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anon

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The decision in the principal case to overrule *DeShazo*, although based upon statutory amendment rather than reevaluation of the former rule,⁸ has brought Washington law into line with the majority position.

COMMUNITY PROPERTY

Federal Savings Bonds—P.O.D. Beneficiary Other Than Surviving Spouse. The United States Supreme Court recently handed down a decision reversing the Washington Supreme Court which has important ramifications in all community property jurisdictions. The problem began when Angel N. Yiatchos purchased Series E United States savings bonds with community funds. Angel became registered owner of the bonds and his brother was designated P.O.D. (payable on death) beneficiary.¹ After Angel's death, his widow refused to deliver the bonds to the brother. The brother then brought suit against the widow individually and as executrix to determine ownership of the bonds. Angel's widow sought one-half interest in the bonds as her community share and asked that the proceeds of the remaining bonds be distributed to the devisees named in decedent's will.² On stipulated facts, the Supreme Court of Washington held that Angel's purchase with community funds of bonds payable to him alone, or to his brother upon his death, was in fraud of his wife's rights and was therefore void *ab initio*.³ On appeal, the United States Supreme Court reversed and remanded. *Held*: Because Treasury regulations have the force of federal law, the P.O.D. beneficiary of federal savings bonds is entitled to the bonds unless their purchase by a husband with community funds is a "fraud" upon the wife as determined by federal law, and the wife has an undivided one-half interest in the bonds as a community asset. *Yiatchos v. Yiatchos*, 376 U.S. 306 (1964).

In the first Washington case involving the survivorship provisions of the Treasury regulations, *Decker v. Fowler*,⁴ the court adopted the

⁸ "Since we are convinced that congressional intent is clear in this case, we cannot substitute our judgment for the obvious policy decision that Congress has made here." 65 Wash.Dec.2d at 367, 397 P.2d at 439.

¹ 31 C.F.R. § 315.66 (1959) provides that upon the death of the registered owner, the P.O.D. beneficiary will be recognized as the sole and absolute owner of federal saving bonds.

² See WASH. REV. CODE § 11.04.050 (1963).

³ *In re Yiatchos Estate*, 60 Wn.2d 179, 373 P.2d 125 (1962). See Comment, 38 WASH. L. REV. 255 (1963).

⁴ 199 Wash. 549, 92 P.2d 254 (1939). The court rejected claims of the P.O.D. beneficiary to federal savings bonds on a gift theory, holding that, absent a valid delivery of the bonds, the designation of a P.O.D. beneficiary was ineffective as a gift. This rationale was severely criticized; see 14 WASH. L. REV. 312 (1939). Legislation designed

“convenience theory”—that the Treasury regulations provide a convenient means by which the federal government may discharge its obligations on federal savings bonds and avoid numerous transfers. Under this theory, the federal government is not concerned with ultimate ownership of the bonds, which may be determined by state law. The Washington court again applied the convenience theory in *In re Allen's Estate*,⁵ holding that “irrespective of treasury regulations,” bonds purchased with community funds are community property.⁶ The court reasoned, “If this were not so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds.”⁷

While the principal case was pending before the supreme court of Washington, the United States Supreme Court announced its decision in *Free v. Bland*,⁸ holding that Treasury regulations have the force of federal law and supersede conflicting state community property law⁹ under the supremacy clause. Thus, the surviving owner of co-ownership bonds¹⁰ was entitled to the bonds under the Treasury regulations despite conflicting state law. The Court, however, recognized the possibility of fraud on the part of the husband as manager of the community estate, and enunciated a “fraud exception”:

The regulations are not intended to be a shield for fraud and relief would be available in a case where the circumstances manifested fraud or breach of trust tantamount thereto. . . . However, the doctrine of fraud applicable under federal law must be determined on another day. . . .¹¹

In an attempt to bring the principal case within this fraud exception, the Washington court concluded, as a matter of law, that Angel's purchase of federal savings bonds with community funds and designa-

to overrule this gift rationale was subsequently enacted. See WASH. REV. CODE §§ 11.04.230 and 11.04.240 (1963), substantially enacting 31 C.F.R. §§ 315.61 and 315.66 (1959), respectively.

⁵ 54 Wn.2d 616, 343 P.2d 867 (1959), 35 WASH. L. REV. 280 (1960). By the time *Allen* was decided, the “convenience theory” had been rejected in a majority of jurisdictions. Usually the Treasury regulations were recognized as superseding conflicting state law. See generally, Annot. 37 A.L.R.2d 1221, 1229, 1231 (1954).

⁶ The Treasury regulations provide that the registered owner is entitled to federal savings bonds. 31 C.F.R. §§ 315.5 and 315.65 (1959). Because it did not consider Treasury regulations to have the force of federal law, the Washington court did not concern itself with the supremacy clause.

⁷ 54 Wn.2d at 619, 343 P.2d at 868.

⁸ 369 U.S. 663 (1962).

⁹ VERNON'S TEX. CIV. STAT. tit. 75, ch. 3, arts. 4613-27 (1960). Under Texas community property law, the bonds were community property and thus subject to the testamentary disposition of the deceased co-owner.

¹⁰ See 31 C.F.R. §§ 315.60, 315.61 and 315.7(a) (2) (1959).

¹¹ 369 U.S. at 670-71.

tion of a third party as P.O.D. beneficiary was in constructive fraud of his wife's rights. The court denied efficacy of the survivorship provisions of the Treasury regulations, and, applying community property law,¹² granted one-half of the proceeds of the bonds to the widow and the remaining proceeds to beneficiaries under Angel's will. On appeal, the Supreme Court discerned a question of fraud, and expressly stated that it would develop the "scope and application" of the federal fraud exception set forth in *Free*.¹³ It then rejected the Washington court's finding of constructive fraud, stating: "whether or not there is fraud which will bar the named beneficiary in a particular case must be determined as a matter of federal law."¹⁴

The Supreme Court further stated that, upon a showing by the widow that she did not consent to or acquiesce in the bonds' purchase and registration, the husband's conduct would be deemed fraudulent. The Washington court had been satisfied by a showing that the husband had purchased bonds with community funds and named a third party as P.O.D. beneficiary. To sustain the burden of proving "fraud" within the *Free* exception, however, the party alleging fraud apparently must show, in addition, that the wife did not consent to or acquiesce in the bonds' purchase and registration.

Even if fraud were proved upon remand, the relief granted would not be that which was previously granted by the Washington court. Two possible results were suggested by the Supreme Court: (1) If the widow has an undivided one-half interest in each item of the community estate, she would be entitled to the proceeds of one-half of the bonds. The proceeds of the other one-half would go to the designated beneficiary. (2) If the widow does not have such an interest, her share of the community estate must be satisfied from the estate's other assets. It would seem that the first result suggested by the Court will be given effect in Washington.¹⁵

Although the Washington court will presumably no longer fail to recognize that the survivorship provisions of Treasury regulations have the force of federal law, the husband who purchases savings bonds must still be wary of the "federal fraud exception" set forth in *Free*. This

¹² See WASH. REV. CODE § 11.04.050 (1963).

¹³ 376 U.S. at 307.

¹⁴ *Id.* at 309.

¹⁵ In *In re Coffey's Estate*, 195 Wash. 379, 382, 81 P.2d 283 (1938), the Washington court stated: "The interest of the wife in the community estate in this state is not a contingent or expectant interest, but a present, undivided, one-half interest." See *Poe v. Seaborn*, 282 U.S. 101, 111 (1930). *But see* *Yiatchos v. Yiatchos*, 376 U.S. at 314 (dissenting opinion).

exception would seem to hinder employment of federal savings bonds with their survivorship provisions as "a convenient method of avoiding complicated probate proceedings."¹⁶

Community Property Agreement—Private Pension Fund—Designated Beneficiary Other Than Surviving Spouse. The conflict in the Washington Supreme Court as to priority between contract law and community property law, which resulted in a 5-4 decision in *Occidental Life Ins. Co. v. Powers*,¹ is still present after 27 years. The contract at issue in the principal case was the General Electric Pension Trust, to which decedent had contributed premiums for 13½ years. During that time decedent had been married three times and divorced twice. Neither divorce decree had disposed of the pension funds, and decedent's second wife was the designated beneficiary at his death. During his third marriage, decedent and his third wife, the plaintiff, entered into a statutory community property agreement² which provided that the separate property of each was converted into community property and the survivor would hold title to all community property upon the death of either party.

Upon the husband's death, the Pension Board paid into court a lump sum in the amount of decedent's contributions, plus accrued interest, and sought judicial determination of the proper recipient under the Declaratory Judgments Act.³ Decedent's three former wives stipulated that the first two wives were entitled to one-half of the funds contributed during the period of their respective marriages,⁴ and that plaintiff was entitled to all of the funds contributed during the period of her marriage. The only contested fund was the former separate property

¹⁶ *Free v. Bland*, 369 U.S. 663, 669 (1962). "The success of the management of the national debt was deemed to depend upon the successful sale of the savings bonds, one of the inducements to purchasers being survivorship provisions." *Yiatchos v. Yiatchos*, 376 U.S. 306, 307 (1964).

¹ 192 Wash. 475, 74 P.2d 27 (1937).

² WASH. REV. CODE § 26.16.120 (1958): "Agreements as to status. Nothing contained in any of the provisions of this chapter or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property then owned by them or afterwards to be acquired, to take effect upon the death of either. . . ." See Brachtenbach, *Community Property Agreements—Many Questions, Few Answers*, 37 WASH. L. REV. 469 (1962); Comment, *The Community Property Agreement Statute*, 25 WASH. L. REV. 165 (1950).

³ WASH. REV. CODE ch. 7.24 (1956).

⁴ Failure of a divorce decree to dispose of community property results in the former spouses holding thereafter as tenants in common. *Ambrose v. Moore*, 46 Wash. 463, 90 Pac. 588 (1907). The stipulation in the principal case merely effected partition of the tenancy, and payment of her one-half to each former wife.