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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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

NOV 10 1977

FILED

ERMAN MILLER, Petitioner	)	
v.	)	Docket No. 2385
ISTRICT OF COLUMBIA, Respondent	)	

OPINION AND ORDER

The petitioner takes this appeal from an assessment for nheritance tax in the amount of $10,322.75.[1/] The tax was aid by the petitioner on April 29, 1976, and a claim for efund was denied on May 10, 1976. He alleges as error the act that the Department of Finance and Revenue included the um of $277,332.30 in the Estate of Rose Miller.

The Court has jurisdiction to hear this appeal pursuant o D. C. Code 1973, §§11-1201, 11-1202 and 47-2403.

I

The Court finds the facts in this case as follows: he petitioner, an attorney, married Rose Miller on September 2, 928. His practice was more or less limited to landlord-enant and real estate law. In the late 1960's he had deposited

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/ The petitioner, a well-known practitioner in the Landlord-enant Court, died on November 28, 1976, after the petition as filed. His daughters, Ruth F. Bloom and Ann S. Easterly, ave been appointed as co-administratrices of the Estate of erman Miller. They have been substituted as parties with the onsent of the District. For the purposes of this Opinion and rder, the Court will refer to Herman Miller as the petitioner.

approximately $545,000 in forty-two savings accounts including accounts located in the District of Columbia area and the State of California. The accounts consisted solely of moneys earned by the petitioner and the accounts were in his name alone. In the late 1960's, the petitioner was in declining health and he decided to place all of the above accounts in the names of "Herman Miller or Rose Miller".[2/] The petitioner testified that he "didn't want to be in the position where she would be saddled with the payments of my bills and my doctors bills".[3/] (Dep. 6.) He had no will at the time he transferred the accounts from his name to the joint names of himself and his wife. The petitioner testified that he made the transfers because of his declining health which was getting progressively worse. Rose Miller was unemployed at that time and there is no evidence that she had any other source of income other than the petitioner.

Rose Miller died on May 30, 1971. The Department of Finance and Revenue included one-half of the amounts in the joint bank

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2/ Unfortunately the information concerning the accounts, including the precise language used on the account cards, is not known to this Court. It was suggested to counsel that either or both might wish to supplement the record by supplying that information, however, after considering the Court's comments, both sides advised the Court that they preferred to stand on the present record.

3/ The petitioner died prior to the trial in this case but testified by way of a deposition taken on May 13, 1976. All references to deposition in the Opinion refer to that deposition of the petitioner.

accounts as Rose Miller's property in computing the amount due for the inheritance tax. The petitioner filed a protest alleging that he had only placed the accounts in both names as a matter of convenience and that he never intended to create a joint tenancy or a tenency by the entirety. The Department rejected his claim and he paid the tax and filed for a refund. He appealed to this Court when his request for a refund was denied.

In his deposition taken in May, 1976, the petitioner testified that he never intended to create a joint tenancy or a tenancy by the entirety. He also stated that he was not familiar with estate law or tax law but was familiar with that line of cases holding that when a person deposits his money in an account in the name of himself and another, there is a presumption that the money was placed in the name of the second party only for the convenience of the first party and that no gift was intended.[4/]

The funds in the accounts were deposited by the petitioner; Rose Miller made no contribution. The petitioner maintained a separate commercial account for his practice. He continued to hold the passbooks after the transfer of the accounts to the joint names of himself and his wife and testified that his wife did not know were the accounts were located. He further testified

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4/ See Thompson v. Thompson, 100 U.S. App. D.C. 285, 244 F.2d 374 (1957); Imirie v. Imirie, 100 U.S. App. D.C. 371, 246 F.2d 652 (1957); Murray v. Goddon, 91 U.S. App. D. C. 38, 197 F.2d 194 (1952).

that when he set up the accounts in the names of "Herman Miller or Rose Miller", he deliberately used the word "or" rather than "and" to negate the idea that he was establishing a joint tenancy. 5/

II

The inheritance tax is imposed pursuant to D. C. Code 1973, §47-1601 which provides in part that the tax shall be imposed on:

> (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 * * * shall be subject to the tax * * * *

D. C. Code 1973, §47-1602 provides in part that:

> 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.

The petitioner argues that no portion of the funds in the forty-two savings accounts is subject to the inheritance tax because he never gave or intended to give Rose Miller any interest or right to share in those accounts and because he never intended that she should have a right of survivorship. His argument is simply that once he found himself in ill health in the late 1960's, he merely placed the accounts in their joint names in order that Rose Miller would not be "saddled

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5/ It is unfortunate that the Court does not have more information concerning the accounts.

with the payment" of his bills and his doctors bills. (Dep. 6.) He further contends that the transfer from his sole name to their joint names were not intended as a bequest, or to create a trust, as a contract or as a gift. He asserts, as is indicated above, that the transfer was merely for his convenience.

The District argues that the evidence supports a finding that the petitioner intended to make and did in fact make a gift to Rose Miller. In an alternative argument, the District contends that the Court need only look to Section 47-1602 which determines the taxable portion on the basis of legal title only and that since Rose Miller held legal title in the accounts, that factor alone allows the District to impose the inheritance tax.

III

Before discussing whether the transfers constituted gifts, or in lieu thereof, whether the Court need only look to the statute to decide the issue now pending, a few comments are necessary concerning whether the transfers amounted to bequests, created trusts, or contracts between Herman and Rose Miller.

The various account cards are not before the Court but it seems logical to conclude that none of the cards signed by Herman and Rose Miller are in conformity with the Statute of Wills. See D. C. Code 1973, §18-801 et seq. Neither side to this dispute has made any such contention; accordingly, the transfers did not amount to bequests. Murray v. Gadsden, 91 U.S. App. D.C. 3 , 41, 197 F.2d 194, 197 (1952). In any event,

the question of a bequest is not a real issue in this case since Rose Miller predeceased the petitioner.

Likewise, there can be no valid argument that the transfers somehow resulted from contractual obligations. There may have been contracts between the Millers and the various banks but there is no showing of any contracts between the Millers themselves. "There was no consideration expressed, and none was pleaded or proved". 91 U.S. App. D.C. at 41, 197 F.2d at 197. Thus, there were no contracts.

Finally, since the Court does not have the bank cards before it, there is certainly no grounds upon which the Court can hold that trusts were created. Without the benefit of the instruments establishing the joint accounts and the language used thereon, any suggestion that trusts have been created must be rejected out of hand. 91 U.S. App. D.C. at 41-43, 197 F.2d at 197-199.

Thus the District may prevail only if there was a valid gift or based upon the language of the statute itself without resort to the normal presumptions or general law regarding the creation of a joint tenancy.

IV

The law in this jurisdiction is that the fact that two persons establish a joint bank account where only one has provided the funds does not establish a survivorship interest in the other. Imirie v. Imirie, 100 U.S. App. D.C. 371, 246 F.2d 652 (1957); Thompson v. Thompson, 100 U.S. App. D.C. 285

The petitioner apparently had always maintained the bank accounts in his name only although he had been married for 43 years at the time his wife died. He also maintained at least one separate checking account as his commercial account. His health began to fail in the late 1960's and it was at that time that he transferred all forty-two savings accounts to the joint names of himself and his wife. He testified that he did so for convenience only but his testimony must be taken as somewhat self-serving since his testimony was given after the fact; after the death of Rose Miller. The facts in the above cited cases are distinguishable from those in this case.

In Thompson, Grace Thompson was taken ill and transferred the sum of $5,500 from an account in her name alone to a joint account in the name of herself and her brother Lorin. Unfortunately, the appellate court did not recite the pertinent facts but they did note that "[o]n the evidence, the conclusion is inescapable that the account was created" for the use and benefit of Grace since she was unable to sign checks or to take other action with respect to her account. That court also noted that a bank had urged the court to reexamine its prior holding in Murray v. Gadsden, supra. The court then noted that: "reexamination would avail nothing here: even if we started with the presumption urged upon us [favoring the creation of a joint tenancy], it would be rebutted by the testimony". (Matter in brackets this Court's.) 100 U.S. App. D.C. at 286, 244 F.2d at 575. The facts in Thompson favored a finding that the account was established for the convenience of the person contributing

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the fund and the court found that the evidence was strong enough to even overcome a contrary presumption. Thompson therefore gives little assistance in deciding this case.

In Imirie, the facts in support of a holding that the joint account was created solely for the convenience of the contributor were also strong. John Imirie was an attorney who married and shortly thereafter transferred three of his existing commercial accounts to the joint names of himself and his wife. Those accounts had been maintained for his business. When he died his wife withdrew the funds and deposited them in her own account. The court noted that she did not testify that her husband stated that he would give her the funds remaining in the event of his death. Furthermore, no small factor in the decision against the wife was the fact that to award the money to her may have frustrated the legitimate claims which creditors may have had on the commercial accounts.

The leading case in this jurisdiction is Murray v. Gadsden, supra. Again, that case is distinguishable on its facts. There, Mrs. Murray was married but established a joint account with her sister Vellmar Gadsden. Testimony introduced at the trial indicated that she did not want her husband to receive the money but rather wanted the money to be divided among her sisters. She therefore transferred her funds to the joint names of herself and one of her sisters. The court found that the transfer did not constitute a present gift to Ms. Gadsden and that the purported

gift was to take effect only upon Mrs. Murray's death. Based upon those facts, the court decreed that there was no gift and that the moneys should be awarded to the estate.

In each of the above cases there was strong evidence that the contributors only transferred the funds for his or her convenience. In Thompson the transfer of the fund in one account in the amount of $5,500 was made because the transferor could not write her checks. In Gadsden, the transfer was made in lieu of a will - there was clearly no gift, in praesenti. In Imirie, a court seeking to avoid an inequitable result - the transferring of a commercial account to the wife of a deceased lawyer - found that the attorney did not intend that the wife have a right of survivorship.

The petitioner here could clearly have transferred some moneys or accounts to the joint name of himself and his wife to allow her to pay his medical or doctor bills without having transferred all forty-two accounts to their joint names. Indeed, it appears that he had over $200,000 in bank accounts in the Metropolitan Washington, D. C. area alone. However, the petitioner transferred not only those accounts but all of his personal savings accounts to Rose Miller, including those accounts located in California. The fact that he transferred all of his personal accounts, as opposed to his commercial accounts, supports the argument that he intended to make a gift, in praesenti, to his wife. There were no more than three accounts each involved in Thompson, Imirie and Murray as opposed to the forty-two accounts involved in this case.

A second factor is that the petitioner did not transfer all of his accounts to his wife's name; the commercial accounts remained in his name alone. Moreover, while he testified that he was ill, there is no evidence that his illness so incapacitated him that he could not take care of his own affairs. For example, there is no evidence in this record that he was hospitalized or handicaped for any period of time. He apparently saw no need to have his wife handle his commercial accounts.

It is significant that at the time he made these transfers he did not have a will. He testified that he was familiar with the holdings in the above cases therefore he knew that he could not make a valid testamentary transfer to his wife by merely transferring the funds to a joint account unless he also intended to make a gift in praesenti. Finally, with respect to the absence of a will, he testified that "if something would have happened to me first I could have taken care of it by a testamentary paper". (Dep. 9.) This indicates an intention to provide for his wife in the event of an incapacitating illness or death, but the only action he took was to transfer the forty-two bank accounts. Had he been incapacitated or died in 1970, the only funds available to Rose Miller would have been in the forty-two bank accounts.

This is not the case of a transfer of a single bank account at a time when the transferor could not manage his affairs; nor is it a transfer of a commercial account to his wife. It is the transfer of all of his personal noncommercial accounts

to his wife. Such a transfer seems consistent with the relationship of husband and wife. Cf.: Prather v. Hill, supra.

The petitioner testified that his wife did not know how many accounts he had, where they were located or how much was in any one account. These facts strike the Court as being inconsistent with the argument that he had transferred the accounts to their joint names merely so that she would be able to pay and take care of his bills. Apparently, except for signing the account cards, she knew little about the accounts. There is no evidence that the petitioner took any steps to prepare her for the eventuality of the payment of his bills. Additionally, these facts do not suggest any urgency that the accounts be readily available to her for the petitioner's convenience.

Finally, the transfers took place in the late 1960's. The petitioner's wife died in 1971 but there is no evidence that in the interim period he took any action to reclaim any account or to make a will.

After weighing all of the evidence in this case, and after due consideration of the authorities cited by the petitioner, this Court finds as a fact and concludes as a matter of law that the petitioner made a gift, in praesenti, to his wife of the funds in the forty-two bank accounts and that at the time he also intended that she have a right of survivorship.

VI

While the above is dispositive of this case, the alternative argument presented on behalf of the District deserves some comment.

The District argues that notwithstanding the line of cases described in Part V, supra, the assessment is proper because the petitioner did in fact transfer the accounts to the joint names of himself and his wife. It contends that that fact standing alone is sufficient to sustain the inheritance tax since the "language of the statute determines the taxable portion on the basis of legal title". McKimmey v. District of Columbia, 112 U.S. App. D.C. 132, 133, 300 F.2d 724, 725 (1962). There, the court went on to state:

> It [the statute] makes no exception, even where the surviving joint tenant has furnished the consideration for the purchase of the property, has controlled it, and has enjoyed the income therefrom during the decedent's lifetime. (Matter in brackets this Court's.)

The Court also noted that Congress chose not to adopt the same method for taxing such property under District of Columbia law as was used under the Federal Estate Tax. The federal tax is determined on the basis of original ownership or the consideration supplied in acquiring the property. The Court found the distinction between the two statutes to be deliberate. U.S. App. D. C. at 134, F.2d at 726 . McKimmey represents the only pronouncement by an appellate court on this subject. District of Columbia v. Riggs National Bank, 335 A.2d 238, 241 n 4 (D.C. App. 1975). As such, it is controlling in this case. Bethea v.

United States, 365 A.2d 64 (D.C. App. 1976).

The petitioner argues that McKimmey does not go as far as the District suggests since in McKimmey a joint tenancy was intended and created while this petitioner denies he ever intended such a result. The petitioner in McKimmey purchased shares of stock and registered them jointly in the names of herself and the decedent with a right of survivorship. The trial court found that the purpose for registering the shares in their joint names was to "assure that the decedent as survivor would receive the shares if petitioner predeceased her". 112 U.S. App. D.C. at 133, 300 F.2d at 725. Petitioner argues that McKimmey is distinguishable from the instant case. This Court disagrees with that reasoning. The Court has already found that the present petitioner intended to make a gift in praesenti with a right of survivorship. Thus, this case is consistent with the prior cases and McKimmey. It is also noted that the McKimmey opinion was written by the same judge who authored the opinions in Thompson and Imirie. In fact McKimmey cites Imirie. 112 U.S. App. D.C. at 134, 300 F. 2d at 726 n. 3.

The District is correct in arguing that the court in McKimmey appeared to interpret the statute so as to require the payment of the tax solely on the basis of legal title; however, since this Court has already disposed of the case in a manner consistent with Murray, Imirie and Thompson, it need not address that precise issue.

VII

The burden of proof was upon the petitioner. See Petworth Pharmacy, Inc. v. District of Columbia, 335 A.2d 256 (D.C. App. 1975). Since the petitioner has failed to carry that burden it follows that judgment must now be entered for the District.

In view of the above this Court will enter judgment in favor of the District dismissing this claim for refund.

O R D E R

It is hereby

ORDERED that petitioner's appeal is denied, and it is further

ORDERED that this case is dismissed with prejudice.

Dated: November 7, 1977

JOHN GARRETT PENN
Judge

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