

STATE OF MICHIGAN
COURT OF APPEALS

Estate of ANDREW PANTALEO, Deceased.

UNPUBLISHED
April 25, 1997

RONALD F. SCHILLING, as Personal
Representative of the Estate of
ANDREW PANTALEO,

Petitioner-Appellee,

v

STATE OF MICHIGAN,

No. 189505
Oakland Probate Court
LC No. 90-207875

Respondent-Appellant.

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

Respondent State of Michigan appeals from an order entered by the Oakland County Probate Court that redetermined the inheritance tax for the estate of Andrew Pantaleo. Respondent asserts that the probate court erred in valuing decedent's home based upon the amount received from the sale of the home two years after death, rather than upon an appraisal conducted six months after death. We affirm.

Andrew Pantaleo died on November 2, 1990. At the time the estate was opened, the temporary personal representative listed the value of decedent's residence as \$200,000. It is undisputed that, on the date of decedent's death, the property suffered from significant structural defects, including floors that had sunk several inches and broken away from the edges of the walls. In April 1991, Ronald Schilling was appointed as personal representative, and on May 13, 1991, the property was appraised by Steward Real Estate Appraisals. The appraisal valued the home at \$98,000. It is unclear from the record exactly when the home was listed for sale, but it was clearly on the market by this time.

* Circuit judge, sitting on the Court of Appeals by assignment.

From the time the home was listed for sale until the fall of 1992, the only offer to purchase was made by the Babinchaks, for \$58,090. On October 6, 1992, the probate court entered an order permitting the home to be sold to the Babinchaks for the offered price, and the sale was consummated. There was evidence that no additional defects arose on the property between the date of decedent's death and the sale.

Following the sale, Schilling filed an amended inventory for decedent's estate, claiming that the true market value of the property was \$58,090 (rather than the \$200,000 original estimate or the \$98,000 appraisal) and that the tax owing should be adjusted to reflect this. Respondent contested this claim, arguing that the value of the property to be taxed is the actual clear market value *at the date of death*, and that the appraised value of \$98,000 (valued six months after the decedent's death) more closely approximated this value than the sale two years after decedent's death. Following a hearing, the probate court approved the \$58,090 figure.

Respondents now appeal, contending that the probate court erred in using the sale price of the residence as reflecting the clear market value of the home in determining the inheritance tax. We disagree.

Michigan tax laws impose an inheritance tax upon the "clear market value" on the property of a decedent *at the time of death*. See MCL 205.203; MSA 7.561, *In re Clayton Estate*, 343 Mich 101, 103-104; 72 NW2d 1 (1955). Although "clear market value" is not defined under the Act, the Michigan Supreme Court has held that "clear market value is composed of three separate but integrated elements: (1) the highest price obtainable; (2) a willing seller not obliged to sell; (3) a willing buyer not obliged to buy." *In re McCornack Estate*, 406 Mich 534, 540; 281 NW2d 119 (1979).

Here, respondent's contention centers on what was the highest obtainable price at the time of decedent's death. Respondent claims that this figure should be \$98,000, relying upon the fact that appraisals are explicitly sanctioned by statute. MCL 205.211; MSA 7.572. Respondent also submits Letter Ruling 86-41 issued by then-Commissioner of Revenue Susan Work Martin. LR 86-41 states:

The probate court may establish clear market [value] by appointing an appraiser. See Michigan's Inheritance Tax Act, MCL 205.211. In the absence of an appraisal, one of the most commonly used methods of determining clear market value is the sale price of items sold within a reasonable time after the decedent's death through arms length transactions.

While an appraisal can demonstrate the clear market value of an estate's property, the statute makes it clear that such an appraisal alone is not binding. Thus, although the probate court may appoint an appraiser, it is free to consider other proof of value.

The probate court here determined that the highest price obtainable for the property was the \$58,090 price, two years post-death; a finding which implicitly concluded that the appraised value was incorrect. There is adequate evidence to support this finding. The property had an SEV of \$28,494,

with an estimated value of \$56,988. The inaccuracy of the appraisal is also evident by the fact that it required two years to sell the property.

Respondent contends that because the sale occurred more than two years after decedent's death, an unreasonable length of time had passed, and therefore the sale price could not reflect the clear market value at the time of decedent's death. However, respondent fails to present any evidence demonstrating that there was a change in the fair market value of the property during the two years between decedent's death and the sale. In fact, the record indicates that there was no change in the character or nature of the property or its surrounding area which would suggest a change in clear market value. Furthermore, there is no suggestion here of bad faith or dilatory tactics. Therefore, on the facts of this case, the probate court did not err in ruling that the clear market value for decedent's residence was \$58,090 (the sale price), for purposes of determining the inheritance tax.

Affirmed. Petitioner being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly

/s/ Henry William Saad

/s/ Harry A. Beach