

1980

Forace Martin and Eldean Martin v. Herta K.
Dennett as Personal Representative of John Elwood
Dennett, Deceased, Et al. v. United States of
America : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Martin v. Dennett v. U.S.*, No. 16781 (Utah Supreme Court, 1980).
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IN THE SUPREME COURT OF THE STATE OF UTAH

FORACE MARTIN and ELDEAN :
MARTIN, husband and wife, :

Plaintiffs, :

v. :

HERTA K. DENNETT as Personal :
Representative of JOHN ELWOOD: DENNETT, deceased, et al., :

Case No. 16781

Defendants and :
Appellant, :

and :

UNITED STATES OF AMERICA, :

Defendant and :
Respondent. :

BRIEF OF APPELLANT

Appeal from the Judgment of the Third Judicial District
in and for Salt Lake County, State of Utah
Honorable Christine M. Durham, District Judge

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FILED

JUN 16 1980

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Appellant, : Case No. 16781
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and :
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UNITED STATES OF AMERICA, :
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Defendant and :
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NATURE OF THE CASE

This is an action to determine the relative priorities of claims against the assets of the insolvent decedent's estate; specifically, whether the reasonable funeral expenses and the expenses of administration of the estate are entitled to priority over federal tax liens recorded prior to decedent's death.

DISPOSITION IN THE LOWER COURT

The Third Judicial District Court, Hon. Christine M. Durham, Judge, heard this matter and adjudged that the claims of the United States of America to certain moneys held by the Clerk of the Court were superior to the claims made by the estate thereto for the decedent's reasonable funeral expenses and for expenses of administration of the estate of the deceased.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment of the Court below and a finding that the claims of the estate to reasonable funeral expenses and the costs and expenses of administration of the estate are claims entitled to priority over the claims of the United States.

STATEMENT OF THE FACTS

Plaintiffs in this action filed several complaints (R.2-7; 11-13; 14-20) through their Final Amended Complaint (R. 39-41). Plaintiffs sought to make final payments on a contract for the purchase of certain real property and thereupon obtain title thereto superior to all the defendants except Western Savings & Loan Company (R. 41-42). As a review of the record will show, Mr. Dennett and his former wife and now executrix, Herta K. Dennett, vigorously contested the Plaintiffs' action and other parties' claims. Nevertheless, subsequent to Mr. Dennett's death and after the appearance of present counsel in behalf of Herta K. Dennett, individually, and as personal representative of the Estate of John Elwood Dennett, Deceased, the parties Dennett endeavored to accommodate Plaintiffs in their action and in accordance therewith an order of judgment was entered in the Court below in May, 1978. (R.364-368). Pursuant to that order the Plaintiffs paid the balance owing Western Savings and Loan and deposited with the Clerk of the Court the excess owing on the Uniform Real Estate Contract of August 10,

1972, for the purchase of the property, which sum is the amount of \$1,347.46 (R.375) and which is the res which is the subject of the present dispute between Appellant and Respondent. This balance was held by the Clerk of the Court pending adjudication of the relative rights and claims of the various defendants (R. 365, 375). Thereafter, the United States of America (R. 369-371), the Utah State Tax Commission (R. 376-377), and the Estate of John Elwood Dennett (R. 380-382) filed their claims to the moneys deposited with the Clerk. Hearing was had on December 20, 1978, before the Hon. G. Hal Taylor, who, after hearing representations of counsel regarding their claims to priority, continued without date the motions for disbursal of the funds (R. 383).

Hon. Christine M. Durham subsequently, on June 27, 1979 (R. 388), heard counsels' arguments regarding the priorities and upon which she made and entered her Findings of Fact and Order (R. 389-391). The defendants Dennett (Herta K. Dennett individually and as Personal Representative of the Estate) thereafter filed their Objections to Proposed Findings of Fact and Order and moved the Court to amend its Findings and Order (R. 394-400). After response by the United States of America (R. 401-411), the Court entered its Amended Findings of Fact and Amended Order (R. 413-415). That Order, which is the Order appealed herein, determined that the United States of America, by virtue of its tax liens, in the total amount of \$3,143.04, had claims superior to the claims of the Estate of the deceased for funeral expenses and expenses of administration of the Estate (the claims of Herta K.

Dennett individually were also determined to be inferior to the claims of the United States of America. No appeal is brought from that determination, however, pursuant to an understanding reached between counsel for the United States of America and present counsel for the Estate (R. 419).

ARGUMENT

REASONABLE FUNERAL EXPENSES AND EXPENSES OF ADMINISTRATION OF A DECEDENT'S ESTATE ARE SUPERIOR TO AND ARE ENTITLED TO PRIORITY OVER FEDERAL TAX LIENS RECORDED PRIOR TO THE DECEDENT'S DEATH.

There are two statutes which are applicable to the facts of this case, one being a state statute and the other federal.

The Utah Uniform Probate Code provides (§75-3-805(1)) that:

"If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (a) Reasonable funeral expenses;
- (b) Costs and expenses of administration;
- (c) Debts and taxes with preference under federal law;
- (d) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (e) Debts and taxes with preference under other laws of this state;
- (f) All other claims."

The federal statute establishing priorities of payment from insolvents or the estates of deceased debtors provides (31 U.S.C. §191) that:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. The priority established under this section does not apply, however, in a case under title 11 of the United States Code [11 USCS §§L et seq]."

It is the Appellant's contention that under either of the above statutes, both of which are applicable to the present case, the Personal Representative of the Estate is entitled to priority over the claims of the Respondent (and, for that matter, over all other possible claimants).

A. THE UTAH UNIFORM PROBATE CODE, §75-3-805:

The assets of the Dennett Estate "are insufficient to pay all claims in full..." the "estate" consisting of the sum of \$10.00 (R. 381) and, of course, its claim to the \$1,347.46 on deposit in connection with this case. The funeral and burial expenses of the deceased alone amounted to substantially more (approximately \$1,800.00 (R. 381)) than the above amounts combined. The Court below in its Amended Findings of Fact found that:

"...reasonable funeral and burial expenses in excess of the amount of \$1,800 have been expended

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for the funeral and burial of John Elwood Dennett.

"6. Said Funeral and burial sums were advanced by the decedent's mother and have not been repaid out of the estate of the decedent. Said estate having no cash assets other than TEN DOLLARS (\$10.00).

"7. That reasonable attorneys [sic] fees have been incurred in connection with the administration of the estate of John Elwood Dennett in an amount in excess of the sum being held by the clerk of the court in connection with this matter and in the approximate amount of [\$2,600]. The estate of John Elwood Dennett has no assets other than the aforementioned \$10.00 except an interest in pending litigation, the outcome of which is uncertain.

"8. No portion of the above mentioned claims for funeral, burial or administration expenses have been paid or distributed." (R. 414-415)

It thus appears that the question of the priority of the expenses of the administration of the estate/^{may} be moot in that the funeral and burial expenses amount to more than the amount in the estate, i.e., the estate's potential assets of \$1,357.46 versus the funeral and burial expenses of \$1,800 (Utah Code Ann. §75-3-805(1)(a) & (b)).

The fact that the funeral and burial expenses were advanced by the decedent's mother should not have a bearing on this case in that they are still a legal charge upon the estate, the statute implying a promise to reimburse. Dunn v. Wallingford, 155 P. 347, 47 U. 491. The statute on its face, therefore, prescribes that the Appellant's claims to the res, coming as they do as the first and second ordered priorities, have precedence over the "debts and taxes with preference under federal law," the third ordered priority (should the tax lien be viewed as a

"preference" under federal law) and over "[d]ebts and taxes with preference under other laws of this state", the fifth ordered priority (which would be applicable if the federal claims are viewed as having a preference such as by virtue of their recordation), and over "[a]ll other claims", the sixth ordered priority.

As to the status of the Respondent's claims, that of being "liens," that status is not property in or a right to the thing, or res, itself, but merely constitutes a charge or security or incumbrance for payment of some debt, obligation or duty. BLACK'S LAW DICTIONARY 1072 (Rev'd 4th ed. 1968). As such, it may have a status of being "choate" or "inchoate," "perfected" or "unperfected," etc. and may otherwise be subject to or interpreted by various laws (e.g. Utah Code Ann. §§38-6-1 through 4, re: manner of filing federal tax liens in state offices, etc.; Gillmor v. Dale, 75 P. 932, 27 U. 372 (1904)). The nature of the taxpayer's interest in property and the extent thereof is a matter determined by state law. Aquiline v. United States, 363 U.S. 509, 4 L.Ed.2d 1365, 80 S.Ct. 1277. The federal statute regarding liens merely attaches federally defined consequences to rights created under state law. United States v. Durham Lumber Co., 363 U.S. 522, 4 L.Ed.2d 1371, 80 S.Ct. 1282. The rights of collection of the Internal Revenue Service, the agency in interest in this case (R. 415), can rise no higher than those of the taxpayer whose right to property is sought to be levied upon. Bd. of Sup'rs of Louisiana State Univ. v. Hart, 26 So.2d 361, 174 A.L.R.

1366; Central Surety & Ins. Corp. v. Martin Infante Co.,
272 F.2d 231 (CA3 NJ).

The cases cited in the foregoing paragraph are cited in support of the Appellant's argument that by virtue of the statutory priority schedule and the fact that the federal liens were unexecuted upon at the decedent's time of death that by operation of law the nature of the estates property, i.e., the res herein, was changed from a property which the could have been executed upon to one which could be distributed only in accordance with the statutory scheme provided in the probate code as cited, which is not to say that the United States' claims were defeated but only that they were subordinated to other claims as may have existed at the death, or rather by virtue of the death of the decedent. The United States held its rights to the same extent that decedent had in the res under the laws of the State of Utah, i.e., that its unexecuted lien on the property was subject to a re-prioritizing (if you will) of its claims. The United States' and the decedent's rights to the property were not absolute, but were contingent on the death and upon the solvency of the property owner upon his death as those relate to and are defined by Section 75-3-805, which is a mandatory and not an optional distribution schedule. Had the United States executed upon its claims prior to the death of Dennett, Dennett's estate would have no claim to the res inasmuch as it would not be property of Dennett; however, inasmuch as the claims were unexecuted upon at Dennett's death, the res was still property of Dennett,

and subject to the mandatory distribution scheme of the probate code by occurrence of the contingencies specified therein.

From the foregoing it is apparent that even though the United States may have had first priority to the res during the life of Dennett, and in a practical sense may have been the "heir apparent", the death of Dennett and the insolvency of his estate under the terms of §75-3-805 Utah Code Ann. changed the priorities by adding in before federal debts and taxes the funeral, burial, and estate administration expenses, the basis therefore being a sound public policy of assuring to the extent possible that the minimum necessities attendant to the ending of a life are provided for (the Court should note that even the expenses of the last illness are inferior to the federal claims; only funeral, burial, and estate administration are given priority over federal claims; it may also note that one may have even a chance of displacing federal tax claims only through one's own death, surely a matter not lightly entered into). In the present case, the assets of the estate should be adjudged to include the res which is the subject of this action, and that res should be distributed in the order prescribed by the Utah statute mentioned.

B. THE FEDERAL PRIORITY STATUTE, 31 U.S.C. §191:

The relevant portions of the federal priorities statute state:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the

debts due from the deceased, the debts due to the United States shall be first satisfied...." 31 U.S.C. §191.(R.S. §3466; derived from Act Mar. 3, 1797, ch 20, §5, 1 Stat. 515; Mar.2, 1799, ch 22, §65, 1 Stat 67

If the foregoing statute is interpreted literally it would appear that the Dennett estate has a claim which is inferior to that of the United States. The "estate...in the hands of the...administrators is insufficient to pay all the debts due from the deceased." The administrator herein has "in her hands" only \$10.00. Even if "in her hands" is interpreted to include the res of \$1,347.46, the total \$1,357.46 is insufficient to pay the federal tax liens of \$3,143.04, is insufficient to pay the funeral and burial expenses of \$1,800, and is insufficient to pay the costs and expenses of administration of the estate. The estate is "insolvent" and "insufficient to pay all the debts due from the deceased." United States v. State of Oklahoma, 261 U.S. 253, 67 L.Ed. 638, 43 S.Ct. 295, 297; Nolte v. Hudson Nav. Co., 8 F.2d 859, 865; for a Utah definition of "insolvent" see Saperstein v. Holland, McGill and Pasher, 496 P.2d 896, 898, 27 Utah 2d 396. Federal courts have uniformly, however, interpreted the federal statute in a limited fashion. Beginning in the year 1828, insofar as Appellant can determine, the federal courts interpreted this statute and its similar predecessors to allow the priority of the United States to extend only to the net proceeds of an estate after the expenses of administration have been paid. United States v. Hunter, (opinion by Mr. Justice Story as Circuit

burger, 23 F.Cas. 224 (C.C.M.D.Ala. 1877) (No.13526); In re Halsey Elec. Generator Co., 175 F. 825, aff'd 179 F. 321 (CA3 NJ), cert. denied, 219 U.S. 587, 55 L.Ed. 347, 31 S.Ct. 471; In re Wyley Co., 292 F. 900. In cases dealing specifically with decedents' estates and the federal priority statute, the federal courts again have held that the priority of the United States extends only to the assets of the estate after the funeral, burial and estate administration expenses are paid. United States v. Eggleston, 25 F.Cas. 979 (CC-Ore 1877) (No. 15027); United States v. Weisburn, 48 F.Supp. 393 (D.C.Pa. 1943). Similarly, where the priorities question has been presented to state courts, the state courts have ruled that funeral, burial, and estate administration expenses have priority over federal tax claims. In re Holmes' Estate, 1 A.2d 42 (N.J.); Matter of Stiles, 126 Misc. 715, 215 N.Y.S. 134 (N.Y. 1926); In re Henke's Estate, 39 Misc.2d 705, 241 N.Y.S.2d 788.

The Stiles case, supra, is particularly noteworthy for its review of the genesis of the federal priorities statute. Quoted or referred to therein is the English law pre-dating the formation of the United States, Blackstone's Commentaries, and subsequent English and American cases. Blackstone is quoted:

"The executor or administrator must pay the debts of the deceased. In payment of debts he must observe the rules of priority; otherwise, on deficiency of assets, if he pays those of a lower degree first, he must answer those of a higher out of his own estate. And, first, he may pay all funeral charges, and the expense of proving the will, and the like. Secondly, debts due to the King on record or specialty. Thirdly, such debts as are by particular statutes to be preferred to all others." Stiles, 126 Misc. at 717.

Citing Patterson v. Patterson (59 N.Y. 574), Stiles further states (at 718) that the basis of the provision for funeral and burial expenses as prior to all other claims the

"...general right of everyone to have decent burial after death; which implies the right to have his body carried, decently covered, from the place where it lies to a cemetery or other proper enclosure and there put in the ground...."

In United States v. Hahn, 37 Mo.App. 580, the court stated regarding section 3466 of the Revised Statutes (31 U.S.C. §191):

"These sweeping provisions have been equitably limited by the judicial construction of the Federal Courts, so as to deprive them of all hardship..." Stiles at 718

and allowed the widow's dower or allowance provided for by state law. For a similar holding, see, e.g., Postmaster General v. Robbins, 19 F.Cas. 1126 (D.C.Me. 1829) (No. 11314), wherein the court states (at 1126):

"The policy of the law, in these cases, places the claims of humanity above the claims of justice... though the provision which is made...is made at the expense of creditors."

The Appellant herein has found no case, after diligent search, wherein was required the priority of tax claims over claims for funeral, burial, and estate administration. All federal and state cases located on the subject hold uniformly that those expenses are given priority over tax claims.

SUMMARY AND CONCLUSION


The estate of the decedent, John Elwood Dennett, is and will remain unable to pay all claims in full, does not have

estate administration, federal and state tax claims, which are merely those claims in this case which are entitled to priority. The death-caused invocation of §78-3-805's priority scheme, giving priority to funeral, burial and estate administration expenses over the theretofore prior tax claims, together with state and federal public policy, statutory and case law demand that the judgment of the court below be reversed and that the expenses of funeral, burial, and estate administration be adjudged prior and superior to the tax claims asserted in this case. If the tax claims are to be attached to anything, let them be attached to the estate's contingent litigation interests, while the res herein be distributed to the decedent's estate for distribution according to the federal, foreign state, and Utah statutorily ordered scheme of

- "(a) Reasonable funeral expenses;
- (b) Costs and expenses of administration;
- (c) Debts and taxes with preference under federal law;
- (d) *****
- (e) *****
- (f) *****" (§75-3-805(1), Utah Code Ann.)

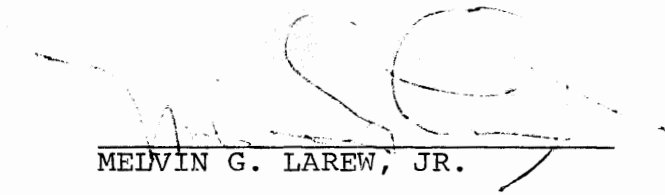
and in accord with conscience and humanity.

Respectfully submitted this 16th day of June, 1980.


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MAILING CERTIFICATE

I hereby certify that I caused two copies of the foregoing Brief of Appellant to be hand-delivered to the offices of Ronald L. Rencher, United States Attorney, and Barbara W. Johnsen, Assistant United States Attorney, 200 Post Office & Courthouse Building, 350 South Main Street, Salt Lake City, Utah, this 16th day of June, 1980.



MELVIN G. LAREW, JR.