

TAX APPEAL BOARD OF THE STATE OF DELAWARE

ESTATE OF WILLIAM J. WILSON,)
)
 Petitioner,)
)
 v.)
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Docket No. 622

Before: Joseph S. Yucht, Esquire, Chairman; Cyric W. Cain, Jr., and Nettie C. Reilly, Board Members.

Gregg Wilson, Esquire and Edward J. Wilson, Esquire, for Petitioner.

John P. Fedele, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: One William J. Wilson died on or about December 12, 1973 and at the time of his death certain assets were deemed owned by him individually or jointly with one Bella D. Burns. The Respondent accordingly computed that the sum of \$4,216.52 was due in inheritance tax, plus interest thereon. Petitioner contended that although the assets were listed in decedent's name alone or jointly with Bella D. Burns, said assets were only being held in trust for

one Francis S. Wilson, a brother of said decedent.

In December, 1951, the said William J. Wilson and Bella D. Burns executed a written document entitled Memorandum of Intent, whereby they declared:

"The undersigned, William J. Wilson and Bella D. Burns, wish to go on record that the stock certificates and real estate which they now own jointly are being so held for the benefit of Francis S. Wilson of 2501 W. 18th St., Wilmington, Del. It is their intention that any property acquired in the future and so held is to be for Francis S. Wilson. The funds were left by Mrs. Fannie A. Wilson, deceased, and are to be invested and reinvested in sound securities to provide extra income and financial assistance for her son, Francis S. Wilson, who has had no business training and lacks the skill to manage these investments.

Net income from the funds will be used each year either for the personal expenses of Francis S. Wilson, or invested in our joint names to accumulate additional funds for his later years. Certificates and deeds will be kept in safe deposit by William J. Wilson.

Property owned as joint tenants with right of survivorship and not as tenants in common as of December 18, 1951.

2713 Broom St., Wilmington, Del.
Three apartment building

300 sh. Atlas Powder Co. Com. Ctf. #NB 6025,
NB 6026, NB 6027
60 sh. Coty, Inc. Com. Ctf. # NY/O 12201

40 sh. duPont, Inc. \$4.50 Pfd.

20 sh. Warner Brothers Pictures, Inc. Com.

Ctf. # FO 88461"

The funds were invested and reinvested as aforesaid and the income was used to support Francis who is incompetent to handle his own affairs. No formal guardianship or trusteeship was set up through the Court of Chancery because the said William J. Wilson did not want to be bound by the strict legal investment requirements of said Court. No deeds were recorded at the Office for the Recorder of Deeds indicating that said property was being held as aforesaid. The property increased in value through the years from \$25,000.00 to around \$81,000.00 as of the time of the hearing.

The issue is whether or not a trust really did exist. If a trust did exist then these assets should not be included in the Estate of William J. Wilson.

The Board finds as a fact that a Trust did exist and the assets should not have been included in said Estate. The four basic elements of a trust are (1) an intent, (2) a trustee, (3) a trust res, and (4) a cestui que trust. (Survey of the Law of Trusts, by Chester H. Smith, West Publishing Co., 1949.) Each of these elements are set out in the "Memorandum of Intent" document and are determined as follows:

A. Intent

William J. Wilson and Bella D. Burns sought to place the property (res) listed in said document for the exclusive use of Francis. It was clearly intended that the legal title to the property remain in William and/or Bella's name and that it be used wholly for Francis, who has the beneficial interest.

B. Trustee

William J. Wilson and Bella D. Burns were the trustees. The fact that both William and Bella are deceased will not destroy the trust for an equity court will not permit a trust to fail for want of a trustee. That was not necessary in this matter for others have been acting to administer said trust.

C. Trust Res

There can be no trust without a res - a definite thing held by the trustees for the beneficiary. In this case the res was the stock certificates and real estate, which were funds left by one Fannie A. Wilson, the mother of William and Francis.

D. Cestui Que Trust

In this case Francis S. Wilson is the

cestui que trust, the one for whose benefit the trust is created and for whom alone the trustees hold and administer the res or subject matter.

The Respondent was unable to cite to the Board any controlling authority, by either case law or statute, whereby Delaware imposes any other or different requirements for the creation of a trust. Absent such authority, the Board relied on the general body of law pertaining to the creation of a trust. Accordingly, we hold that the assets in question were held in trust by William J. Wilson and as such should not have been included in his Estate.

IT IS SO ORDERED.

Joseph J. Gault
Richard W. Cain, Jr.
Nettie C. Reilly

Dated:

July 18, 1977

SYNOPSIS

DOCKET NO. 622

TAX SEGMENT: INHERITANCE TAX
 Trust

ISSUE: The question is whether a trust existed and whether the assets of the trust should be included in the estate.

TAB DECISION: The Tax Appeal Board held that a trust had been created and therefore the assets should not be included in the estate.

DECISION: For Petitioner

DECISION DATE: July 18, 1977