

SUPPLEMENTARY BENEFIT

Resources—valuation of an undivided share in property under a will trust.

The claimant was a beneficiary under a will trust. The trust consisted of assets comprising 12 cottages whose total value was stated to be about £25,000. The supplementary benefit officer decided that the claimant was absolutely entitled to a one-sixth share of the value of the trust fund and disallowed benefit on the grounds that his capital resources exceeded £2,000. On appeal, the tribunal decided that payment of supplementary benefit should be restored because the sole trustee had no express or implied discretion under the trust to pay the claimant or apply for his benefit any income or capital. The supplementary benefit officer appealed to a Social Security Commissioner.

Held that:

1. before construing a will, it is necessary to obtain adequate information as to proof of the will, by admission to probate or grant of letters of administration, together with full details of relevant births, marriages and deaths of all beneficiaries under any will trust, and to ascertain whether any death duties or administration expenses have been paid. The tribunal should satisfy itself on reasonable grounds of the above matters of fact (paragraph 6);
2. in order to determine the value of a claimant's undivided share in properties of a trust where he is absolutely entitled in possession, it is necessary to first value the underlying assets of the trust fund, having regard to the position under the Rent Acts and whether sale with vacant possession of all or any of the trust properties is possible (paragraph 8);
3. where a claimant is absolutely entitled to an undivided share in a trust fund held upon trust for sale, the share must be valued at its current market value under regulation 5(a) of the Supplementary Benefit (Resources) Regulations, but not as land and therefore the 10 per cent deduction does not apply (paragraph 9);
4. such an undivided share has a current market value of less than the amount provided by merely dividing the total value of the trust fund by the number of beneficiaries, and the reduction in value from a merely proportionate basis is a question of evidence and argument (paragraph 9);
5. where a beneficiary has an absolute entitlement to an undivided share and whether or not he is also a trustee it is a broad general principle that he can force a sale of the total trust property and thereby secure his share (paragraph 11).

The appeal was allowed.

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 12 February 1982 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination in accordance with my directions (rule 10(8)(a)(ii) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982).

2. This is an appeal by a benefit officer on a point of law against the decision of the Liverpool Supplementary Benefit Appeal Tribunal dated 12 February 1982 reversing the decision of the supplementary benefit officer issued on 2 December 1981 that the claimant was not entitled to supplementary pension from 15 February 1982 because the claimant's capital resources exceeded £2,000.

3. The claimant, who lives with his wife, has been receiving a supplementary pension. Subject to adequate proof of entitlement, the claimant has an absolute interest (being an undivided share) under a will trust, being the will of his late great grandfather dated 14 January 1924 which consists of assets comprising a total of 12 cottages whose total value at the material time was

stated to be in the region of £25,000. Mr T. W., apparently the sole trustee, was asked on 8 September 1981 for the following information:—

- “(1) How many beneficiaries of the Trust are still living?
- (2) What is the relationship of the beneficiaries to the Testator (i.e. grandchild, nephew etc.)?
- (3) What is each beneficiary’s proportionate share of the Trust (e.g. one sixth, one half etc.)?
- (4) What is the Trust income?
- (5) What is the current value of the Trust property?
- (6) Is any of the property at present being advertised for sale?”

To these queries Mr T. W. replied on 23 September 1981:—

- “(1) Six still alive
- (2) 4 grandchildren and 2 GT Grand
Self 18 Pit Place
N W ..
H W ..
Mrs A ..
E P [the claimant] ..
T A H ..
- (3) One sixth
- (4) Total income £2,175 gross less rates, insurance, repairs etc.
- (5) £25,000, inland revenue value.
- (6) No”.

With the papers I have a copy of the will dated 14 January 1924. It is however defective in that part of clause 11 is not included.

The chairman’s notes of evidence dated 12 February 1982 are as follows:—

- “(1) It was established that the claimant is not a trustee under the will of his great grandfather and therefore has no control over the administration of the Trust.
- (2) Mr T. W. is the sole trustee.
- (3) The SBO’s statement that [the claimant] ‘is absolutely entitled’ to a 1/6 share of the Trust cannot be correct because he is not a Trustee.
- (4) He has not capital exceeding £2,000 available to him because he has no control over the Trust.
- (5) The Tribunal decided that SB should be restored.
- (6) The Tribunal decided that Reg 4.12 and 4.2.4.6 do not apply”.

The appeal tribunal’s Reasons for Decision are:—

“The Sole Trustee is Mr [W]. This being so [the claimant] cannot direct Mr [W] to sell the property or his share of it. Under normal and usual terms of a Trust a beneficiary who is not a Trustee has no rights whatsoever, so the Supplementary Benefit Officer’s statement that [the claimant] is absolutely entitled to 1/6th share of the value of the Trust is not agreed with.

Because [the claimant] has no control over the Trust he cannot be said to possess as a resource £3,750 as determined by the Supplementary Benefit Officer. [The claimant’s] total capital resources do not exceed £2,000 and his Supplementary Pension should be restored.

(There was no evidence to show that the Trustee had any express or implied discretion to pay [the claimant] or apply for his benefit any income or capital, under Regulations 6 and 8 of the Supplementary Benefit (Resources) Regulations 1980, the Tribunal decided)''

4. Regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] provides that subject to regulation 8 (irrelevant in this case) where the value of the claimant's capital resources (including those of a partner) calculated in accordance with the Regulations exceeds £2,000 the claimant shall not be entitled to a pension or allowance. Regulation 4(6) provides that a member of the assessment unit shall be treated as possessing the whole or any appropriate share of any resources held under a trust under which the trustees have express or implied discretion to pay him, or apply for his benefit, any income or capital. Regulation 4(8) explains how a beneficiary's share of a trust fund is to be calculated in that it takes into account the number of beneficiaries under the trust and the terms of the trust either expressed or implied. It does not allow discretion in deciding whether or not to take account of the resources held under a trust except that it provides that the resources shall not be treated as possessed for such period not exceeding 3 months as is necessary to enable the trustees to make arrangements for payments to be made. Regulation 4(6) and 4(8) deal with what may loosely be termed discretionary trusts. They have no application where a person is absolutely entitled to an undivided share under a trust.

5. The tribunal erred in law for the following reasons:—

- (i) they decided that a beneficiary who is not a trustee has no rights whatsoever and therefore cannot be said to possess a resource consisting of part of the trust property. This was an error irrespective of what conclusion they reached on the construction of the will. I deal with this error of law at the commencement of paragraph 10 below,
- (ii) they did not obtain adequate information as to the proof of the will together with full details of all relevant births, marriages and deaths of all beneficiaries under the will trust and they failed to ascertain whether all relevant death duty liabilities were met,
- (iii) the construction of a will is a matter of law and is a question of construction of the whole will. On the copy will before me and the omission in clause 11 it would appear that the tribunal did not consider the terms of the whole will,
- (iv) the tribunal erred in law in that it failed to give adequate or indeed any consideration to the valuation of an undivided share.

6. The tribunal should have had before it a full and accurate copy of the testator's will. The tribunal should have satisfied itself that the will had been admitted to probate or there had been granted letters of administration with the will annexed. In the absence of such grant or letters of administration a will is not a valid dispositive document as a later will or codicil might have been found and admitted to probate. Further the tribunal should have satisfied itself that the testator's widow had died or remarried and that the testator's daughter M. W. had died or remarried. Further the tribunal should have satisfied themselves by adequate evidence as to the dates of birth and death of the children of the daughter and as to the dates of birth and death of any children of the daughter who died before the period of distribution as defined in the will leaving a child or children living at the period of distribution. The tribunal should have satisfied itself by adequate evidence of birth and death as to such grandchild or grandchildren of the daughter. Further the tribunal should have satisfied themselves that

any death duties exigible on the death of the testator and all administration expenses had been paid. The tribunal should also have satisfied themselves that any death duties exigible on the death or remarriage of the testator's widow or the death of the testator's daughter M. W. had been paid. The construction of a will (assuming it has been admitted to probate) is a question of law and that question of law can only be resolved on a full copy of the will in the light of all the relevant facts, in particular proof as to the beneficiaries presently entitled. The tribunal did not have before it adequate information as to the beneficiaries. In an application to the Chancery Division of the High Court of Justice for construction or variation of a will strict proof is required by production of all relevant grants of probate, letters of administration, certificates of birth and death. Similar proof would be required were for example an insurance company to purchase a beneficiary's interest under a will trust. It is only when all the relevant facts are before a tribunal that in the light of the relevant facts the tribunal can proceed to construe the will. While I would not consider that a supplementary benefit appeal tribunal should insist on the strict proof that would be required in the Chancery Division or on the acquisition of a beneficiary's interest by an insurance company, the tribunal should satisfy itself on reasonable grounds of the above matters of fact before proceeding to a construction of the will.

As a question of construction of clause 10 of the will on the assumption that the widow and daughter M. W. are dead (and that the will was proved) and on the further assumption (having considered dates of birth and death) that the present beneficiaries are together absolutely entitled, the further question of valuation of the claimant's entitlement arises.

7. So far as relevant the Supplementary Benefit (Resources) Regulations 1981 regulation 5(a) provides as follows:—

“5. the amount of a claimant's capital resources to be taken into account shall be the whole of his capital resources assessed where applicable—

(a) at their current market or surrender value less—

- (i) in the case of land, 10 per cent, and in any other case, any sum which would be attributable to expenses of sale, and
- (ii) any outstanding debt or mortgage secured on them.”

On the above assumptions (which of course have to be proved) the claimant would be entitled in possession absolutely to an undivided share in the trust properties. The question at issue therefore is on what basis is the claimant's undivided share to be valued. In the first place the tribunal should satisfy itself as to the value of the underlying assets of the trust fund. In so doing the tribunal should consider the position under the Rent Acts and whether sale with vacant possession of all or any of the trust properties is possible. In arriving at a conclusion as to the value of the trust properties the tribunal can take into account such matters as the terms of the tenancies to which trust properties are subject, the age of the tenants and the existing state of repair of the trust properties.

In the present instance the trustee lives in one of the trust properties and it is at least debatable in law as to whether a beneficiary could force a sale with vacant possession of that particular trust property in which the trustee resides. This possible argument could I think be taken into account by a tribunal here as a question of valuation decreasing the value of the trust fund by the fact that at least during the life of the trustee there is an argument that the property in which the trustee resides cannot be sold with vacant possession. Against this can be stated the proposition that a trustee must not benefit from his trust but that would not apply if the trustee

resides in the trust property in his capacity as beneficiary and has not acquired the right of residence in that property through his position as trustee. I think the question really resolves itself as indicated immediately above to one of valuation, that is what would a purchaser in the open market possessed of all the facts and advised as to the relevant law give for the trust property in which the trustee resides bearing in mind the possibly somewhat outside chance of securing vacant possession.

From the trustee's letter dated 23 September 1981 two of the beneficiaries (as well as the trustee living in a property subject to the trust) also live in trust properties, namely in 14 and 16 Pit Place. On the assumption that the Rent Acts apply (which is a matter for consideration by the tribunal) the fact that a beneficiary who is not a trustee resides in a trust property does not enable a beneficiary under the trust to force a sale of that property with vacant possession. Any sale of those trust properties can (on the assumption as to the Rent Acts referred to above) only be made subject to the existing tenancies.

The tribunal should also satisfy itself that all relevant death duties and administration expenses have been paid on the death of the testator, and the death or remarriage of the widow and the daughter M W. If there are any such outstanding expenses (or indeed any other trust expenses outstanding) that would go to a reduction of the total value of the trust fund.

The question of valuation of the underlying assets of the trust fund is what (bearing in mind the above factors) is its market value, but as what is being valued as a capital resource of the claimant is an undivided share in the trust fund I do not see that the deduction of 10 per cent referred to in paragraph 5(a)(i) of the Resources Regulations set out above applies when the issue is one of valuing an undivided share in the trust fund.

8. As a question of law where a number of beneficiaries are together absolutely entitled to the trust fund, that is because they are all of full age, not under disability and as a question of construction of the will absolutely entitled, any one of those beneficiaries could force a sale of the total trust property and thereby secure his aliquot share. It is this undivided share to which the claimant is (on the assumptions made above) absolutely entitled in possession.

The question for consideration (after being satisfied as to the value of the trust fund in the manner explained above) is the current market value of the claimant's undivided share in the trust fund which constitutes a capital resource of the claimant. On the assumptions made earlier in this decision (which of course have to be proved) the claimant would be entitled in possession absolutely to an undivided share in the trust fund. By clause 8 of the will the trust fund is held upon trust for sale. By the doctrine of conversion therefore an undivided share in a trust fund comprised of land is regarded as though already converted and in consequence as money (see *Re Wheeler, Jameson v Cotter* [1929] 2KB 81n). Accordingly therefore the claimant's undivided share in the trust fund has to be valued at its current market value under regulation 5(a) of the Resources Regulations but not as land and in consequence the statutory deduction provided for land of 10 per cent does not apply under regulation 5(a)(i) to the claimant's undivided share. An undivided share in a trust fund has a current market value of less than the amount provided by merely dividing by the number of beneficiaries. As the value of the claimant's undivided share is less than the amount provided by dividing the total value of the trust fund by the number of beneficiaries a reduction in value from a merely proportionate basis of anything between 5 and possibly 30 per cent is a question of evidence and argument. However as a question of valuation the value of the beneficiary's share must be subject to possible litigation, that is if the trustee refused to sell the beneficiary's

recourse would be to the court and of course the costs of sale would in any case diminish the value of the beneficiary's interest.

9. In the submission dated 14 May 1982 the benefit officer now acting relies on regulation 4(6) of the Resources Regulations (see paragraph 4 above) and refers to clause 11 of the will in the following terms.

'The Trustees may at their discretion apply all or any part "of the trust fund to which the beneficiary is entitled" for his or her maintenance education or benefit in such manner as they may think fit.'

This is very much a paraphrase of clause 11 of the copy of the will with the case papers which copy is incomplete in the case papers. However, on the assumption that the beneficiaries are together absolutely entitled in undivided shares to the trust fund (which is a matter for a tribunal to satisfy itself on the basis of the evidence referred to above) clause 11 of the will has ceased to have any effect. Where under the terms of the will the beneficiaries have become absolutely entitled and are of full age that puts an end to a trustee's discretion to pay or apply any part of the trust fund to which the beneficiary is entitled for his or her maintenance, education or benefit. On the assumption above that the beneficiaries are absolutely entitled under clause 10, the provisions of clause 11 (though of course consideration as a question of construction must be given to the full provision) are no longer of effect.

10. The Tribunal in paragraph 5 of its decision state "the Sole Trustee is Mr [W]. This being so [the claimant] cannot direct Mr [W] to sell the property or his share of it, under normal and usual terms of a trust a beneficiary who is not a trustee has no rights whatsoever." These reasons for decision have no validity in law, whatever the nature of the trust, whether the trust is one in which there are fixed interests (life interest and remainder) or one where beneficiaries are together concurrently absolutely entitled or one where trustees have power, or power in the nature of a trust, to pay or apply capital to or for a number of designated beneficiaries. Where a beneficiary has an absolute entitlement to an undivided share and whether or not that beneficiary is also a trustee it is a broad general principle that a beneficiary can force a sale in the manner indicated above. Problems arise in particular where a trustee or a beneficiary resides in trust property or where husband and wife own trust property.

11. The claimant is (on the assumptions made above) absolutely entitled in possession to an undivided share in the trust properties and the question of valuation at issue is what is the current market value of that undivided share arrived at in the manner indicated above with a deduction of any sum which would be attributable to expenses of sale of the undivided share if there were such sale: see Resources Regulations, regulation 5(a)(i). It is that figure that forms part of the claimant's capital resources for the purpose of ascertaining whether his resources exceeded £2,000.

Stated shortly a tribunal should construe the whole will as a question of law in the light of the principles applicable and in full knowledge of the facts (in particular the dates of birth and death of all the beneficiaries). If satisfied that the claimant as a question of construction of the will is absolutely entitled to an undivided share the tribunal should then consider in the light of the above the current market valuation of that undivided share. Whether or not the claimant's sister is entitled to a share under clause 10 of the will trust depends upon her satisfying the conditions of entitlement set out in clause 10.

12. I would add that the value of the claimant's capital resources (apart from his interest under the will) and those of his wife should be taken into consideration in assessing his resources.

13. Accordingly I remit the case for a hearing by a different tribunal.

14. Accordingly the benefit officer's appeal is allowed.

(Signed) J. B. Morcom
Commissioner
