate of the decedent or a third party whose interest is measured by the life of the decedent, the property will pass to the decedent's estate or be kept by a third party for the life expectancy of the decedent. Section 8 covers contingent remainders and executory interests of the slayer. If the interest would vest or increase upon the death of the decedent, the interest shall not vest or increase during the period of the life expectancy of the decedent. If the interest would not have become vested or increased had the slayer predeceased the decedent, then the slayer shall be deemed to have predeceased the decedent.

According to Section 9, when the slayer holds an interest in property subject to divestment by the decedent (should decedent survive him or live to a certain age), the interest shall remain in possession of the slayer during his lifetime or until the decedent would have reached such age, but then passes as though the decedent died immediately after the slayer or the reaching of that age.

Any power of appointment in favor of the slayer by the decedent's will shall pass in accordance with the lapse statute as if the slayer predeceased the decedent. Section 10 also states that present or future interests held by the slayer, but subject to divestment by the exercise of a general power of appointment, shall pass to the estate of the decedent. Furthermore, any interest subject to the slayer's exercise of a special power of appointment will pass to such person(s) in equal shares, exclusive of the slayer.

Section 11 extends the slayer's forfeiture to insurance benefits. When the insured dies, the slayer cannot inherit insurance proceeds payable to him. Instead, these proceeds pass as if the slayer predeceased the decedent. If the slayer's insurance policy designates the decedent as a beneficiary or assignee, the proceeds of such a policy are to be paid to the estate of the decedent on the death of the slayer.

22. § 31A-10(b).
24. § 31A-11.
25. § 31A-11.
Section 12 protects persons acquiring property or interests of the slayer affected by this chapter only if they did not have any notice of the circumstances that brought their interests within the scope of this chapter. All consideration received by the slayer will be held in trust for those entitled to the interests under this chapter, and it is the responsibility of the slayer to make up the difference.

Section 13 allows the record of the judicial proceeding determining the slayer status to be admissible in evidence for or against a claimant of property in a civil action arising under this chapter. Also, the Uniform Simultaneous Death Act is not applicable to cases governed under this chapter, according to Section 14.

Section 15 declares that the slayer chapter should be construed in a way that will effect the policy of the state that no person shall be allowed to profit by his own wrong. The final Section further provides that as to acts specifically provided for in this chapter, the rules of this chapter are to supply the only rules, remedies, and procedures. For acts not specifically within the slayer chapter, all existing or future remedies, rules, and procedures shall be applicable.

B. History of Chapter 31A

North Carolina adopted the current slayer statute in 1961. The drafting committee enacted a statutory scheme developed by Professor John Wade of Harvard Law School. Wade published his all-inclusive slayer statute in an attempt to avoid the wide array of disparate decisions coming from states without such a statute.

The Wade model supplied definitions for key terms like slayer, provided for the proper distribution in cases where a slayer was present, and allotted for a reversion to common law principles where the

---

statute did not cover such situations. It defined "the term 'slayer' [to] mean any person who willfully and unlawfully takes or procures to be taken the life of another," and added that this definition should not include the crime of involuntary manslaughter because of the lack of intent.

Wade's model allotted for a reversion to common law principles where the specific provisions did not cover a situation by including Section 15 of the statute. Section 15 states the "[a]ct shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong."

Desire for a thorough statute prompted Professor Wade to add Section 15. He acknowledged that this section is there to reinforce the notion that the statute is not penal in nature and should not be subject to strict construction. Also, he wanted to allow for judicial determinations where the slayer could benefit from the decedent's death in circumstances occurring outside the ambit of the specific sections. Indeed, Section 15 opened the door for judicial determinations not within the statute, which extended further than "slayers" per se.

When North Carolina adopted Wade's proposal in 1961, the Special Drafting Committee commented on the proposed section, but elaborated on Wade's comments by declaring the section to preserve the common law as to all acts not specifically provided for in Chapter 31A.
Thus the fact that this Chapter covers only certain acts of wrongful killing does not necessarily preclude other wrongful acts from barring property rights by common law, such as involuntary manslaughter or an acquitted killer in some cases. In such instances the constructive trust concept and other nonstatutory remedies remain available under the terms of this Chapter.\footnote{45}

By this language, the Special Drafting Committee presumed the common law would not allow for inheritance in the case of involuntary manslaughter. The question as to the intended effect of this language is whether it was meant to impose their view of the common law, or merely allow for judicial determination in cases not covered by the other provisions.

In any case, it is this legislative history, combined with recent court decisions that left North Carolina with an incorrect determination of the common law and unjust results in regard to slayers. “Few, if any, other jurisdictions have gone so far as North Carolina in such [holdings].”\footnote{46}

II. The Common Law As Determined by North Carolina Courts

A. The Beginning: Quick v. United Benefit Life Insurance Company

In 1975, the North Carolina Supreme Court held in the case of Quick v. United Benefit Life Insurance Company\footnote{47} that a woman convicted of the involuntary manslaughter of her husband could not receive insurance proceeds as the named beneficiary under his life insurance policy. Quick accidentally shot and killed her husband.\footnote{48} In reaching its decision, the court relied on the common law maxim that “no one should be allowed to profit from his own wrong.”

The trial court in Quick found that the wife, Jill Quick, was a slayer under the meaning of the statute, because involuntary manslaughter was a willful and unlawful killing of another person as set out in N.C. Gen. Stat. §31A-3(3)(a). Furthermore, her act was against

\footnote{45. Id. (quoting Special Report of the General Statutes Commission on An Act to be Entitled 'Acts Barring Property Rights' (1961)).}

\footnote{46. J. David Walsh, Note, Decedent’s Estates- Forfeitures of Property Rights by Slayers, 12 Wake Forest L. Rev. 448, 455 (1976) (citing 5 A. Scott, Trusts 3504 (3d ed. 1967)) (“It seems clear that in the absence of a statute otherwise providing, the fact that the legatee or heir was guilty of involuntary manslaughter is not sufficient ground to preclude him from taking and keeping the property which he inherits from the decedent.”).}

\footnote{47. Quick v. United Benefit Life Ins. Co., 287 N.C. 47, 213 S.E.2d 563 (1975).}

North Carolina's public policy that "no person should be allowed to profit from his or her own wrong." Finding involuntary manslaughter not to be a willful and unlawful killing within the meaning of the statute, the court of appeals reversed. According to the interpretation by the court of appeals, Quick was not a slayer. It also declared that "the General Assembly has elected to legislate in the subject matter of this controversy and that the policy so established supplants the common law rule which would not have allowed her to recover."

The North Carolina Supreme Court also determined Quick was not a slayer under the statute. To be a slayer within the meaning of the slayer statute, the killing must have been willful and unlawful. The term "willful" can mean the "wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law." Here, according to the supreme court, willful killing refers to "intentional homicide." Involuntary manslaughter is defined as "an unlawful killing, without malice, without premeditation and deliberation, and without intention to kill or inflict serious bodily injury." Thus, it satisfies the definition of unintentional homicide and is outside the scope of the slayer rule.

In addition to the slayer definitions of Chapter 31A, the question remained whether the provisions of Chapter 31A completely supplanted the common law principle recognized by the court that "one should not be allowed to profit by his own wrong." To determine this question, the supreme court turned to N.C. Gen. Stat. § 31A-15, which allows for a broad construction to effect the State's policy that no person should be allowed to profit by his own wrong. The

51. Id.
52. Id.
54. Id. at 51, 213 S.E.2d at 566.
55. Id. at 51, 213 S.E.2d at 565.
56. Id.
57. Id. at 53, 213 S.E.2d at 567 (quoting State v. Wrenn, 279 N.C. 676, 682, 185 S.E.2d 129, 132 (1971)).
59. Quick, 287 N.C. at 54, 213 S.E.2d at 568.
supreme court also relied on the comments to the proposed section in the legislative history which indicated that "[t]his section preserves the common law, substantive and procedural, as to all acts not specifically provided for in this Chapter."\(^{61}\)

Interestingly, the court also cited Professor Wade's comment to Section 15 of the Model Act in support of its conclusion, which stated that "[i]t is always possible, of course, that some situation may arise which is not expressly covered in Sections 3 to 11."\(^{62}\) But Wade concluded that "the slayer will still be prevented from acquiring [any] benefit."\(^{63}\)

The North Carolina Supreme Court agreed with the trial court's judgment that the evidence "was sufficient to support its conclusion of law . . . to the effect that under the common law of this state defendant Jill A. Quick was disqualified from receiving any insurance proceeds from the policy insuring her deceased husband's life."\(^{64}\) The trial court could disqualify Quick since the killing, while unintentional, "resulted from her culpable negligence, that is conduct incompatible with a proper regard for human life. Culpable negligence proximately resulting in death comes within the purview of the common law maxim that no one shall be permitted to profit by his own wrong."\(^{65}\)

B. Other Cases Are Quick to Follow Quick

Following Quick, the court in Lofton v. Lofton resorted to the common law to disqualify a boy's inheritance from his parents after his conviction for involuntary manslaughter for killing them.\(^{66}\) Unlike the Quick court, the court here did not misinterpret the common law, because the boy was convicted of only involuntary manslaughter, but also admitted to willfully shooting his parents.\(^{67}\)

Smith v. Independent Life Insurance Company concerned an estate settlement dispute when both decedents had life insurance policies naming the other as beneficiary, and were both killed in the same car

---


63. Wade, supra note 36, at 751.


65. Id. at 59, 213 S.E.2d at 570-71.


67. Id. at 210, 215 S.E.2d at 866.
The issue on appeal was whether the insurance company had to pay the estate of the beneficiary who was driving the car, and was thus responsible for the accident and death of the insured. Both sides in this case argued the *Quick* case. The plaintiff alleged that the driver, William, was culpably negligent, and that this was sufficient under the common law to bar him from receiving the insurance proceeds. The court did not find sufficient evidence, and held that the plaintiffs had not shown culpable negligence by the driver. No North Carolina case law involving culpable negligence has found such negligence "in the absence of either willful or wanton conduct."

The logic flowing from the *Smith* opinion strongly supports the contention that the slayer statute should not bar unintentional acts. By equating willful or wanton conduct with culpable negligence, the *Smith* court put culpable negligence within the purview of the slayer statute. A finding of willful or wanton conduct would, in effect, take cases out of the category of involuntary manslaughter because it is, by definition, unintentional and not willful.

*Lynch v. Newsom* upheld the *Quick* case. In *Lynch*, the plaintiff was the father of two boys allegedly killed by their mother, or as a consequence of her actions. The plaintiff also alleged that the mother took part in procuring the deaths of her parents and grandmother while she was the primary beneficiary. The defendants in the *Lynch* case argued that since the plaintiff brought no action under the slayer statute within a year to declare the mother a slayer, the plaintiff should be barred from proving that the mother's wrongdoing contributed to the two boys' deaths. The court held for the plaintiff and relied on *Quick*:

> This enactment [of the slayer statute] merely authorizes an additional means of preventing some wrongdoers from profiting from their wrongs; it authorizes an action, if brought within the year, to establish by simplified proof the ineligibility of a slayer to share in the property

---

69. Id.
70. Id. at 276, 258 S.E.2d at 868.
71. Id.
72. Id. at 277, 258 S.E.2d at 869.
75. Id. at 54, 384 S.E.2d at 285.
76. Id.
77. Id. at 57, 384 S.E.2d at 284, 287.
of his victim; . . . it did not abrogate any of the many procedures devised by the common law to prevent one from profiting from his own wrong; a litigant's failure to file an action under the slayer statute within a year of the death involved only bars him from filing such an action and availing himself of the presumptions and evidentiary shortcuts authorized by that statute; it does not affect his common law right to prove in any appropriate action, if he can, that the alleged wrongdoer's culpable negligence caused the death. 78

As recently as 1997, the Quick rule was acknowledged in State Farm Life Insurance Company v. Allison. 79 The Allison court stated that in North Carolina a person can be barred from collecting life insurance proceeds either by being deemed a slayer under the slayer statute, or by coming within the bounds of the common law rule that no one may profit from his own wrongdoing. 80

III. WHAT IS THE COMMON LAW AS TO SLAYERS?

A. History of Cases Developing Slayer Rules

In his proposed statutory solution, Professor Wade outlined three historical views of the forfeiture of property rights by slayers. 81

The first view, that complete ownership will pass to the slayer in spite of his or her wrong, was the holding in the North Carolina case of Owens v. Owens. 82 Owens and subsequent cases reasoned that the courts could not override or change the statutory scheme developed for inheritance. 83

Another view allowed no property to pass to the slayer as a result of the slayer's killing. 84 In the case of Riggs v. Palmer, the court decided that a grandson could not inherit from his grandfather where he had murdered his grandfather in order to inherit from him. 85 The
Riggs court recognized that the rules and statutes concerning wills and devolution of property would give the property to the murdering grandson, if liberally construed. The Riggs court continued on this point:

[a]ll laws as well as all contracts may be controlled in their own operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime.

A third view that received little support by cases at its inception was that "title [would] pass to the slayer, but that equity [would] hold him a constructive trustee for the heirs or next of kin of the decedent." This view created problems, in that a constructive trust can be imposed only in favor of one who has been unjustly deprived of property. Thus, other heirs could not contend deprivation of property by the slayer's act because they would not have taken it anyway. However, it could be reasoned that if the decedent survived the slayer, then the property passing to the slayer would have passed to them. Another logistical difficulty in this third view was the belief that a constructive trust could only be imposed when the slayer killed the decedent for the purpose of inheriting property.

Some states enacted statutes in an attempt to deal more effectively with inheritance rights of slayers. Other states continued to rely on common law interpretation. Maryland is an example of one such state, as can be seen in the Ford case.

B. Recent Analysis of Common Law- Ford v. Ford

In the recent Maryland case of Ford v. Ford, the Court of Appeals of Maryland faced the issue of whether a woman who murdered her mother, yet was found insane, could be allowed to inherit from her mother. The court grappled with the issue of what quantum of intent should be required on the part of the slayer to preclude inheritance.

86. Id.
87. Id. at 190.
88. Wade, supra note 36, at 718-19.
89. Id. at 719 n.14.
90. Id.
91. Id.
92. Id.
94. Id.
The court previously dealt with the issue of the intent necessary to implement the slayer's rule in the case of Schifanelli v. Wallace. In Schifanelli, a man had unintentionally killed his wife as a result of his gross negligence. The court held that "the overwhelming weight of authority allows recovery where the beneficiary causes the death of the insured unintentionally or not feloniously." Furthermore, the court stated the basic rule that where the death was the result of carelessness, and thus not intentional, the rights of the beneficiary are not barred. The Schifanelli court allowed recovery for the husband on the policy since the accident was the result of the husband's gross negligence and there had been an express finding of unintentional cause.

The Ford court relied on Schifanelli and established the slayer's rule of Maryland:

1) A person who kills another
   a) may not share in the distribution of the decedent's estate as an heir by way of statutes of descent and distribution, or as a devisee or legatee under the decedent's will, nor may he collect the proceeds as a beneficiary under a policy of insurance on the decedent's life when the homicide is felonious and intentional;
   b) may share in the distribution of the decedent's estate as an heir by way of statutes of descent and distribution, or as a devisee or legatee under the decedent's will and may collect the proceeds as a beneficiary under a policy of insurance on the decedent's life when the homicide is unintentional even though it is the result of such gross negligence as would render the killer criminally guilty of involuntary manslaughter.[100]

The Ford court founded its rule on the same common law principle cited in North Carolina cases, even though the Maryland rule is opposite of the North Carolina rule. Again, that principle is the equitable maxim that no one should be able to profit by his own fraud or take advantage of his own wrong. However, North Carolina interpreted the maxim to mean that a wrong could be a consequence of

96. Id.
97. Id. at 519.
98. Id. (relying on Tippens v. Metropolitan Life Ins. Co., 99 F.2d 671 (5th Cir. 1938); Commercial Travelers Mutual Acc'ns v. Witte, 406 S.W.2d 145 (Ky. 1966)).
99. Id.
102. Ford, 512 A.2d at 390.
one's "culpable negligence." Culpable negligence is merely "conduct incompatible with a proper regard for human life." This definition could include anything from running a red light to speeding, but neither act would be sufficient for disinheritance under the Maryland rule, unless actual intent to kill could be proven.

C. The History of the Maxim- Nullus commodum capere potest de injuriā suā propriā

The well known equitable maxim, *nullus commodum capere potest de injuriā suā propriā*, has been cited as the guiding common law principle for property right forfeiture by slayers. Its meaning translates into "no man shall take advantage of his own wrong." 

Sir Edward Coke, in his *Commentaries on Littleton*, used the maxim to explain why a tenant could not completely extinguish his rent because of the waste he committed on the landlord’s property. The waste made the property less valuable and less worthy of rent. However, the landlord and tenant entered into a contractual relationship voluntarily. To allow the tenant, who knowingly and willingly committed waste, to be relieved from his contractual obligation would be poor legal policy. Waste was the tenant’s wrong and to allow him to profit by not paying rent would, in effect, allow him to take advantage of his own wrong.

The harm contemplated by Coke was committed with knowledge. The wrong contemplated in the slayer context should also be committed with knowledge. This requires a level of *mens rea*, or intent, by the wrongdoer. A tenant committing waste is voluntarily committing a wrong which, if ignored, would enable him to be relieved from a contractual obligation. The negligent driver is in no way relieving himself from such an obligation.

It is often said “maxims are dictated by public policy and have their foundation in all civilized countries, and have nowhere been superceded by statutes.” If dictated by public policy, the wrong as developed in the relevant maxim could not possibly mean accident or

103. *Quick*, 287 N.C. at 59, 213 S.E.2d at 570.
104. Id. at 59, 213 S.E.2d at 570-71.
107. See *Ford*, 512 A.2d at 390; *Quick*, 287 N.C. at 54, 213 S.E.2d at 568.
109. *Id.* (This section corresponds to 148(b) of the *Commentaries on Littleton*).
110. In Re Estate of Tyler, 250 P. 456, 458 (Wash. 1926).
negligence. The concept of "culpable negligence" upon which North Carolina courts allow involuntary manslaughter to bar inheritance was not a common law principle. To allow for such a construction of "wrong" serves no public policy purpose as it does not effectuate the intent of the decedent, which is the pole star for the laws of intestacy and will interpretation. Furthermore, it does not encourage extra care to avoid a charge of involuntary manslaughter, since it is a rule not known or assumed by many. It is logical that an intentional killer does not inherit from the one he killed. However, the North Carolina rule is overinclusive and only serves to punish the unintentional beneficiary and the decedent.

D. Other Common Law and Statutory Interpretation

In 1959, a wife convicted of manslaughter in the fourth degree of her husband tried to recover as the beneficiary of his life insurance policies.\textsuperscript{111} In Kansas, fourth degree manslaughter is the equivalent of the involuntary killing of another in the heat of passion.\textsuperscript{112} The defendant insurance company and son contended that since the killing was felonious by statute, it came within the purview of the Kansas slayer statute.\textsuperscript{113} The Kansas slayer statute, unlike that of North Carolina, prohibited recovery where the person seeking recovery was "convicted of feloniously killing, or procuring the killing of" the person from whom he or she seeks inheritance.\textsuperscript{114} A quick read of the slayer statute would prevent the wife from inheriting, but the court reasoned that this was not the result the legislature intended.\textsuperscript{115} "To adopt the interpretation for which the intervening defendant contends... would be to prohibit those so convicted from taking although they had no intention or desire to actually kill or even harm the insured."\textsuperscript{116} The court relied on an illustrative story demonstrating the injustice of such a holding:

Let us assume that some villain had ravished a neighbor's daughter and the parents of the daughter deliberately planned to take the life of the villain, they armed themselves with weapons and went to the place where the villain was then living, for the deliberate purpose of killing him, that all of the facts and circumstances were such that if either one

\textsuperscript{112} Id. at 385 n.1.
\textsuperscript{113} Id.
\textsuperscript{114} Id. at 381.
\textsuperscript{115} Id. at 382.
\textsuperscript{116} Id.
of the parents had killed the villain they would have been guilty of murder, but the wife, being a poor shot and excited, missed the villain and killed her husband. Under the law of Michigan, the wife would be guilty of murder. . . . [S]he should not be barred from receiving benefits which she otherwise would receive from life insurance on her husband. The reason she should recover would be because she did not intend to kill her husband. No cases have been found which hold that a person is barred from receiving the benefits under a life insurance policy or under a will, or by inheritance, unless he killed and intended to kill the person from whom he was to receive benefits. In other words, as far as the law has ever gone is to prevent the recovery of benefits which would not have become due and payable except for the intentional taking of the life of the benefactor.\textsuperscript{117}

The court could find no case where a court adopted as a test the classification of a killing as a felony or misdemeanor.\textsuperscript{118} The test most generally adopted is the question of intent to cause death or the feloniousness of the act causing death.\textsuperscript{119} "The 'intent' or 'willfulness' test would clearly coincide with the intent of the Kansas legislature at the time it enacted into statutory law what had previously been the common-law rule."\textsuperscript{120} Thus, since the legislative intent in enacting such a statute must have been to effect the common-law rule, it is necessary to interpret "feloniously killing" as including only those convicted of intentional killing.\textsuperscript{121} To construe the statute strictly would mean that one convicted of only negligent homicide would also be barred, as it is a felony.\textsuperscript{122} The slayer rule instead should only apply to those wrongdoers who intentionally cause the wrong.\textsuperscript{123}

The Kansas court, like North Carolina, believed the slayer statute could not be interpreted too strictly. To interpret it strictly in Kansas would, according to the \textit{Rosenberger} court, create a situation not intended, thus barring negligent killers from inheriting. To interpret North Carolina's statute strictly would bring about the just result the Kansas court found. However, North Carolina has construed the slayer statute broadly to prevent inheritance. In doing so, it has

\textsuperscript{117} \textit{Rosenberger}, 176 F. Supp. at 382-83 (quoting Metropolitan Life Ins. Co. v. McDavid, 39 F. Supp. 228, 231 (E.D. Mich. 1941)).

\textsuperscript{118} \textit{Id.} at 383.

\textsuperscript{119} \textit{Id.}

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} \textit{Id.}

\textsuperscript{123} \textit{Id.}
reached the opposite result of the Kansas court and bars negligent killers from inheriting.124

The third edition of Couch on Insurance125 provides the rule that an insurance beneficiary is not barred from receiving the proceeds of insurance when he or she did not intend to kill the insured.126 This situation could take place, for example, in an accident,127 or when the beneficiary fought with the insured and caused his death but not with the intent to kill,128 or when the beneficiary killed the insured in the commission of an unlawful act, but without having the intent of killing him or her.129 "The common law rule is frequently redeclared or qualified by statute, by providing that the beneficiary is barred when he or she 'willfully' or 'intentionally' brings about the death of the insured."130

South Dakota adopted Professor Wade's model in 1937131 as a codification of the common law that already provided for the disqualification of willful slayers.132 The common law as codified is best explained in DeZotell v. Mutual Life Ins. Co of New York,133 which stated that the principle of sound public policy demands that a sane,

125. LEE R. RUSs, COUCH ON INSURANCE § 62:10 (3d ed. 1996).
126. Id. (citing Diep v. Rivas, 727 A.2d 448 (Md. 1999)). This states that where the killing is unintentional, such as accidental, or grossly negligent amounting to involuntary manslaughter, the beneficiary's rights under the insurance policy are not barred by the slayer's rule. See Calaway v. Southern Farm Bureau Life Ins. Co., 619 S.W.2d 301 (Ark. Ct. App. 1981); Beene v. Gibraltar Indus. Life Ins. Co., 63 N.E.2d 299 (Ind. Ct. App. 1945); Gorley v. Parizek, 475 N.W.2d 558 (N.D. 1991).
127. Id. (citing Mutual Ben. Health & Acc. Ass'n. v. Tilley, 3 S.W.2d 320 (Ark. 1928), Ford v. Ford, 512 A.2d 389 (Md. 1986)).
128. Id. (citing Dowdell v. Bell, 477 P.2d 170 (Wyo. 1970); Tippens v. Metropolitan Life Ins. Co., 99 F.2d 671 (5th Cir. 1938)).
129. Id. (citing Throop v. Western Indem. Co., 193 P. 263 (Cal. Ct. App. 1920)).
132. Gibbs, 490 N.W.2d at 510.
133. Id. at 510 (citing DeZotell v. Mutual Life Ins. Co. of New York, 245 N.W. 58 (S.D.1932)).
A NEw SLAYER STATUTE IN NORTH CAROLINA

felonious killer should not profit by his crime.134 The statutes of descent should not operate in favor of such a killer.135 Implicit in that court's interpretation of the common law and the statute is the reasoning that a killing as a result of insanity or unintentional killing should not bar the killer from inheriting.

IV. INTERPRETATION OF SIMILAR SLAYER STATUTES BY OTHER STATES

Pennsylvania's slayer statute was based on Professor Wade's article and thus reads just like N.C. Gen. Stat. § 31A.136 Idaho also has a similar statute.137 However, the interpretations of these states' statutes in cases of involuntary manslaughter do not parallel the interpretations of North Carolina courts.

Pennsylvania offers the most convincing evidence since its statute was adopted around the same time as the North Carolina statute. In defining how involuntary manslaughter fits in the slayer statute, Pennsylvania has, like North Carolina, agreed that one guilty of involuntary manslaughter is not a willful and unlawful killer.138 In Prudential Insurance Company of America v. Doane, a conviction for involuntary manslaughter did not bar Mrs. Doane from collecting insurance proceeds.139 However, the court would not allow her to recover until the plaintiffs brought their civil action to determine whether she was a slayer under the statute.140 The Doane court found this necessary because of the varying burdens of proof for civil and criminal trials.141 Because the burden of proof is a preponderance of the evidence, it would be entirely possible for the killer to be adjudicated a slayer in a civil trial and yet not be convicted as a criminal under the reasonable doubt standard. There was no discussion within Doane as to the common law or actions brought outside the slayer statute.

In 1977, the Supreme Court of Pennsylvania again considered whether one convicted of involuntary manslaughter should be able to inherit from a decedent.142 In determining the meaning of words such

134. Id. at 510 (citing DeZotell v. Mutual Life Ins. Co. of New York, 245 N.W. 58 (S.D. 1932)).
135. Id. at 510.
136. Quick, 287 N.C. at 51, 213 S.E.2d at 566.
140. Id. at 1242.
141. Id.
as "willful" as used in the Slayer's Act, the court discussed various meanings such as "intentional," "deliberate and intentional," and "to suggest 'the presence of intention and at least some power of choice.'" The supreme court concluded that "in employing 'willful' killing in the Slayer's Act, the Legislature intended to designate a higher degree of culpability than that required for involuntary manslaughter." A different conclusion "would render the word 'willful' surplusage as all unlawful killings would then be covered by the Slayer's Act."

The Supreme Court of Pennsylvania relied on Professor Wade's commentary to the proposed statute. "Should a statute of this sort include manslaughter? . . . It is believed it should not if the killing is involuntary. If the wrong was not intentional, it is difficult to say as a matter of policy that the perpetrator should be prohibited from acquiring property." Again, the court did not ponder any common law theories when holding involuntary manslaughter outside the scope of the statute.

Idaho also has a statute very similar to that of North Carolina. Its definition for "slayer" is the same, and it also provides a section allowing for a broad construction of the statute. However, it does not specifically permit outside sources where the statute does not fit. Idaho, by statute, cleared up the difficulty of negligent homicide by providing specifically in its commentary to the statute: "This section is confined to intentional and felonious homicide and excludes the accidental manslaughter killing."

V. THE SOLUTION: NORTH CAROLINA SHOULD ADOPT THE UNIFORM PROBATE CODE

It is clear from a comparison of the common law and North Carolina court decisions that North Carolina's interpretation of the common law maxim is incorrect. North Carolina's reasoning that the wrong contemplated by the common law maxim is the equivalent of involuntary manslaughter is egregious. Clearly, the common law did

144. Id. at 1185.
145. Id.
146. Klein, 378 A.2d at 1186 (quoting Wade, Acquisition of Property by Wilfully Killing Another- A Statutory Solution, 49 Harv. L. Rev. 715, 722 (1936)).
148. § 15-2-803.
not intend such inequitable consequences as those flowing from the Quick case.

North Carolina has several options to correct the mistake. A court decision overruling the holding in Quick would solve the problem. However, that would not be a permanent fix, because such holdings can be overruled. Later cases relying on Quick would also be affected but not overruled, creating some confusion in the law. This option would force the courts to await the outcome of a particular case before changing the law, and would provide no notice to individuals of the upcoming change.

Upon considering the inherent problems of waiting for a judicial decision, a statutory solution is preferable and needed. It is particularly necessary to clarify the issue of the effect of involuntary manslaughter. A statutory change is also required in order to correct the wording of the statute in § 31A-3(d), which allows for a civil action or proceeding brought within one year of the death of the decedent to determine whether the killing or the procurement thereof, was willful and unlawful.\(^{149}\) To be declared a slayer in a civil action, one must have died or committed suicide before being tried for the offense or settlement of the estate.\(^ {150}\) Thus, a literal reading of the statute would not allow for a slayer determination by a civil action unless it was accompanied by the death of the killer. Clearly the "and" in the statute should have been an "or," or some similar conjunction. In any case, it should not read as adopted. The Jones case reflected recognition of this mistake and attempted to fix the statute to allow for the civil action.\(^ {151}\) By changing the interpretation of the statute, the court circumvented the rule that statutes are to be authoritative over case law.

The legislature has several options in solving the dilemma. It could amend the wording of § 31A-3(d) and then add commentary like Idaho stating the intention that there should be no forfeiture in the cases of unintentional killings such as involuntary manslaughter. This would be an quick and easy solution. The legislature could keep the slayer statute in its same form and make the necessary modifications to the provisions including a narrower wording for § 31A-15, which allows for broad construction of the chapter. Any change here should clearly indicate that the policy is not to prevent a person from profiting

---


by his own wrong, but rather that no slayer shall profit from his own wrong.\(^{152}\)

The best option is for North Carolina to adopt the Uniform Probate Code's Slayer Statute. Colorado and New Mexico have already adopted this provision.\(^{153}\) Although organized differently than North Carolina's current statute, the uniform statute covers potential pitfalls. First, a particularly great strength is the language of the statute defining a slayer as one that "feloniously and intentionally kills."\(^{154}\) This takes away any doubt as to the meaning of the word "willful." This provision of the statute also explains all benefits forfeited, including the different statutory shares, and provides that the decedent's estate should be distributed as if the killer disclaimed his or her share.\(^{155}\)

The Uniform Probate Code provides that a felonious and intentional killing of the decedent will revoke any revocable disposition of property made by the decedent to the killer. Furthermore, it contains a provision denying a power of appointment to the killer, and nomination of the killer to serve in a fiduciary or representative capacity.\(^{156}\) The killing also severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with survivorship rights, thus changing the interests into tenancies in common.\(^{157}\) However, such severance will not affect the rights of third parties who relied on apparent title, unless the appropriate record showed such evidence to the contrary.\(^{158}\) Furthermore, any provisions in favor of the killer not revoked by this section are given effect as if the killer disclaimed all of them.\(^{159}\)

The Uniform Probate Code provision sets forth procedure for determining whether the killing was felonious and intentional. This can be done by a conclusive criminal conviction.\(^{160}\) In the absence of a conviction and by a petition from an interested person, the court must determine whether the individual would be found criminally

\(^{152}\) Wade, supra note 36, at 751.


\(^{155}\) UNIF. PROBATE CODE § 2-803(b) (amended 1990), 8 U.L.A. 211 (Supp. 2000). This results in the same distribution scheme already in place in North Carolina where the slayer's intestate share would pass to his or her living issue per stirpes. N.C. Gen. Stat. § 31A-4(2) (1999).


A NEW SLAYER STATUTE IN NORTH CAROLINA

accountable of such felonious and intentional killing under a preponderance of the evidence standard.\textsuperscript{161}

The Uniform Probate Code provides a very detailed section for protection of payors and third parties,\textsuperscript{162} as well as bona fide purchasers.\textsuperscript{163} Perhaps the biggest attraction of the statute is the fact that it does not open the door to the common law where one has not been already deemed a "killer." In § 2-803(f), "a wrongful acquisition of property or interest by a killer not covered in the statute must be treated in accordance with the principle that a killer cannot profit from his [or her] wrong." Since the statute is very thorough, this provision affords courts appropriate flexibility in interpretation, should an unimaginable situation arise. The word choice used is quite significant, for, unlike North Carolina or Idaho, the section provides that a "killer"\textsuperscript{164} instead of a "person"\textsuperscript{165} should not profit from his own wrong. This indicates that there has already been a felonious and intentional killing. Furthermore, the comment to the provision specifically states that the act will not preclude inheritance in an accidental manslaughter but instead applies only to felonious and intentional killings.\textsuperscript{166}

Lastly, the Uniform Probate Code provision is more modern in that it encompasses all scenarios from the inception, rather than carving out detailed inclusions and exclusions along the way. The very title of the statute evidences this: "Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations."\textsuperscript{167} North Carolina, in adopting such a statute, will save itself the many minor revisions that need to be made to its present statute. Doing so will relieve the pressure on the courts and move the state towards uniform law on what acts will bar inheritance rights. Uniformity is clearly desirable in such instances so as to give notice to citizens, insurance companies, and judges of a standard rule.

\textit{Julie Waller Hampton}

\textsuperscript{161. Id.}