

In principle no right to restitution of a legacy gifted during lifetime - Law of succession

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: In its judgment dated January 9, 2014 (Az.: 10 U 10/13), the Higher Regional Court of Hamm (HRC) had to address the question of whether a person considered in a will can demand restitution of an asset gifted to a third party by the testator during the latter's lifetime. In the instant case, a married couple had determined in a joint will that one of their two daughters should be due a semi-detached house after the death of the last surviving spouse. Following the death of the husband, the wife became the sole heiress. However, she thereafter conferred the semi-detached house upon her grandchild after a conflict arose between her and her daughter.

The daughter subsequently lodged a claim after the death of the testatrix and demanded transfer and restitution of the house from the grandchild of the deceased. As justification, the plaintiff cited that the testatrix made the gift in order to interfere with the plaintiff's rights with respect to the semi-detached house. However, the HRC Hamm did not consider a corresponding claim to exist. While there are certainly provisions which direct the restitution of a gift from the donee to the future legatee, these require that the testator intends the impairment of the future legatee in making the gift. The Court, however, was not able to establish this intention in the present case.

Moreover, the interpretation of the will resulted in the plaintiff becoming legatee and not heiress. As such she was not entitled to any claim for restitution vis-à-vis the donee grandchild, since for this she would have to have initially approached the heirs of the deceased mother and brought a claim against them for compensation. However, she did not do this.

When composing a will, it is important to pay attention to legal details. The consequences of an ineffective or incomplete will can be far-reaching and occasionally elicit a legal dispute between the heirs. With the help of a lawyer versed in the law of succession, those affected can achieve a secure settlement of their estate. By drawing up an irreproachable will, testators can assure themselves that their last will shall be adhered to. Additionally, a lawyer can also support the heirs in enforcing claims in the event of legal problems.

<http://www.grprainer.com/en/Last-Will-and-Testament.html>

Pressekontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

Firmenkontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

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Anlage: Bild

