

CHAPTER 877

ACTIONS BY AND AGAINST PERSONAL REPRESENTATIVES, HEIRS, AND LEGATEES

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877.01 Tort actions on surviving causes. If a cause of action survives under ch. 895, a personal representative may maintain an action on the cause of action against the wrongdoer in every case in which the decedent could, if living, maintain the action and, after the wrongdoer's death, against the wrongdoer's personal representative, except that this section shall not extend to actions for slander or libel.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.01; 2001 a. 102 s. 100; Stats. 2001 s. 877.01.

877.03 Multiple personal representatives to be considered one. In an action or proceeding against more than one personal representative of an estate, all of the personal representatives shall all be considered to be representing the decedent. Service of the summons on one personal representative shall constitute service on all, although the plaintiff may serve each of them. Judgment shall be rendered as if all had been served and execution may be issued against the property of the decedent as if all had appeared.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.03; 2001 a. 102 s. 101; Stats. 2001 s. 877.03.

877.05 Judgment not to bind realty. A decedent's real estate shall not be bound or in any way affected by, or liable to be sold by virtue of any execution issued upon, any judgment against the decedent's personal representative except as provided in s. 811.25.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 s. 55; Stats. 1979 s. 777.05; 2001 a. 102 s. 102; Stats. 2001 s. 877.05.

877.06 Prosecution and defense of actions by personal representatives; setoff of claims against decedent; judgments, how appealed and paid. (1) A personal representative may commence and prosecute an action and may prosecute any action commenced by his or her predecessor or decedent for the recovery of any claim or cause of action that survived and may have execution on any judgment. In the action the defendant may set off any claim pleadable as a counterclaim that he or she may have against the decedent, instead of presenting it to the court. If judgment is rendered in favor of the defendant the claim shall be certified to the circuit court and paid as other claims allowed against the estate.

(2) A successor personal representative may bring a writ of error or appeal upon any judgment against his or her predecessor or the decedent and shall defend any writ of error or appeal brought upon any judgment against his or her predecessor or the decedent. The successor personal representative shall have the same remedies in the prosecution or defense of any action by or against his or her predecessor or the decedent and in the collection

and enforcement of any judgment as his or her predecessor or the decedent had.

History: 1977 c. 449; 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.06; 2001 a. 102 s. 103; Stats. 2001 s. 877.06.

877.07 Authority of deceased personal representative's personal representative. The personal representative of a deceased personal representative shall not meddle with the estate that the deceased personal representative was entrusted with or take any charge or control of the estate.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.07; 2001 a. 102 s. 104; Stats. s. 877.07.

877.08 Liability as executor of his or her own wrong. No person shall be liable to an action as executor of his or her own wrong, but the wrongdoer shall be responsible to the personal representative for the value of any property or effects wrongfully received or taken and for all damages caused by his or her acts to the estate of the decedent.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.08; 2001 a. 102 s. 105; Stats. 2001 s. 877.08.

877.14 Rebuttal of inventory. (1) In any action or proceeding against a personal representative, the inventory of the decedent's property filed by the personal representative shall be prima facie evidence of the property that has come to the personal representative's possession or knowledge and of the value of the property.

(2) In an action or proceeding against a personal representative, the defendant shall not be charged with choses in action specified in the defendant's inventory unless it appears that the choses in action have been collected or might have been collected with due diligence.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.14; 2001 a. 102 s. 106; Stats. 2001 s. 877.14.

877.16 Foreign personal representatives empowered to act. When no personal representative has been appointed in this state for the estate of any decedent who was not a resident of this state at the time of his or her death, a foreign personal representative of the decedent, upon filing the original, or a certified copy of the original, appointment in any circuit court in this state, may exercise any power over the estate, including sales and assignments, and may prosecute and defend any action and proceeding relating to the estate and shall have all the remedies and defenses in regard to the property and the collection of any demands of the estate that a personal representative appointed in this state has.

History: 1977 c. 449; 1979 c. 32 s. 55; Stats. 1979 s. 777.16; 2001 a. 102 s. 107; Stats. 2001 s. 877.16.

877.17 Actions against personal representatives; when allowed; when not. No attachment or execution may be issued against the estate of the decedent or the personal representative until the expiration of the time limited for the payment of debts, except as provided in ss. 811.25 and 815.14.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 449; 1979 c. 32 s. 55; Stats. 1979 s. 777.17; 2001 a. 102 s. 108; Stats. 2001 s. 877.17.

The personal representative's failure to inform the trial court that the high bidders in a sale of the testator's property had been occasional clients did not constitute a breach of fiduciary duty when the sale was publicly advertised, conducted under sealed bid, attracted 20 to 30 interested viewers of the house, and was authorized as to procedure by both the court and estate beneficiaries. Estate of Philbrick, 68 Wis. 2d 776, 229 N.W.2d 573 (1975).

877.18 Action to recover from heirs, legatees; parties defendant. Actions against the heirs or legatees and devisees of any decedent to recover the value of any assets that may have been paid or delivered to them by a personal representative may be brought against all of the heirs or all of the legatees and devisees jointly or against one or more of them. If the action is not against all who are liable, the rest shall be made parties on request of the defendant.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.18; 2001 a. 102 s. 109; Stats. 2001 s. 877.18.

877.19 Action against heirs and legatees; what may be recovered; costs. If an action described in s. 877.18 is brought, the plaintiff must show that he or she has been or will be unable, with due diligence, to collect all or part of his or her debt by proceedings in the circuit court or from the personal representative of the decedent. In that event, except as limited by s. 859.23, the plaintiff may recover the value of all the assets received by all the defendants if necessary to satisfy his or her demand, and the amount of the recovery shall be apportioned among the defendants in proportion to the value of the property received by each of them. Costs of the action shall be apportioned in like manner. No allowance or deduction may be made from the amount on account of other heirs or legatees or devisees to whom assets have also been delivered or paid. The judgment shall express the amount recovered against each defendant for damages and costs.

History: 1977 c. 449; 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.19; 2001 a. 102 s. 110; Stats. 2001 s. 877.19.

877.20 Contribution among heirs. Any heir against whom recovery is made under ss. 877.18 and 877.19 may maintain an action against the other heirs to whom any assets may have been paid or delivered by the personal representative, jointly or against any of them separately, for a just and equal contribution, and shall be entitled to recover from each defendant an amount that is in the same proportion to the sum collected from the plaintiff as the value of the assets delivered to that defendant bore to the value of all the assets delivered to all the heirs.

History: 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.20; 2001 a. 102 s. 111; Stats. 2001 s. 877.20.

877.21 Recovery against legatee; contribution. (1) If an action is brought against all the legatees and devisees, the plaintiff shall not recover unless the plaintiff shows, in addition to the facts required to be shown in an action against the heirs, any of the following:

- (a) That no assets were delivered by the personal representative to the heirs.
- (b) That the value of the assets delivered to the heirs has been recovered by some other creditor.
- (c) That the assets delivered by the personal representative to the heirs are not sufficient to satisfy the demands of the plaintiff and that the plaintiff is entitled to recover the deficiency.

(2) If an action is brought against a preferred legatee or devisee or a preferred class, the plaintiff must also show the same matters as to the legatee or devisee or class to whom the defendants are preferred as is required to be shown under sub. (1) as to the heirs.

(2m) Any legatee or devisee against whom recovery is made may maintain an action for contribution against others of the same class as heirs may among themselves.

(3) Specific legacies and devisees are preferred to residuary legacies and devisees.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.21; 2001 a. 102 s. 112 to 115; Stats. 2001 s. 877.21.

877.22 Payment a discharge. In case of any judgment against several heirs, legatees, or devisees, the payment or satisfaction of the amount recovered against any one of the defendants shall discharge that defendant from the judgment and from execution on the judgment.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.22; 2001 a. 102 s. 116; Stats. 2001 s. 877.22.

877.26 Accounts as evidence. The account of the personal representative, settled by the proper circuit court, may be used in any action brought under the provisions of this chapter as presumptive evidence of any matter of fact stated in the account.

History: 1977 c. 449 s. 497; 1979 c. 32 s. 55; Stats. 1979 s. 777.26; 2001 a. 102 s. 117; Stats. 2001 s. 877.26.

877.28 Limit of liability. When part of the plaintiff's debt has been collected, the plaintiff may recover only the residue remaining unpaid. When the action is against the devisees and legatees, the plaintiff may recover only that part of the debt that is not recoverable from the heirs.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.28; 2001 a. 102 s. 118; Stats. 2001 s. 877.28.

877.29 Debts charged upon realty not affected. Nothing in this chapter shall affect the liability of heirs or beneficiaries for any debt of their decedent that was by the decedent's will expressly charged upon property or made payable exclusively out of particular property or of any beneficiary made exclusively liable for the debt.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.29; 2001 a. 102 s. 119; Stats. 2001 s. 877.29.

877.32 Judgment, how collected. If any real estate that descended or was devised to any defendant is not aliened by the defendant before the filing of a notice of the pendency of an action, the court shall adjudge that the debt owing to the plaintiff, or the portion of the debt that the plaintiff is entitled to recover against the defendant, shall be levied only out of the real estate so descended or devised.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 877.32; 2001 a. 102 s. 120; Stats. 2001 s. 877.32.

877.36 Debts, order of payment. The next of kin, legatees, heirs, or devisees who are liable for demands against the decedent under this chapter shall be given preference in the payment of and shall be liable for demands against the estate in the following order:

- (1)** Debts entitled to preference under the laws of the United States.
- (2)** Judgments entered in the judgment and lien docket against the decedent, according to the respective priority of the judgments.
- (3)** All other debts arising or growing out of any contract.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.36; 1995 a. 224; 2001 a. 102 s. 121; Stats. 2001 s. 877.36.

877.38 Defenses. If the decedent's next of kin, legatees, heirs, and devisees show that there are unsatisfied debts of the decedent that are of a class prior to or the same as the class of the debt on which the action is brought and that the value of the personal property delivered to them or of the real estate descended or devised to them does not exceed the debts of a class prior to that

of the debt on which the action is brought, judgment shall be rendered in their favor.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.38; 2001 a. 102 s. 122; Stats. 2001 s. 877.38.

877.39 Extent of liability. If the personal property delivered to the decedent's next of kin or legatees or the real estate descended or devised to the decedent's heirs or devisees exceeds the amount of debts that are entitled to a preference over the debt for which an action is brought, judgment shall be rendered against the next of kin, legatees, heirs, or devisees only for a sum that is a just proportion to the other debts of the same class with that on which the action is brought.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.39; 2001 a. 102 s. 123; Stats. 2001 s. 877.39.

877.40 Preferred debts deducted. If any debt of the decedent that is of the same or a prior class to that on which an action is brought has been paid by any next of kin, legatee, heir, or devisee, that person may give evidence of the payment, and the amount of debts so paid shall be estimated in ascertaining the amount to be recovered in the same manner as if those paid debts were outstanding and unpaid as prescribed in ss. 877.38 and 877.39.

History: 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.40; 2001 a. 102 s. 124; Stats. 2001 s. 877.40.

877.41 Rights and liabilities of posthumous child and witness to will. A child born after the making of a will who is entitled to succeed to a portion of any of the testator's property, or a witness to a will who is entitled to recover any portion of the testator's property from the legatees or devisees, shall:

(1) Have the same rights and remedies to compel a distribution of the personal property and partition of the real estate or to recover from the legatees or devisees the portion of the property that belongs to him or her as any other person entitled to any part of the estate;

(2) Have the same rights and remedies to compel a contribution from other persons interested in the estate, or to gain possession of the property, as any other person entitled to any part of the estate; and

(3) Be equally liable to the creditors of the decedent under this chapter as any other person entitled to any part of the estate.

History: 1979 c. 32 s. 55; Stats. 1979 s. 777.41; 1993 a. 486; 2001 a. 102 s. 125; Stats. 2001 s. 877.41.

877.42 Estate of deceased heir liable. The estate of any heir, devisee, legatee, or next of kin of a decedent who dies before paying his or her just share of the decedent's debts is liable for his or her share of the decedent's debts, as a personal debt, to the same extent that he or she would have been liable if living.

History: 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.42; 2001 a. 102 s. 126; Stats. 2001 s. 877.42.