

IN THE COURT OF APPEALS 07/18/95
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-00534 COA

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF
MARION SHAW PAGE, DECEASED
PHILIP W. SHAW, JR., CO-EXECUTOR APPELLANT
OF THE ESTATE OF MARION SHAW PAGE,
DECEASED

v.

HORACE EDGAR PAGE, JR., CO-EXECUTOR APPELLEE
OF THE ESTATE OF MARION SHAW PAGE,
DECEASED

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. J. N. RANDALL

COURT FROM WHICH APPEALED: CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HARRISON COUNTY

ATTORNEY FOR APPELLANT: PAUL M. NEWTON

ATTORNEY FOR APPELLEE: W. RAYFORD JONES

NATURE OF THE CASE: CIVIL: (ESTATE DISPUTE)

TRIAL COURT DISPOSITION: JUDGMENT FOR APPELLEE PAGE

BEFORE BRIDGES, P.J., COLEMAN, SOUTHWICK, J.J.

SOUTHWICK, J., FOR THE COURT:

This case involves a dispute between a life tenant and remaindermen concerning entitlement to principal and interest proceeds from promissory notes bequeathed to them. The chancery court held that the life tenant is entitled to the interest paid on the notes and only needs to preserve the principal for the benefit of the remaindermen. We affirm.

The will provides with our emphasis added:

I hereby . . . bequeath unto my beloved husband . . . for his lifetime, all of my property . . . and I hereby direct that he be permitted to use any of such properties as he deems fit and proper and to his best interest during his lifetime, *including the income derived from such properties*, and at his death, I give my house and contents [with enumerated exceptions] . . . to my son . . . and my two daughters . . . subject to the life estate of my husband as aforesaid.

The testatrix left two sizable notes upon which payment was being made in her estate. In the quoted residuary clause, the decedent bequeathed to her husband a life estate in the notes and almost all other property. The will does not state who the remaindermen of this life estate are, except as to the house and contents. The life tenant admitted in his pleadings that the children had the remainder interest in the notes. We will not disturb that agreed-to reading of the will, which is not raised as an issue on appeal.

The children argue that "income" to which the life tenant is entitled is only that derived from investment of both the interest and the principal paid on the notes. Their remainder interest extends to both principal *and* interest paid on the notes. The life tenant only argues that he is entitled to all the interest; he makes no claim to any of the principal. Thus ownership to the interest is the extent of our inquiry.

The language of the will must be scrutinized for the intent of the decedent. *Whittington v. Whittington*, 608 So. 2d 1274, 1278 (Miss. 1992). Neither party has presented any evidence of the testatrix's intent which challenges the chancellor's conclusion that she intended her husband to receive the entirety of the interest of the note, and not just interest on interest.

A life tenant is entitled to the rents and profits generally, but may not deplete the corpus, meaning he may not cause waste. *Threatt v. Rushing*, 361 So. 2d 329, 331 (Miss. 1978). We have found no discussion in Mississippi case law of life estates in promissory notes. The argument made by the children that they are entitled to the preservation of both principal and interest derived from repayment of the notes appears to be similar to the claim of remaindermen to royalties paid from production of minerals. A life tenant in a minerals generally may not keep the entirety of royalties paid under a lease. Instead, the life tenant must place the royalty -- the fractional share of the

production to which the land-owner is entitled -- into an interest-bearing account. In that way the remaindermen will have the converted corpus preserved when the life estate terminates, while the life tenant gets the present use of the interest on the royalty. *Hathorn v. Amoco Production Co.*, 472 So. 2d 403, 407 (Miss. 1985).

The problem for the plaintiffs here is that royalty payments do not equate to the promissory note interest payments. Royalty is the converted corpus of a mineral interest; it is the only part of the corpus that either the life tenant or the remainderman has to enjoy. The rest is paid to various participants in the drilling of the well and represents the costs and risks of drilling. The minerals are being sold, and the royalty is the payment. When the royalty stops being paid it is usually because the minerals have been depleted. The interest paid on a promissory note is not a conversion of the corpus, i.e., a depleting of it. The principal remains and the interest, not to put too fine a point on it, is the income. When the law permits the life tenant only to receive interest on the royalty proceeds, that is analogous to the chancellor's ruling here that the life tenant is only entitled to the interest on the corpus of the note.

Similarly, stock dividends have been held to be income enuring to the benefit of the life tenant rather than the remaindermen. *Birmingham v. Conger*, 222 So. 2d 388, 393 (Miss. 1969).

The corpus of this note is the principal. It is already producing income, i.e., interest, at the time of the creation of the life estate. By granting to the life tenant all the income from the property, the testatrix has demonstrated her intent.

We hold that the life tenant of this interest bearing note is entitled to retain all of the interest of that note.

THE JUDGMENT OF THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HARRISON COUNTY IS AFFIRMED WITH ALL COSTS OF THIS APPEAL TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, MCMILLIN AND PAYNE, JJ., CONCUR.

THOMAS, P.J., DOES NOT PARTICIPATE.