Denver Law Review

Volume 16 | Issue 6 Article 5

July 2021

Taxation of Trust Funds Where Invasion of Corpus Occurs and Remainder Left to Charity

J. E. Robinson

TAXATION OF TRUST FUNDS WHERE INVASION OF CORPUS OCCURS AND REMAINDER LEFT TO CHARITY

By J. E. ROBINSON *of the Denver Bar*

AN interesting and important decision was handed down by the Supreme Court of this state on May 15th, in case No. 14425, entitled the *People of the State of Colorado v. the Colorado National Bank, as Executor of the Estate of Frederick J. McCombe, Deceased.* It is interesting in determining the questions raised, and important in view of similar situations which may arise in the future. As the opinion did not state very fully the facts in the case, but referred to the record for those facts, it is necessary to state the facts as so shown in order that the question presented may be fully understood.

Frederick J. McCombe died September 18, 1936, a resident of Denver, leaving a will and an estate of an agreed net value of approximately $33,000.

He left a widow who was sixty-nine years of age, and her life expectancy was 8.97 years. She is incurably insane, and has been cared for in a sanitarium for some twelve or fifteen years.

Under his will the testator left all of his property to the Colorado National Bank in trust for the support of his wife during her lifetime, and to the Denver Foundation for charitable uses after her death. The will in question provided for the support of his wife as follows:

"Out of the moneys and property constituting, or which shall thereafter constitute, the assets of this trust, meaning thereby both the principal of said trust and the income therefrom, I do authorize, direct and require my said trustee to furnish and expend for my beloved wife, * * * during her natural lifetime, full, proper, adequate and comfortable support and maintenance, * * * and for that purpose I do hereby authorize, direct and empower my said trustee to use, first, the income from said trust fund for that purpose, and if the income shall not be sufficient for that purpose then to use so much of the principal of said fund as may be necessary fully and adequately to support and care for my said wife so long as she lives."

The will further provided that upon the death of his said wife the remainder should go to the Denver Foundation for charitable purposes. The remainder going to the Denver Foundation is exempt from an inheritance tax, and the amount thereof when ascertained must be deducted from the gross

estate under the authority of subsection (c) of section 26, chapter 85, C. S. A., as amended in 1937, which provides that there shall be deducted from the gross estate

"the amount of all bequests, legacies, devises or transfers * * * to or for the use of any corporation * * * organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. * * *"

The Attorney General filed his report claiming an inheritance tax upon the entire assets of the estate, less the widow's exemption. The County Court entered its customary ex parte order fixing the amount of the inheritance tax in accordance with the report of the Attorney General. Objections were filed to the order upon which there was a hearing, as a result of which the court determined that the estate was not liable for any inheritance tax.

In the County Court, as well as in the Supreme Court, the Attorney General contended that by reason of the permissible invasion of the corpus of the trust for the purpose of the support of the widow, the amount which would ultimately go to charity was so indefinite and uncertain that it could not be deducted. The contention of the executor was that the amount necessary for the support of the widow and, therefore, the amount which would ultimately go to charity, was capable, of being ascertained and determined with reasonable certainty.

Upon the hearing of the objections in the County Court, and after testimony was taken, the court found and determined that the amount necessary for the support of the widow during her life expectancy was approximately $19,000, of which approximately $7,000 would be paid from income, and the balance of $12,000 must be paid from the corpus of the estate, and that the remainder of the estate which would go to the Denver Foundation for charitable purposes was over $21,000.

The law upon the question is fairly well settled, although it has been the subject of numerous discussions, principally in the federal courts under a federal statute similar to the one quoted above. Perhaps the principal case is that of *Ithaca Trust Co. v. U. S.*, 279 U. S. 151, wherein the court stated that if the amount which would go to charity could be ascertained with reasonable certainty, it was deductible. In that case, however, as in other cases it was stated that the probable

income from the trust would be sufficient to support the life beneficiary, but there appears to be no case holding that the fact that it is necessary to invade the corpus of the estate for the support of the life beneficiary renders the bequest to charity indefinite or uncertain. The Attorney General conceded that if the income was sufficient to support the widow the corpus of the trust which would go to charity could be deducted, but insisted that when it was necessary to invade the corpus for that purpose, no deduction could be made.

It was the contention of the executor that it is not material whether or not in any given case the corpus was invaded, the sole question being the amount which would ultimately go to charity whether the corpus of the fund was or was not invaded, and the Supreme Court so held.

As stated, the question is of much importance, not only to trust companies and others administering similar trusts, but to men who desire to provide for the ample support of their widows, leaving the balance to charity.

COURT RULES ORDINANCES OF HOME RULE CITIES CONTROL TRAFFIC VIOLATIONS

The Colorado State Motor Patrol, acting under authority of the motor vehicle act and the state statutes, cannot enforce a traffic violation committed under the state motor vehicle act when it occurs in the city limits of the home ruled city, according to a ruling announced by Judge John B. O'Rourke in a recent case decided by him in the District Court of La Plata County.

In the particular case the defendant was charged with operating a motor vehicle while under the influence of intoxicating liquor and reckless driving, contrary to the motor vehicle act. In this case the court quashed the information on the ground that the acts sought to be charged under the information in this particular case were acts in nature of traffic violation occurring within the limits of the City of Durango, and were of a local or municipal nature and subject to the exclusive control of the city itself. The court based its opinion upon the question of whether or not the conduct sought to be controlled by the state statutes, as well as the ordinances of the City of Durango, which is a home ruled city, is a matter of

purely a local or municipal nature, affecting the city only, or one of a general nature, affecting the interests of the people of the State of Colorado as a whole.

The court took the position that the decisions indicate that traffic regulation generally without reference to the specific charge alleged in the information is lodged exclusively in the municipality. The court further pointed out that the 20th Amendment to the Constitution of the State of Colorado grants to home ruled cities exclusive control without legislative interference in matters local and municipal. The court reached the conclusion that the information charges acts relating to matters of traffic regulation, which are exclusively under the control of the municipal authorities, because based upon matters purely local and municipal in their nature. Therefore, regulation was lodged in the City of Durango.

—R. FRANKLIN MCKELVEY, *Correspondent.*

LAWYER DISBARRED FOR AIDING UNAUTHORIZED PRACTICE

Another case condemning the lawyer who aids unlawful practice of the law, is the recent case of "In the matter of Paul E. Tuthill, an attorney," before the Supreme Court, Appellate Division, First department, April, 1939, New York.

Tuthill was found to have aided in unlawful practices of a corporation known as Transatlantic Estates & Credit Company, Inc., upon an investigation being made of the activities of the corporation, in New York. In 1930, the corporation was dissolved in New York, and reorganized in New Jersey, the respondent aiding in all of its work when the corporation continued its unlawful activities in New York State, Tuthill continuing to reside in New York City.

The court found that the sole business of the corporation was searching out and procuring claims, furnishing counsel and legal advice and that such activities constituted the unlawful practice of the law. The Respondent was disbarred.

Jerome Smith of Fort Collins is part-time instructor at the Colorado State College of Agriculture and Mechanic Arts this semester. He is teaching commercial law.