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Community Property

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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).

Kidder, a married man, and Webb, an unmarried half brother living at the Kidder home, deposited money in a joint account with right of survivorship. The purpose of the account was to provide a convenient method to save funds in order to purchase a chicken ranch when Kidder retired. Before this purpose could be realized, Webb died. Kidder, claiming under the right of survivorship, withdrew the total funds on deposit. Later, Kidder, acting as the administrator of Webb's estate, refused to inventory as part of the estate the amount of Webb's contributions to the account. In a suit by Webb's heirs, the trial court held that the intent to purchase a chicken ranch was inconsistent with a right of survivorship to the funds and ordered Kidder to inventory the amount of Webb's deposit.

This decision was reversed by the supreme court. The court, citing *In re Iver's Estate,*[3] confirmed the right to create a joint tenancy bank account, with right of survivorship, by express contract and said,

> We cannot agree with the trial court that Kidder and Webb did not actually make a contract. . . . They both signed a statement that they intended and agreed that the 'money now on deposit or hereafter deposited . . . is a joint account payable on either signature and to the survivor of either.'[4]

The court then referred to the treatment which had been accorded insurance contracts under the community property law of Washington. They pointed out that insurance contracts are generally enforced according to the wishes of the deceased (insured) until such point that they conflict with the rights of community property in a surviving spouse.[5] Using this as a basis for their decision, the court held that a contract for a joint bank account with right of survivorship should also be enforced to such a point, and unless it actually conflicted with community property law, should be enforced to its fullest extent.[6] They declared that,

> . . . [W]here community funds have been deposited in a joint account with a right of survivorship in a person not a member of the community and the deposit agreement is in all other respects valid, the agreement will be given effect at least up to the point at which the rights of the survivor might have to yield to the superior right of the surviving member of the community . . .[7]

[3] 4 Wn.2d 477, 104 P.2d 467 (1940).
[4] 149 Wash. Dec. at 9, 297 P.2d at 951.
[5] Occidental Life Ins. Co. v. Powers, 192 Wash. 475, 74 P.2d 27 (1937); Wilson v. Wilson, 35 Wn.2d 364, 212 P.2d 1022 (1949).
[6] This interpretation of the insurance contract cases has not been accepted without criticism. See Note, 31 WASH. L. REV. 146 (1956).
[7] 149 Wash. Dec. at 11, 297 P.2d at 952.

At first glance this dictum seems to give an unjust preference to community members at the expense of single individuals. Yet, there is no need to follow the inference of this dictum and incorporate such an unjust result. The court, in fact, has merely said that where the contract is in conflict with community property law they will refuse to enforce it. There is no conflict here.

It is the writer's opinion that a right of survivorship contract is not in conflict with the community property law where both parties have deposited funds, and therefore should be enforced for the benefit of either party.

Clearly, if the transaction were an attempt to make a gift of community property, then it would not be enforcable. This result has been definitely established by previous decisions of the court.[8] It is also the foundation upon which the insurance cases are based: that to execute the insurance contracts would be to permit the insured to make a gift of the proceeds which are community property.[9]

Here there is no attempt to make a gift. The court plainly based its decision on a contractural right which existed in Kidder and was derived from the contract as to the joint account.[10]

A husband has the statutory right to manage the community personal property.[11] Though this right does not make the husband the owner of the community personal property,[12] he does have a general power of management when acting for the benefit of the community.[13] This control includes the making of contracts for the benefit of the community.[14] Therefore, according to established principles, if the community is to benefit from the transaction, it should be enforceable against the community.

In the instant case, the parties opened the account for the primary purpose of purchasing a chicken ranch. Any benefit derived from the ranch, if it had been purchased, would have passed to Kidder for the

[8] Marston v. Rue, 92 Wash. 129, 159 Pac. 111 (1916).

[9] Cases cited in note 5 *supra.*

[10] Whether the contract is between the parties or between the bank and the parties has not been specifically decided. The answer to this question might raise further problems as to the enforceability of the right of survivorship. For a discussion of this question and the common law rights of survivorship see Rutledge, *Joint Tenancy in Washington Bank Accounts,* 26 WASH. L. REV. 116 (1951); Comment, 16 WASH. L. REV. 105 (1941).

[11] RCW 26.16.030.

[12] Hanley v. Most, 9 Wn.2d 429, 115 P.2d 933 (1941).

[13] Marston v. Rue, 92 Wash. 129, 159 Pac. 111 (1916); Hanley v. Most, *supra* note 12.

[14] Oudin v. Crossman, 15 Wash. 519, 46 Pac. 1047 (1896); Floding v. Denholm, 40 Wash. 463, 82 Pac. 738 (1905); Mapes v. Mapes, 24 Wn.2d 743, 167 P.2d 405 (1946).

benefit of the community and would have been subject to the wife's claim of community property. The main purpose of the contract was plainly to benefit the community and as such was a legitimate exercise of the husband's managerial power. When Kidder and Webb established the account, they also entered into an aleatory contract. The parties contracted in regard to a fortuitous event, the death of either party before the main purpose of the contract could be fulfilled. The consideration flowing from each to the other was the right, if the one predeceased the other before the ranch could be purchased, of the survivor to receive the total sum on deposit. This, conceivably, could result in a loss to the community, but it could also result in a benefit as evidenced by this case. Should the court say that the power of the husband does not extend to the making of aleatory contracts, and if so, on what basis? Should not this be recognized as such a contract, which is not in conflict with the community property laws of the state? Each party accepted the hazard that he might die before the ranch was purchased, which is plainly as fair to the community as it is to the single individual. This is especially true when it is realized that the right of survivorship was not the main purpose of the contract, but only provisional in the event the primary purpose was never realized.

If this interpretation were to be adopted by the court, it need not prevent the court from refusing to enforce rights of survivorship in cases where the community has no opportunity to benefit. In cases like *Munson* v. *Haye*,[15] where the married member of the joint account contributed all the funds from community property and the single member contributed none, the court would not have to enforce the contract as there would be no consideration moving from the single individual to the community. It would be an attempt to make a gift of community property. This interpretation would also be consistent with the insurance cases where it is plain that the insured is attempting to make a gift of community property with no possible benefit running to the community.

This result appears to be the better solution to the problem. If the court is to decide otherwise, the community promise as to the right of survivorship is illusory and the single individual is receiving no consideration for his corresponding promise, which therefore should not be enforced against him.

LAWRENCE M. ROSS

[15] 29 Wn.2d 733, 189 P.2d 464 (1948); see also *In re* Bush's Estate, 195 Wash. 416, 81 P.2d 271 (1938).