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WASHINGTON CASE LAW - 1956

Presented below is the fourth annual Survey of Washington Case Law. The value of such a survey is attested by the increasing number of publications which publish similar surveys dealing with the case law of their respective jurisdictions. The articles appearing herein have been prepared by second year student invitees to the *Law Review* as a part of their program for nomination to the Editorial Board. The second year students were guided in their work by third year student members of the Editorial Board and by various members of the faculty of the Law School.

The survey does not represent an attempt to discuss every Washington case decided in 1956. Rather, its purpose is to point out those cases which, in the opinion of the Editorial Board, constitute substantial additions to the body of law in Washington. The second survey which is published by the *Washington Law Review*, that dealing with significant new legislation, will appear in the forthcoming Autumn issue.

ADMINISTRATIVE LAW

Scope of Review. In *Williams v. Hollenbeck*,[1] the decision of the State Department of Public Assistance was reversed without discussion of the scope of judicial review of administrative action. Disposition of the case in this fashion reinforces the concept that while administrative findings of fact made after a fair hearing are final unless unsupported by the evidence, no deference need be given administrative interpretations of the law. Upon questions of law the Court exercises an independent judgment and enforces its views of policy unrestrained by the contrary views of the administrative agency charged with enforcement of the law.

[1] 149 Wash. Dec. 27, 297 P.2d 952 (1956).

The Williams had been recipients of general assistance payments from the State of Washington continuously since 1953. In July of 1954, to forestall suit on debts they had contracted *prior to becoming welfare recipients*, they executed a note secured by a mortgage on their *exempt* furniture and realty. The county office of the Department of Public Assistance notified the Williams that delivery of the mortgage constituted a prohibited transfer within the meaning of RCW 74.08.335 and certain departmental regulations.[2] Since under the statute and rulings this would render them ineligible for public assistance for a period of time during which the reasonable value of the property transferred would be adequate to meet their needs, the recipients requested a hearing by the state director. This resulted in a general affirmation of the county office ruling and the Williams appealed to the Superior Court, where the state director was reversed.[3]

The statutory prohibition of transfers serves at least three purposes: (1) it prevents persons from making themselves eligible for public assistance by giving away their property, (2) it requires a person who disposes of property by gift or sale to "live up" the proceeds before receiving further state aid, and (3) it preserves the state's lien against the recipient's exempt resources upon his death and thus increases the possibility that there will be a partial recovery of assistance payments.[4] The supreme court, in affirming the lower court's

[2] RCW 74.08.335 provides, "Public assistance shall not be granted under chapters 74.04 through 74.16 to any person who has made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under chapters 74.04 through 74.16. Any person who shall have transferred or shall transfer any real or personal property or any interest in property within two years of the date of application for public assistance without receiving adequate monetary compensation therefor, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the director, shall be ineligible for public assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet his needs under normal conditions of living: *Provided*, That the director is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance." (1953 c. 174 #33.)
Regulation 441.14-R provides: "Transfers shall mean an act or omission to act whereby title to or any interest in property is assigned, set over or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges,..."
Regulation 411.148-R(6) provides: "...If a recipient executes and delivers a mortgage covering exempt property, the delivery of the mortgage shall be considered the transfer of the property;..."

[3] RCW 74.08.080. Federal statutes in many instances provide that federal pensions are a "bounty" and that the decision of the administrator shall be final and unappealable. 54 Stat. 1197 (1940), 38 U.S.C. § 11a-2 (1946); 48 State 9 (1933), 38 U.S.C. 705 (1946). The Washington statute provides that a recipient may appeal whenever he feels aggrieved and has exhausted his available administrative remedies. The scope of review is limited by a provision in the statute that the court shall not disturb the findings of fact unless the evidence in the record preponderates against them, nor reverse a ruling unless it is found to be arbitrary, capricious or contrary to law.

[4] The provisions of RCW 74.08.111 give the State, in certain specified circum-

reversal of the state director, stated that the statute was clearly not intended to prohibit "a mortgage of *exempt resources* by welfare recipients to secure *antecedent debts, the consideration for which is the forbearance of suit by the mortgagee.*"[5] In short, while the department regulations may be valid generally in defining a mortgage to be a "transfer," they do not extend the intent of the legislature to proscribe a transfer to these particular circumstances.

The issue was not forcefully presented in the brief filed in behalf of the State Department of Public Assistance, but it may be noted that this decision does not serve the third imputed purpose of the statute; i.e., the preservation of the state's right to recover welfare payments out of the estate of the recipient. The lack of either a fraudulent attempt to qualify for benefits or any present monetary or property consideration which the recipient can "live up" is the point of distinction made by the court.

The prior case of *Robinson v. Olzendam*[6] involved the same department of the state government and the court was likewise faced with the problem of reviewing an administrative determination as to how best to implement the purpose of a statute. There the question was what standard to use to determine the amount to be deducted from assistance payments as a credit for imputed income from home ownership. The agency had been using a "minimum" figure of six dollars for all recipients in a particular county and changed to the "median," or thirteen dollars. A considerable amount of evidence developing the statistical analysis and policy considerations used by the department was entered in the record. The court upheld the department's ruling, stating,

> "*Even if the department was in error in its determination,* it exercised its honest judgment in this matter and, therefore, the trial court should not have held that the department acted arbitrarily, capriciously or upon a fundamentally wrong basis in these cases."[7] (italics supplied.)

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stances, a right to assert a lien up to the amount paid in public assistance against the estate of deceased recipients of public assistance superior to that of all unsecured creditors. It should be noted that the debts of the recipients in the *Williams* case were subject to this "creditor" right of the state prior to the mortgage, but not after. The court may have discounted this as inconsequential in general and dependent children assistance cases as opposed to old age assistance cases, but is this a valid distinction? The State's lien is applicable to both classes of assistance and as a practical matter, except for the statute of limitation, the department's chances of recovering would appear to be equal.

[5] 297 P.2d at 954.

[6] Robinson v. Olzendam, 38 Wn.2d 30, 227 P.2d 732 (1951).

[7] 227 P.2d at 737.

Contrast that statement with the court's terse comment in the *Williams* case, "We do not agree with the department's position on the matter."[8]

Although both decisions may be sound, the apparent conflict is obvious and sharp. Their reconciliation may give some insight as to the basis upon which the court will review administrative determinations. This involves the "law-fact" distinction and also some practical policy considerations inherent in the problem of substituted judicial judgment.

While left unsaid, it is clear that the court treated the question of whether the Williams "transferred" an "interest in property" as one of law. In the *Robinson* case, the court stated that there was room for a difference of opinion as to whether the minimum figure or the median was more accurate, and it regarded this to be a question of fact. The statute prescribing the scope of judicial review of decisions of the Department of Public Assistance states that the court shall not disturb the findings of fact unless the evidence in the record preponderates against them, nor reverse a ruling unless it is found to be arbitrary, capricious or contrary to law.[9] Thus the court is entirely free of any restraint as to a question deemed to be one of law, but its power to reverse upon the facts is limited to those cases where the action is found to be arbitrary or clearly unsupported by the evidence. This statutory prescription coincides with the position taken by the court as to the scope of its review of administrative decisions generally.[10] But this distinction between law and fact is too neat—the question of the interpretation to be placed upon the statutory requirement of income credits in the *Robinson* case is at least partially one of law.[11] It may logically be urged that whether the Williams "transferred" an "interest in property" is in the final analysis a question of fact.[12] Other factors must be weighed in the balance with such fine distinctions if

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[8] 297 P.2d at 954.
[9] RCW 74.08.080.
[10] *In re* St. Paul and Tacoma Lumber Co., 7 Wn.2d 580, 110 P.2d 877 (1941); *In re* Stolting, 131 Wash. 392, 230 Pac. 205 (1924).
[11] Compare NLRB v. Hearst Publications, 322 U.S. 111 (1944), where the issue was whether the term "employees" in the National Labor Relations Act encompassed newsboys selling appellants' papers. The Court met squarely the argument of appellants that the term should be applied as it was at common law, stating that the meaning of the word was to be found in the history, terms and purposes of the statute, but limited its review to a determination that the findings of the board had "warrant in the record" and a "reasonable basis in law." The court thus met the fundamental issue of law raised on appeal, but left to the discretion of the agency the specific application of the language within the limits it outlined.
[12] THAYER, A PRELIMINARY TREATISE ON EVIDENCE 249-50 (1898).

judicial review is not to be in itself an arbitrary and capricious action.

A further basis for distinguishing the results in the two cases may be found in the legislative function which the departmental rulings served in each case. In the *Williams* case, the regulation merely defined a term of the statute. By contrast the ruling attacked in the *Robinson* case was pursuant to a legislative delegation of authority to determine the consideration to be given to imputed income from resources of the recipient. The statute prescribed that such consideration must be given but gave no formula for evaluating the resource and provided that the department make such rules and regulations as were required.[13] It is submitted that the court will generally give a much higher standing to a regulation promulgated in the exercise of delegated authority necessary to the carrying out of the legislative intent than they will to an agency definition of a statute's meaning, a function traditionally judicial in nature. The court could find that the definitive regulation in the *Williams* case extended the statute to cases not properly within its scope, but a regulation exercising a delegated discretion within the limits of the delegation is not open to such an attack.

The attitude the courts will take as to the limits of their reviewing function will be influenced in part by their practical appraisal of the abilities of the agency as opposed to the court as a tribunal to decide the particular issue raised.[14] Thus in the two cases under discussion, a distinction may be drawn as to the value of expertise in deciding them. The determination in the *Robinson* case of whether the minimum or median figure was the more accurate in the greater number of cases was one requiring statistical analysis and experience which the department was particularly qualified to make. On the other hand, nothing could be more within the armory of the courts' peculiar abilities than determining the proper interpretation of statutory wording.[15] Other practical considerations not present in a comparison

[13] Rem. Supp. 1949, sections 9998-33q, 9998-33c and 9998-33j.
The regulations held inapplicable in the *Williams* case were issued under the same statute as those in the *Robinson* case. It provides generally for the promulgation and publication of such regulations as the director shall deem necessary. The difference in the court's treatment results from the fact that, in the *Robinson* case, the legislation provided that something had to be done and was silent as to the details, leading undeniably to the inference raised by the court—that the director was expected to fill in those details and that the statute was intended to delegate the specific legislative authority necessary.

[14] For an acute discussion of the federal cases, see DAVIS, ADMINISTRATIVE LAW, c. 20 (2d ed. 1951), and Nathanson, *Administrative Discretion in the Interpretation of Statutes*, 3 VAND. L. REV. 470 (1950).

[15] However, the experience of the state director in effecting recoveries of assistance

of the instant cases, but emphasized in others, include the absence of prosecuting duties in the administrative trier, the judicial nature of the proceedings within the agency, the independence of the agency from political pressures, and any overriding policy considerations that are presented by a particular case.[16] While these matters are seldom clearly articulated or discussed by the courts, some otherwise irreconcilable decisions become meaningful when these factors are considered.

The present status of the law can be condensed to a statement that the findings of fact by an administrative agency will not be disturbed unless the evidence in the record preponderates against them, but that application of principles of law is always said to be subject to an independent judgment by the court. This area of the law is in a relatively fluid state and is one in which policy considerations and practical arguments are particularly persuasive, if not controlling, due to the absence of stratified rules of law and procedure. Both counsel and courts would do well to consider the problems involved in the scope of judicial review when faced with advocating or determining an appeal to the courts from an administrative decision.

WILLIAM FRASER

COMMUNITY PROPERTY

Right of Survivorship in Joint Tenancy Bank Accounts. In the recent case of *In re Webb's Estate*,[1] the Supreme Court of Washington held that if a married man and a single man together establish a joint savings account with right of survivorship, the married man may take the total sum on deposit upon the single man's predeceasing him. However, a seeming inconsistency arose when the court intimated that if the married man had predeceased the single man, the survivor's rights would have been subject to the claims of community property.[2]

payments from exempt assets in the estates of deceased recipients may have given him greater insight into the necessity of serving that purpose of the prohibition against transfers in RCW 74.08.335.

[16] For perhaps the most radical attempt by the Supreme Court to make these factors crucial see Dobson v. Commissioner, 320 U.S. 489 (1943). It is perhaps ironical that this attempt to promote the decisive influence of practical considerations failed for practical reasons. Primarily because of opposition from the tax bar and uneven application by the circuit courts, the doctrine fell into ill repute and was repealed by statute in 1949. The opinion retains its vitality, however, as an expression by the court of its current feeling towards the whole problem of judicial review. The history of the doctrine in our courts provides a suggestion of some of the limitations upon that approach.

[1] 149 Wash. Dec. 6, 297 P.2d 948 (1956).

[2] The same dictum appeared in Toivonen v. Toivonen, 196 Wash. 636, 84 P.2d 128 (1938).