

IN RE: CAMPION ESTATE, C.P. Franklin County Branch,
O.C.D. 1978-138

Orphan's Court - testator's direction of tax allocation - Conflict of Laws.

1. Testator may direct, either expressly or by necessary implication, that specific testamentary gifts shall be awarded to the beneficiaries without deduction for federal estate and state inheritance taxes.

2. Testator's direction to distribute the residue of his estate "after the bequests above provided for and the payment of all costs and expenses incident to the execution of the powers herein contained and the settlement of my estate" imposes the burden of payment of Federal Estate Tax and Pennsylvania Inheritance Tax on the residue of the estate.

3. Where the law of the state of testator's residence and domicile at the time of death does not apportion estate taxes, the law of the forum may be considered in order to determine the tax burden on a specific bequest of real property located within the forum state.

Roy S. F. Angle, Esq., Counsel for the Estate of Mary L. S. Osborne Campion

Robert W. Costigan, Esq., Counsel for Margaret Barrie Gallagher and Charles Gallagher, her husband

ADJUDICATION AND DECREE

KELLER, J., April 14, 1977:

Mary L. S. Osborne Campion had her Will and First Codicil dated January 1971, and the Second Codicil dated January 31, 1972, prepared by her Hagerstown, Washington County, Maryland attorney. She died on April 13, 1972, and letters testamentary on her estate were granted to Oscar E. Lohman and Harvey M. Miller by the Register of Wills for Washington County, Maryland on May 8, 1972. The Register of Wills of Franklin County, Penna. granted ancillary letters testamentary on the decedent's estate to Oscar E. Lohman and Harvey M. Miller on September 29, 1972. The decedent was a resident and domiciliary of the State of Maryland. She owned assets in a number of states, including Maryland and Pennsylvania, and real estate in Maryland and Pennsylvania and several other jurisdictions.

The Will provides inter alia:

"Item 8: I give and bequeath to my good friend, Margaret Barrie Gallagher, the home in which she and her husband now reside being the half of a double two story house of brick and

stone construction, containing six rooms and bath, and being now designated as No. 3017 Cottman Street, Philadelphia, Pennsylvania, if she be living at the time of my death and at the time of the first distribution of my estate. If she shall have predeceased me, or shall have died prior to the first distribution of my estate, said property shall become a part of the residue of my estate and be disposed of therewith as hereinafter provided.

"Item 9: If the said Margaret Barrie Gallagher shall have predeceased me, or shall have died prior to the first distribution of my estate, and her husband, Charles Gallagher, be living at the time of my death and at the time of the first distribution of my estate, I give and bequeath the sum of Three Thousand (\$3,000.00) Dollars to her said husband. If he shall have predeceased me, or shall have died prior to the first distribution of my estate, said sum shall become part of the residue of my estate and be disposed of therewith as hereinafter provided."

Item 14 of the Will provides inter alia:

"And I give and bequeath all the rest and residue of the proceeds of my estate and property, *after the bequests above provided for and the payment of all costs and expenses incident to the execution of the powers herein contained and the settlement of my estate* in equal shares as follows: (Italics ours)

After the appointment of her executors and alternate executor, the testator specifically provided:

"... and I direct that they be allowed as compensation for their services as Executors net commissions of four (4%) per centum (each two per centum) of the gross value of the part of the assets of my estate administered upon by them, over and above the tax on Executors commissions as provided by law in the State where said assets are situate."

In the testator's Second Codicil, she revoked Items 8 and 9, supra, and in lieu thereof substituted a paragraph designated as Item 8-9:

"Item 8-9: I give and bequeath to my good friends, Margaret Barrie Gallagher and Charles Gallagher, her husband, the home in which they now reside, being the one-half of a double two story house of brick and stone construction containing six rooms and bath, and being now designated as No. 3017 Cottman Street, Philadelphia, Pennsylvania, to have and to hold as tenants by the entirety, or to the survivor of them that

may be living at the time of my death and at the time for the conveyance of said home to them, or to the survivor of them, by the Executors of my Estate. If both of them shall have predeceased me, or died prior to conveyance of said home to them, or the survivor of them, (or prior to the time that title to said property shall pass to them or the survivor of them under the Laws of the State of Pennsylvania), then said home shall revert to and become a part of the residue of my estate and shall be disposed of with said residue as hereinafter provided for."

Counsel for the estate of the decedent have taken the position that the Federal Estate Tax should be apportioned among the legatees, and Mr. and Mrs. Gallagher should be responsible for their apportioned share of the Federal Estate Tax and the Pennsylvania Inheritance Tax payable on the real estate devised to them by the decedent. To the contrary, Mr. and Mrs. Gallagher and their counsel contend that the Federal Estate Tax and Pennsylvania Inheritance Tax are payable out of the residue of the decedent's estate. The matter was presented to the Court as a case stated and is now ripe for disposition.

Counsel for the Gallaghers contends that the Federal Estate Tax and Pennsylvania Inheritance Tax should be paid from the residue of the estate on the alternative theories that (1) the Will directed that the residue pay all such taxes; (2) Pennsylvania law should be applied to determine the allocation of the burden of death taxes and would require the payment by the residue; or (3) Maryland law does not impose liability by Pennsylvania Inheritance Tax on the devisees. Counsel for the estate declined to consider the first contention asserted by the devisees, and not surprisingly took the contrary position on the other two issues.

Preliminarily, we note that in Items 4 through 12 of the decedent's Will, she made bequests of cash or real estate in the case of Mrs. Gallagher (Item 8, supra), to various friends and relatives. After the distributive provision in each item, the testatrix provided that if the legatee predeceased her or died prior to first distribution of her estate, the sum or object bequeathed would "become a part of the residue of my estate and be disposed of therewith as hereinafter provided".

Since the testatrix died a resident and domiciliary of the State of Maryland, we conclude the law of the State of Maryland would govern the interpretation of her Will. We have been advised by counsel for the devisees that he has been unable to locate any case under the Maryland Apportionment Acts establishing, "what constitutes a direction by the testator to

apportion taxes in a manner different from the act". Counsel for the estate have not disagreed with this assertion or cited any cases to the contrary. We, therefore, accept the statement as a correct one concerning the law of the State of Maryland. We further conclude under that circumstance that it would be appropriate to consider the law of the forum to determine whether the language adopted by the testatrix in her Will imposed the burden of the payment of Federal Estate Tax and Pennsylvania Inheritance Tax upon the residue of the estate.

In *Browns Estate*, 208 Pa. 161 (1904), the testator left the residue of his estate in trust and provided, "and after taking any and all necessary expenses, to divide the said net income in equal shares among" certain persons named. An appeal was taken from the determination of the auditing judge that collateral inheritance tax, New York State Transfer Tax and United States War Tax would be payable out of the gross income of the estate, rather than from the principal of the estate. The Supreme Court of Pennsylvania affirmed the trial court and concluded inter alia: "It is properly conceded by the learned counsel for the appellant that the authorities sustain the proposition that the direction in the testator's will to deduct 'any and all necessary expenses' is sufficient to include the payment of the taxes charged upon the legacies."

In *Jeffery's Estate*, 333 Pa. 15 (1939), the Supreme Court construed the language appearing in an inter vivos trustee, "to pay out of said trust fund all costs, charges and expenses of said trust estate and of the management thereof, including court costs and attorneys' fees, and reasonable compensation . . ." to be sufficient to authorize the payment from the corpus of the trust of that portion of Federal Estate Tax properly attributed to it on the death of the settlor.

In *Ramsey Estate*, 13 D&C 2d 305 (1957), the Orphan's Court of Montgomery County, Pennsylvania was called upon to determine whether certain cash legacies were payable free of Pennsylvania Transfer Tax and Federal Estate Tax, where the will provided:

"After expenses are paid I leave to my cousins Elizabeth G. Mckee and Emily C. McKee, and to my sister Emily Hamilton each \$3,000.00."

Our sister court concluded in the light of *Brown's Estate*, supra, and in *Jeffery's Estate*, supra, that the word "expenses" was sufficient to include the payment of taxes charged upon the legacies and was intended to free the legacies of the Inheritance Tax and apportionment of the Federal Estate Tax.

LEGAL NOTICES, cont.

HAHN — First and final account, statement of proposed distribution and notice to the creditors of Mildred E. Hahn and Alta Lee Sollenberger, executrices of the estate of Mabel E. Hahn, late of Waynesboro, Franklin County, Pennsylvania, deceased.

JONES — First and final account, statement of proposed distribution and notice to the creditors of The Chambersburg Trust Company, executor of the estate of Alice May Jones, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

JONES — First and final account, statement of proposed distribution and notice to the creditors of The Farmers and Merchants Trust Company, executor of the estate of Hazel F. Jones, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

KESSINGER — First and final account, statement of proposed distribution and notice to the creditors of Ernest Kessinger, executor of the estate of Harold Kessinger, late of Hamilton Township, Franklin County, Pennsylvania, deceased.

MARTIN — First and final account, statement of proposed distribution and notice to the creditors of The Valley Bank and Trust Company and Marion E. Martin, co-executors under the will of James A. Martin, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

McLAIN — First and final account, statement of proposed distribution and notice to the creditors of The Union National Bank of Pittsburgh, executor of the estate of Jean M. McLain, a/k/a Jeanne M. McLain, late of The Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

McLAUGHLIN, SR. — First and final account, statement of proposed distribution and notice to the creditors of Charles H. McLaughlin, Jr. and Bonita M. Grove, Administrators of the estate of Charles H. McLaughlin, Sr., late of Greene Township, Franklin County, Pennsylvania, deceased.

SHATZER — First and final account, statement of proposed distribution and notice to the creditors of Wilma S. Mickey, executrix of the estate of Martha E. Shatzer, late of Hamilton Township, Franklin County, Pennsylvania, deceased.

SHINDLEDECKER — First and final account, statement of proposed distribution and notice to the creditors of The Peoples National Bank of Shippensburg, Pa., executor of the estate of Helen E. Shindledecker, late of Southampton Township, Franklin County, Pennsylvania, deceased.

SPRENKLE — First and final account, statement of proposed distribution and notice to the creditors of Mildred S. Darr, executrix of the estate of Fred S. Sprenkle, late of Quincy Township, Franklin County, Pennsylvania, deceased.

WARD — First and final account, statement of proposed distribution and notice to the creditors of Thomas N. Ward, administrator of the estate of Lula B. Ward, late of the Borough of Chambers-

LEGAL NOTICES, cont.

burg, Franklin County, Pennsylvania, deceased.

WEBER — First and final account, statement of proposed distribution and notice to the creditors of The Chambersburg Trust Company, executor of the estate of Emma Weber, late of the Borough of Chambersburg, Franklin County, Pa., deceased.

YAUKEY — First and final account, statement of proposed distribution and notice to the creditors of Samuel R. Gehr and Millard A. Ullman, executors of the estate of Helen M. Yaukey, late of The Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of the Orphans' Court
Franklin County, Pennsylvania
(6-9, 6-16, 6-23, 6-30)

While we recognize the will in the case at bar is not a holographic will as in *Ramsey's Estate*, supra, we nevertheless find the authorities above cited persuasive and controlling in the interpretation of the testamentary language, "the payment of all costs and expenses incident to the execution and powers herein contained in the settlement of my estate". We find this particularly true in the light of the dispositive scheme of:

(a) Relatively modes specific devises and pecuniary legacies to good friends, a sister and a niece.

(b) A specific provision for the reverter to the residue of each such devise or bequest in the event the devisees or legatees predeceased the testatrix or died prior to distribution of the property.

(c) The provision incorporated in the residuary clause (Item 14), "...after the bequests above provided for *and* the payment of all costs and expenses. . ." (Italics ours)

(d) The distribution of the residue among eight nieces and nephews.

We deem it unlikely that the testatrix intended to diminish those specific bequests and legacies by inheritance or estate taxes, or in the case of the Gallaghers require the possible sale of the very gift made.

"... , it is well established that a testator may direct, either expressly or by necessary implication, that his testamentary gifts shall be awarded to his beneficiaries without deduction for the state inheritance tax. . . . Indeed, a decedent's relief of his beneficiary from any deduction on account of state inheritance tax on his legacy may rest solely upon testamentary implication. . . . The important inquiry in any instance is whether the language of the will involved implies an intent to such effect."

Wright Estate, 391 Pa. 405, 409-10 (1958).

We conclude the language of Mary L. S. Osborne Campion's will and the donative scheme revealed therein is inconsistent with the executors' contention that the devises and legacies to the pre-residuary legatees and devisees were to be subject to deduction or charge for any estate or Pennsylvania Inheritance Tax.

Having disposed of the issue on the basis of the intention of the testatrix, it is unnecessary for us to consider the other issues raised by counsel.

DECREE

NOW, this 14th day of April, 1977, pursuant to the case stated by counsel for the parties, judgment is entered for the reasons above set forth in favor of Margaret Barrie Gallagher and Charles Gallagher. Pennsylvania Inheritance Tax and Federal Estate Tax attributed to the devise to Margaret Barrie Gallagher and Charles Gallagher shall be paid by Harvey M. Miller and Oscar E. Lohman, Executors of the Estate of Mary L. S. Osborne Campion.

Costs to be paid by the Estate of Mary L. S. Osborne Campion.

Exceptions are granted the estate.

FRANKLIN COUNTY ASSOCIATION FOR RETARDED CITIZENS v. LINCOLN INTERMEDIATE UNIT No. 12, C.P. Franklin County Branch, E.D. Vol. 7, Page 60

Equity - public school intermediate unit - Commonwealth Court jurisdiction - Appellate Court Jurisdiction Act of 1970, P.L. 673, No. 223, 17 P.S. 211.101 et. seq.

1. An intermediate unit, which is created by State legislative mandate, regulated and primarily funded by the State Board of Education, and governed by a board comprised of certain members of constituent school boards, is an agency of the State Board of Education.

2. The Commonwealth Court, which has original jurisdiction of suits against agencies of the Commonwealth, has exclusive original jurisdiction of a suit against a public school intermediate unit.

Stephen E. Patterson, Esq., Counsel for Plaintiff

Thomas J. Finucane, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., February 19, 1976:

The plaintiff's complaint in equity filed June 30, 1975 alleges various expenditures made or incurred by defendants in connection with a series of hearings on the proposed demotion

of the Director of Special Education to School Psychologist; the transfer of funds from Special Education Fund accounts to the Special Education Fund legal service account; the expectation of additional account transfers and disbursements; and that the defendants have acted arbitrarily and capriciously in that (a) the payment of legal fees and expenses incurred by reason of the demotion hearings is an improper expenditure of Special Education Fund monies, and (b) it deprives exceptional children of the right to obtain an education. The plaintiff seeks an injunction restraining the defendants from: (a) making additional transfer to the Special Education legal fund to pay expenses incurred by the demotion hearings and (b) paying such expenses and requiring the defendants to reimburse the Special Education Fund for the illegal transfers and disbursements. True copies of the complaint were served upon the defendants between June 30, 1975 and July 15, 1975. Preliminary objections to the plaintiff's complaint were filed on July 30, 1975, and served by mail upon counsel for the plaintiff. On August 12, 1975 the plaintiff filed its amended complaint and a true and attested copy of the same was served upon the defendants by service upon their counsel of record.

On September 5, 1975 the defendants filed preliminary objections to the amended complaint in the nature of:

1. A motion to dismiss on the grounds that the plaintiff has failed to allege facts showing that it is a real party in interest in violation of Pa. R.C.P. 2002 (a).
2. A demurrer on the grounds that the plaintiff failed to set forth how it is damaged, affected or in any way interested in the matter set forth in the amended complaint.
3. A motion for a more specific complaint contending that the plaintiff has failed to allege how an education is denied exceptional children.

The defendants' preliminary objections came on for argument before the Court en banc on October 2, 1975. *Sua sponte* the Court inquired of counsel for plaintiff and defendants when the case was called whether the Commonwealth Court did not have original jurisdiction by reason of the defendant, Lincoln Intermediate Unit No. 12, being an agency of the Commonwealth. Not surprisingly, counsel for the plaintiff felt this Court had jurisdiction to hear the matter, and counsel for the defendants were certain that this court did not have jurisdiction of the defendants. The