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Divorce--Sale of Property by Court Order

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ABSTRACTS

Divorce—Sale of Property by Court Order

The circuit court, having granted a divorce sought by wife, *W*, directed the sale of *W*'s property at public sale under the authority of W. VA. CODE ch. 48, art. 2, § 13, 19 (Michie 1966). *W* instituted this prohibition proceeding contending that the circuit court lacked jurisdiction to order the sale even with the consent, approval, and agreement of both parties to the divorce. *Held*, writ awarded. The circuit court lacked jurisdiction to direct the sale and order the proceeds divided between *H* and *W*, even if their consent had been given. *Collins v. Muntzing*, 157 S.E.2d 16 (W. Va. 1967).

The court, relying on its decisions in *Hammond v. Worrell*, 144 W. Va. 83, 106 S.E.2d 521 (1958) and *Farley v. Farley*, 149 W. Va. 352, 141 S.E.2d 63 (1965), held inapplicable W. VA. CODE ch. 48, art. 2, § 15 (Michie 1966) which gives the court the power to make an order concerning the estate of the parties or either of them in cases relating to the maintenance of the parties and or custody of their children. The court also held inapplicable W. VA. CODE ch. 48, art. 2, § 19 (Michie 1966) which relates to the power of the court to require one party to a divorce proceeding to convey real estate to the other. The court did, however, indicate that the authority granted under W. VA. CODE ch. 48, art. 2, § 19 (Michie 1966) coupled with a written agreement between the husband and wife could bring about a different result than that in the principal case. *Farley v. Farley*, 149 W. Va. 352, 359, 141 S.E.2d 63, 68 (1965).

Estate Tax—Ascertainable Standard Exception to General Power of Appointment Inclusion

H received property from his deceased wife under the terms of a mutual will giving him the property for life with the power to "use, utilize, and dispose of the same," with the remainder over to their seven children. Upon *H*'s death, his executor argues that this power is limited by an ascertainable standard and is therefore a special power under § 2041 of the Internal Revenue Code. As such the property subject to the power should be excluded from *H*'s estate for federal estate tax purposes. Executor contends that W. VA. CODE ch. 36, art. 1, § 16 (Michie 1966) effectively limited *H*'s power of appointment to an ascertainable standard. This action was brought for refund of estate tax. *Held*, complaint dismissed. *H* had a general