

***COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION***

2 Feb 98

No. 2336 of 1984

Estate of HENRY P. ZUCKER, Deceased

**Sur account entitled First and Final Account For The
Trust Established Under The Will Of Henry P.
Zucker, Deceased**

Before PAWELEC, J.

This account was called for audit February 2, 1998

Counsel appeared as follows:

**RONALD C. UNTERBERGER, ESQ., of HARPER & DRIVER
- for the Accountant**

**BRUCE L. CASTOR, ESQ., of BALLARD SPAHR ANDREWS
& INGERSOLL LLP - for Lutheran Home at
Germantown**

**LEONARD SPEAR, ESQ., of SPEAR, WILDERMAN, BORISH
ENDY, SPEAR & RUNCKEL PC - for George T.
Foreman, Jr.**

**LAWRENCE BARTH, ESQ., DEPUTY ATTORNEY
GENERAL - for the Commonwealth of
Pennsylvania, Office of Attorney General,
as parens patriae for Charities**

This trust arises under Item SECOND of the will of Henry P. Zucker, dated January 31, 1973, whereby he gave all of his estate in trust, on the following terms and conditions, to wit,

“ A. To pay to my daughter, PAULINE RIDDLE, the sum of Two Hundred Dollars (\$200.00) per month from income, and if the income is not sufficient, to pay the balance from principal.

B. Upon the death of my daughter, PAULINE RIDDLE, this trust shall terminate and the balance of principal and accumulated income, if any, shall be paid as follows:

1. One-half (1/2) thereof to the LUTHERAN HOME FOR ORPHANS AND AGED AT GERMANTOWN, Philadelphia, Pa.

2. One-half (1/2) thereof to GEORGE T. FOREMAN and ETHEL C. FOREMAN, his wife, in equal shares, or to the survivor of them.”

A copy of the will is annexed.

Henry P. Zucker, the testator, died on June 21, 1983.

George T. Foreman, remainderman, died on July 22, 1983.

Ethel C. Foreman, remainderman, died on June 27, 1991.

Pauline Riddle, daughter of the testator and annuitant, died on December 16, 1995.

The account is of the fund awarded in trust by an adjudication of Gutowicz, J., dated November 27, 1984, and is filed by reason of the termination of the trust by its terms.

It is stated that notice of the audit has been given to all parties having a possible interest in the trust, including the Attorney General as parens patriae for charities, whose Charitable Gift Clearance Certificate is annexed.

The Lutheran Home at Germantown (formerly Lutheran Home for Orphans and Aged at Germantown) now claims the share of principal and accumulated income which is bequeathed to, “.....GEORGE T. FOREMAN and ETHEL C. FOREMAN, his wife, in equal shares, or to the survivor of them.” Said share of principal and accumulated income is also claimed by the son of George and Ethel Foreman, namely George T. Foreman, Jr. The issue may be framed as follows: did the gift to George and Ethel Foreman vest on the death of the testator, in 1983, or, must it lapse because George and Ethel died in the lifetime of the testator’s daughter? At page 3 of his brief, counsel for Mr. Foreman argues that,

“Absent Evidence to the Contrary, the Will Should Be Construed According to Well-Established Pennsylvania Law That Language of Survivorship Relates to the Death of the Testator, Not the Life Tenant.”

However, this Court prefers to apply the sound reasoning of Judge Taxis in Deacon Estate, 2 D.&C. 3d 711 (O.C., Montgomery, 1977), at 713, wherein it is said that,

“ At one time, the presumption of early vesting which was part of the law of this Commonwealth might have indicated an opposite result. However, starting some years ago, our Supreme Court has progressively diminished the effect of artificial canons of construction, or presumptions of intent, and has mandated our courts to determine, from the document itself and from other circumstances known to a testator, his intent as expressed by the most natural and reasonable meaning of the words used: Jessup Est., 441 Pa. 365, 276 A.2d 499 (1970)”

In Deacon, supra, Judge Taxis cites Loving Estate, 159 Pa.Superior Ct. 339 (1946) in support of his conclusion that a gift of principal, “.....equally, share and share alike, to my three sons or the survivors of them,”, vested on the death of the life tenant, not on the death of the testator. The opinion of our Superior Court, In Loving, supra, at 342-343, includes the following discussion, to wit,

“ We have mentioned these artificial rules for construing wills, but we recognize that they, as well as precedents, are but an aid in the interpretation of wills. They are entirely disregarded if in conflict with the apparent meaning of the language used, which in the final analysis is the controlling factor:” (citations omitted)

Former Chief Justice Mitchell in *Mulliken v. Earnshaw*, 209 Pa. 226, 58 A. 286, in discussing the period to which ‘then living’, or similar words in a will, should be applied, stated: ‘Like all artificial rules it had the constant tendency to become an arbitrary fetter instead of a mere instrument for the ascertainment of the testator’s intent. The policy of the later cases in this state, if not everywhere, is to get back to the true rule of looking only to the actual intent. There is no

sound reason in the nature of things why the actual meaning of the person using the words should not be sought in the case of a will exactly as it is in the case of a contract.”

Following Deacon and Loving, supra, this Court will look for the actual intent of the testator by considering the apparent meaning of the language which he used. In doing so, this Court will give his words their most natural and reasonable meaning.

Under Item SECOND of the will of Henry P. Zucker, the gift to George and Ethel Foreman consists of principal and accumulated income, if any, and, is to be paid upon the termination of the trust, that is, upon the death of the testator’s daughter. As in Deacon, supra at 714-715,

“The ‘upon’ phrasebecomes superfluous if it does not serve to measure the time at which the distributees of the trust should be determined.”

Given their most natural and reasonable meaning, the words of our testator show his intent that the gift to the Foremans should vest, if at all, on the death of his daughter. Accordingly, said gift must lapse because both George and Ethel died in the lifetime of the testator’s daughter.

There was no objection to the account which shows a combined balance of principal and income of \$ 135,994.11

which, composed as indicated in the account, together with income received since the filing thereof, if any, is awarded to the Lutheran Home at Germantown.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, _____, unless exceptions are filed to this adjudication within twenty (20) days, the account is confirmed absolutely.

J.