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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

*Distinguished by
B-201382, July 7, 1983*

FILE: B-197781

DATE: September 8, 1982

MATTER OF:

- Real Estate Expenses -
Title Requirements - Reconsideration

DIGEST: Employee who transferred from Nevada to Alaska, requests reconsideration of _____, 60 Comp. Gen. 141 (1980), which denied reimbursement of expenses of residence transactions at old and new duty stations. He contends that his wife, as co-trustee and beneficiary of a trust, held title to the residences within meaning of Federal Travel Regulations (FTR). We find that, as co-trustee, wife had no individual interest in trust property and that, as beneficiary, she was not the owner of the trust property. Hence, her interests in the trust property do not satisfy title requirements of FTR. 60 Comp. Gen. 141 sustained.

This decision is in response to a request by the lawyers representing employees of the Department of the Interior and the United States Forest Service, Department of Agriculture, respectively, for reconsideration of our decision, _____, B-197781, December 30, 1980, published at 60 Comp. Gen. 141.

While we recognize the force of counsel's argument, we sustain our prior denial of the claim for the reasons stated below.

In our prior decision, we denied reimbursement of real estate expenses of \$8,510.25, incurred in the sale and purchase of residences incident to the Gidlunds' change of official station from Reno, Nevada, to Anchorage, Alaska, in 1978. Title to both old and new residences was held in the name of a trust established by the last will and testament of Mrs. the deceased mother of _____, the wife of _____.

The trust paid the expenses of the residence transactions. We concluded that, since title to the residences was held by the trust and not by his wife, or any member of his immediate

family, the title requirements of 5 U.S.C. § 5724a(a)(4) (1976) and paragraph 2-6.1c of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), had not been met. We viewed the purpose of the statute and regulation as being to reimburse a transferred employee for real estate expenses incurred by him or a member of his immediate family, but not to reimburse a third party, such as a trust, that paid such expenses.

In the letter of appeal, the lawyers point out that by her last will and testament and first codicil thereto, established a testamentary trust making her daughter, the primary beneficiary and also naming her as a co-trustee. Among the trust benefits to which is entitled is an adequate and suitable residence for herself and her growing family, free from payments for mortgage loans, insurance, taxes, repairs, etc. On her 40th birthday, will be entitled to all income from the trust.

The lawyers for the also contend that it is clear that the reasons for denying the claim are simply wrong from a legal and factual standpoint. They state that it is basic hornbook law that the trustees and not the trust hold legal title and that the beneficiary holds beneficial title to the trust property. and her co-trustee held legal title to the residence at the old duty station and presently hold legal title to the residence at the new duty station. also holds equitable title to the trust property because she is the beneficiary of the trust and the beneficiary of a cost free residence for her family. Therefore, they conclude that holds all of the indicia of title ownership to the property in question which is required by the Federal Travel Regulations.

As to the payment of the expenses by the trust, the lawyers argue that a reduction in the assets of the trust directly reduces the benefits which and her family can obtain from the trust. They state that the denial of reimbursement by the certifying officer and by this Office has directly reduced the disbursements made to the under the trust.

Finally, the lawyers state that the legislative history of 5 U.S.C. § 5724a(a)(4) in Senate Report No. 1357, 89th Congress, 2nd session, reprinted in United States Code Congressional and Administrative News, pages 2564-2577 (1966), clearly indicates that the purpose of the statute was as an incentive to retain skilled Government employees who are transferred and to alleviate the financial hardships that might result from a transfer. Neither of these purposes have been met in this case, according to their lawyers, because the were directly damaged by their transfer since the trust property has been decreased, thereby reducing the benefits which the derive from the trust and reducing the ability of the trustees to provide for the future residence needs of the family.

The regulation implementing 5 U.S.C. § 5724a(a)(4) is found in paragraph 2-6.1c of the FTR, which provides that in order to reimburse real estate expenses, title to the residences at the old and new official stations must be "in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family."

We concur with the point made by the lawyers that the legal title to the trust property is held by the trustees, and not by the trust as we stated in our prior decision. However, this does not change the result of our decision because the legal title to the trust property held by as co-trustee is not held by her in an individual or proprietary capacity. In this regard, paragraph III of the will devises and bequeaths to the co-trustees all of the rest, residue and remainder of the estate to hold, maintain, control, invest, and reinvest in accordance with the terms of the trust document. Hence, and her co-trustee hold legal title to the trust property subject to the trust agreement, which must be construed within the confines of its four corners. See Denver National Bank v. Von Brecht, 322 P. 2d. 667, 670 (Colo. 1958). Further, the rule paramount in the

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construction of wills is to have due regard to the directions of the will, and the true intent and meaning of the testator, derived primarily from the language of the will itself. _____ v. International Trust Co., 169 P. 138, 139 (Colo. 1917). Thus, paragraph III of the _____ will clearly delineates the extent of the legal interest of the co-trustees in the trust property.

It has also been held that the trustee's interest is a bare legal interest, not entitling him or her to any benefit or profit from the trust property. The beneficial equitable interest is in the beneficiary and the trustee acquires no beneficial interest. _____ v. Midgate Center, Inc., 436 P.2d 201, 205 (Wash. 1967); La Junta & Lamar Canal Co. v. | _____ 71 P. 415, 419 (Colo. 1903); Bogert, The Law of Trusts and Trustees, § 146 (2nd edition, 1965).

In the instant case, it is to be noted that _____ does not hold the entire legal interest in the trust property but shares such interest and the duties and responsibilities of trustee with the co-trustee. In this regard, under paragraph VI of the will, the power and discretion to pay over some or all of the principal of the trust to _____ rests solely with her co-trustee. Hence, the partial legal title of _____ as co-trustee, is not a proprietary interest entitling her to convey the trust property but merely a representative interest she holds, along with her co-trustee, to maintain, control, invest and reinvest such property in accordance with the terms of the will.

In regard to the equitable interest of _____ in the trust estate, a beneficiary of a trust has no present ownership of, or lien upon, the general assets of her trustee. See _____ v. Riggs National Bank, 92 F. 2d 183, 199 (C.A.D.C. 1937); 76 Am. Jur. 2d, Trusts, § 103 (1975). Under subparagraph III(a) of the _____ will, _____ is not entitled to receive the income from the trust until her 40th birthday. Assuming that _____ has not attained her 40th birthday, she merely has an expectancy to receive the income from the trust estate and does not possess a

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present ownership interest in the remaining trust property. Subparagraph III(b) gives the power of appointment by her last will and testament of the principal of the trust fund to or for the benefit of her husband and her children. However, in default of such appointment or in the event of an ineffectual appointment of the principal, then upon the death of , said trust fund is to be distributed to her then surviving children in equal shares. In default of any surviving children, the annual income from the trust fund is to be paid in equal shares to the daughters of husband. If the daughters do not survive or upon the death of the survivor of them, the remaining portion of the trust fund is to be distributed and paid to the Shriner's Hospital For Crippled Children, Salt Lake City, Utah.

Therefore, while is the primary beneficiary under the terms of the trust, there are other individuals who have legally recognizable contingent interests in the trust property. is not the owner in fee simple of the trust property nor does she hold legal title to such property in her individual capacity. Accordingly, we conclude that does not hold title to the residences in question as required by the Federal Travel Regulations.

Our prior decision also denied reimbursement of the claimed real estate benefits because the Trust, and not the employee, his wife, or any member of his immediate family, paid the residence sale and purchase expenses. While denial of reimbursement reduces the assets of the trust and the amount of the benefits to be derived therefrom by and her family, we point out, in further support of our denial of the claim, that the express provisions of paragraph 2-6.1f of the FTR require that "[t]he expenses for which reimbursement is claimed were paid by the employee."

In our opinion, the purpose of 5 U.S.C. § 5724a(a)(4) (1976) and the regulations is to reimburse transferred employees only for real estate expenses incurred by the employee or the immediate family, but not to reimburse a third party who paid such expenses. In this regard we note the language contained in Senate Report

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No. 1357, cited by the _____ counsel, which states that the bill would enable the Government to more nearly meet the actual expenses incurred by the transferred employee who is uprooted and moved in the interest of the Government. Emphasis added.

Accordingly, our prior decision of December 30, 1980, which denied reimbursement of the _____ claimed real estate expenses, is sustained.

Milton J. Aroslan

Acting Comptroller General
of the United States