

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

APR 19 1979

TAX DIVISION

FILED

WALTER S. FURLOW, JR. :

Docket No. 2612

and :

WILLIAM C. McMILLIAN, Trustees :  
under the Will of CHARLES M. :  
KIDNER, Deceased :

Petitioners :

v. :

DISTRICT OF COLUMBIA :

Respondent :

FACTS OF FACT AND OPINION

This matter comes before the Court upon petitioner's claim that the assessment of the tax determined by the Inheritance Estate Section was based upon an error. That is, petitioner claims that the total value of the corpus of the trust under the Will of Charles Kidner should not have been assigned to Doris C. Yerkes.

Statement of Fact

1. Pursuant to his Last Will and Testament, Mr. Charles Kidner provided that Doris C. Yerkes should receive the net income from his testamentary trust for the duration of her life.

2. Mr. Kidner further directed that:

"\* \* \* [the] trustees shall have full power and authority to invade the trust principle and to pay so much of the trust principle to Doris C. Yerkes or for her benefit as they shall in their sole and absolute discretion consider necessary for her essential needs, having due regard for the income produced by this trust and any other sources of income for Doris C. Yerkes." Paragraph Six (c) of Charles Kidner's Last Will and Testament.

3. The corpus of the trust is worth approximately \$90,000 and has never been invaded by the trustees on behalf of Ms. Yerkes.

4. Ms. Yerkes receives approximately \$6,500 per year as income from the trust. Additionally, she earns \$20,000 per year as a government

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employee. She has approximately \$8,500 in a savings account.

5. Ms. Yerkes has a modest life style and does not support either of her children who are older than 25 years and independent.

6. Ms. Yerkes plans to retire in five years at which time her retirement benefits will provide her with an income of approximately \$12,000 per year.

#### Discussion

The question presented is whether the holder of the life estate, Ms. Yerkes, should be assigned the entire value of the corpus of the trust under the District of Columbia inheritance tax. The tax assessor had determined that this value was equivalent to Ms. Yerkes' interest in the trust. A review of the cases and Regulation 4 <sup>1/</sup> indicates that this question turns on the factual determination whether the trustees are likely to invade the corpus of the trust on behalf of the holder of the life estate. McCree v. District of Columbia, 97 U. S. App. D.C. 282 (1956); Estate of Marcus Goldwasser v. District of Columbia, Docket No. 1622, Opinion No. 949 (February 12, 1958). If the trustees are likely to do so, then the interest of the life tenant in the corpus of the trust is assessed and the tax is apportioned accordingly.

Each of the cases differs depending on the factual scenario. However, the key factors to weigh are the discretion of the trustees as outlined by the terms of the trust, and — with respect to the life tenant — his state of health, his accustomed scale of living, and his economic circumstances. McCree, supra; Estate of Marcus Goldwasser, supra.

Turning to the facts of the instant case, it is difficult to discern whether Ms. Yerkes is likely to request the trustees to invade the corpus of the trust on her behalf. Having reviewed the evidence on this point,

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<sup>1/</sup> "Where the donee for life or years has the right in his sole discretion to expend or consume the corpus, or a part thereof, for his own use, the taxable value of the interest of the donee for life or years in such corpus, or such part thereof, shall be the value of the entire corpus \* \* \*."

at best the evidence is in equipoise. On the one hand, Ms. Yerkes, who appears to be a healthy individual, maintains a modest life style and her monthly income adequately meets her daily needs at present. On the other hand, the principle of the trust is not very large (\$90,000) and, therefore, the income that she receives from the trust is modest (approximately \$6,500 per year). Even though Ms. Yerkes is capable of taking care of her current needs, her income does not exceed her needs so much as to demonstrate that she would not seek the monies in the principle in the event of an emergency or in preparation for retirement. Compare this to the economic situation of the trust beneficiary in Estate of Marcus Goldammer, supra.

It is clear that the trustees have a broad grant of authority to invade the corpus of the trust on behalf of Ms. Yerkes. However, it is not clear how, when, or why they would exercise their discretion on her behalf. Mr. Kidner's Last Will and Testament states that the trustees have "full power and authority" to invade the corpus of the trust to attend to her "essential needs." Moreover, the terms of the trust provide that the trustees have the "sole and absolute discretion" to decide what her "essential needs" are. See, Kidner's Last Will and Testament, Paragraph 6(c). Thus, although there is language which limits the discretion of trustees, this limitation is not very restrictive. Because the trustees have such broad authority to interpret "essential needs", this term loses much of its limiting force. This is especially so when comparing the terms of the trust to the terms of the trust in the Estate of Marcus Goldammer, supra. There, the terms of the trust curtailed the power of the trustees in a manner that could be objectively measured by the court. Here, the power of the trustees is not so clearly defined.

In sum, the Court finds that it is not unlikely that Ms. Yerkes may make a reasonable request of the trustees to invade the corpus

of the trust on her behalf. Moreover, it is not unlikely that the trustees may grant such a request by liberally and broadly interpreting "essential needs." Thus, the petitioners have failed to carry their burden of proof. The assessment of the Inheritance Tax Division is reasonable under the facts of the instant case.

Conclusions of Law

It is concluded as a matter of law that the inheritance tax was properly levied.

WHEREFORE, it is ORDERED that the petition is hereby denied.

Judgment is entered in favor of the respondent, the District of Columbia.

  
WILLIAM C. PRYOR  
Judge

April 19, 1979

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