IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

O.C. No. 78 DE of 2006
Control No. 062895
E-Filing No. 0600308

Estate of CLINTON MILES ROBISON, Deceased

OCTOBER 16, 2006

LAZARUS, J.

OPINION

The matter before the Court is a Petition for Declaratory Judgment filed by Jill Robison Croom and Jeffrey L. Scheib, Co-Executors of the Will of Clinton Miles Robison, Deceased. The petitioners have sought a ruling by this Court that the language of the tax clause in decedent's will is not sufficiently specific to alter the statutory apportionment of Pennsylvania Inheritance Tax and Federal Estate Tax. Respondent Marco George Toda, a beneficiary of a life insurance policy purchased by the decedent, argues that the testator's intent is clear and that all death taxes be paid from his probate estate. For the reasons set forth below, the Court grants the declaratory relief requested.

In the absence of a contrary intent appearing in a decedent's will, liability for Pennsylvania inheritance tax falls upon each transferee. 20 Pa.C.S.A. § 3703; 72 Pa.C.S.A. § 9144(f). Similarly, Federal Estate Tax is apportioned proportionately among all parties who have an interest in property includible in the decedent's gross estate, except where there is a contrary direction contained

in the Will. 20 Pa.C.S.A. §§ 3701, 3702(a). In short, the apportionment statutes create a presumption which must be overcome by a contrary direction in a testator's Will.

In paragraph Third of his Will, Clinton Miles Robison directs "that all taxes arising as a result of my death, including those due because of bequests under this my Will, shall be paid out of my estate so that no beneficiary is charged therefor." Petitioners claim that this clause lacks the specificity necessary to overcome the statutory scheme, while the Respondent asserts that the imposition of the statutory scheme would defeat the testator's "clear and unambiguous" intent that all taxes – on probate and non-probate assets – be paid from his probate estate.

The apportionment statutes have been interpreted by our Supreme Court to require that a testator's tax clause be "clearly expressed . . . [in] language [which] must not be of doubtful import." *Erieg Estate, 439 Pa. 550, 556, 267 A.2d 841, 845 (1970).* The language used by the testator to override the statutory presumption must be "unambiguous and open to no other interpretation." *Id.* In this case, and as the petitioners correctly observe in their Memorandum of Law, the testator's tax clause is open to multiple interpretations.

The decedent directed that all taxes arising as a result of his death – "including those due because of bequests under this my Will" – be paid out of "the estate so that no beneficiary is charged therefor." His use of the words "including those due because of bequests under this my Will" suggests by

implication that he also intended that taxes due because of non-probate transfers at death be paid from "the estate." However, the testator did not define "estate." An argument can be made that he intended that taxes be paid from his probate estate, but he did not explicitly so direct. Furthermore, assuming we accept that he intended for all taxes to be paid from his probate estate, the decedent nevertheless failed to specify whether such taxes were to be paid from residue prior to division, or subsequent to division. This distinction would have a significant impact on tax consequences, not only for the individual beneficiaries, but particularly for the charitable beneficiary, upon whose share no tax is due. If tax were calculated prior to division, the charitable beneficiary would, in effect, bear an indirect share of the tax burden. However, if residue is divided and tax is calculated on each taxable share thereof, the charity bears no tax burden. This overall lack of clarity requires that taxes be apportioned according to the statute.

In the *Erieg* case referred to above, the tax clause at issue read as follows:

> "Item IV. All taxes and interest and penalties thereon payable by reason of my death with respect to property comprising my gross taxable estate, whether or not passing under this Will, shall be paid from my residuary estate."

The language utilized in the *Erieg* clause is more specific than that used by Mr. Robison in his Will. For example, the *Erieg* clause refers specifically to the testator's "gross taxable estate" and directs payment from his "residuary estate" (rather than simply his "estate"). Nevertheless, the *Erieg* Court found that this

language was not specific enough to overcome the statutory presumption. The Court based its decision in part on the fact that one of the residuary beneficiaries – the wife of the decedent – received favorable tax treatment on her share of residue. The Court reasoned that the testator would likely not wish to deprive his wife of this favorable tax treatment, which would have been the result had his tax clause been implemented. The Court stated that, because the aim of the statute "is to promote the presumed intentions of most testators," it would not depart from that scheme without a "clear indication that such was the testator's intent." *Erieg*, at 556, 845. Mr. Ereig did not clearly indicate an intention to depart from that scheme.

In the matter now before the Court, one of the residuary beneficiaries is a charitable organization, whose share of the estate is also subject to favorable tax treatment. As stated above, the charity would indirectly bear a portion of the tax burden were the Court to accept the respondent's proposed interpretation of the decedent's will. As the Court did in *Erieg,* we must consider whether the testator clearly indicated his intent to deprive the charitable beneficiary of a portion of its tax exemption. *See also Estate of Pyle, 391 Pa. Super. 244, 252, 570 A.2d 1074, 1078 (1990) (declining to enforce an interepretation whereby "shares given to charities would be reduced, thereby reducing the deduction available to the estate and causing the estate to pay a greater amount of estate tax" and observing that a "testatrix [is] free to upset [the statutory] scheme" if such an intent is evidenced in the will).* The language of Mr. Robison's will evidences no

such intent.

Finally, the Court wishes to note that the position taken by the petitioners is contrary to their personal interests in the estate. Were the Court to accept the respondent's position, the petitioners, as residuary beneficiaries under the Will, would be entitled to a larger sum than they would under their proposed scenario.

For the foregoing reasons, the Court concludes that the testator failed to direct with sufficient specificity an allocation of taxes contrary to the statutory scheme. Accordingly, the recipients of non-probate property shall bear the tax on the property they receive, the residuary beneficiaries shall bear the tax generated by their share of residue, and the charitable residuary shares are exonerated from all death taxes.

Lazarus, J

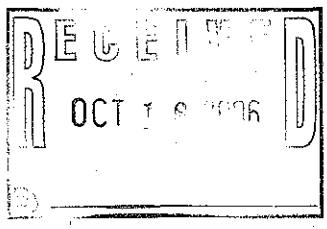
COPIES SENT
PURSUANT TO Pa. R.C.P. 236(b)
OCT 16 2006
USER I.D.

James F. Mannion, Esquire
John B. Eurell, Esquire
Charles E. Donohue, Esquire
Deputy Attorney General

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No. 78 DE of 2006



ESTATE OF CLINTON MILES ROBISON, DECEASED

FINAL DECREE

AND NOW, this 16th day of October, 2006, upon consideration of the annexed Petition and any answers thereto, and upon consideration of memoranda of law submitted by counsel, and pursuant to the Declaratory Judgments Act, 42 Pa. C.S.A. § 7351 *et seq.*, it is hereby **ORDERED** and **DECREED** as follows:

1. Item THIRD of Decedent's Will dated November 14, 2001 is not sufficiently specific to alter the statutory apportionment of Pennsylvania Inheritance Tax and Federal Estate Tax on the non-probate property against the recipients of that property.

2. Marco George Toda shall pay to the Estate the sum of $58,899.09, representing apportionment against him of $48,980.79 of Federal Estate Tax and $9,918.30 of Pennsylvania Inheritance Tax on account of non-probate property received by him.

3. Tax is apportioned against Jill Robison Croom as follows: $1,700.71 of Federal Estate Tax on non-probate property, $53,170.72 of Federal Estate Tax on probate property, and $90,031.56 of Pennsylvania Inheritance Tax on probate property, for a total of $144, 902.99.

4. Tax is apportioned against Louise T. McCall as follows: $12,670.21 of Federal Estate Tax on non-probate property, $10,274.09 of Federal Estate Tax on probate property, and $22,746.61 of Pennsylvania Inheritance Tax on probate property, for a total of $45,690.91.

5. Tax is apportioned against Jeffrey L. Scheib as follows: $10,274.09 of Federal Estate Tax on probate property, and $22,746.61 of Pennsylvania Inheritance Tax on probate property, for a total of $33,020.70.

Anne Lazarus, J.