

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

**CITIZENS BANK OF WEST VIRGINIA,
ADMINSTRATOR, C.T.A. OF THE ESTATE
OF SHIRLEY A. MARTIN, SUCCESSOR
TRUSTEE OF THE SHIRLEY A.
MARTIN TRUST, and SUCCESSOR TRUSTEE OF
THE CARL J. MARTIN TRUST,**

Petitioner,

v.

**Civil Action No. 20-P-21
Judge David H. Wilmoth**

**WILLIAM A MARTIN, SHERREE D.
MARTIN, CARL J. MARTIN, II, TERESA
A. MARTIN PIKE, CARL ROBERT
MARTIN, PATRICK STEPHEN MARTIN,
CARLI JO MARTIN, JEFFREY TODD
EDGELL, MARTINA ELIZABETH ANN
EDGELL, JASMINE PIKE, and SOPHIA
PIKE, interested parties in the Estate of
Shirley A. Martin, the Shirley A. Martin
Trust, and the Carl J. Martin Trust,**

Respondents.

**ORDER GRANTING MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING FEDERAL ESTATE TAX PAYMENT**

On Thursday, April 7, 2022, the parties in the above-styled civil action appeared, by counsel, before the Court to address the proper source of payment of federal estate tax due as a result of the death of Shirley A. Martin. At the Hearing, the parties, by counsel, made oral arguments and proffers to the Court. Objections by the parties to certain rulings by the Court during the Hearing were noted and preserved for the record. After reviewing the pleadings and papers filed herein, hearing oral arguments and proffers, and upon mature consideration by this Court, the Court makes the following findings of fact and conclusions of law. As set forth more fully below, the Court hereby concludes as a matter of law that the Estate of Shirley A. Martin (the Estate) is entitled to reimbursement from

the Carl J. Martin Marital Trust (the Trust) for federal estate tax due as a result of the inclusion of the Trust in the gross estate of Shirley A. Martin.

FINDINGS OF FACT

Based on the various motions, memoranda, the arguments of the parties, and the entire record in this action, the Court is of the opinion and does hereby FIND as follows:

1. Carl J. Martin, Sr. passed away a resident of Upshur County, West Virginia on August 9, 1996.
2. Mr. Martin was survived by his spouse, Shirley A. Martin, and his children, William A. Martin, Sherree D. Martin, Carl J. Martin, II, and Teresa A. Martin Pike.
3. Under the terms of the Last Will and Testament of Carl J. Martin, Sr., Mr. Martin established the Carl J. Martin Testamentary Trust (the Carl J. Martin Marital Trust) for the benefit of his surviving spouse, Shirley A. Martin.
4. On Schedule M of the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) filed on behalf of the Estate of Carl J. Martin, the Executor of the Estate of Carl J. Martin made an election under I.R.C. § 2056 to qualify the assets of the Carl J. Martin Marital Trust for the unlimited marital deduction.
5. By qualifying the assets of the Carl J. Martin Marital Trust for the unlimited marital deduction under I.R.C. § 2056, no federal estate tax was paid on the death of Carl J. Martin.

6. Mr. Martin's Will provides that the assets of the Carl J. Martin Marital Trust are to be divided into equal shares for Sherree D. Martin, Teresa A. Martin Pike, and Carl J. Martin, II upon the death of Shirley A. Martin¹.
7. Shirley A. Martin passed away a resident of Upshur County on August 11, 2019.
8. Shirley A. Martin was survived by her children, William A. Martin, Sherree D. Martin, Carl J. Martin, II, and Teresa A. Martin Pike, and seven (7) grandchildren.
9. Article III, Paragraph 4 of the Last Will and Testament of Shirley A. Martin directs that the residuary of Mrs. Martin's Estate be distributed to the Shirley A. Martin Trust which Mrs. Martin established on November 24, 1997, and subsequently amended.
10. The Last Will and Testament of Shirley A. Martin and the Shirley A. Martin Trust, as amended, set forth multiple specific bequests of personal property and specific devises of real property, coupled with detailed directions as to the disposition of her assets.
11. Article II of the Last Will and Testament of Shirley A. Martin provides as follows:

I further direct that any and all estate, gift, income, inheritance, transfer, and succession taxes, not including generation-skipping taxes, assessed or accruing as a result of my death, including penalties and interest, if any be paid from the residue of my estate and not apportioned.
12. Shirley A. Martin's estate planning was done in contemplation of I.R.C. § 2207A and does not indicate an intent to waive any right of recovery under I.R.C. § 2207A.

¹ William A. Martin, a son of Carl J. Martin, Sr., and Shirley A. Martin, disclaimed any interest he had in the Estate of Carl J. Martin, Sr. and in the Carl J. Martin Marital Trust.

13. It is in the best interest of Mrs. Martin's beneficiaries to have the Carl J. Martin Marital Trust reimburse the Estate of Shirley A. Martin for the federal estate tax payable as a result of the inclusion of the Marital Trust in Mrs. Martin's gross estate.
14. The terms of Shirley A. Martin's Last Will and Testament are consistent with the provisions of the Carl J. Martin Marital Trust established under the Last Will and Testament of Carl J. Martin.
15. Shirley A. Martin recognized that the bequests set forth in her estate planning documents would be reduced if the Carl J. Martin Marital Trust was not responsible for the federal estate tax payable as a result of the inclusion of the Marital Trust in Mrs. Martin's gross estate.
16. Shirley A. Martin intended to maximize the bequests to the beneficiaries named in her estate planning documents.
17. The specific bequests and devises set forth in Mrs. Martin's estate planning documents, including bequests of Twenty-Five Thousand Dollars (\$25,000.00) to each of her grandchildren, would be significantly reduced if the Carl J. Martin Marital Trust is not responsible for its proportionate share of the federal estate tax due as a result of the inclusion of the Marital Trust in the gross estate of Shirley A. Martin.
18. Reducing the specific bequests and devises set forth in Mrs. Martin's estate planning documents would be contrary to the intent of Shirley A. Martin as expressed in her estate planning documents.
19. On or about May 8, 2020, Sherree D. Martin, as Executrix of the Estate, paid the U.S. Treasury \$3,089,693.08 in estimated federal estate tax, a portion of which

was paid from the Carl J. Martin Marital Trust in accordance with the provisions of I.R.C. § 2207A.

20. On or about November 12, 2020, Sherree D. Martin, as Executrix of the Estate of Shirley A. Martin, filed the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) on behalf of the Estate in accordance with the provisions of Treas. Reg. § 20.6081-1(b).
21. In accordance with provisions of I.R.C. § 2044, Sherree D. Martin, as Executrix of the Estate of Shirley A. Martin, included the assets of the Carl J. Martin Marital Trust in the gross estate of Shirley A. Martin for federal estate tax purposes.
22. Following the appointment of Citizens Bank of West Virginia (Citizens Bank) as Administrator, c.t.a. of the Estate and Trustee of the Carl J. Martin Marital Trust, Citizens Bank questioned whether or not the Estate of Shirley A. Martin is entitled to reimbursement from the Carl J. Martin Marital Trust for federal estate tax due as a result of the inclusion of the Trust in the gross estate of Shirley A. Martin.

CONCLUSIONS OF LAW

Based on the various motions, memoranda, the arguments of the counsel, and the entire record in this action, the Court is of the opinion and does hereby CONCLUDE as follows:

1. This Court has jurisdiction over this proceeding by virtue of the Decedents Carl J. Martin and Shirley A. Martin having been residents of Upshur County, West Virginia.
2. Venue is proper before this Court pursuant to W.Va. Code § 56-1-1(a).

3. Summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c).
4. "A motion for summary judgment should be granted if the pleadings, affidavits, or other evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Aluise v. Nationwide Mutual Fire Insurance Company, 218 W.Va. 498, 503, 625 S.E.2d 260, 265 (2005) (citing Syl. Pt. 2, Harrison v. Town of Eleanor, 191 W.Va. 611, 447 S.E.2d 546 (1994)).
5. "Upon a motion for summary judgment, all exhibits and affidavits and other matters submitted by both parties should be considered by the court, and such motion can be granted only when it is clear that no genuine issue of material fact is involved." Aluise at 503, 625 S.E.2d at 265 (citing Haga v. King Coal Chevrolet Co., 151 W.Va. 125, 132, 150 S.E.2d 599, 603 (1966)).
6. There are no genuine issues of any material fact on the question of whether or not the Estate of Shirley A. Martin is entitled to reimbursement from the Carl J. Martin Marital Trust for federal estate tax due as a result of the inclusion of the Trust in the gross estate of Shirley A. Martin.
7. I.R.C. § 2056 provides that a decedent's estate is entitled to a marital deduction for qualified terminable interest property (QTIP) passing in trust for the benefit of the decedent's surviving spouse during the surviving spouse's lifetime.
8. I.R.C. § 2044 provides that the value of a surviving spouse's gross estate includes the value of any QTIP property if a deduction was allowed with respect to the

transfer of such property for the benefit of the surviving spouse under I.R.C. § 2056.

9. I.R.C. § 2207A(a)(1) grants a decedent's estate a right of recovery for the increase in estate taxes caused by estate tax inclusion of qualified terminable interest property (QTIP) under I.R.C. § 2044.

10. The West Virginia estate tax apportionment statute, codified as W. Va. Code § 44-2-16a, was enacted prior to the current version of I.R.C. § 2207A and does not address the right of a decedent's estate to recover federal estate tax attributable to the inclusion of the assets of a qualified terminable interest property (QTIP) trust in a surviving spouse's gross estate.

11. I.R.C. § 2207A(a)(2) provides that the right of recovery under I.R.C. § 2207A(a)(1) shall not apply if the surviving spouse "specifically indicates an intent to waive any right of recovery" with respect to such property.

~~12. While the language of I.R.C. § 2207A permits it to be negated by a contrary provision in a decedent's will, the tax apportionment clause of the Last Will and Testament of Shirley A. Martin is insufficient to negate the reimbursement requirement of I.R.C. § 2207A.~~


~~13. Because Shirley A. Martin did not specifically indicate an intent to waive any right of recovery under I.R.C. § 2207A, the provisions of I.R.C. § 2207A require that the assets of the Carl J. Martin Marital Trust be used to pay the portion of the federal estate tax due as a result of the inclusion of the Trust in the gross estate of Shirley A. Martin.~~

14. The paramount rule in construing a will is that the intention of the testator controls and must be given effect. Ruble v. Ruble, 217 W. Va. 713, 619 S.E.2d 226 (2005);

Charleston Nat'l. Bank v. Thru the Bible Radio Network, 203 W.Va. 345, 507 S.E.2d 708 (1998); Dilmore v. Heflin, 159 W. Va. 46, 218 S.E.2d 888 (1975); Weiss v. Soto, 142 W. Va. 783, 98 S.E.2d 727 (1957).

15. The cardinal rule in the construction of testamentary instruments is that a court should give effect to the intent of the testator. Charleston Nat'l. Bank, 203 W.Va. 345, 507 S.E.2d 708 (1998); Reed v. Propst, 169 W. Va. 473, 288 S.E.2d 526 (1982).
16. The intent of the testatrix regarding apportionment of taxes must be ascertained and, if clearly expressed, applied. Dilmore v. Heflin, 159 W. Va. 46, at 53, 218 S.E.2d 888, at 892 (1975).
17. Applying the reimbursement provisions of I.R.C. § 2207A in the present matter is consistent with the intent of Shirley A. Martin.
18. I.R.C. § 2207A should be followed in the present matter because it was part of Shirley A. Martin's overall estate plan.

CONCLUSION

For the foregoing reasons, the Court hereby enters partial summary judgment in favor of Sherree D. Martin in accordance with Rule 56 of the West Virginia Rules of Civil Procedure and ORDERS that the Estate of Shirley A. Martin recover from the Trustee of the Carl J. Martin Marital Trust the amount of federal estate tax (including any penalties and interest thereon) attributable to the inclusion of the Carl J. Martin Marital Trust in the gross estate of Shirley A. Martin. ~~The Court further ORDERS that the Carl J. Martin Marital Trust pay the Estate of Shirley A. Martin interest on the foregoing amount in accordance with the provisions of W. Va. Code § 56-6-31 (2015) at the rate of four-~~ 

~~percent (4%) per annum from the date of payment of federal estate tax until the Estate is reimbursed in full.~~

For the reasons stated herein, the Court further ORDERS that the relief requested in the "Opening Brief Regarding Estate Tax Liability of Respondents Carl J. Martin, II, Teresa A. Martin-Pike, Jasmine Pike, Sophia Pike, Carl Robert Martin, Patrick Stephen Martin, and Carli Jo Martin" is hereby DENIED.

The OBJECTIONS of those parties adversely affected by this ruling are noted and preserved.

The Court FINDS upon EXPRESS DETERMINATION that this is a final order available for the proper application of the appellate process pursuant to Rule 54 of the West Virginia Rules of Civil Procedure. Accordingly, this Order Granting Motion for Partial Summary Judgment Regarding Federal Estate Tax Payment is subject to immediate appellate review. The parties are hereby advised: (1) that this is a final order, (2) that any party aggrieved by this Order may file an appeal directly to the Supreme Court of Appeals of West Virginia, and (3) that a notice of appeal and the attachments required in the notice of appeal must be filed within thirty (30) days after the entry of this Order, as required by Rule 5(b) of the West Virginia Rules of Appellate Procedure.

The Clerk is hereby directed to provide a copy of this Order Granting Motion for Partial Summary Judgment Regarding Federal Estate Tax Payment to all counsel of record.

CE-5/3/22
-W. O'Brien
R. Chenoweth
T. Uorback
J. Hussell, IV
S. Wanners
C. Winton
R.M. Mullens
J. Edgell

Entered this 26 day of April, 2022.

M. Edgell
W. Martin

WEST A true copy from the records
dated in the office of the Clerk of the
Court of Upshur County, West
Virginia

David H. Wilmore
The Honorable David H. Wilmore

even under my hand 5/3/22
BRIAN P. GAUBEL, CLERK
By Kelly
Deputy Clerk

FILED
MAY -3 A 10 56
CLERK OF COURT
UPSHUR COUNTY
WEST VIRGINIA