

Opinion
No. 1166

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

DIST. OF COLUMBIA DIVISION
FEB 15 1973
FILED

GEORGE NOVAK,)
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 Petitioner)
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 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent)

Docket No. 2430

OPINION AND ORDER

The petitioner, who is pro se, appeals from an assessment for inheritance taxes made against him in the amount of \$6,157.22. The assessment was made pursuant to D. C. Code 1973, §47-1601.

Petitioner deposited money in the amount of \$134,232.20 in several bank accounts in the names of Marica L. Selman and himself. When Ms. Selman died in 1976, the respondent included one-half of the above amounts as being in her estate for the purpose of the inheritance tax and assessed the above tax. The petitioner contends that no portion of the monies is taxable since he was the sole owner of the accounts and merely deposited the money in their joint names for personal convenience.

I

A nonjury trial was held in this case and after taking into consideration the testimony and other evidence the Court finds the facts as set forth below.

The petitioner, who was born in Europe in 1927, came to this country after World War II after having seen members of his family suffer a loss of possessions as a result of these

hostilities. He lived in the area near New York City and thereafter came to the District of Columbia to work and finally rented a room from Ms. Marion Sellman in 1954. He continued to live in that room until 1976 when Ms. Sellman died. He was only one of a number of roomers she took in over the years. They became close friends, however, their relationship was never anything more than landlord and tenant. The petitioner either prepared his own meals in his room or ate at the cafeteria where he was employed during this period. Ms. Sellman rarely prepared meals for him. He worked for the World Bank for most of that time and is still employed at that institution.

Petitioner's mother and father lived in New York but it appears that the petitioner was not particularly close to his family. He had a few close friends in the District of Columbia and in other cities around the world where he visited in his official capacity with the World Bank. He never had a will prepared and assumed that, upon his death, his property would pass to the District of Columbia. The petitioner sometimes worked almost 24 hours a day, not leaving his office during that period, and often working seven days a week. He apparently had no outside interests.

Ms. Sellman, who was born in 1890 retired in 1955 and apparently had to let rooms in order to get by on her retirement income. The petitioner was impressed with this fact and was quite concerned about his own well being and support if and when he retired. As a result, he saved most of his salary

and at first invested in the stock market, a venture which proved unprofitable since he lost approximately \$50,000 over a number of years. He decided to look for a more conservative investment and ultimately decided to deposit his funds in various savings and loan associations. He became concerned in 1968 that his deposits were not fully insured under the Federal Deposit Insurance Fund and he decided to establish joint accounts with Ms. Selman, since he felt he could thereby increase the amount of the federal deposit insurance on those deposits. The petitioner expressed a fear that without full insurance coverage and in the event of a depression or war, he might lose some of his savings. His fears resulted from his family's experiences in Europe, his knowledge of the catastrophic events of the depression in this country, and his desire to prepare for retirement.

He discussed the matter with Ms. Selman and she consented to having her name placed on his accounts. Her name was listed on a number of accounts together with the petitioner's including the accounts which are now the subject of this appeal. The petitioner was the source of all sums deposited in the accounts; Ms. Selman never deposited her own funds in those accounts nor did she ever make any withdrawals either for herself or on behalf of the petitioner. She had at least one account of her own which had nothing to do with the accounts established by the petitioner. The petitioner always maintained control and dominion over the accounts including possession of the passbooks. He never intended that Ms. Selman have an interest in those funds and he did not intend to, in any way, make a gift

of all or any portion of any of the accounts to Ms. Sellman, either during his lifetime or after his death if he should predecease her. The petitioner was in good health and fully anticipated that he would outlive Ms. Sellman who was in ill health from the time of her retirement in 1955 until the date of her death in 1976 at the age of 85. He was 49 at the time of her death.

The petitioner did not authorize Ms. Sellman to withdraw any sums from the accounts for herself; he only intended to authorize withdrawals in the event of an emergency during which he could not withdraw the needed funds himself. He did not anticipate that she would be required to withdraw any sums however, and as set forth above, the primary purpose for establishing the joint accounts was to increase the amount of his Federal Deposit Insurance. Ms. Sellman never made any deposits on his behalf.

He paid her directly for his rent during the 22 years he lived in her house and he paid full rent which ranged from \$27.00 per month, when he first began rooming in her house, to \$80.00 per month in 1976. He rarely if ever discussed the accounts with Ms. Sellman and there is no evidence that he was ever given any consideration for transferring those accounts from his name to the names of himself and Ms. Sellman.

Ms. Sellman died testate but her will, dated September 20, 1964, makes no reference to or mention of the petitioner or his bank accounts. She did bequeath money to certain named persons and charities and provided for a trust for the support of her cousin, which would have provided that cousin with

\$10.00 per month until the funds were exhausted. She also referred to the moneys in her savings account giving the name of the bank; an account which is unrelated to those which are the subject of the present appeal. There were no codicils to her will.

The petitioner is a resident of the District of Columbia and has paid the tax in question. The subject accounts are as follows:

1. National Permanent Federal Savings and Loan Association, Account No. 326-439-4 was opened by petitioner on February 5, 1972, in the names of Marion L. Sellman and George J. Novak as joint tenants with right of survivorship. There was \$17,111.09 in the account at the time of Ms. Sellman's death.

2. Perpetual Federal Savings, Account No. 203-1005-3 was opened by petitioner on August 14, 1960, in the names of himself and Marion L. Sellman. The amount in that account at the time of her death was \$67,488.21.

3. Columbia Federal Savings and Loan Association, Account No. 31-019337-00 was opened by petitioner on August 13, 1960, in the names of himself and Marion L. Sellman subject to the order of either or survivor. That account amounted to \$9,660.51 at the time of her death.

4. Columbia Federal Savings and Loan Association, Account No. 35-002400-05 was opened by petitioner on May 5, 1972, in the names of himself and Ms. Sellman and contained \$24,365.65 at the time of her death.

5. American Federal Savings and Loan Association, Account No. 1-087540-4 was opened by petitioner on June 19,

1973, in the names of himself and Marion L. Sellman with a right of survivorship. That account contained \$15,605.92 at the time of her death.

The above constitute the findings of fact by the Court; the most important of which are that (1) all the funds deposited in the accounts were contributed by the petitioner, (2) Ms. Sellman never gave any consideration for the transfer of the accounts to their joint names, (3) the relationship of the petitioner and Ms. Sellman were no more than landlady and tenant, (4) the petitioner always paid Ms. Sellman directly for any services she rendered, (5) petitioner retained dominion and control over the subject accounts, (6) petitioner never intended to make any gift, either inter vivos or testamentary, of all or any portion of the moneys in the accounts, (7) Ms. Sellman never exercised control over the accounts and she never deposited or withdrew any moneys from the accounts, (8) petitioner paid all federal and local taxes on income or dividends earned on the accounts and (9) petitioner never intended to give Ms. Sellman any interest in the accounts. The sole reason for placing the accounts in the joint names of the parties was for his convenience and benefit.

II

The tax at issue is imposed under D. C. Code 1973, §47-1601 which provides in part:

§47-1601. Imposition of tax.

Taxes shall be imposed in relation to estates of decedents, the share of beneficiaries of such estates, and gifts as hereinafter provided:

(a) All real property and tangible and ~~intangible personal~~ property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship and all such property, or interest therein, transferred by deed, grant, bargain, gift or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the father, mother, husband, wife, children by blood or legally adopted children, or any other lineal decedendants or lineal ancestors of the decedent, shall be subject to the tax as follows:
(Emphasis this Court's.)

D. C. Code 1973, §47-1602 provides as follows: []

§47-1602. Tax based on market value-Appraisal.

The tax provided in section 47-1601 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held.

Positioner contends that no tax is imposed under Section 47-1601 since he was the sole owner of the monies in the accounts. The respondent argues that the petitioner intended to create a joint tenancy with the right of survivorship, and that if that was not his intention, that a joint

tenancy resulted in any event when he had Ms. Sellman sign the deposit agreements placing the accounts in their joint names with a right of survivorship, and finally, that even if the petitioner did not intend a joint tenancy with a right of survivorship and even if one was not created by their joint signatures on the deposit agreement, the petitioner is still liable for the inheritance tax as a result of Section 47-1602 and the holding in McKinney v. District of Columbia, 112 U.S. App. D.C. 132, 300 F.2d 724 (1962). This Court rejects respondent's arguments and finds for the petitioner for the reasons set forth below.

III

The respondent's argument that the petitioner intended to create a joint tenancy with a right of survivorship has already been negated by the Court's findings of fact. See Part I, supra. This Court has found, based upon the evidence presented in this case, that the petitioner never intended to create a joint tenancy, never intended a gift, either inter vivos or testamentary, and never intended a trust or a contract. Petitioner merely established the accounts in his name and that of Ms. Sellman for his own convenience and protection.

Respondent argues that the petitioner cannot prevail, notwithstanding a finding that he did not intend to create a joint tenancy with a right of survivorship, because he created a joint tenancy by having her sign account cards indicating that they were joint owners with a right of survivorship.

Such an argument may have prevailed prior to 1979, see e.g., Matthews v. Matthews, 77 U.S. App. D.C. 221, 295 F.2d

645, 149 ALR 856 (1943), but that decision is not controlling in this jurisdiction. See, Murray v. Gadsden, 91 U.S. App. D.C. 38, 44, 197 F.2d 194, 200 (1952); Harrington v. Emmerman, 88 U.S. App. D.C. 23, 186 F.2d 757 (1950).

In Harrington v. Emmerman, supra, Ms. Carlin signed a writing declaring her savings account to be thereafter a joint one in the names of herself and Ms. Emmerman. When Ms. Carlin was adjudged to be of unsound mind, Steven Ingram, who was appointed committee of her person and estate, made a demand that the passbook, which was then in the possession of Ms. Emmerman, be returned. Emmerman refused and a suit was filed. Carlin thereafter died while the case was still pending. Carlin's administrator was substituted for the committee and the court held that in order for Emmerman to prevail, she must be able to show that Ms. Carlin had made a present gift of the account to her. Id. at 26, F.2d at 760. "[T]he deposit agreement described the two women as joint owners and provided that either might draw on the account; but the agreement was on a printed form supplied by the building association, presumably for its own purpose and protection". Id. at 27, F.2d at 761. The court ruled that while the writing on the deposit agreement was conclusive as between Carlin and Emmerman on one side and the building association on the other it "was not conclusive between the individuals as to whether a present gift had been intended". Id.

The court amplified that ruling in Murray v. Gadsden, supra. There, Ms. Murray signed a printed form declaring her substantial account to be in the names of her sister,

Ms. Gadsden and herself, "subject to order of either, and balance at death of either to the survivor". Murray thereafter died and Gadsden withdrew the funds and deposited them in her individual account. The suit resulted from a claim made for the accounts by Murray's administrator.

The Murray court noted that if Ms. Gadsden was entitled to the funds, "ownership must somehow have passed from the decedent to her" and that she could have acquired title by way of a bequest, a contract, a trust, or a gift made by Mrs. Murray. Id. at 41, P.2d at 197. They found that Ms. Murray did not bequeath the amounts to Ms. Gadsden because the deposit agreements were not executed in conformity with the Statute of Wills. Id. The theory that the funds were transferred to the joint accounts by virtue of a contract was likewise rejected since there was no consideration expressed between Murray and Gadsden. In addition, if a contract had been intended, it would have run afoul of the Statute of Wills since, it would only have been effective at Ms. Murray's death. Id. The same comments were made respecting a trust, that is, if a trust was intended, it would have been testamentary in character and thus invalid unless accompanied by a validly executed will. In any event, the language of the deposit agreement did not amount to a trust. Id.

The court then considered whether Ms. Murray had made a gift to Ms. Gadsden. The court observed that "when a depositor creates a joint account for himself and another, without consideration, it is presumed to have been done for the convenience of the depositor", that is, when the sole

source of the funds is the depositor, that the printed form is not conclusive between the two individuals as to whether a present gift was intended and that the "donee" of the "gift" has the burden of establishing it. Id. at 44, F.2d at 200. Furthermore, the parol evidence rule does not forbid inquiry into the intention of the parties. Id. at 45, F.2d at 201. Thus the court held that when it is alleged that a written instrument does not express the actual intent of the parties, the court may resort to parol evidence in order to ascertain their intention. Id. at 46, F.2d at 202. The court found that Ms. Murray had placed the accounts in the joint names of herself and her sister for her own convenience, noting also that she had retained the passbooks, made all subsequent deposits and withdrawals, and reported all income on her tax returns as though the accounts were her sole property. Id. at 46, F.2d at 202. Finally, the court ruled that a joint tenancy was not created unless Ms. Gadsden could show that Ms. Murray had intended the deposit agreement to operate as a gift, in presenti. She failed to meet that burden and the funds were awarded to the administrator.

The holding in Murray has been followed in subsequent cases. In Shannon v. Shannon, 100 U.S. App. D.C. 205, 244 F.2d 374 (1957), the court held that where the depositor, who was ill, transferred her money to the account in the name of herself and her brother, "subject to order of either, the balance at death of either to the survivor" and there was evidence that she had done so in order to make the money available to herself, since due to her illness she was unable

to sign checks or go to the bank, that the joint account was created for her convenience and was not a gift. In such cases, the rebuttable presumption is that it is not a gift. Id. at 206, F.2d at 375.

The court in Inirie v. Inirie, 100 U.S. App. D.C. 371, 246 F.2d 652 (1957) reached the same result where the husband, who was an attorney, transferred both his personal and commercial accounts to the joint names of himself and his wife. The court held that the fact that the deposit agreements reflected a right of survivorship was not sufficient to establish such a right where the funds are provided by only one of the signatories. Id. at 372, F.2d at 653. The court also noted in ruling against the wife, that if they had ruled in favor of the wife they would have given her priority over the claims of the commercial creditors of the husband and thus would have violated public policy.

In Brathen v. Hill, 250 A.2d 699 (D.C. App. 1969), the court reached the opposite result on facts which are clearly distinguishable from the cases already discussed and the case at bar. There, the decedent, rented a basement apartment from Ms. Hill. He was a seaman who was often away and it was decided that the parties would open a joint account where he could have his checks deposited and she could withdraw the rent. Over the years their relationship grew to a very close personal relationship in which they eventually held themselves out as husband and wife and during which he stated that the accounts and a car purchased from money withdrawn from the accounts were hers. They maintained that relationship until

his last illness during which she constantly cared for him until his death. His daughter filed a claim against the funds in the account, however, her claim was denied. The court concluded that Ms. Hill was entitled to the fund in view of their relationship, his statement that the money was hers, the fact that she had a claim on some of the money for rent and that at the time the money was deposited into the account some of it belonged to Ms. Hill as money due for rent. The court found that there was a gift, in presentia.

The above cases set forth the law in this jurisdiction respecting the creation of joint accounts where one person is the sole contributor. See Edstrom v. Ruden, 351 A.2d 506, 509, n. 4 (D.C. App. 1976).

IV

Setting aside for a moment the question of taxation and viewing the instant case in light of the above cases, the Court concludes that Ms. Soliman would not have been entitled to the moneys in the subject bank accounts had the petitioner predeceased her. The moneys came solely from the petitioner and were deposited in their joint names solely for the benefit and the convenience of the petitioner and for no other reason. As already noted, Ms. Soliman made no deposits or withdrawals and the petitioner always maintained control over the accounts. Thus the presumption was raised that the joint accounts were opened solely for the petitioner's convenience and that no gift was intended. There is added weight for such a finding when considering the evidence presented by the petitioner at the time of the trial. That evidence demonstrates that the

petitioner did not intend a gift, trust, contract or a will and never intended to give Ms. Sellman any interest in the accounts. Although the petitioner maintained a close friendship with Ms. Sellman, it apparently grew out of his attempt to help her as an aging and ill lady who was some 35 years his senior. While his life style may be unusual by current standards, it is easily understood when one considers his background in which he saw his family lose most of their possessions and in light of his fear that he would not have sufficient money to care for himself in the event of retirement or illness.

All of these facts distinguish this case from Burton v. Hill, supra, where there was evidence that the depositor intended to make a present gift to Mrs. Hill.

Respondent also cites the Court to its opinion in Miller v. District of Columbia, 105 Wash. L. Rptr. 2189 (D.C. Super. Ct. 1977), but that case is also distinguishable. There, this Court found that an attorney, who suffered a serious illness and then transferred some 42 bank accounts to the joint names of his wife and himself at a time when he had no will, intended to make a present gift to his wife with a right of survivorship.

Based upon the facts and the law, the Court finds that the petitioner did not make a gift in present to Ms. Sellman and that he never intended that she have a right of survivorship. Moreover, the purported transfer does not qualify as a testamentary trust or gift or a contract. Ms. Sellman would not have been entitled to share in the moneys in the accounts if she had survived the petitioner.

Respondent's final argument is that the inheritance tax imposed in this case is valid even though Ms. Sellman would not have been entitled to any interest in the accounts. The respondent in making that argument relies solely on the opinion in McKimsey v. District of Columbia, supra.

Unfortunately, the court in McKimsey did not fully set forth all the facts in that opinion. That court reached certain factual conclusions, however, which were relevant here. In that case, Mrs. McKimsey purchased shares of stock with her own funds and placed the stock in the names of herself and her sister with a right of survivorship. Mrs. McKimsey always maintained sole control over the shares and received all income therefrom. She testified that the purpose for placing the shares in their joint names was so that the sister would receive the shares if Mrs. McKimsey predeceased her. The sister died and the District of Columbia assessed an inheritance tax on one-half of the shares. The court held that the tax was properly imposed. Respondent argues that that decision is controlling in this case. This Court cannot agree; respondent's reliance on that case is misplaced.

The issue as stated in McKimsey was "whether the inheritance tax is payable, under Section 47-1602 of the District of Columbia Code (1951), on one-half of the value of the shares of stock held jointly by the decedent and the survivor, the petitioner here, where the decedent made no contribution to the purchase of the shares". Id. at 133, 7.2d at 725.

The tax is actually imposed under Section 47-1601 not 47-1602. It is necessary to determine first, whether the property is taxable by reading Section 47-1601. That section purports to tax property which is transferred "from any person who may die seized or possessed thereof". As has already been determined, Ms. Sellman had no interest in the bank accounts notwithstanding the language of the deposit agreements. It is only after having found a taxable event or interest that it is necessary to turn to Section 47-1602. That section merely provides that "the tax provided in Section 47-1601" shall be based upon the value as appraised by the Probate Court and further that the taxable portion shall be "determined by dividing the value of the entire property by the number of persons in whose joint names it was held". In McKinnon, it simply meant that since the petitioner and her sister were joint owners of the shares of stock, that the taxable portion was to be determined by dividing the value of the entire property by the number of persons in whose names it was held without regard to the amount contributed by each.

The issue was whether one-half of the property should be taxable where the decedent's sister did not contribute that amount towards its purchase and not whether the decedent's sister was a joint tenant with a right of survivorship; the latter being the issue in the instant case. That the issue was so limited is demonstrated by the language of the opinion. First, throughout the opinion the court assumes in discussing the legal issues that the sister was a joint tenant with a right of survivorship. It noted that the petitioner intended

the sister to have right of survivorship and that the petitioner was a "surviving joint tenant". (Emphasis this Court's.) Id. at 133, F.2d at 725. It observed, "[n]or did the petitioner say that she did not intend to create a joint tenancy in the stocks" and that a "joint tenancy with survivorship rights having been intended and created, the decedent not only held the legal title jointly with the petitioner but possessed the right of survivorship, and possibly other rights". (Emphasis this Court's. Footnotes omitted). Id. at 134, F.2d at 726. It noted that petitioner acquired valuable rights upon her sister's death which "were sufficient to afford a basis for Congress to impose the tax." (Citations omitted.) Id. at 135, F.2d at 727. Finally, on this point, it cannot be overlooked that the author of the opinion in McKinney (Judge Washington) was also the author of the opinions in Thompson v. Thompson, supra, and Imrie v. Imrie, supra. In fact, Judge Washington cites Imrie and the cases cited therein and states that "[p]etitioner's intention to create survivorship rights in both joint tenants is undisputed". Id. at 134, F.2d at 726, n. 3. There was no issue in McKinney concerning whether a joint tenancy had in fact been created, that is, whether the petitioner had made a gift, in present; here, that is the primary issue. The court in McKinney was not called upon to decide whether the tax should be imposed under Section 47-1601, rather its only concern was the amount of the tax to be imposed under Section 47-1602.

This is further illustrated by the fact that the court in McKinney discussed the difference between the federal statute, which taxed jointly held property on the basis of original ownership of the property or the consideration applied in acquiring it and Section 47-1602 in which Congress directed that the assessor shall determine the tax based upon the number of persons in whose joint names it was held, as owners.

VI

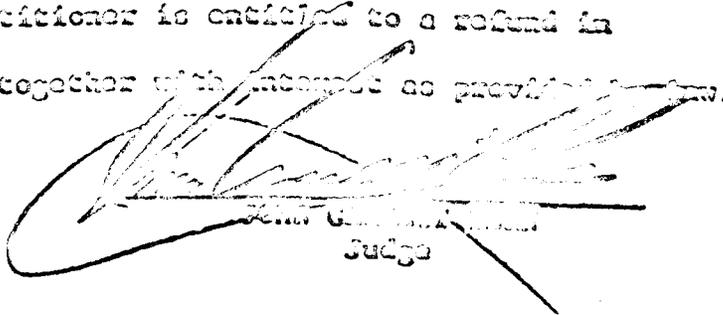
Having carefully reviewed the evidence in this case together with the applicable law, the Court finds that the petitioner did not intend to create a joint tenancy with a right of survivorship and further that no such tenancy was created by the petitioner, either intentional or otherwise, when he transferred the accounts to the joint names of himself and Ms. Sellman. Having so found, the Court concludes that one-half of the moneys in the bank accounts was not taxable pursuant to D. C. Code 1973, Section 47-1601, since Ms. Sellman had no interest in those accounts.

In view of the above, it now follows that petitioner is entitled to a refund of those taxes together with any interest paid thereon, plus interest as provided by law.

ORDER

It is hereby

ORDERED that the petitioner is entitled to a refund in the amount of \$6,157.22 together with interest as provided by law.



Judge

Date: February 9, 1979