



Erickson v. Commissioner, TC Memo 2007-107, April 30, 2007

The Facts: Mrs. Erickson granted her oldest daughter Karen durable power of attorney in 1987 which was revoked and re-executed by Mrs. Erickson in 1994. The second power of attorney was in effect up until Mrs. Erickson's death in September of 2001. Karen handled Mrs. Erickson's finances beginning in 1998 or 1999 until her death and signed documents on behalf of her mother beginning in 1999 or 2000 when Mrs. Erickson could no longer sign for herself. Mrs. Erickson was diagnosed with Alzheimer's disease on March 5, 1999 and was unable to drive or cook for herself by May of 2000. Due to Mrs. Erickson's failing health, her daughters placed her in an assisted living, medical care facility in June of 2000. She experienced a broken hip and collar bone from two falls in 2001 and the family expected her to live only another year or two after her hip surgery in May of 2001.

After Mrs. Erickson was diagnosed with Alzheimer's disease, a report was prepared by Merrill Lynch Financial Foundation providing financial planning alternatives and recommendations. The report estimated that the estate would owe approximately \$500,000 in Federal estate taxes and advised that estate tax professionals should be consulted.

In May of 2001, Mrs. Erickson's daughters met with counsel to discuss the possibility of forming an FLP and formed the Arthur and Hilde Erickson Family LLLP ("the Partnership"). Karen and her sister Sigrid were the general partners and Mrs. Erickson, Karen's husband Chad and the trustees of the credit trust (Karen and Sigrid) were limited partners. The limited partnership agreement provided that Mrs. Erickson would contribute securities plus a Florida condominium in exchange for an 86.25% limited partner equity interest in the Partnership. The fair market value of these assets was approximately \$2,100,000. The other members also contributed assets of value to equal their respective percentages. Karen signed the agreement on behalf of her mother and herself.

Karen did not begin to fund the Partnership for approximately two (2) months when she instructed Wells Fargo and Merrill Lynch to transfer Mrs. Erickson's securities and assets totaling \$1,500,000 into the account (this was in July 2001). No additional funding took place until September 28, 2001, two days prior to Mrs. Erickson's death. Karen realized that her mother's condition was deteriorating rapidly and scrambled to make the transfers.

The Arguments:

The respondent argued that assets transferred to the partnership shortly before Mrs. Erickson's death should be included in the gross estate under Section 2036. The respondent further argued that the assets were not transferred in a full and bona fide sale

because Mrs. Erickson retained possession or enjoyment of, or the right to income of the transferred assets.

The estate argued that Mrs. Erickson did not retain any rights to the assets once they were transferred and maintains the assets were transferred in a bona fide sale for adequate and full consideration.

The Findings:

The Court was troubled by the delay in transferring property after the formation of the partnership. The Court did not hold credible the statements that Mrs. Erickson's daughters had needed time to complete the transfers and it had been out of their control as they were able to expedite the transfers to the partnership as well as gifting to the grandchildren in only two days prior to their mothers death. These last minute transfers of virtually all of Mrs. Erickson's assets left nothing available for Mrs. Erickson's support or to pay the estate's liabilities after her death.

In addition, the Court concluded that Mrs. Erickson had indeed retained possession or enjoyment of the transferred property. The Court indicated that the Estate had received disbursements from the sale of Mrs. Erickson's home when no other partners had and the partnership had little effect during Mrs. Erickson's lifetime.

The Court determined that several factors when taken together showed an implied agreement between the parties the Mrs. Erickson had indeed retained possession of the transferred assets and thus, they should be included in the gross estate.

Parting Thoughts:

Again, a classic example of a train wreck waiting to happen. This case demonstrates how important it is to avoid delaying the implementation of an estate plan until death is imminent and to follow the formalities of the partnership formed to carry out the estate plan.