Opinion No. 1179

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. ... CLERK
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION
APR 30 1979
FILED

MARJORIE JONES JACKSON, Petitioner	)	
v.	)	Docket No. 2601
DISTRICT OF COLUMBIA, Respondent	)	

MEMORANDUM ORDER

This case comes before the Court on cross motions for summary judgment filed by the parties. Super. Ct. Tax R. 3, Civ. R. 56.

I

The petitioner, the Administratrix of the Estate of Mabel Irene Jones (Estate) appeals from an assessment for inheritance taxes made against the Estate on January 9, 1978, in the amount of $193.40. The tax was paid on January 11, 1978, and petitioner filed a claim for refund on December 8 1977 and June 2, 1978.*/ The claim was disallowed by respondent's failure to timely answer the claim in writing within six months.

There is no dispute as to the facts in this case and those facts are as follows: Sadie R. Aikens died on November 20, 1976, leaving a last will and testament.

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*/ Respondent denies that a letter from counsel for petitioner dated December 8, 1977, constituted a claim for refund because the taxes assessed had not been paid at that time but does agree that a proper claim for refund was filed on June 2, 1978, and that no action was taken on that claim therefore in effect, the claim was disallowed. See D.C. Code 1973, §47-2413(a). Although respondent may have been able to argue that petitioner did not wait for 6 months before filing this action, respondent makes no such argument.

Robert E. Lynch, Jr. was named as executor in Administration No. 2222-76 filed in the Probate Division of this court. Ms. Aikens made certain specific bequests of property and then provided, in paragraph 6 of her will, with respect to the real property located at 819 Crittenden Street, N.W. in the District of Columbia, as follows:

> 6. In the event that I own, at the time of my death, premises 819 Crittenden Street, N.W., Washington, D.C., I direct my Executor to sell the same at public or private sale and after paying all expenses incident to said sale, the net proceeds shall become part of my residuary estate.

In paragraph 7 of her will, Ms. Aikens disposed of the rest, residue and remainder of her estate and provided that Mabel Irene Jones was to share equally in that residue, together with eight other named persons. Ms. Jones died on May 6, 1977, within six months of the date of death of Ms. Aikens, without having lived in or physically occupied the property at 819 Crittenden Street. She never received any property, real, personal or mixed from the estate of Sadie R. Aikens. The Executor sold the property on September 17, 1977, pursuant to an order entered by the Probate Division. The one-ninth share of the residue was distributed to the petitioner.

II

The Court has jurisdiction over this appeal pursuant to D. C. Code 1973, §11-1201.

There are no issues of genuine fact in this case therefore the entry of summary judgment is appropriate. International Underwriters, Inc. v. Boyle, 365 A.2d 779, 782 (D.C. App. 1976).

See also Super. Ct. Civ. R. 12-I(k), 56.

The only issue here is whether the estate is liable for an inheritance tax under the above facts where Ms. Jones died within six months of Ms. Aikens and where the property was not devised to her but rather to the executor with directions to sell the property at sale, and to pay the net proceeds into the residuary estate.

D. C. Code 1973, §47-1601(f) provides:

> Where any beneficiary has died or may hereinafter die within six months after the date of the decedent and before coming into the possession and enjoyment of any property passing to him, and before selling, assigning, transferring, or in any manner contracting with respect to his interests in such property, such property shall be taxed only once, . . .

Petitioner contends that the estate is exempt from the payment of the tax under the above provision.

Respondent relies upon the case of Fisher v. District of Columbia, 82 U.S. App. D.C. 371, 164 F.2d 707 (1947) in support of its claim that the tax is due and payable. There, Willis Fisher died in May 1946 and devised an undivided interest in real property to his wife, who thereafter died in October 1946. The Court upheld the assessment of the inheritance tax because Mrs. Fisher "had the immediate right to possess and full power to convey what she had inherited". Id. at 374, F.2d at 710.

This case is distinguishable in that the real property was not devised to Ms. Jones; rather, the testatrix directed the executor to sell the property and to pay the net proceeds into the residuary estate. This amounted to what can be

considered a devise of the real property to the executor as a trustee. Cf. Kashouty v. Deep, 75 U.S. App. D.C. 259, 126 F.2d 233 (1942). Ms. Jones did not have a right to immediate possession or any power to convey the property. Although it might be argued that she had a right to elect to take the real estate instead of the proceeds, she was not the sole devisee of the trust proceeds and before an election to take real property could be made, all of the beneficiaries would have been required to elect to reconvert the property. Finally, of course, is the fact that she died within six months of Ms. Aikens.

Taking all of these matters into consideration, this Court concludes that the property was exempt from the imposition of the inheritance tax pursuant to Section 47-1601(f), and accordingly, the petitioner is entitled to a refund of the tax together with interest from the date of payment.

ORDER

It is hereby

ORDERED that the respondent's motion for summary judgment is denied, and it is further

ORDERED that the petitioner's motion for summary judgment is granted, and it is further

ORDERED that the respondent shall pay petitioner the amount of $193.40 plus interest from the date of payment, January 1, 1978, together with interest thereon as provided by law.

Dated: April 27, 1979

JOHN GARRETT PENN
Judge

Copies to:

Robert E. Lynch, Jr., Esq.
Counsel for Petitioner

Richard Amato, Esq.
Assistant Corporation Counsel
Counsel for Respondent

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[illegible] 4-27, 1979
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and to
Kenneth Back
Finance Officer, D.C.

R. Stanfield
4/30/79