

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-07-29-01 / NON-PRECEDENTIAL
ID: P-86-125
DATE: JULY 29, 1986
DISPOSITION: DENIED
TAX TYPE: ESTATE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made to ALJ, Presiding Administrative Law Judge, by the Oklahoma Tax Commission, and hearing had on June 20, 1986, at which hearing NEPHEW, Executor of the Estate of DECEDENT, appeared in person and by attorney, ATTORNEY, and the Estate and Gift Tax Division appeared by attorney, OTC ATTORNEY.

Exhibits not herein itemized were received in evidence. NEPHEW, Executor, testified on behalf of Protestant. AUDITOR, Auditor, and SUPERVISOR, Auditor Supervisor of the Division, testified on behalf of the Division. Proposed Findings and Conclusions were received on June 26, 1986, and the case was submitted for a proposed decision.

STATEMENT OF THE CASE

DECEDENT died testate on October 21, 1985, at the age of 82. The Executor, NEPHEW, filed the Oklahoma estate tax return with the Division on or about March 3, 1986. An Order Assessing Tax in the amount of One Thousand Forty-Five Dollars and Ninety-Five Cents (\$1,045.95) was entered on March 31, 1986, by the Division. On April 1, 1986, the Executor paid the amount of the assessment under protest, and on the same date, the Division entered its Order Releasing Taxable Estate.

Prior to March 31, 1977, decedent was the sole owner of certain real property, to-wit:

Lot NUMBER (XX), Block NUMBER (X), NAME Addition; Lots NUMBER (X) to NUMBER (XX), inclusive, to CITY, COUNTY, Oklahoma, according to the recorded plat thereof.

On March 31, 1977, decedent transferred said real property to NEPHEW and herself as joint tenants. No gift tax return was filed with respect to the transfer and no documentary stamps were affixed to verify a sale of real property.

NEPHEW is a nephew of DECEDENT, decedent. In 1976, according to the testimony of NEPHEW, he and his aunt entered into an oral contract, by the terms of which he agreed to perform labor for repairs of her home, as needed, in exchange for which she would deed to him a one-half (1/2) interest in the real estate. He testified further that he did perform labor and made repairs on her home, gave her money on occasions, but that no written documentation exists to verify such agreement or his performance in accordance therewith.

On September 27, 1984, approximately one year and one month prior to the date of death of decedent, she executed her Last Will and Testament which provided for disposition of the real property in question. On the same date, she and NEPHEW, as joint tenants, conveyed said real property to themselves as tenants in common, thereby giving NEPHEW a one-half (½) interest in the real property by separate and distinct title from the one-half (½) interest remaining in decedent.

The value of the real property in question was Forty-One Thousand Eight Hundred Forty-Five Dollars (\$41,845.00). The total taxable estate of DECEDENT was Seventy-Seven Thousand Six Hundred Fifty-Nine Dollars and Twenty-Five Cents (\$77,659.25).

ISSUES AND CONTENTIONS

The issue here is whether the deed dated September 27, 1984, to the real property in question was made in contemplation of death and, if so, whether the entire value of said real property should be included in the estate instead of only one-half (½) thereof, the ownership of which remained in the name of decedent at the time of her death.

Protestant contends that the deed of September 27, 1984 was not made in contemplation of death and, therefore, only one-half (½) of the value of said property should be included in the estate.

The Division contends that the deed to the above real property dated September 27, 1984, was made in contemplation of death and, therefore, the entire value of said real property should be included in the estate.

APPLICABLE LAW

68 O.S. § 804(A)(4) provides as follows:

“(A) The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:

...

“(4) To the extent of the value of any interest of the decedent in any property owned by the decedent and any other person as joint tenants, or tenants by the entirety, including funds or securities deposited with any person, corporation, bank or trust company or held in any safety box kept by the beneficiary or joint survivor, except such part of said property or deposit as may be shown to have originally belonged to such other person and never to have been acquired by the latter from the decedent for less than an adequate and full consideration in money or money’s worth. Persons claiming to own an interest with the decedent in any property, real or personal, included in the taxable estate of the decedent must support said claim by adequate proof, showing the value of claimant’s interest contributed in money or money’s worth from separate funds or properties, and provided that a sworn affidavit

setting forth the facts supporting such claims shall be considered prima facie evidence of adequate proof.” (Emphasis Added)

At the hearing, Protestant failed to provide any proof, other than the self-serving testimony of NEPHEW, to the effect that any “money or money’s worth” from separate funds or property was contributed by NEPHEW as consideration for the property deeded to himself and decedent as joint tenants on March 31, 1977. Thus, it is clear that pursuant to the above statute, the entire value of the real property in question would have been included in the estate of DECEDENT had such property remained in joint tenancy until her death.

68 O.S. § 807(A)(2) provides as follows:

“(A) The value of the gross estate used as a basis for a determination of the value of the net estate, shall be determined by including:

...

“(2) The value of any real or personal property, including the homestead passing by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after his death. Any transfer made by the decedent of a material part of his estate within three (3) years prior to death, without an equivalent in monetary consideration, shall, unless shown to the contrary, be deemed to have been in contemplation of death, and such transfers shall be included at their net value at the date of decedent’s death.” (Emphasis Added)

At the hearing, the evidence and testimony, presented established that a material portion of decedent’s estate was transferred to NEPHEW approximately one year and one month prior to the death of decedent, and that such transfer was “without an equivalent in monetary consideration.” As such, a rebuttable presumption that the transfer was made in contemplation of death was established. Protestant failed to present evidence and/or testimony sufficient to rebut that presumption.

CONCLUSIONS

In view of the above and foregoing factual findings and law applicable thereto, the undersigned concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That NEPHEW did not contribute “money or money’s worth from separate funds or property” as consideration for the real property deeded to himself and decedent as joint tenants on March 31, 1977.
- (3) That had the real property in question remained in joint tenancy, the entire value of said property would have been included in the estate of DECEDENT pursuant to 68 O.S. § 807(A)(4)

(4) That when the property was transferred by decedent and NEPHEW, as joint tenants, to decedent and NEPHEW, tenants in common, by deed on September 27, 1984, one-half (½) of the property was withdrawn from decedent's taxable estate.

(5) That the transfer by deed of said real property on September 27, 1984, represented the transfer of a material part of decedent's estate without an equivalent in monetary consideration being paid to decedent, and such transfer was made in contemplation of death.

(6) That pursuant to 68 O.S. § 807(A)(2), the entire net value of the property should be included in the Estate of DECEDENT.

(7) That the protest should be denied, and the One Thousand Forty-Five Dollars and Ninety-Five Cents (\$1,045.95) assessment paid under protest not be refunded.

DISPOSITION

In view of the above and foregoing Findings of Fact and Conclusions of Law, it is the ORDER of the OKLAHOMA TAX COMMISSION that the Protest of the Estate of DECEDENT be denied, and that the One Thousand Forty-Five Dollars and Ninety-Five Cents (\$1,045.95) assessment paid under protest not be refunded.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.