no. 1185

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

MAY 14 1979

FILED

JOHN CHAPMAN GREELY, Petitioner	)	
v.	)	Docket No. 2351
DISTRICT OF COLUMBIA, Respondent	)	

MEMORANDUM ORDER

This is an appeal from an assessment of inheritance taxes assessed against the petitioner in the amount of $486.19. The case is now before the Court based upon a stipulated record and arguments of counsel.

The facts are fully set forth in the stipulation of counsel and need not be restated here.

The petitioner aruges that the instant case comes squarely within the rule of Mazza v. Mazza, 154 U.S. App. D.C. 274, 475 F.2d 385 (1973), and therefore Maryland apportionment law should be applied to the facts at hand.

The Court agrees that insofar as there is an issue of conflict of law and that the Mazza "interest analysis" test should be applied, the instant case resembles Mazza. Since state law determines how the burden of estate taxes will be apportioned, the problem initially presented is which state law will be applied. It is evident that the District of Columbia has not yet formally abandoned the common law approach where probate assets are concerned, and the resolution of the instant case does not require this Court to determine whether or not the District should follow the common law

with regard to probate or non-probate assets. At present, then, District of Columbia law differs from the apportionment law of Maryland with regard to probate assets, and both jurisdictions have significant contacts with the interests in question.

This case differs from Mazza because probate assets, not non-probate assets, are involved. Petitioner argues to the Court that the devised property is actually non-probate property because devised real estate is not subject to probate administration in the District of Columbia and does not constitute part of the probate estate controlled by the testatrix's executor unless sold for the payment of debts. The Court views this definition as overbroad. Non-probate property assets in the context of estate taxes generally include property rights which ceased at the testator's death, or property which was no longer owned by the testator at death, but which was brought back into his estate for tax purposes only. See In re Estate of Garcia, 455 P.2d 269, 273 (Ariz. 1969). Inter-vivos gifts trusts, and jointly owned property are common examples of non-probate assets.

Courts often distinguish between the two types of assets because the equitable argument for charging non-probate assets with a pro-rata share of estate taxes gains much of its impetus from the fact that these assets pass outside the will and are artificially brought back into the estate for tax valuation purposes only. The property here, however, was owned by the testatrix in fee simple at her death and was specifically devised by her will to the petitioner.

The distinction between these two types of assets is important because under the test adopted by the Mazza court, the interests of the District of Columbia in applying the common law to a non-probate asset situation has to be weighed against the interest of Maryland in having its apportionment law applied. The question, here, however, is whether the District's interest in applying the common law to probate assets will outweigh Maryland's interest in having its own apportionment statute applied by this Court. This is a question of first impression. As explained below, this Court finds that under the Mazza test, the interest of the District of Columbia does not outweigh the interest of Maryland in having its apportionment law applied by this court.

Since the District of Columbia is the situs of the land in question and seeks to have the common law applied to the instant case, the Court must first look to the reasons why the common law was originally adopted in this jurisdiction, and then determine whether there is sound reason for rejecting equitable apportionment, the applicable law of the State of Maryland.

Reference to Hepburn v. Winthrop, 65 App. D.C. 309, 83 F.2d 566 (1936), reveals that while the doctrine of equitable apportionment was considered by the court, its adoption in the District of Columbia was rejected in dicta, without strong reasons, to the preferred adoption of the presumption that every testator must know the law when his will is drawn and must have been fully cognizant of any inequities which might

have been caused by testementary silence.

The case precedents above reveal that the District of Columbia courts have adhered to the common law distribution of the estate tax burden principally because the courts will only recognize and defer to the expressed wishes of the testator or the exercise of proper legislative authority. This policy was adopted in Hepburn and applied throughout the years without the benefit of forceful and articulated reasons. The Court, therefore, does not consider this to be a strong judicial policy in favor of the District's applying the common law principles to the situs of this land. This view of the strength of the common law was shared by Mazza v. Mazza, U.S. App. D.C. at 280.

> . . . the entire area of estate planning and estate taxation has undergone substantial change in recent years. In the midst of that change the District of Columbia has at most retained the old rule with no apparent reexamination of the rule's relationship to the policies which originally justified its adoption.

Contrast, for example, the reasons behind the conflict of law policy that the law of the situs of real property governs its descent, alienation and transfer. Noyes v. Parker, 68 App. D.C. 13, 16. It might be argued that since the validity of a will, insofar as it disposes of interests in land, is determined by the law that would be applied by the courts of the situs, the law of the situs should control as regards estate taxes. The relative importance of estate taxes with regard to land was minimized, however, by the court in Mazza. Id.

It should also be pointed out that the beneficiary in the instant case is not a resident of the District of Columbia. No assertion could be made, then, that under these circumstances the District has the additional interest of applying its own law to one of its residents.

Unlike the few interests in applying the law of the District of Columbia, there are many reasons for applying the Maryland apportionment law to the instant case.

First, it should be noted that the Mazza court found a strong Maryland legislative policy of concern for residuary beneficiaries, especially to avoid inequitable burdens on that class of beneficiaries. In addition, there are important general conflict of law policies which would favor the interests of applying the law of the testator's state of domicile. All beneficiaries taking under the same instrument should be subject to the same presumptions regarding the estate tax burden. The Mazza court adopted a similar argument by pointing out that reference by all jurisdictions to the testator's domicile insures uniform treatment of those receiving property from the decedent's taxable estate.

A related, although less compelling, reason for adoption of the apportionment question is that it is similar to the question of determining a testator's intent as expressed in his will, which is governed by the law of the testator's domicile. Noyes v. Parker, supra. Also, if the rationale for interpreting the testator's will under the law of his domicile is that the testator is most familiar with the law

of his domicile, Greenwood v. Page, 78 U.S. App. D.C. 166, 168 (1943), then argument can be made for the proposition that barring a strong interest of the situs of land to the contrary, the apportionment law of the testator's domicile should be applied to his bequests.

In conclusion, this Court does not consider the involvement of probate assets to add any more compelling reason for applying District of Columbia law instead of Maryland law to reach a result other than as was decided in Mazza.

The respondent argues strenuously that in the absence of a Congressional authorization for the apportionment of federal estate taxes in the District of Columbia, the application of Maryland's statutory apportionment law to District of Columbia real estate subject to the District of Columbia inheritance tax law would violate Article I, Section 8, Clause 17 of the Constitution. That section of the Constitution gives the Congress exclusive legislative power over the District of Columbia.

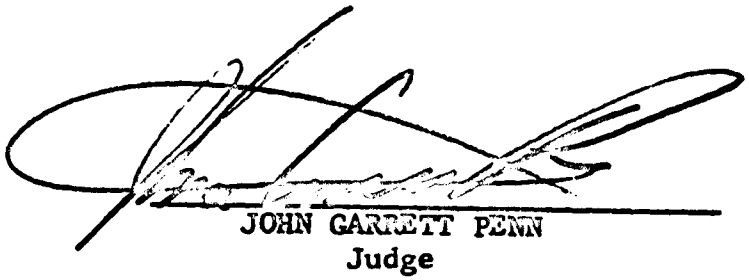
Application by this Court of the Maryland law to determine the burden of the federal estate taxes does not, however, in any way conflict with Congress' exclusive legislative authority. In this case, recognition of Maryland law is purely voluntary and carries no diminution of the sovereignty of Congress' exclusive legialtive authority, especially where there is no applicable statute in the District of Columbia and the application of the common law has been by the exercise of judicial discretion. Bank of Augusta v. Earle, 13 Pet. 519, 10 L.Ed. 274.

As such, this Court considers that under Maryland law the petitioner is liable for that share of the inheritance taxes which were occasioned by the inclusion of the District of Columbia real estate in Marian Greely's net taxable estare, and therefore the value of the devise of the District of Columbia real estate should be reduced by that amount for which the petitioner is liable.

ORDER

Based upon the above, this Court directs that the petitioner receive a refund of the inheritance tax in the amount of $433.52 and interest in the amount of $4.81, plus interest from the date of payment, May 16, 1975, plus interest thereon as provided by law.

Date: May 11, 1979



JOHN GARRETT PENN
Judge

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Copies [illegible]
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5-11, 1979
JS

and to Kenneth Back
Finance Officer, Dc.

R. Stanfield
5/15/70