IN THE COURT OF APPEALS

IN THE MATTER OF THE ESTATE OF PAUL F. GRAY, JR.,	)	HAMILTON CHANCERY
	)	C. A. NO. 03A01-9507-CH-00227
Appellee	)	
vs.	)	HON. HOWELL N. PEOPLES CHANCELLOR
INTERNAL REVENUE SERVICE,	)	AFFIRMED AND REMANDED
Appellant	)	

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OPINION

McMurray, J.

The dispute in this case is whether an unsecured debt owed by the decedent to the United States Internal Revenue Service for income taxes takes precedence over the surviving spouse's elective share of the decedent's estate to which she would otherwise be entitled under the provisions of T.C.A. § 31-4-101. The trial court held that the surviving spouse's elective share should be paid prior to unsecured debts of the decedent including the claim of the I.R.S. for income taxes. We affirm the judgment of the trial court.

We find it unnecessary to recite the procedural history of this case. There are no facts in dispute. This appeal involves only a matter of construction of federal and state statutes as they relate to one another and as applied to the facts and circumstances of this case.

FACTS

Paul F. Gray, Jr., died on February 3, 1989. On December 31, 1990, his surviving spouse, Tammela Gray, filed a petition for an elective share of the estate pursuant to the provisions of T.C.A. § 31-4-101. The estate is insolvent and it is not disputed that there are insufficient funds to pay the spouse's elective share and the debt owed by the decedent to the I.R.S. for income tax, penalties and interest. The income tax liabilities arose as a result of an I.R.S. audit of joint tax returns filed by the decedent and his former wife for 1985 and 1986 and for separate tax

returns filed by the estate of the decedent for 1987, 1988 and 1989. The income tax assessments were made in 1992.

The I.R.S. concedes that the claims for taxes, penalties and interest are unsecured but asserts that debts to the United States take precedence over the elective share by virtue of the provisions of 31 U.S.C. § 3713, The Federal Insolvency Statute. The I.R.S. further concedes that the surviving spouse's one year support and administration expenses have priority over the tax claim. It argues that unlike the one year's support, under existing Tennessee law, the elective share is considered a part of the estate and not the absolute property of the surviving spouse. On the other hand, the administrator of the estate asserts that by virtue of T.C.A. § 31-4-101, the elective share is exempt from all unsecured debts of the decedent. He contends that the elective share, in any event, is not a debt of the decedent but rather a statutory charge against the estate and should be treated in the same manner as the one year's support insofar as The Federal Insolvency Statute is concerned. In support of his position he argues that, like our former provision for dower, the elective share can neither be defeated nor destroyed by the decedent.

APPLICABLE STATUTES

The Federal Insolvency Statute provides in pertinent part as follows:

(a)(1) A claim of the United States Government shall be paid first when))

(A) a person indebted to the Government is insolvent and))

(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor. (Emphasis added).

(2) This subsection does not apply to a case under title 11 [11 USCS §§101 et seq.].

(b) A representative of a person or an estate (except a trustee acting under title 11 [11 USCS §§101 et seq.]) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

T.C.A. § 30-2-102 provides in pertinent part as follows:

30-2-102. Year's support allowance. —(a) In addition to the right to homestead, an elective share under title 31, chapter 4, and exempt property, the surviving spouse of an intestate, or a surviving spouse who elects to take against a decedent's will, is entitled to a reasonable allowance in money out of the estate for such surviving spouse's maintenance during the period of one (1) year after the death of the spouse, according to such surviving spouse's previous standard of living, taking into account the condition of the estate of the deceased spouse. The court may consider the totality of the circumstances in fixing the allowance authorized by this section, including assets which may have passed to the spouse outside probate.

(b) The allowance so ordered shall be made payable to the surviving spouse, unless the court finds that it would be just and equitable to make a division of it between the unmarried minor children. If there is no surviving spouse, the allowance shall be made to the unmarried minor children.

(c) ...

(d) The allowance authorized by this law is the absolute property of the surviving spouse for such uses and shall be exempt from all claims and shall not be taken into the account of the administration of the estate of the intestate or seized upon any precept or execution.

(e) ...

(f) ...

T.C.A. § 31-4-101 provides in pertinent part as follows:

31-4-101. Right to elective share. —(a) A decedent's surviving spouse has the right to elect to take an elective share. The elective share is one third (1/3) of the decedent's net estate as defined in subsection (b). The right to elect an elective share is available to the surviving spouse of an intestate decedent and a testate decedent if the surviving spouse elects against the decedent's will. When the elective share is determined, **it is exempt from the unsecured debts of the decedent incurred after April 1, 1977.** In determining the elective share, it is not reduced by any estate or inheritance taxes. (Emphasis added).

(b) The net estate includes all of the decedent's real and personal property subject to disposition under the terms of the decedent's will or the laws of intestate succession reduced by funeral and administration expenses, homestead, exemptions and year's support.

DISCUSSION

Upon consideration, the first impulse is to immediately conclude that The Federal Insolvency Statute applies to the facts at hand under the Supremacy Clause of the United States Constitu-

tion.[1] Impulsive conclusions, however, are many times inaccurate when subjected to a closer scrutiny and in differing contexts.

The issue to be decided here has been well and meticulously briefed by the two opposing sides. Neither, however, have called our attention to any recent, direct, and controlling authority precisely in point. Therefore, in deciding this issue, we will direct our attention to the interpretation of the statutes in pari materia using traditional rules of construction, older cases and cases in which issues similar to the issue here has been decided.

There is no real distinction between the canons of statutory construction in the federal courts and the canons of statutory construction as applied in this jurisdiction. In construing any statute, courts are always primarily interested in the intention of the legislative body which passed it. This is the fundamental rule to be applied in construing any statute whether its words are clear or not. State of Maine v. United States, 134 F.2d 574 (1943).

> The Supreme Court clearly stated the rule in the case relied upon by counsel for the appellant, (Caminetti v. United States, 242 U.S. 470, 490, 37 S.Ct. 192, 196, 61 L.Ed. 442, ...) as follows: '* * * when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their

[1]Article 6, paragraph 2 of the constitution of the United States provides:

[2] This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

> introduction, or from any extraneous source. In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.'

State of Maine v. United States, supra.

> When the legislative intent has been expressed in plain and unambiguous words, it is the duty of the courts to apply and enforce a statute as written. There is then no room for construction.

Mead Corporation v. Commissioner of Internal Revenue, 116 F.2d 187, (1940).

Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, and without any forced or subtle construction to limit or extend the import of the language. Worrall v. Kroger Company, 545 S.W.2d 736, 738 (Tenn. 1977); see City of Lenoir v. State ex rel. City of Loudon, 571 S.W.2d 297, 299 (Tenn. 1978).

Under the above rules of statutory construction, we must look to The Federal Insolvency Statute and determine whether the legislative intent has been expressed in plain and unambiguous words. We conclude that it has. We further conclude that the enactment applies expressly to all debts of the debtor, nothing more. The debtor in this case was Paul F. Gray, Jr., deceased. The elective share to which the surviving spouse is entitled was not, is not and could not have been a debt of the decedent. At no time during his lifetime did the decedent owe one-third of his estate to his spouse. The right to make a claim for an elective

share did not vest in the surviving spouse nor come into existence until after the death of the decedent. Hence, we are compelled to reach the conclusion that the elective share is not a debt of the debtor, Paul F. Gray, Jr. To conclude otherwise, would contravene the canons of statutory construction set out earlier and upon which we now rely.

We further conclude that the elective share is not a debt of the estate. Under the design of the intestacy laws in this jurisdiction the elective share is a statutory charge against the estate and is not available as an asset from which unsecured debts of any creditors can be satisfied absent the application of The Federal Insolvency Statute.

Under the State's plan, the surviving spouse is absolutely entitled (as against unsecured debts), to homestead, the elective share, the exempt property, and a year's support allowance. The only significant difference between the entitlements of these allowances is that the elective share is calculated using the "net estate" as hereinabove defined. We do not consider this to be a distinction which would require a different construction of The Federal Insolvency Statute than that applied to the remaining entitlements. In Jessie Smith, Executrix of the Estate of Louis Smith v. Commissioner of Internal Revenue., 24 B.T.A. 807 (1931) the court was called upon to interpret The Federal Insolvency Statute under slightly different circumstances. In Smith the court was dealing with an action against an executrix to establish

personal liability against her for paying certain claims in contravention of what is now subsection 2(b) of The Federal Insolvency Statute. In declining to find the executrix personally liable, the court stated:

> The priority of Federal taxes given by statute, section 3466, R.S. (see Price v. United States, 269 U.S. 492) in any event, is over debts, not payments required by law to be made to a widow as her statutory allowance out of the estate of her deceased husband. Such statutory allowance is not a debt and the payment thereof therefore is not a payment of a debt. Under the Illinois law this takes priority over all debts except funeral expenses. See par. 75, ch. 3, Callaghan's Illinois Statutes Annotated, vol. 1, p. 410. The priority of the United States on account of taxes extends to any assets or funds available for the payment of debts. United States v. Johnston, 5 Fed.(2d) 951. The widow's allowance not being available for the payment of debts, we do not think the Government's claim for taxes has priority over it.

We find no meaningful, distinguishing features between our statutory scheme and that of Illinois which was under consideration in Smith. The appellant argues otherwise. The argument is premised upon the assertion that since the elective share is not subject to secured and unsecured debts of the decedent incurred after April 1, 1977, but is subject to debts incurred before that date, the elective share, unlike the year's support, is a part of the administered estate and is a right of inheritance rather than an interest that passes directly to the widow. This argument is not persuasive. We note that T.C.A. § 31-4-101 was enacted by the legislature by the Public Acts of 1977, ch 25, § 4. We point out that creditors had a vested right to look to the decedent's estate for satisfaction of claims against the estate prior to the passage

of the act. Any act on the part of the legislature which would effectively destroy a vested right to collect a debt would, under most circumstances, run afoul of Article 1, Section 10 of the Constitution of the United States, which prohibits the states from passing any law which impairs the obligation of contracts. Further, the destruction of a vested right by the legislature would offend Article 11, Section 2 of the Constitution of Tennessee which provides:

> **Sec. 2. No impairment of rights.** — Nothing contained in this constitution shall impair the validity of any debts or contracts, or affect any rights of property or any suits actions, rights of action or other proceedings in Courts of Justice.

It follows, therefore, that if we should accept the argument advanced by the appellant, there could never be a statute enacted which would allow an elective share of a decedent's estate to pass to a surviving spouse free from the debts of the decedent because of The Federal Involvency Statute. A legislative act freeing the surviving spouse's elective share from unsecured debts must be prospective only to avoid offending either the U.S. Constitution or the Constitution of Tennessee. We find no merit in this argument.

We find Smith to be compellingly persuasive under the facts and circumstances of this case absent a more recent case by a superior tribunal holding to the contrary. We have found none. Rather, we have found support in more recent cases. In Schwartz and Estate of Max L. Raskin, Deceased v. Commissioner of Internal

Revenue Service, 560 F.2d 311 (8th Cir. 1977), in footnote 7, we find the following:

> The Tax Court recognized that widow's and family's allowances permitted by a state probate court are not "debts" within §§ 3466 and 3467. See Grace McKnight, 15 T.C. 730 (1950); Jessie Smith, Executrix, 24 B.T.A. 807 (1931); Ferguson, supra at 25 N.Y.U. Inst. on Fed. Tax. 1203-1204. Thus, the Tax Court correctly held that the United States did not have priority over the $25,000 paid by the executors to Florence Melman as a family allowance. ...

The appellant has called our attention to several cases from the United States Supreme Court, various Federal Circuit Courts and various other courts for the proposition that The Federal Insolvency Statute prevails over state law and where The Federal Insolvency Statute applies, priority of federal tax claims cannot be defeated by local law. See e.g. State of Idaho ex rel. Soward v. United States, 885 F.2d 445 (9th Cir. 1988); Fagiano v. United States, 490 U.S. 1065 (1989) and United States v. Sullivan, 254 F.Supp 254 (D.R.I. 1966). These propositions advanced by the appellant are virtually legal truisms, however, they do not address the issue sub judice i.e., does the Federal Insolvency Statute apply under the facts and circumstances of this case. We think not.

The principles fostered in Jessie Smith, Executrix of the Estate of Louis Smith v. Commissioner of Internal Revenue, 24 B.T.A. 807 (1931) have neither been rejected nor overruled. Thus, we hold that Smith is controlling and must be followed.

We affirm the judgment of the trial court in all respects. Costs are taxed to the appellant and this case is remanded to the trial court.

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Don T. McMurray

CONCUR:

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Houston M. Goddard, Presiding Judge

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Charles D. Susano, Jr., J.

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vs.	)	HON. HOWELL N. PEOPLES CHANCELLOR
INTERNAL REVENUE SERVICE, Appellant	)	AFFIRMED AND REMANDED

ORDER

This appeal came on to be heard upon the record from the Chancery Court of Hamilton County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court in all respects. Costs are taxed to the appellant and this case is remanded to the trial court.

PER CURIAM