1959

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

Utah Supreme Court

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In the Supreme Court of the State of Utah

In the Matter of the Estate of EUGENE CRANDALL,

Deceased,

STATE TAX COMMISSION OF UTAH,

Appellant,

vs.

VALGENE CRANDALL, Executor of the Estate of Eugene Crandall,

Respondent.

CASE NO. 8993

RESPONDENT'S BRIEF

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NEW CENTURY PRINTING CO., PROVO, UTAH

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

The Statement of Facts made in Appellant's brief will be adopted for the purposes of our discussion herein, but we shall hereinafter refer to additional facts that appear in this record which Appellant did not set out.

STATEMENT OF POINTS

POINT I

THIS IS A SPECIAL STATUTORY PROCEEDING IN EQUITY IN WHICH THE COURT IS GIVEN POWER TO HEAR, DETERMINE AND ORDER THE TRUE APPRAISEMENT OF THE PROPERTY FOR INHERITANCE PURPOSES AND IT CONTEMPLATES PLEADINGS, AS REQUIRED BY THE UTAH RULES OF CIVIL PROCEDURE, AS WELL AS COMPETENT EVIDENCE.

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THE ORDER OF THE UTAH COUNTY DISTRICT COURT DETERMINING THE TRUE APPRAISAL VALUE OF THE CRANDALL FRUIT FARM ASSET FOR INHERITANCE TAX PURPOSES TO BE $36,800.00, IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, AND SHOULD BE SUSTAINED.

ARGUMENT

POINT I

THIS IS A SPECIAL STATUTORY PROCEEDING IN EQUITY IN WHICH THE COURT IS GIVEN POWER

TO HEAR, DETERMINE AND ORDER THE TRUE APPRAISEMENT OF THE PROPERTY FOR INHERITANCE PURPOSES AND IT CONTEMPLATES PLEADINGS, AS REQUIRED BY THE UTAH RULES OF CIVIL PROCEDURE, AS WELL AS COMPETENT EVIDENCE.

Valgene Crandall, the Executor of the Eugene Crandall estate, filed objections to the inheritance tax appraisal under Section 59-12-20, Utah Code Annotated, 1953, which provides as follows:

> "The State Tax Commission or any person interested in the estate appraised may, within thirty days after an appraisement is filed, file objections to the appraisement. **The hearing thereon shall be deemed an action in equity.** If upon such hearing the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade at time of death, and that the appraisement fairly and in good faith made, it shall approve such appraisement, but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade at time of death, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers, and so proceed until a fair and just appraisement of the property is made. **Or the court in its discretion shall proceed to hear and determine the amount at which the property is to be appraised and make and enter its order of appraisement in that behalf, which order shall constitute the true appraisement in such case."**

The Executor's decision to file objections was taken when the "Inheritance Tax Report and Appraisement" was filed placing the value of the decedent's one-third interest

in the Crandall fruit farm to be $75,000.00 (R. 47), and the probate file disclosed that the estate appraisers had theretofore appraised the same asset at $25,000.00 (R. 27). Briefly the verified "Objections to Inheritance Tax Appraise-" of the Executor alleges the names of the inheritance tax appraisers and the fact that they made an appraisal of the asset in question at $75,000.00; that the appraisal of the inheritance tax appraisers was objected to on the ground that it was made at a greater sum than the value of the asset in the ordinary course of trade at the time of the death of Decedent because, (a) the asset was being devoted exclusively to fruit farming purposes at the time of decedent's death, (b) that the Crandall farm was owned by deceased, his brother and surviving widow of a deceased brother, as tenants in common and a partition suit would be required to separate the interests of the owners, (c) that decedent devised his interest in the Crandall farm to the Executor, his son, who desires to continue devoting the asset to farming purposes, (d) the State Tax Commission had heretofore recognized the value of the entire Crandall farm at $75,000.00, and (e) that the value of the property in question including the land and water rights is not more than $1500.00 per acre. The court was requested to hear and determine the amount at which the estate's interest in this property is to be appraised and to order same.

Although the said petition was served on the Appellant, no answer to it was filed and we believe one was required under the Utah Rules of Civil Procedure. This is a special statutory proceeding and Rule 81 (a) provides:

"These rules shall apply to all special statutory proceedings, except and so far as such rules are by their nature clearly inapplicable . . ."

Rule 7 (a) provides that, "There shall be a complaint and an answer; . . .", and Rule 8 (b) provides:

"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading . . ."

Despite these provisions, Appellant filed no answer but instead called two of the inheritance tax appraisers, one who did not participate in the inheritance tax appraisal (T. 24) under attack, who gave the evidence at the hearing hereinafter referred to in defense of their former appraisal. Thus it would appear that the aforesaid allegations of the Executor's objections stand admitted in this record.

POINT II

THE QUALIFICATIONS OF APPELLANT'S APPRAISERS AS EXPERTS ON MARKET VALUE OF REAL ESTATE IN UTAH COUNTY ARE QUESTIONABLE, AND THEIR EVIDENCE AS TO MARKET VALUE OF THE PROPERTY IN QUESTION AT THE TIME OF DECEDENT'S DEATH, IS SO SPECULATIVE THE COURT COULD GIVE IT NO WEIGHT.

The record shows that neither the witness, Mecham (T. 20-21), nor the witness, Randall (T. 26), are regular real estate appraisers and neither ever made an appraisement of real estate in Utah County for sale. The witness, Mecham, was sick and in the hospital at the time the in-

heritance tax appraisal was made and did not understand same when it was called to his attention after he had signed it (Tr. 24-25). Neither of these witnesses testified that the property in question had a value of $3,000.00 per acre at the time of decedent's death occurring October 29, 1957. But even so, let us examine the testimony of each of them and observe its speculative character:

The witness Mecham on direct examination stated (T. 21-22):

"Would you state how you arrived at your estimate of the value of this property as to the date of death of the decedant?

A. Well, we—I didn't particularly examine it for the location—and it's a good location. A very fine view. I went over it again this morning up there. It's quite a nice place there. I believe it's a good location for a subdivision.

Q. You actually went to this property?

A. Oh, yes.

Q. On more than one occasion?

A. Oh yes. I know the property quite well.

Q. What led you to believe that this property is worth three thousand dollars an acre?

A. Well, it apparently has a very fine water right, and we inquired around, and apparently they could sell it for that much.

Q. It is your belief they could sell that property for that much, at three thousand dollars an acre. That would be including the water right?

A. Yes.

Q. Do you believe that it's possible to sell the property for more than three thousand dollars an acre?

A. That would be a conservative figure.

Q. You think three thousand dollars would be conservative figure?

A. Yes."

The witness Randall on direct examination stated (T. 27-28):

"Q. Have you had occasion to value the property in this estate which has been referred to here—that is the orchard property?

A. Yes.

Q. How did you arrive at your estimate of the value of this property?

A. It is my understanding of the duties that we have as appraisers for inheritance tax division of the estate, we are to appraise to the best of our ability a fair, market value for the property involved. This includes its use, its highest economic use, what a man—a reasonable person with no pressure to sell would sell the property and a reasonable person with no pressure to buy would buy the property at. In light of this fact, we discussed the values at first with persons of the estate and we worked on it considerably, checking some of our records, and trying to work out a valuation, and we felt, after due deliberation, that the property on the average would be worth three thousand dollars an acre. There are some important points on water stock. There is fifty-five to sixty-five thousand dollars worth of water stock involved in the property. And this is an important factor to be considered. We appraised the Alta Ditch water for loan purposes again between nine hundred and fifty and a thousand dollars a share. The property, as we discussed with Judge Ballif at the beginning, although it is used as for farm purposes, fruit farming purposes—now the value of the land cannot be tied, in our estimation, to the value of fruit farming; that it has a higher eco-

nomic use and would be sold, if it were to be sold on the market, at a higher level.

Q. So you think it could be sold for more than—

A. At the time we were discussing this at the first appraisal I think it would be well to point out that the appraisal made by the estate was a thousand dollars. So it's been increased by the estate in their appraisals now.

Q. But your estimate is, if this property were sold it would bring three thousand dollars an acre?

A. Yes.

Q. With the water stock?

A. Yes."

The basis of the Mecham testimony seems to be mere guesses and hearsay, without any reference to the market value of the property at the time of decedent's death. The Randall testimony seems to constitute a theoretical discussion of market value and a speculation as to the value of the property in question at some future time without any reference to the market value of the property at the time of decedent's death. Both of the witnesses failed to consider that the property in question was not available for subdivision residential purposes at the time of decedent's death. This is clearly shown by the testimony of the witness Johnson called by the Executor which states (T. 19-20):

"Do you know of any potential purposes of this land?

A. I do not. There is always potential purposes. There is always a market for something if it's priced within a market value—market range.

Q. How near this property are other subdivisions?

A. Oh, I would estimate, approximately—let's see. Further subdivisions east would be on about two seventy five east in Orem. That would be the further one east which would be the Rose Gardens Estates which we are handling, and that would also take in the Mountain View Subdivision which is in the two seventy five to three east and this property is on twelve to thirteen.

Q. Nine or ten blocks west?

A. That is right. It would be east.

Q. East of the subdivision?

A. That is right.

Q. That is the closest subdivision?

A. That would be the closest subdivision."

Nor did either of the witnesses consider the fact of the ownership of the asset in question by deseased as a joint tenant of an undivided one-third interest and the effect of such ownership upon market value. In this connection the Executor testified as follows (T. 4-5):

"Q. Now, you are acquainted with the type of ownership that your father had in the place, are you not?

A. Yes.

Q. What is that?

A. It's an undivided one-third interest in the seventy-nine acres.

Q. They are owners in common?

A. Yes.

Q. Tenants in common?

A. Yes.

Q. Has there ever been a partition between these three brothers?

A. No.

Q. Now, I take it that your father, Eugene, and brother, Merrill, and brother, Rafael, owned the farm which you have described in this?

A. Yes.
Q. Rafael died a few years ago, did he not?
A. Yes.
Q. And his wife, Eliza, took his interest?
A. Yes."

The importance of the "fractional or undivided ownership" on market value and its legal effect is stated in 85 Corpus Juris Secundum Page 1021 as follows:

> "**Fractional or undivided interests.** Where an undivided interest in real property was devised, the subject matter to be appraised is such undivided interest, and not specific property subsequently set off to the devisee in partition proceedings. In some jurisdictions an undivided interest in real property is appraised at a full proportionate part of the value of the entire property; but in other jurisdictions an allowance or deduction is made for the diminution of value resulting from the fact that the interest is only an undivided and fractional one."

As indicated in the foregoing statement, there is an allowance for deduction for the diminution of value resulting from the fact that the interest is only an undivided and fractional one. New York is a jurisdiction which so holds and we quote from, In Re Gilbert's Estate, 163 N. Y. S. 974, 176 App. Div. 850, quoted in 61 C. J. 1700 as follows:

> "Deduction is due in part to cover the expenses incident to a partition action, but is chiefly due to the fact that the owner of such an undivided interest, particularly if, as in the case at bar, it be a minority interest only, cannot control it, but holds it practically at the mercy of the owners of the other interests. For such an interest there is only a limited market, the proof being that experience shows that the purchasers

of undivided interests are usually speculators and operators. This restrictive market for such interests lowers their market value."

It is submitted that the evidence given by the above mentioned two witnesses is so speculative that the court could not make a finding that there was a higher use for the estate asset at the time of decedent's death than fruit farming. Furthermore, the fact that the Crandall fruit farm was in undivided (tenancy in common) ownership seriously affects the market value of the estate asset in question which fact was never considered in the speculative value which both these witnesses assigned to the asset. Also, both seem to have had in mind some undetermined future time that the property in question might be good for subdivision—residential property. Both seem to have had buyers in mind but either could not or would not disclose their names.

Counsel for Appellant contend for the application in the instant case of the rule of "highest and best use" which is applied to valuation in the condemnation case of Moyle v. Salt Lake City, 111 Utah 201, 176 Pac. 2d 882. They cite no case involving valuation for inheritance tax purposes where that rule has been applied. They say that "The import of Kennecott Copper Corporation v. Salt Lake County, 122 Utah 431, 250 Pac. 2d 938, 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". (A. Br. 8). We point out that the use to which the Kennecott Tails Dump was being put at the time of the assessment for general tax purposes, was then the "highest and best use" to which the property

had ever been put, and this Court refused to look back to the grazing use value of past years. In view of the provision in Section 59-12-3 U. C. A. 1953 that "The value of the gross estate of a decedent shall be determined by including the value at the time of his death . . .", we contend that the "use" element in the valuation is the "use" to which the property is being put when death occurs, forgetting past and future uses, in justice to the decedent's heirs who, as in the instant case, may wish to carry on the same business that decedent was carrying on at the time he died. The possible future changes in the property's use which may occur should not enhance its value at the time of death, for the sole purpose of increasing the amount of inheritance taxes the Appellant could collect.

But, be that as it may, the witnesses, Randall and Mecham, have given no evidence, other than the theoretical speculations above set forth, of a higher available use than fruit farming. Indeed, other than vague references to the "time of death" (T. 21-23) they give no evidence of value at the time of decedent's death. The court properly disregarded their testimony, it being insufficient to establish any value at the time the decedent died.

POINT III

THE ORDER OF THE UTAH COUNTY DISTRICT COURT DETERMINING THE TRUE APPRAISAL VALUE OF THE CRANDALL FRUIT FARM ASSET FOR INHERITANCE TAX PURPOSES TO BE $36,800.00, IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, AND SHOULD BE SUSTAINED.

We emphasize the fact that Respondent called the only

qualified independent appraisers who testified in this case. Ralph Halm is a real estate broker of ten years experience who knows land values in Utah County and particularly in Orem; and Milton G. Johnson, likewise a real estate broker with an acquaintance of land values in the same area, he having made appraisals there over the past twelve years. Both have their offices in Orem. Their respective market value testimony we now set out:

On this point the witness Halm testified (T. 11-13):

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

A. Yes.

Q. Did anyone participate in that appraisal with you?

A. Yes.

Q. Who?

A. Milton Johnson.

Q. Would you describe briefly to the court the farm which you examined and appraised?

A. Yes. It consisted of seventy-nine acres, approximately, of which seventy acres is in fruit. There is about nine acres of non-productive ground. There is a variety of apples and pears, cherries, some old and some new trees.

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

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

Q. Now, did you arrive at a value for the property that you have just described for—at about the time, October the 29th, 1957?

A. Yes.

Q. When Eugene Crandall died?

A. Yes.

Q. Will you state what your appraisal is?

A. Our total appraisal was—my total appraisal, I should say, was one-hundred and ten thousand four hundred dollars.

Q. That is for the whole farm?

A. That is correct.

Q. How did you break that down? Would you tell the court about that?

A. We estimated the seventy acres of fruit at fifteen hundred dollars an acre, and the nine acres of ground at an estimated value of six hundred dollars per acre. That is the nine acres of sandy and unproductive ground, and ground that was from what we could gather information, hard to water, or it could not be watered at all.

Q. It was unproductive and not planted?

A. Yes.

Q. You understood it could not be watered?

A. Yes.

Q. The total appraisal was one hundred ten thousand four hundred?

A. That is correct.

Q. You understood, did you not, that the Eugene Crandall estate owns a one-third interest in that. So what would you put the value of that one-third interest? That is one-third of one hundred ten thousand four hundred?

A. I haven't figured it out.

Q. The way I figure it it is thirty six thousand eight hundred.

A.That sounds correct, yes.

Q. You and Mr. Johnson have reduced your appraisal to writing, have you not?

A. Yes.

Q. I show you the original and ask if that is it?

A. Yes."

The witness, Johnson, on this point testified (T. 17-18):

"Q. Will you tell the court the value that you placed on this property as of October 29, 1957 when the Decedent died?

A. I am consistently being actively engaged in the real estate business, and particularly on a market value. 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, brink of the hills, and I have evidence as to actual transactions, names, descriptions, amount of acreages, and sales prices, and after due consideration of all facts—land, water rights, location, and all, I felt that fifteen hundred dollars per acre was a fair market value for that property. If my office was to solicit listing for sales purposes, we would not list that less than fifteen hundred dollars per acre.

Q. And the total amount of fruit land, you then figured it one hundred and five thousand dollars, and what did you put on the unplanted, sandy ground?

A. Well, that is—I have placed—in working this out, I estimate between five and six hundred dollars. It's something that has a long range development program. It has no value. It's actually a liability right now because of tax purposes and what have you. In the six hundred dollars per acre.

Q. You have signed the appraisal with Mr. Halm, did you not?

A. I have, yes, you bet.

Q. And you put a value on the unproductive land as six hundred dollars an acre?

A. Yes.

Q. That is your signature?
A. That is my signature."

Their appraisal was reduced to writing, was received in evidence and is now part of this record. (R. 35).

The Executor, Valgene Crandall, son of decedent and devisee of the estate asset in question, testified that he had worked on the farm with his father prior to his death for eleven years, and before that during the summer vacations from school; that the farm was run most of that time by his father and two uncles in an operating partnership for fruit farming purposes; that his father willed his interest in the farm to Executor; and that he wanted to continue to operate the property as a fruit farm, the same as his father had done for many years, and did not want to sell same. He further testified as to the value of the farm at the time of his father's death as follows (T. 4-6):

"At the time of your father's death, October 29, 1957, was the farm being operated for fruit farming purposes?
A. Yes.

. . . . . .

Q. Now, your father and his brother and his deceased brother's wife operated the farm as a partnership, did they not?
A. Yes.
Q. It was just an operating partnership?
A. Yes.
Q. The partnership did not own the land?
A. No.
Q. From your connection with the property out there over the years, have you any idea as to its value, including the water right per acre?

A. Well, I feel that my own opinion — I feel around fifteen hundred dollars an acre."

He also testified that he filed his objections because the inheritance tax appraisal was too high (T. 3). Counsel for Appellant seized upon the Executor's statement on cross examination that the net profit from the farm for "last year" was, "I think it was around $30,000.00", as evidence of "capitalization of net income" method of arriving at market value. In fairness to the Executor his testimony on this point on re-direct examination should be here referred to (T. 9):

"Mr. Crandall, with respect to this fifteen thousand two eighty four eighty seven which came in for the 1957 share of your deceased father, would you explain what part of that was for compensation for his services for operating the farm?

A. Well, forty percent, or one-third of the whole three-thirds is what he got. Twenty percent is what he got for running Eliza's share.

Q. Now, the fifteen thousand dollars is not net profit to the farm?

A. No.

Q. But it includes compensation for his services and for operating the farm, for a third partner—

A. Yes.

Q. (Continuing) Merrill.

A. Yes.

Q. So that item then is not alone net profit?

A. No."

It appears that none of the appraisers had this capitalization element in mind when they testified and they make no mention of it in the entire record. The factors in the employment of this method recognized in Clift Estate, 70

Utah 409, 260 Pac. 859, are not in evidence in the instant case. The above testimony of the Executor also indicates that the exact net income figure is not in the record, to say nothing of the deduction figures used in the Clift case.

It is submitted that by a preponderance of the evidence the Executor's witnesses have established a fair market value of the interest of decedent in the Crandall farm at the time of his death to be $36,800.00. The court committed no error by so finding and ordering.

CONCLUSION

The court had the power under the Utah Statute to hear and determine the value of the estate asset for inheritance tax purposes at the time of decedent's death. The Executor challenged the inheritance tax appraisement and his attack upon it was never met either by answer or by evidence on the part of Appellant. By a preponderance of the evidence the value of this estate asset for inheritance tax purposes at the time of decedent's death was $36,800.00 for fruit farming purposes which was and is the highest and best use of the property. It is submitted that the court did not err in so finding, nor in so ordering upon the Estate's evidence, and this Court should affirm that decision.

Respectfully submitted,

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