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State Tax Commission of Utah v. Val Gene Crandall : Brief of Appellant

Utah Supreme Court

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AUG 6 1959

In the
Supreme Court of the State of Utah
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In the Matter of the Estate of
EUGENE CRANDALL,

Deceased.

STATE TAX COMMISSION OF UTAH,
Appellant,

vs.

VAL GENE CRANDALL, Executor of
the Estate of Eugene Crandall,
Respondent.

CLERK, Supreme Court, Utah

Case No.
8993

APPELLANT'S BRIEF

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In the Supreme Court of the State of Utah

In the Matter of the Estate of EUGENE CRANDALL, <i>Deceased.</i>	}	Case No. 8993
STATE TAX COMMISSION OF UTAH, <i>Appellant,</i>		
vs.		
VAL GENE CRANDALL, Executor of the Estate of Eugene Crandall, <i>Respondent.</i>		

APPELLANT'S BRIEF

STATEMENT OF FACTS

Eugene Crandall died testate, a resident of Utah County, on October 29, 1957. Among the assets of his estate was an interest in 79 acres of real property situated in Orem, Utah, together with 51 shares of water stock in the Alta Ditch and Canal Co. and 15 shares of water

stock in the Provo Reservoir Co. Eugene Crandall held the said 79 acres together with a brother, Merrill Crandall, and Eliza Crandall, the widow of a deceased brother, Raphael Crandall, as tenants in common (Tr. 4). At the time of the death of Eugene Crandall (hereinafter referred to as Decedent) 70 acres had been planted with apple, pear and cherry trees and the property was being operated as a fruit farm. The remaining 9 acres were sandy and unproductive (T. R. 3).

On July 16, 1958 a commission issued out of Fourth Judicial District Court, Probate Division, appointing Arnold Mecham, Elmer W. Bird and K. A. Randall as appraisers of all property of the estate subject to inheritance tax (R. 46), and on September 1, 1958 the said appraisers returned their appraisal of all property in the estate, which was filed with the court on October 1, 1958 (R. 50).

The inheritance tax appraisal described the 79 acres of land together with its water right, and valued the same at 225,000, resulting in the inclusion in decedent's estate for purposes of inheritance tax of one-third of such value, or \$75,000 (R. 47).

On October 23, 1958 the Executor of Decedent's estate, Valgene Crandall, filed objections to the inheritance tax appraisal and asked the court to fix the value of the real estate (R. 28-30). At the hearing on the Executor's objections the estate called three witnesses in support of the Executor's objections and the state called two witnesses. Salient points of the testimony of each witness are as follows:

Valgene Crandall, the Executor of the estate was called. He described the property and the water rights, and stated that he had worked steadily on the farm for eleven years, and prior to that time during the summer (T. 3). He stated that decedent left the property to him, that is was being operated as a farm, and that he intended to continue to operate it as a farm (T. 4). He also stated that in his opinion the land was worth \$1,500 per acre, including the water right (T. 6). On cross-examination Mr. Crandall stated he would not sell the land even if offered \$5,000 per acre, because he wanted to farm it; and that the net profit from farming the property during 1957 amounted to \$30,000 (T. 7). He further stated that he knew of no recent sales of other property in the same area and that he had no idea what the water stock alone was worth (T. 8).

Ralph Halm was next called by the estate, and after stating that he operated a real estate office in Orem, Utah County (T. 10), he said that he had appraised the property at \$1,500 per acre for the 70 productive acres and \$600 per acre for the nine acres that were unproductive, producing a total value of \$110,400 (T. 12). In response to a question as to whether he considered the water right in his appraisal, Mr. Halm stated:

“Yes, we did determine from the owner that it was adequate, which we were concerned with in arriving at the value” (T. 11).

On cross examination, Mr. Halm stated that in his opinion the property if sold would bring no more than the above amount with the water stock included (T. 13);

that the "Provo River" water stock by itself was worth about \$240 per share, and that the Alta Ditch stock varied from "seven fifty to a thousand dollars a share" (T. 13-14), but that he had not attempted to value the water right separately "because what we were concerned with, was there adequate water with the ground. And if you took it off the ground, as far as the fruit farm is concerned, it would be valueless. . . ." (T. 14). He further stated that he was aware of other sales of land in the same area, and that \$1,500 per acre is an average value "for fruit ground." (T. 14)

Milton Johnson was then called as a witness for the estate. He testified generally the same as did Mr. Ralph Halm, except that he stated that his appraisal was based on the land having water rights, which he identified as "fifty-one shares of Alta Ditch and Canal Co. and eleven shares of Murdock Canal, Murdock irrigation water" (T. 17). He further stated, "If my office was to solicit listing for sales purposes, we would not list that less than fifteen hundred dollars per acre" (T. 18). He also appraised the part which was unproductive because of the difficulty of irrigating it at \$600 per acre (T. 18).

Thereupon the estate rested, and the State called Arnold Mecham, one of the inheritance tax appraisers. Mr. Mecham testified that he had been in the abstracting business in Utah County about 37 years (T. 21). He stated that in his opinion the real property in question, including the water rights was reasonably worth \$225,000, and that the one-third interest of the decedent was worth \$75,000.00 (T. 23). He further stated that in his opinion the property was a good location for a subdivision (T. 21).

On cross-examination Mr. Mecham was examined as to his qualifications and knowledge of the property (T. 24-25). He also stated that he believed he knew people who would give \$3,000 per acre for the property, but that he would have to obtain their consent before naming them (T. 25).

K. A. Randall, another inheritance tax appraiser, was next called as a witness for the State. He testified that he was the vice-president and cashier of the State Bank of Provo, and that he had acquired a familiarity with property values through twelve year's experience in the loan business in Utah County (T. 26). He testified that in appraising the property for inheritance tax purposes he and the other appraisers had discussed the values with representatives of the estate, and whereas the property was being used for farming purposes, its value could not be tied to the value of that use, since "it has a higher economic use and would be sold, if it were to be sold on the market, at a higher level"; and that in his opinion "the property on the average would be worth \$3,000 per acre" (T. 27).

On cross-examination Mr. Randall testified that he had appraised other property in the same area. Specifically, he stated he had appraised the property of a Mr. Stratton, whose property adjoins the property in question here on the west, at a value which would average \$3,000 per acre (T. 28). Also, he had appraised the property of a Mr. Vern Stratton, whose property is "immediately south, across eighth north, and along the brow of the hill. We have worked with Mr. Clive Pullen who is

along eighth north road. We worked with both Howard Ferguson and with Jim Ferguson, whose property bounds on the east" (T. 29). He also stated that he felt it would be possible to sell the property for \$3,000 per acre, and that the highest use of the property would be for residential purposes (T. 30).

On November 18, 1958 the Probate Court entered its order adopting the appraisal of Ralph Halm and Milton Johnson, and determining the value of the "Crandall fruit farm asset" for inheritance tax purposes at \$36,800. (R. 40-42).

This appeal from the last named order of the court was then taken.

STATEMENT OF POINTS

POINT I.

THE PROBATE COURT ERRED IN ORDERING THAT THE TRUE APPRAISEMENT VALUE OF THE CRANDALL FRUIT FARM ASSET IS \$36,800.00.

ARGUMENT

POINT I.

THE PROBATE COURT ERRED IN ORDERING THAT THE TRUE APPRAISEMENT VALUE OF THE CRANDALL FRUIT FARM ASSET IS \$36,800.00.

It is the position of the State Tax Commission that the Probate court went against the clear weight of the evidence in adopting the appraisal made by Ralph Halm and Milton Johnson.

Section 59-12-3, Utah Code Annotated, 1953, provides as follows:

“The value of the gross estate of the decedent shall be determined by including the *value* at the time of his death . . . of all property, real or personal, within the jurisdiction of this state, and any interest therein, whether tangible or intangible, which shall pass to any person . . . by testamentary disposition . . .” (Emphasis added.)

By Section 59-3-1, Utah Code Annotated, 1953, the term “value” is defined as follows:

“In this title, unless the context or subject-matter otherwise requires:

“(5) ‘Value’ and ‘full cash value’ mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.”

This court has construed the meaning of this definition in the case of *Kennecott Copper vs. Salt Lake County*, 122 Utah 431, 250 P.2d 938, 939-40, as follows:

“Although the phrase ‘the amount at which the property would be taken’ refers more definitely to the amount at which the creditor would be willing to accept the property than it does to the amount the debtor would insist on receiving, still inherent in this provision is the concept that such amount must also be agreeable to the owner-debtor for the creditor could not take the property at an amount to which the owner-debtor would not agree. *In other words, this is a definition of ‘market value.’ Although it speaks in terms of paying debts and not sale for cash, it is the price which would be agreed upon at a voluntary sale between an owner willing to sell and a purchaser*

willing to buy. 18 Am. Jur. 876. *It means the same thing as 'just compensation' in connection with 'eminent domain.'*" (Emphasis added.)

With reference to the standard of just compensation, the Court in the case last cited referred to the case of *Moyle vs. Salt Lake City*, 111 Utah 201, 176 P.2d 882, 888, wherein the court said:

"It is elemental in eminent domain cases that the owner is entitled to the value of the property for the highest and best use to which it could be put. . . ."

The import of the *Kennecott Case*, *supra* would seem to be that the term "value" has the same meaning when it appears in the taxation statutes as it has when it appears in the eminent domain statutes, and that the "value" of property which should be included in the estate of a decedent means the value of the highest and best use of which the property is presently capable.

It is submitted that the record indicates that the probate court disregarded this standard of valuation when it determined the value of the property in question.

The Order of Appraisement entered by the court (R. 40-43) contains no finding as to the highest and best use of this property. The order found merely that the property was being operated as a fruit farm and "that the true appraisement value for inheritance tax purposes of the $\frac{1}{3}$ interest in said land and water right which is an asset of the above entitled estate, is the sum of \$36,800.00 as of the date of said decedent's death. That the appraisement of said fruit farm asset of said estate,

made by Ralph Halm and Milton G. Johnson, the appraisal witnesses at the hearing, which was received in evidence and filed here in, is hereby found to be true and correct." (R. 41)

It is apparent from the testimony at the hearing that Mr. Halm and Mr. Johnson in appraising the property gave consideration only to the present use of the property, i.e., as a fruit farm. Note for example the following excerpts from Mr. Halm's testimony (T. 11):

"Q. Now are you acquainted with the values of real estate, particularly farming real estate, in Utah County from your experience?

A. Yes.

Q. Did you make an examination of the Crandall fruit farm?

A. Yes.

* * * * *

Q. Did you consider, of course, the water right that went with the land in your appraisal?

A. Yes, we did determine from the owner that it was adequate, which we were concerned with in arriving at the value."

Mr. Halm testified on cross-examination as follows (T. 14):

"Q. Are you aware of any other sales of land in that area?

A. Yes.

Q. How much does land sell for per acre in that area?

A. Well, up in that area, that is an average value for — in my opinion, that is an

average value, fifteen hundred for fruit ground . . ." (Emphasis added.)

It is uncontroverted in the record that this property has a very valuable water right, the estimated value of which was \$55,000 to \$65,000 (T. 27). Yet Mr. Halm and Mr. Johnson took no account of this valuable asset, except to determine that the water right was "adequate." Mr. Halm testified (T. 14):

"Q. On the basis of this value, how much would the total water stock be worth?

A. I haven't calculated that. *We didn't try to arrive at that figure, because what we were concerned with, was there adequate water with the ground. And if you took it off the ground, as far as a fruit farm is concerned, it would be valueless, you know.*" (Emphasis added.)

In the same vein, Mr. Johnson testified (T. 18):

"A. . . . I do quite a lot of independent appraising, and when I was asked to make this appraisal, I pulled actual transactions which were comparable or even exceeded comparable value of tracts of land *with productive fruit* up into the twenty acre view lots . . ."

Whereas, the testimony indicates that Mr. Halm and Mr. Johnson based their appraisal upon the value of the property as a fruit farm, it is uncontroverted in the record that the highest and best use of this property is for residential or subdivision purposes. Note, for example, the testimony of K. A. Randall (T. 30):

"Q. Well, now, you are basing your opinion solely upon what you claim the market

value of this property to be for the highest use?

A. That is correct.

Q. What is the highest use?

A. Used for residential purposes."

This view is confirmed by the statement of Mr. Mecham: "I believe it's a good location for a subdivision" (T. 21), and certainly is not controverted by the testimony of Mr. Johnson that this property is within nine or ten blocks of the nearest subdivision (T. 20), or the statement of Mr. Halm to the effect that, while the property would be suitable for subdividing, other property would be more suitable (T. 15).

It might be contended, as it was by the representatives of the estate at the hearing, that the executor does not want to sell the land or do anything other than continue its present operation as a fruit farm. This, however, does not mean that it is proper to limit the value of the property for inheritance tax purposes to its value as a fruit farm.

In 4 Nichols on Eminent Domain, P. 107, Sec. 12.3142 (3d ed. 1951), we find this statement relative to "market value":

"Market value, as has been previously stated, is not limited to value for the use to which the land is actually devoted.

"The most characteristic illustration of the rule that market value is not limited to value for the existing use and the situation in which it is most frequently invoked, and also most frequently abused, is found in those cases where evidence is

offered of what the value of a tract of land that is used for agricultural purposes or is vacant and unused would be if cut up into house-lots."

This quotation from Nichols was discussed in a law review article contained in a symposium on eminent domain problems published in 43 Iowa Law Review 191, 200, *Some Elements of Damage in Condemnation*, Gardner Cromwell (1958), as follows:

"In seeking to draw the line between prospective and speculative use (and to avoid the abuse mentioned), courts generally accept proof of availability for subdivision as it might affect the market value of the land being considered, but refuse, as speculative, remote, or conjectural, detailed computations of the number of lots which could be carved out, and the selling price of each. This practice is a fair compromise between confining the owner to valuation at the present use and allowing recovery in specie for the rosiest dreams of real-estate promoters."

This statement is significant, because it summarizes the precise method recognized by the Utah Court for settling the claims of the parties in a fair manner. In *State vs. Tedesco*, 4 U. 2d 248, 250-51, 291 P. 2d 1028, 1029 this court said:

"A reading of the testimony of defendants' experts can lead to no other reasonable conclusion than that they arrived at their determination of Parcel 1's value [Parcel 1 was then unsubdivided] by taking the sales prices of comparable lots in the vicinity, assigning such values to the individual lots involved in this litigation and adding them up, without considering any cost or expense incident

to the sale of each of the lots or the time within which the lots might have been sold.

* * * * *

“A condemnee is not entitled to realize a profit on his property. It must go to the condemnor for its fair market value, as is, irrespective of any claimed value based on an aggregate of values of individual lots in a subdivision which one hopes to sell at a future time to individuals rather than to an individual. The test is not what the lots will bring when and if 62 willing buyers come along, but what the tract, as a unit, and as is, platted or not, and in whatever state of completion, will bring from a willing buyer of the whole tract.”

In this respect it should be pointed out that the inheritance tax appraisers made no detailed computations of what individual lots in a subdivision would bring if sold separately, but rather based their opinion upon what the entire tract would sell for on an acreage basis for subdivision purposes. The main difference of opinion at the hearing seemed to be whether such a computation was proper in view of the facts that the decedent had used it as a fruit farm, and that the executor stated that he wished to continue so to use the property. Note the following extract from the cross-examination of Mr. Randall (T. 29-30):

“Q. Well now, you are basing your opinion solely upon what you claim the market value of this property to be for the highest use?

A. That is correct.

Q. What is the highest use?

A. Used for residential purposes.

- Q. You have heard two appraisers from Orem this morning who say that it is fifteen hundred dollars — is the value of that property on the market?
- A. I also heard Mr. Halm say he appraised it as a fruit farm, and I heard Mr. Johnson say he agreed to the same answer of Mr. Halm.
- Q. You said something about market value meaning a buyer who is willing to buy and a seller who is willing to sell?
- A. That is right.
- Q. All right. You heard Mr. Crandall say he wanted to farm this ground?
- A. That is right.
- Q. That it was being farmed at the time his father died?
- A. That is correct.
- Q. So you have an unwilling [seller], haven't you?
- A. I don't believe that has any basis on the valuation.
- Q. You don't?
- A. In what our assignment is from the state of Utah. If he wants — I am not saying that Mr. Crandall has to sell the property. All I am saying is we have a responsibility in our estimation to appraise the property."

It is submitted that the appraisers employed by the estate determined the value of the property only from the standpoint of its present use, and gave no consideration to any other possible use of the property, and that

in adopting their appraisal the Probate court went against the clear weight of the evidence.

One other fact disclosed in the record helps substantiate this view. The executor stated on cross-examination that the property produced \$30,000 in net income during the last year prior to the death of the decedent. In the case of *In Re Clift's Estate*, 70 Utah 409, 260 Pac. 859 this court gave recognition to the practice of appraising income producing property by capitalizing the net income to arrive at the fair market value thereof. In the court's explanation of the testimony of Edward M. Ashton, who had used the net income method, most of the discussion concerned the computation by which Mr. Ashton arrived at the net income figure. In the present case the executor himself supplied the net income figure.

In the Clift case Mr. Ashton capitalized the net income at 6%, which the court explained, was about the average rate of interest on loans secured by real estate mortgages. In many other cases courts have recognized the efficacy, during normal years, of using 6% as the basis for capitalization of net income for determining market value. Among them are:

Louisville & Nashville R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L.ed. 1271; *Ill. Cent. R. Co. vs. Greene*, 244 U.S. 555, 37 S.Ct. 697, 61 L.ed 1309; *Louisville & N.R. Co. vs. Coulter* 131 Fed. 282, 303; *Pleasant vs. Mo-Kan-Tex R. Co.*, 66 F.2d 842; *Great Northern R. vs. Weeks*, 297 U.S. 135, 56 S. Ct. 426, 80 L. ed. 532; *Wisconsin Gas & Electric Co. vs. Wisconsin Tax Commission*, 221 Wis. 487, 266 N.W. 186.

Present times might not be considered as normal, so that the use of 6% as a capitalization factor might not be proper. However, in order to appraise property which produces \$30,000 worth of net income at \$110,400, one would have to use a capitalization factor of 27%. Certainly the court should take judicial notice of the fact that present day interest rates on loans secured by real estate mortgages do not approach 27%.

It is, therefore, respectfully submitted that the findings of the Probate Court and its adoption of the appraisal made by Mr. Halm and Mr. Johnson are against the clear preponderance of the evidence.

CONCLUSION

For the foregoing reasons Appellant respectfully contends that this court should reverse the findings of the Probate Court, and affirm the appraisal as made by the inheritance tax appraisers, or at the very least, should remand the case for the taking of more complete evidence upon the question of the fair market value of the property in question.

Respectfully submitted,

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