

1948

In the matter of the estate of Anna D. Walton : Brief of Respondent

Utah Supreme Court

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E. A. Walton; Attorney for Respondent;

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In the
SUPREME COURT
of the
STATE OF UTAH

FILED

Case No.

7249

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CLERK, SUPREME COURT, UTAH

In the matter of the estate of Anna D. Walton, deceased.

BRIEF OF RESPONDENT

E. A. WALTON,

Attorney for Respondent

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In the
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7249

In the matter of the estate of Anna D. Walton, deceased.

BRIEF OF RESPONDENT

STATEMENT

At pp. 16 and 17 of appellant brief the commission method of computation appears. Reference to stipulation of facts (Rec. 62) discloses that the net estate is \$25,444.77 and not \$26,983.93, and see appellants brief p. 5, para. 5.

The executrix, Elizabeth M. Jerrell, and the State Tax Commission have by stipulation filed herein agreed upon the submission of a controversy without action for the purpose of obtaining a declaratory, and final judgment as to the meaning and application of the present inheritance tax statute.

The testatrix, Anna D. Walton, had five children;—three daughters, to each of whom was bequeathed an undivided one-fifth of the estate; Thomas D. Walton, a son, who died in 1940, leaving four children, to each of which children is bequeathed an undivided one-twentieth of the estate; a son, Franklin G. Walton, to whom beneficially is bequeathed a life estate with remainder over to his children. This one-fifth of the estate is in trust to E. A. Walton, et al., as trustees.

The principal questions are: First, does the word “children” include grandchildren of the testatrix. If it does then it is not claimed that there is any tax liability here, either in respect of Thomas’ children or Franklin’s children.

Secondly, if the term “children” does not include grandchildren of the testatrix then should the tax be applied as to the Franklin one-fifth upon his life estate as well as upon the remainder to his children.

Thirdly, if the executrix be wrong in her principal and first contention, then should the exemptions with respect to the part going to the children begin at one dollar or at ten thousand and one dollars.

BRIEF AND ARGUMENT

I

IN SUCH A STATUTE CHILDREN INCLUDES GRANDCHILDREN.

It will not be disputed that in respect of wills the general rule is that if it appears that the intention of the

testator makes it manifest that grandchildren were intended to be included such intention will be given effect. The authorities seem unanimous upon this point. *Passim*.

In statutes usually as we have been able to discover about two thirds of the jurisdictions are our way and about one-third are apparently, or superficially as to some of the cases, seem against us.

It is our contention that the equity, reason, justice, and weight of authority support our position.

Prior to the amendment of 1947 there was no discrimination between direct and collateral heirs, and this amendment as indicated by the title, and the language of the statute itself is manifestly designed to bring our system into line in a general way, not only with the Federal Statute but practically all of the other jurisdictions, State and Territorial, making up the American Union, nearly all of which both as to rate of tax and amount of exemption discriminate sharply between lineals and collaterals.

The same discrimination between lineals and collaterals, including of course spouses with lineals, is found in the common law and in all the statutes of descent in the various jurisdictions of the United States, and as was held in the Cupples case in Missouri, 199 S.W. 556, the inheritance tax or state tax statutes are to be construed in light of descent statutes.

In *Kyle v. Kyle*, 18 Indiana, 108, a section of the act concerning descents provided, "If a husband or wife dies intestate, leaving no children and no father or mother, the whole of his property . . . shall go to the survivors."

The court held that the *general intent* exhibited in the descent statutes to take care of descendants required a holding that the term child includes grandchildren.

In Eshleman's Appeal, 74 Pa. 42, the statute dealt with advances to a "child." The court held that such included advances to a grandchild whose father was dead. The Court cited many cases and said: "When the expression in a statute is special or particular but the reason is general, the expression should be deemed general."

To the same effect is Storey's Appeal, 83 Pa. 89, 96.

In Morin v. Holliday (Ind. Ap.) 77 N.E. 61, the court held that the words, "illegitimate child or children" in a statute of inheritance includes grandchildren.

In Scott v. Silvers, 64 Ind. 76-78, it is held that in a statute of descent the words, "children alive" must be held to mean 'children or their descendants alive'."

These cases were followed in Davis v. Thompson, 179 Ind. 539, 101 N.E. 108.

In Starret v. McKim, 90 Ark. 520, 119 S.W. 824, the court held that in a statute of descent the word "children" includes descendants in any degree.

In Phillips v. Lawing, 150 Ala. 186, 43 So. 494, the court held that the words "child or children" in a descent statute mean "a child or children represented in the distribution of the estate whether living or represented by descendants," "where such interpretation is required by reason and justice."

In *Kahawanui v. Mannakea*, 20 Hawaii, 114, the word “children” in a descent statute is held to include “grandchildren.”

The court approved *Walton v. Cotton*, 60 U.S. 355, which held that in a pension act using the word “children,” “grandchildren” are included in the equity of the statute.

In *Cutting v. Cutting*, 6 F. 259, the court had before it the construction of the word “children” in a donation act of Congress and, holding that the word includes children of a deceased child, said: “The children of the deceased child of Charles Cutting are certainly within the equity of the statute.

In *Keeney v. McVoy*, 206 Mo. 42, 1035 S.W. 946, the above line of authorities was approved and followed.

In *Walton v. Cotton*, 19 How. 355, 15 L. Ed. 659, the syllabus, which reflects exactly the court’s holding is, “The word ‘children’ in the Pension Acts . . . embraces the grandchildren of the deceased pensioner whether their parents died before or after his decease.”

In *re Cupples Estate*, 272 Mo. 465, 199 S.W. 556 involved inheritance tax exemption. There was no tax as to children whether by blood or adoption nor as to lineal descendant of testator. It was claimed by the revenue collector that a child of the deceased’s adopted child was not within the category of persons as to whom the tax did not apply. The court affirmed the judgment against the collector, holding that construction of the inheritance

tax statute should be controlled by the general policy exhibited by the statutes of descents, and that the child of the adopted child was (though not so literally) included as a child or descendant of the testator. The Court said, "The word 'children' may whenever reason requires it be construed to include their descendants."

To same effect are *Estate of Winchester*, 140 Cal. 469, 74 P. 10. *Succession of Vives*, 35 La. Ann. 371; *In re Williams*, 62 Mo. App. 339; *Beebe v. Estabrook*, 79 N.Y. 246, 250.

In the last case the court said that in conformity with the general spirit and design of the descent statutes and of cognate provisions the general principle is "that there shall be equality between the children of the intestate (deceased) and the descendants of deceased children per stirpes, hence the word 'children' includes grandchildren or descendants." The Court further said that statutes in *pari materia* are to be construed together and it would be assumed that the legislature intended a harmonious system.

We submit there is no harmony in a system that penalizes both the children of a deceased, and orphan grandchildren by putting the orphan grandchildren in a class with the most remote of collateral kindred.

See also 3 Restatement of the Law of Property, Sec. 285 (2) (a) (b) (d).

As we have said, nearly all the jurisdictions have by their estate or inheritance tax statutes favored lineals,

especially lineal descendants, and a great many of them favor them both as to rates and as to exemptions.

See the following statutes: Code of Alabama 1940; Title 51; Second Digest of Arkansas Statutes 1937, page 3450; Deerings California General Rues 1937, Act. 8495; Third Colorado Statutes Ann. 1935, page 575, 6; General Statutes Connecticut, Section 1366; Delaware Revised Code 1935; pages 34 and 35; Florida Statutes 1941, Chapter 198; Code of Georgia Title, 92; Revised Law Hawaii, 1945, Sec. 5555; 1 Ada. Court Ann. 1932, Sec. 14-405, 14-407; Extra Session of 1935, Chap. 56, 120 Smith-Hurd Ann. Statutes, 120-375; Baldwin Ind. Statutes 1934, Sec. 15940; 1 Code of Iowa 1946, Sec. 450.9; 450.10; General Statutes 1939, Sec. 8556; Baldwin's Ky. Revised Statutes 1942, Sec. 140.070, 140.080; 2 Revised Statutes Main 1944, Chap. 142; Ann. Code Amended 1939, Article 81, Sec. 109, 110; Second Ann. Laws Mass., Chap. 65; 1 Minn. Statutes 1945, Sec. 291.03, 291.05; 1 Mo. Revised Statutes of 1939, Sec. 573; 3 Mont. Revised Codes 1931, Sec. 10378; 4 Neb. Revised Statutes, Sec. 77-2004; 1 Revised Laws N.H. 1943, page 349; 2 N.M. Statutes 1941, Sec. 34-102; 2 Revised Statutes N.J. 1937, Sec. 54, 34-2; N.C. Code 1939, Sec. 78, 80 (3); 5 No. Dakota Revised Code 1943, 57-3711; 4 A Publications Ohio General Code, Sec. 5334, 5335; 2 Oregon Compiled Laws 1940, Sec. 20-105; Oklahoma Statutes Ann. 68, Sec. 989 G; Purdons Pa. Statutes 1936, Title 72; General Laws Rhode Island 38, Chap. 43, Sec. 7 and 8; 2 Code of Laws So. Calif. 1942, Sec. 2480; Compiled Laws North Dakota 1929, Sec. 6830; Second Williams Tennessee Code, Sec.

1266, 1267; 28 Vernons Texas Civil Statutes, Article 7118-7122; Public Laws Vt. 1933, Sec. 1048, 1049; Va. Code 1942, page 2662; Remington Revised Statutes Washington 1940, pocket part page 183, W. Va. Code 1943, Sec. 843, 845; Wisconsin Statutes 1945, 72.02, 72.04.

We refer to the above as illustrative of the universal recognition in English and American Law of the equity and justice of treating lineal descendants as a distinct and preferred class and as tending to show that the legislature did not intend to put grandchildren or other lineal descendants in the same category as collateral kindred. The policy of favoring lineals in descent statutes is shown emphatically by our non-lapse statute, Sec. 101-1-35 U.C.A., which provides that where a legatee predeceases the testator the legacy will go to the lineal descendants.

“One of the cardinal principles of statutory construction is that the court will look to the reason, spirit and sense of the legislation as indicated by the entire context and subject matter dealing with the subject.”

Masich v. U. S. Smelting Co. (Utah), 191 P. 2d. 612.

All parts of a statute must be subservient to the general intent of the statute.

Crawford Construction of Statutes, Sec. 202.

State v. Franklin, 63 Utah 442, 226 P. 674.

Inheritance tax statutes should be construed against

the state when doubtful.

61 C.J. 1626.

The whole of the taxing statute, including that part relating to exemptions should be construed strictly against the state.

People v. Snyder, 353 Ill. 184, 18 N.E. 158, 88 A.L.R. 1012 and note.

II

IN NO EVENT IS IT PROPER TO TREAT THE FRANKLIN WALTON LIFE ESTATE AS NOT EXEMPT.

As the one-fifth going to Franklin G. Walton and children consists of a life estate and a remainder certainly the life estate goes to a child in the first degree.

Each estate should be valued by using mortality tables, etc., and this is true whether the statute so provides or not.

Ithaca Trust Company v. U. S., 279 U. S. 151, 73 L. Ed. 647.

See also cases cited in 127 America State Reports, page 1076.

III

THE FIRST \$10,000 IS NOT TAXED AT ALL.

There is no attempt in our statute to tax any part of the first \$10,000.00 of an estate. Consequently one should start the exemption that is provided by the statute at just over ten thousand dollars.

Let us take an estate of exactly ten thousand dollars where all of it by will or descent statutes goes to collaterals. We understand that the practice is not to tax it at all. (Record 62.) But, suppose the estate is ten thousand and one hundred dollars, ten thousand dollars going to collaterals and one hundred dollars going to a husband, wife, or child. Literally, under the present statute, the exemption would be one hundred dollars and only that, all of which results in an absurdity.

As the tax begins at \$10,000, so also should the exception exempting the favored spouse and lineals begin at the same point.

We submit that the construction heretofore made by the commission that the first \$10,000 is not taxable nor taxed at all is correct, and that the exemption provided begins exactly at the point and amount where the tax begins.

Otherwise, the exception to the rule is broader than the rule itself which is impossible and absurd.

Here the Commission concedes an exemption as to three-fifths of the estate (about \$15,000), but it wants \$10,000 of that exemption satisfied out of something against which no tax is asserted by the statute.

IV APPELLANTS' AUTHORITIES

Counsel for Tax Commission cites 61 C.J. 1611 and in *Re; McKennans Est.* (S.D.) 130 N.W. 33, holding the

legislature has constitutional power to classify, we do not contend otherwise. If the legislature here had explicitly named grandchildren and so put them in a class outside "children" that would perhaps end the matter and there would be no need for interpretation or construction. However, the case cited says the power is limited, and does not extend to "an unnatural plan." We submit that to construe "children" to exclude "grandchildren" and so to put grandchildren into the same class as third and fourth cousins exhibits a wholly "unnatural plan."

Counsel says "The law seems to be well settled." (His way, of course, he means.) Let us examine his cases:

In *Re O'Connors Will*, 251 N.Y.S., 686 holds that the daughter of a deceased stepson is not included in the term "child." However, if the case is thought to be against us it is in conflict with the court of appeals case of *Beebe v. Estabrook*, 79 N.Y. 246.

McQueen v. Stephens (Tex.), 100 S.W. 2d 1053 is a will case, involving meaning of word child in the pre-emption statute and it appeared that the intention of the testator was not to include the grandchild whose mother was intentionally pretermitted. It is quite obvious that the word "child" in such statute would have the narrower meaning.

In *Re Curry's Estate*, 39 Cal. 529 is cited. The opinion emphasises the fact that the holding that the word "child" does not include "grandchildren" applies to

children of *collaterals*, not to direct descendants, a very different case in the reason and justice of the matter.

Hoggatt v. Clapton, Tenn., 217 S.W. 657, is a will case and the court very properly held that whether “children” includes grandchildren or not is a question of intention of the testator. The Court noted especially that the testator had used the expression as to one devisee “children or grandchildren” and as to another only the word ‘children’ and treated such differentiation as very important.

Falter v. Walker (Okla.), 149 P. 1111 holds as counsel claim. The rule was there applied to exclude not a *grandchild* of deceased, but a *grand nephew*—a *collateral*. The Court there cited and followed the California Court in the *Re Curry’s Estate*, 39 Cal. 529.

Walgren v. Taylor (W. Va.), 45 S.E. 336 does not decide the point. The question was one of advancement and whether the doctrine of “hotch pot” applied. The statute said ‘descendant’ and the Court held that a collateral relative is not a descendant.

Carter v. Carter (Ky.), 270 S.W. 760 is a will case. The Court held that the term “children” included grandchildren. However, the Court based its holding in part on the no lapse statute and also a statute providing that “a devise to children embraces grandchildren when there are no children, etc.” Finally the Court said that from the circumstances the intention of the testator was clear to include the grandchildren.

The case is not in point for the commission. There are therefore hardly four jurisdictions that seem to support counsel's claims as against about eight in our favor.

It is not what the word "children" generally connotes, but what meaning should be ascribed under descent statutes and in circumstances where reason and justice indicate a broader meaning.

V

THE LIFE ESTATE IS PROPERTY GOING TO F. G. WALTON.

Counsel make the point that ours is an estate tax rather than an inheritance tax. We are unable to see the relevancy of this claim. Also, our Court has said that it is immaterial what one calls it, and not important to so classify.

State Tax Commission v. Backman, 88 Utah 424, 55 P. 2d 171.

In Re Walker's Estate, 100 Utah 307, 114 P. 2d 1030. We have difficulty in following counsel's attempt to distinguish the Ithaca Case from this case because there the Court explicitly held that the value of the life estate to the widow was separate from the remainder and should be valued separately.

Counsel seems to think that it is material to consider to whom the remainder goes—whether to relatives or to charity, and to consider on this question, the matter of exemption as applied to the remainder.

Counsel cites *Re Clark* (Mont.), 114 A.L.R. 496 which deals with retrospective tax statute and the distinction between real and personal property in its devolution, but so far as we can see does not touch any question here involved.

In *Baily v. Drane* (96 Tenn.), 16, 33 S.W. 573. There was a life estate in trust for benefit of the mother of testator (The brother was in a preferred or exempted class). Remainder was to one not in the exempted class. This remainder was held taxable and the life estate not taxable.

The judgment should be affirmed.

E. A. WALTON,

Attorney for Respondent