NEBRASKA SUPREME COURT

In re Estate of Marvin H. Shell, deceased, Jane M. Voboril, Personal Representative of the Estate of Marvin H. Shell, deceased, appellee, v. Marvin G. Vanosdall, Personal Representative of the Estate of Sharon Vanosdall, deceased, appellant

In re Estate of Marvin H. Shell, 290 Neb. 791 (2015) · No. No. S-14-281 · Decided May 1, 2015

SUMMARY

The Nebraska Supreme Court held that Marvin H. Shell’s will clearly directed that inheritance taxes be paid from the probate estate as an estate expense rather than apportioned among the beneficiaries under the statutory pattern. The court affirmed the county court’s approval of the accounting and distribution schedule.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	May 1, 2015
DOCKET	No. S-14-281
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Lancaster County Court's order for complete settlement approving the personal representative's accounting and distribution schedule, including treatment of Nebraska inheritance taxes as an expense of the estate.
STANDARD OF REVIEW	Probate cases are reviewed for error appearing on the record made in the county court. Questions of law in probate matters, including interpretation of a will, are reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Marvin G. Vanosdall, Personal Representative of the Estate of Sharon Vanosdall, deceased v. Jane M. Voboril, Personal Representative of the Estate of Marvin H. Shell, deceased

TOPICS

estate administration · probate procedure · probate · tax · statutory interpretation

PRACTICE AREAS

probate · estate administration · tax

QUESTIONS PRESENTED

1. Whether Shell's will clearly and unambiguously directed that inheritance taxes be paid as an expense of the estate rather than borne proportionally by the beneficiaries under the statutory pattern.
2. Whether the will's direction to pay inheritance taxes from the probate estate without contribution or reimbursement supported treating those taxes as an estate expense.

HOLDINGS

1. The will clearly and unambiguously expressed Shell's intent to treat inheritance taxes as an expense of the estate, thereby supplanting the statutory apportionment pattern.
2. The will's direction to pay inheritance and estate taxes without contribution or reimbursement was consistent with treating the taxes as an expense of the probate estate and did not require proportional deductions from the beneficiaries' distributions.

KEY QUOTATIONS

> *"A testator who wants to shift the burden of the tax may employ any word or combination of words that the testator desires, and a few simple words might be enough to show his or her intent. But the direction in the will must be clear and unambiguous in order to supplant the statutory pattern."* (795-796)

> *"We conclude that paragraph I of the will clearly shows Shell's intent to treat inheritance taxes as an expense of the estate, instead of a tax proportionally borne by the beneficiaries under the statutory pattern."* (796)

FACTUAL BACKGROUND

Marvin H. Shell's will gave one-half of the residue of his estate to each of Jane M. Voboril and Sharon Vanosdall. The will authorized the personal representative to pay inheritance, legacy, and estate taxes from the probate estate, without contribution or reimbursement from any person. Because the beneficiaries were subject to different inheritance-tax rates, Voboril's accounting treated the total inheritance taxes as an expense of the estate and reduced both distributions equally. Vanosdall objected, contending that each beneficiary should bear the tax attributable to that beneficiary's distribution.

PROCEDURAL HISTORY

After Marvin H. Shell's will was admitted to informal probate, Jane M. Voboril, the personal representative, submitted an accounting that treated the inheritance taxes owed by the beneficiaries as an expense of the estate. Sharon Vanosdall objected, arguing that the taxes should instead be deducted proportionally from each beneficiary's distribution under the statutory pattern. The Lancaster County Court approved the accounting and distribution schedule. After Vanosdall died during the appeal, the Nebraska Supreme Court sustained a motion to revive the action and substituted the personal representative of her estate as appellant.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Odenreider, 286 Neb. 480, 837 N.W.2d 756 (2013)
- Mart. v. Ullsperger, 284 Neb. 526, 822 N.W.2d 382 (2012)
- Nielsen v. Sidner, 191 Neb. 324, 215 N.W.2d 86 (1974)
- In re Estate of Smatlan, 1 Neb. Ct. App. 295, 501 N.W.2d 718 (1992)
- Stuckey v. Rosenberg, 169 Neb. 557, 100 N.W.2d 526 (1960)
- In re Estate of Eriksen, 271 Neb. 806, 716 N.W.2d 105 (2006)
- Naffziger v. Cook, 179 Neb. 264, 137 N.W.2d 804 (1965)
- Wondra v. Platte Valley State Bank & Trust Co., 194 Neb. 41, 230 N.W.2d 182 (1975)
- Gretchen Swanson Family Foundation, Inc. v. Johnson, 193 Neb. 641, 228 N.W.2d 608 (1975)
- Rasmussen v. Wedge, 190 Neb. 818, 212 N.W.2d 637 (1973)
- University of Louisville v. Liberty Nat. Bank & T. Co., 499 S.W.2d 288 (Ky. App. 1973)
- National Newark & Essex Bank v. Hart, 309 A.2d 512 (Me. 1973)
- Oviatt v. Oviatt, 24 Ohio Misc. 98, 260 N.E.2d 136 (Ohio Prob. 1970)
- Cornwell v. Huffman, 258 N.C. 363, 128 S.E.2d 798 (1963)
- Matter of Durkee, 183 Misc. 382, 47 N.Y.S.2d 721 (N.Y. Sur. 1944)
- In re Estate of Williams, 366 Ill. App. 3d 746, 853 N.E.2d 79, 304 Ill. Dec. 547 (2006)
- Bunting v. Bunting, 60 Conn. App. 665, 760 A.2d 989 (2000)
- Estate of Flanigan v. Flanigan, 175 Colo. 499, 488 P.2d 897 (1971)
- In re Poffenbarger, 40 Misc. 3d 482, 961 N.Y.S.2d 731 (N.Y. Sur. 2013)
- Landmark Trust Co. v. Aitken, 224 Ill. App. 3d 843, 587 N.E.2d 1076, 167 Ill. Dec. 461 (1992)