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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD No. 741038

AGNES SITTERDING MAIORANO, MICHAEL J. MAIORANO, CECELIA ANNE MAIORANO VALENTINE and THOMAS M. GASQUE, Executor of the Estate of MARY ELIZABETH SITTERDING, Deceased,

Appellants,

v.

VIRGINIA TRUST COMPANY, Surviving Trustee Under the Will of FRITZ SITTERDING, Deceased,

Appellee.

APPENDIX

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BILL OF COMPLAINT

Filed April 30,1973

TO THE HONORABLE WILLIAM A. MONCURE, JR.,
JUDGE OF THE CHANCERY COURT OF THE CITY OF RICHMOND:

Your Complainant respectfully represents unto the Court:

1. Fritz Sitterding died testate in the City of Richmond, Virginia, on April 4, 1928, and his will was admitted to probate in this Court on April 30, 1928, at which time your Complainant, together with Fred B. Sitterding, Jr., and William Sitterding qualified as Executors and Trustees. Fred B. Sitterding, Jr., died in 1961, and William Sitterding died on October 2, 1972, so that your Complainant is now the sole surviving Trustee under the will of the said Fritz Sitterding. A copy of the will of Fritz Sitterding is attached hereto as Exhibit "A".

2. By Section THIRD of the will of Fritz Sitterding, he directed his Executors to set aside from his estate and hold as a trust fund $300,000.00. The pertinent provisions of said Section THIRD are as follows:

> "THIRD: I direct my Executors to set aside from my estate and hold as a trust fund, Three Hundred Thousand Dollars ($300,000), either in money or in stocks belonging to my estate at the valuation at the time of my death, and preferably stock in the Life Insurance Company of Virginia. In case any money is set aside from my estate as a part of this trust fund, then my Executors as Trustees are to invest the same in such securities as they may deem wise.
>
> "The said Trustees shall hold the said trust fund during the lifetime of my three children, and until the expiration of twenty-one years after the

death of the last survivor of my said three children.

"I direct the said Trustees to divide the income from the said trust estate quarterly among my three children. In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue. In the event that any of my children shall die leaving no issue surviving him or her, then the share of the income of such child so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue.

"At the expiration of the period of twenty-one years after the death of the last survivor of my children, I direct that the said trust fund shall be divided per stirpes among the issue of my three children."

3. The value of the trust corpus at this time has increased from $300,000.00 to approximately $1,700,000.00.

4. In connection with the administration of the trust created under the above provisions of the will of Fritz Sitterding, your complainant requires the aid and guidance of the Court as to (i) whether at the death of William Sitterding a part of the share in the income theretofore payable to him became payable to Cecelia Anne Maiorano Valentine as beneficiary under the will of Mary Elizabeth Sitterding Maiorano, (ii) whether certain attorney's fees incurred by Cecelia Anne Maiorano Valentine in connection with an estate tax deficiency assessed on account of her interest in the trust may be paid out of her share of the principal of the trust; and (iii) whether the shares of Cecelia Anne Maiorano Valentine and Agnes Sitterding Maiorano in the estate are subject to an attorney's lien in favor of Travis W. Poole.

5. Three children of Fritz Sitterding survived him and became entitled to the quarterly distribution of income of the trust. These were Agnes, Fred, Jr., and William. Agnes died in 1959 unmarried and without issue, and thereafter, the two surviving children, Fred, Jr., and

William, became entitled to the distribution of income. Fred, Jr., died in 1961, leaving three children surviving him, namely, the Defendant Frederick B. Sitterding, III, the Defendant Agnes Sitterding Maiorano, and Mary Elizabeth Sitterding, who thereupon became entitled to their father's share in the quarterly distribution of income, no other child of their father having theretofore died leaving issue then surviving. William died in 1972 without issue.

6. Mary Elizabeth Sitterding died on March 16, 1964, unmarried and without issue, and her will dated May 4, 1962, was probated in this Court on March 24, 1964 at which time, Thomas N. Gasque qualified as Executor. A copy of the will of Mary Elizabeth Sitterding is attached hereto as Exhibit "B".

7. As will appear from the copy of the will of Mary Elizabeth Sitterding, which is attached hereto, she bequeathed to Cecelia Anne Maiorano Valentine, the daughter of Agnes Sitterding Maiorano, the interest of said Mary Elizabeth Sitterding in the trust created by the will of Fritz Sitterding.

8. Defendant Thomas N. Gasque, Executor under the will of Mary Elizabeth Sitterding, and also the Defendant Cecelia Anne Maiorano Valentine have asserted that, upon the death of William Sitterding leaving no issue, the share of the said William Sitterding in the quarterly distribution of income of the trust became payable to Frederick B. Sitterding, III, and Agnes Sitterding Maiorano, issue of Fred B. Sitterding, Jr., and Cecelia Anne Maiorano Valentine as legatee of Mary Elizabeth Sitterding, a deceased issue of Fred B. Sitterding, Jr.

9. The Supreme Court of Appeals of Virginia, in an earlier suit for aid and guidance in the administration of this trust, held that Mary Elizabeth Sitterding, at the death of her father, Fred B. Sitterding, Jr., took a vested interest in a portion of the share in the income which her father had been receiving. The Court gave as one of the reasons for its decision its finding that, upon the death of Fred B. Sitterding, Jr., the will provided for the establishment of a new class to receive his share of the income, namely, "his issue." If a new class were established at the death of Fred B. Sitterding, Jr., it might follow that a new class would also be established at the death of William Sitterding. Such new class would be the issue of Fred B. Sitterding, Jr., however, at the death of William Sitterding, Mary Elizabeth Sitterding having theretofore died would not be a member of the class and no interest in William Sitterding's share in the income would have passed to Cecelia Anne Maiorano Valentine under the will of Mary Elizabeth Sitterding.

10. The only issue now living of the three children of Fritz Sitterding, in addition to the Defendants Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine, are the Defendants: Frederick B. Sitterding, IV, Patricia Anne Sitterding and Lillian Cecelia Sitterding, who are the children of Frederick B. Sitterding, III. The Defendant Alma A. Sitterding is the wife of Frederick B. Sitterding, III, and the Defendant Michael J. Maiorano is the husband of Agnes Sitterding Maiorano. All of said issue and the said spouses may now or hereafter have an interest in the trust.

11. Until the further construction of the will of Fritz Sitterding by this Court, your Complainant is not in a position to proceed further with the administration of the trust insofar as the distribution of income is concerned.

12. A federal estate tax deficiency was assessed against the beneficiaries of the estate of Mary Elizabeth Sitterding as transferees of said estate, with a substantial part of such deficiency being assessed against Cecelia Anne Maiorano Valentine on account of the interest in the Fritz Sitterding trust which passed to her under the will of Mary Elizabeth Sitterding.

13. Cecelia Anne Maiorano Valentine has requested your Complainant to pay out of her interest in the principal of the Fritz Sitterding trust the attorneys' fees in the amount of $4,892.84 incurred by her in connection with such tax deficiency assessment.

14. The question of whether an interest in the principal of the Fritz Sitterding trust has vested in Cecelia Anne Maiorano Valentine was not decided in the prior suit for aid and guidance, and unless such question is decided and this Court authorizes the payment of said attorneys' fees, your Complainant cannot pay the same.

15. The Defendant Travis W. Poole has given to your Complainant written notice that, as attorney for the Defendants Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine, he claims an attorney's lien upon the interests of said Defendants in the Fritz Sitterding trust. However, the said Defendants Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine have advised your Complainant that Travis W. Poole no longer represents them.

16. Your Complainant from time to time must make distributions out of the trust to the Defendants Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine; it is therefore necessary that your Complainant be advised as to the validity of the lien claimed by Defendant Travis W. Poole.

WHEREFORE, your Complainant prays that it may be afforded the aid and guidance of this Court in construing the will of Fritz Sitterding and particularly the provisions thereof relating to the time at which the income of the trust will vest and (a) whether Cecelia Anne Maiorano Valentine has an interest in the share of the income of the trust formerly payable to William Sitterding; (b) whether your Complainant may pay the attorneys' fees of Cecelia Anne Maiorano Valentine in the sum of $4,892.84 in connection with the tax deficiency against the estate of Mary Elizabeth Sitterding, and that the Court authorize the payment of appropriate fees and expenses of your Complainant's counsel in bringing and conducting this suit; and (c) upon what property, if any, does an attorney's lien in favor of Travis W. Poole exist.

VIRGINIA TRUST COMPANY,
Surviving Trustee under the will
of FRITZ SITTERDING, Deceased

By Fielding L. Williams
Counsel

Fielding L. Williams
WILLIAMS, MULLEN & CHRISTIAN
United Virginia Bank Building
Richmond, Virginia 23219

I, FRITZ SITTERDING, of the City of Richmond, Virginia, being of sound and disposing mind, do make this my last will and testament, hereby revoking any and all wills at any time heretofore made by me.

FIRST: I direct that all of my just debts and funeral expenses be paid by my Executors, hereinafter named, as soon after my death as is practicable.

SECOND: I give and bequeath to my daughter, Agnes Sitterding, all of my household and kitchen furniture, automobiles, books, china, silverware, wearing apparel, pictures and jewelry, except my gold watch and chain and diamond and pearl stick pin which I give to my grandson, Fritz Sitterding.

THIRD: I direct my Executors to set aside from my estate, and hold as a trust fund, Three Hundred Thousand Dollars ($300,000), either in money or in stocks belonging to my estate at the valuation at the time of my death, and preferably stock in the Life Insurance Company of Virginia. In case any money is set aside from my estate as a part of this trust fund, then my Executors as Trustees are to invest the same in such securities as they may deem wise.

The said Trustees shall hold the said trust fund during the lifetime of my three children, and until the expiration of twenty-one years after the death of the last survivor of my said three children.

I direct the said Trustees to divide the income from the said trust estate quarterly among my three children. In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue. In the event that any of my children shall die leaving no issue surviving him or her, then the share of the income of such child so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue.

At the expiration of the period of twenty-one years after the death of the last survivor of my children, I direct that the said trust fund shall be divided per stirpes among the issue of my three children.

I authorize the said Trustees, from time to time, to sell any of the securities held by them, if they deem it wise to do so, and to reinvest the proceeds in such other property, either real or personal, as they may deem best, without regard to whether the securities so purchased are of that class of securities commonly known as fiduciary investments; and any property so purchased by the said Trustees shall constitute a part of the trust fund, and be held and disposed of as is hereinbefore provided.

It is my wish and desire that the said Trustees shall have full power and authority to vote any of the securities belonging to said trust fund, in favor of or against any proposed merger or consolidation of any of the Institutions whose stock is held

as a part of the said trust fund, and to receive in exchange for any of the securities held as a part of said trust fund the securities of any other Institution or Company, with which the same may be so merged or consolidated; My wish being that the said Trustees, exercising their best judgment in respect thereto, shall have as full and complete power in respect to any such consolidation, merger or exchange of the said trust fund or any portion thereof as I would or could have were I then living.

FOURTH: All of the balance of my estate I give, devise and bequeath to be equally divided among my three children. In the event that any of my children shall predecease me, leaving issue surviving, then I direct that the share of the child so dying shall go to his or her issue.

FIFTH: I nominate and appoint my two sons, Fred B. Sitterding, and William Sitterding, and the Virginia Trust Company as Executors of this my last will and testament, and I direct that they shall not be required to give security, and that no appraisement be made of my estate. As compensation for their services as Executors I direct that they be allowed the usual commission of five percent, which shall be equally divided between them.

I authorize and empower my said Executors, either as Executors or as Trustees, to retain any investment which may come into their hands, or to sell the same and reinvest the proceeds in other property, and from time to time to change such investments. I also authorize the said Executors and Trustees to sell any of the real estate owned by me at the time of my death, if deemed wise to do so, and to reinvest the proceeds of sale in other property either real or personal; and no purchaser of any such real estate shall be required to see to the application of the purchase money.

Given under my hand and seal this 23rd day of June, 1926.

Fritz Sitterding (SEAL)

Signed, sealed, published and declared as and for his last will and testament by Fritz Sitterding, in the presence of us, who in his presence, at his request and in the presence of one another, have hereunto set our hands as attesting witnesses.

Walker Scott

T. C. Gordon

LAST WILL AND TESTAMENT

RICHMOND)
VIRGINIA)

In the Name of God, Amen.

I, Mary Elizabeth Sitterding, of Richmond, Virginia, being of sound mind and memory and understanding, and being under no restraint, knowing that everyone must die, do hereby ordain, publish and declare this to be my last will and testament, hereby revoking all wills and instruments of a testamentary nature heretofore made by me.

Item 1: I commit my soul to the Gracious God who gave it and direct that my body shall be decently interred according to the rites of the Cathedral Catholic Church of Richmond, Virginia, and that a suitable monument be erected to mark my grave, and that all expenses incurred therefore, be paid out of my estate.

Item 11: I will and direct that my executor, hereinafter named, shall pay all of my just debts with the first money coming into his hands.

Item 111: I will, devise and bequeath to Father Joseph Grazer, of Richmond, Virginia, my large diamond ring for the exclusive purpose of putting the said diamond ring on his chalice, this is to go to him upon the condition that he be ordained as a Catholic Priest and upon the further condition that I have not given it to him before my death.

Item 1V: I will, devise and bequeath to Father Phillip Gallegher my diamond ring which is shaped in the form of a cross upon the exclusive direction that it be placed on his chalice. If this ring is not placed on his chalice, then it will go along with the corpus of my estate.

EXHIBIT "B"

Item V: I will, divise and bequea to Father George Gormley my mahogany writing desk and the chair that goes with it as well as the hurricane lamp which I keep besid it with the sincere hope that it will aid him in his great calling.

Item Vl: I will, devise and bequeath to the Little Sisters of the Poor of Richmond, Virginia all of my linens, personal clothes and other personal effects of a similar nature.

Item Vll: I will, devise and bequeath to my beloved Uncle, William H. Sitterding, my hand painted punch bowl. However, if he predecease me, then I will and direct that it shall go to my Niece, Cecelia Ann Maiorano.

Item Vlll: I will, devise and bequeath to my beloved brother Frederick Sitterding, lll, my mahogany Queene Anne arm chair covered with needle point and my two hurricane lamps that he has told me he liked.

Item IX: I will devise and bequeath to my beloved sister, Agnes Maiorano, my diamond bracelet and diamond ring which she has in her possession at the time of the making of this, my last will and testament, for her lifetime. At her death, I will, devise and bequeath the said diamond ring and diamond bracelet to my beloved Niece, Cecelia Ann Maiorano.

Item X: All the rest, residue and remainder of my property, real and presonal, tangible and intangible, wheresoever situate, and howsoever held, herein referred to as my Residuary Estate, I give, devise and bequeath to my Niece, Cecelia Ann Maiorano, with the exception of those things heretofore specifically named or which I hereafter exempt.

Item Xl; I specifically will, devise and bequeath to my beloved Niece, Cecelia Ann Maiorano, her heirs and assigns forever any and all real estate, stocks, bonds, equities or any

other thing or things of any value, which is remaining at my death which I recieve from my Grandfather, Fritz Sitterding's estate.

Item Xll: If I should die before I recieve my per stirpes inheritance from my Grandfather, Fritz Sitterding's estate; then I will, devise and bequeath to my beloved Niece, Cecelia Ann Maiorano, her heirs and assigns forever, the entire per stirpes amount, including stocks, bonds, real estate or equities which my estate is entitled to recieve from my Grandfather, Fritz Sitterding's estate.

Item Xlll: I will devise and bequeath the following shares of stock to the hereinafter named beneficiaries:

(1) The Cathedral Catholic Church of Richmond, 544 shares of Virginia Electric and Power, Company, Common stock.

(2) Cathedral Central High School, located at Floyd Avenue and Brunswick Street, in Richmond, Virginia, 120 shares of Air Products, Inc., Common stock.

(3) Little Sisters of the Poor of Richmond, Virginia, 1,060 shares of the Home Brewing Company, Inc., of Richmond, Virginia, Common stock.

(4) Mildred Branch, my maid, 36 shares of Morgan Guaranty Trust Company of New York, 44

(5) To the Saint Peters Catholic Church of Richmond, Virginia, 212 shares of Texas Eastern Transmission Corporation, Common stock.

(6) To Frederick Sitterding, lV, son of my brother Frederick Sitterding, 200 shares of First and Merchants National Bank, Common stock.

(7) To Patricia Sitterding, daughter of my brother Frederick Sitterding, 117 shares of Sabre-Pinon, Corporation, Common stock.

(8) To Lillian Sitterding, daughter of my brother Frederick Sitterding, 2,000 units of United Western Trust.

Item XlV: I hereby nominate constitute and appoint Thomas Nelson Gasque, of Richmond, Virginia, as executor of this, my last will and testament, and I direct that he shall recieve Ten Per Cent (10%) of the total value of my estate as his fee for

being the excutor of this, my last will and testament, This is to specifically include Ten Per Cent (10%) of the amount of the estate which I will recieve from my Grandfather, Fritz Sitterding's estate, and which passes through this, my last will and testament. I direct that he shall serve as my executor without bond. If for any reason he shall not qualify as such, then I direct that Michael J. Maiorano, my brother-in-law, shall be excutor of this my last will and testament, and that he shall recieve the same Ten Per Cent (10%) as heretofore set forth above for acting as my executor, and further I direct that he shall serve without bond.

In witness whereof, I hereunto set my hand and seal this 4th day of May, 1980.

Mary Elizabeth Sitterding L.S.
Mary Elizabeth Sitterding

Signed, sealed, published and declared by Mary Elizabeth Sitterding as and for her last will and testament in the presence of us, who in her presence, and of each other, at her request, have subscribed our names as witnesses. (The sentence of the will beginning "In Witness" having been read aloud to us all together and in the presence of the testator.) This will being contained on four typewritten pages.

1. Clarence B. Nesbitt Jr. Address 2314 Hampstead Ave Rich. Va
2. Sandra W Schroeder 3500 Stuart Ave, Richmond Va
3. Frances H. Cuckers 3021 Monument Ave.

ANSWER OF THOMAS N. GASQUE, EXECUTOR OF THE ESTATE OF MARY ELIZABETH SITTERDING, DECEASED

Filed May 24, 1973

This day came Thomas N. Gasque, Executor of the Estate of Mary Elizabeth Sitterding, deceased, by counsel, and for his answer to the bill of complaint filed against him in this cause says as follows:

1. That he admits the allegations as set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11 and 13 all as set forth in the complainant's bill of complaint.

2. That he denies the allegations and conclusions of law as set forth in paragraph 9 of the complainant's bill of complaint and amplifies as follows: The Supreme Court of Appeals in an earlier suit for aid and guidance in the administration of this trust held that Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Mary Elizabeth Sitterding and thus Cecelia Anne Maiorano Valentine, her legatee, took a vested interest in all the income from this trust as a member of the new class created at the death of Frederick B. Sitterding, Jr., son of the testator who died leaving issue, but that each was only entitled to the present enjoyment of 1/6 of the income. The right of each to the other 1/6 was subject to be defeated by the condition precedent that William Sitterding die leaving issue, such issue would have been a new class entitled to the share of the income he had been receiving, which event never did occur. Since William Sitterding died without issue there can be no other class. There is no gift over except to the class existing already, namely Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Mary Elizabeth Sitterding or Cecelia Anne Maiorano Valentine, her legatee. The 1/3rd vested interest of Mary Elizabeth Sitterding in all the income subject to the above mentioned condition precedent, which never occurred, was passed by her will to Cecelia Anne Maiorano, her legatee, because the Supreme Court of Appeals in the aforementioned previous case clearly held that Mary Elizabeth Sitterding did not have to survive William Sitterding or anyone in order to take.

3. That he denies the allegations as set forth in paragraph 10 of the complainant's bill of complaint alleging that all of the said issue and the spouses may now or hereafter have an interest in the trust. The word issue as used in the will of Fritz Sitterding is a word of limitation, thus refers to the issue of a child of the testator who died leaving issue, namely, Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Mary Elizabeth Sitterding, none other. Cecelia Anne Maiorano Valentine merely qualifies as a taker by virtue of the will of Mary Elizabeth Sitterding and as her legatee not by virtue of being an issue of Fritz Sitterding or the issue of a child of the testator who died leaving issue. Others may qualify to take an interest in this trust only through their respective ancestor or spouse, not as an issue of Fritz Sitterding or the issue of a child of the testator who died leaving issue.

4. That he admits the allegations as set forth in paragraph 12 of the complainant's bill of complaint and amplifies as follows: The Internal Revenue Service ruled that the Estate of Mary Elizabeth Sitterding, deceased, had a vested interest in not only the income, but also the principal of the trust created under the will of Fritz Sitterding by virtue of the ruling of the Court of Appeals in the earlier suit for aid and guidance in the administration; that this vested interest in said trust passed to Cecelia Anne Maiorano Valentine by the will of Mary Elizabeth Sitterding, deceased, and thus was subject to estate taxes; that when such estate taxes were not paid, a deficiency was assessed not only against Cecelia Anne Maiorano Valentine but also against Thomas N. Gasque, as Executor of the Estate of Mary Elizabeth Sitterding, deceased, as transferees of the aforesaid vested interest in said

trust and that a settlement of this deficiency was consummated when said executor satisfied forever all estate tax liabilities against the estate of Mary Elizabeth Sitterding, deceased, Cecelia Anne Maiorano Valentine, her legatee, and the executor, as transferees of this vested interest in the income and principal of the trust created under the will of Fritz Sitterding.

5. That he admits the allegations as set forth in paragraph 14 of the complainant's bill of complaint, with the following amplification. In the earlier aforementioned suit for aid and guidance, the question of whether Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine, as legatee of Mary Elizabeth Sitterding, deceased, had a vested interest in the principal of this trust was not decided by the Court of Appeals in order to avoid the assessment of estate taxes thereon until the principal of said trust was actually distributed.

6. That he admits the allegations as set forth in paragraph 15 of the complainant's bill of complaint, but amplifies by saying that Travis W. Poole has withdrawn any claim to an attorney's lien herein.

7. That he admits the allegations as set forth in paragraph 16 of the complainant's bill of complaint, but amplifies by saying Travis W. Poole has withdrawn any claim to any attorney's lien.

Wherefore, this defendant prays that the Court ADJUDGE, ORDER and DECREE that (a) Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine, as legatee of Mary Elizabeth Sitterding, deceased,are entitled to 1/6 of the income of this trust formerly payable to William Sitterding now deceased (b) that they also have a vested 1/3rd interest in the

entire principal of the trust created under the will of Fritz Sitterding in order to avoid a multiplicity of suits and to permit the complainant to pay not only the sum of $4892.84 for attorney's fees as prayed for, but also to permit the complainant to pay for any future attorney's fees including appropriate fees and expenses of the complainant's counsel in bringing and conducting this suit; to orderly administer the trust here involved, and to permit this defendant executor to properly administer the Estate of Mary Elizabeth Sitterding, deceased.

THOMAS N. GASQUE, EXECUTOR OF THE ESTATE OF
MARY ELIZABETH SITTERDING, DECEASED

By Travis W. Poole

Travis W. Poole
601 Mutual Building
Richmond, Virginia
Counsel

I certify that on May 23, 1973, a copy of the foregoing answer was mailed to each of the parties at their respective addresses as shown in the bill of complaint filed herein and a copy to Fielding Williams, Esquire, Williams, Mullen & Christian, United Virginia Bank Building, Richmond, Virginia 23219, counsel of record for the complainant.

Travis W. Poole

Travis W. Poole

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

Filed June 1, 1973

Fritz Sitterding's Surviving Trustee)	
)	JOINT AND SEVERAL ANSWER
)	OF FREDERICK B. SITTERDING,
v.)	III, ALMA A. SITTERDING,
)	FREDERICK B. SITTERDING, IV,
)	AND PATRICIA ANN SITTERDING
Frederick B. Sitterding, III, et al.)	

The defendants Frederick B. Sitterding, III, Alma A. Sitterding, Frederick B. Sitterding, IV, and Patricia Ann Sitterding, for answer to the Bill of Complaint in this cause state as follows:

1. They admit the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 16 of the Bill of Complaint.

2. They are without information as to the allegations of paragraph 8 of the Bill of Complaint.

3. With respect to the allegations of paragraph 14 of the Bill of Complaint, they allege that, regardless of whether the Court determines the question of the vesting of an interest in the principal of the trust in Cecelia Anne Maiorano Valentine, this Court may authorize payment of the attorney's fees referred to in paragraph 13 of the Bill of Complaint from the trust estate because the legal controversy necessitating the fees involved the taxability of an interest in the trust estate and, accordingly, was a proper charge against the trust estate. These defendants allege that payment of such attorney's fees from the principal of the trust estate should be authorized by this Court.

4. They are without information as to the allegations of paragraph 15 of the Bill of Complaint.

WHEREFORE, these defendants pray that the Court adjudge, order and decree (i) that Cecelia Anne Maiorano Valentine has no interest in the share of the income of the trust formerly payable to William Sitterding, and (ii) that the surviving Trustee be authorized bo pay attorney's fees in the sum of $4,892.84 as recided in the Bill.

Respectfully submitted,

FREDERICK B. SITTERDING, III
ALMA A. SITTERDING
FREDERICK B. SITTERDING, IV
PATRICIA ANN SITTERDING

By Thomas S. Word Jr.
Of Counsel

Alexander W. Neal, Jr.
Thomas S. Word, Jr.
McGuire, Woods & Battle
1400 Ross Building
Richmond, Virginia 23219

Counsel for Frederick B. Sitterding, III, Alma A. Sitterding, Frederick B. Sitterding, IV, and Patricia Ann Sitterding

CERTIFICATE

I certify that on June 1, 1973, I mailed a copy of the foregoing answer to Fielding L. Williams, Esquire, counsel for the complainant.

Thomas S. Word Jr.

V I R G I N I A :

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

VIRGINIA TRUST COMPANY,
Surviving Trustee under the
Will of Fritz Sitterding, deceased, Complainant

v.

FREDERICK B. SITTERDING, III, et al, Defendants.

JOINT AND SEPARATE ANSWERS OF CECELIA ANNE MAIORANO VALENTINE, AGNES SITTERDING MAIORANO AND MICHAEL J. MAIORANO

Filed June 6, 1973

TO THE HONORABLE WILLIAM A. MONCURE, JR.,
JUDGE OF THE CHANCERY COURT OF THE CITY OF RICHMOND:

The defendants, CECELIA ANNE MAIORANO VALENTINE, AGNES SITTERDING MAIORANO and MICHAEL J. MAIORANO, for their Joint and Separate Answers to the Bill of Complaint exhibited against them, reserving the right to amend same if they be so advised, Answer and say:

1. These defendants generally admit the allegations of the Bill of Complaint with the exception of the allegations contained in paragraphs numbered 9 and 10 of the Bill of Complaint which allegations are denied.

2. These defendants agree that the Supreme Court of Appeals held in an earlier suit for aid and guidance in the administration of this trust, that MARY ELIZABETH SITTERDING, at the death of her father, FRED B. SITTERDING, JR., took a vested interest in the income which her father had been receiving, but denies that at the death of WILLIAM SITTERDING a new class of beneficiaries was or might be established and alleges that the income which WILLIAM SITTERDING had been receiving should now be paid equally to FREDERICK B. SITTERDING, III, AGNES SITTERDING

MAIORANO and CECELIA ANNE MAIORANO VALENTINE, said right to income having become vested in FREDERICK B. SITTERDING, III, AGNES SITTERDING MAIORANO and MARY ELIZABETH SITTERDING in accordance with the Supreme Court of Appeals decision referred to herein and that thereafter no new class was established by the death of WILLIAM SITTERDING, since he died, without leaving issue.

3. These defendants affirmatively allege that CECELIA ANNE MAIORANO VALENTINE held a vested interest in the income and principal of the trust created under the Will of FRITZ SITTERDING by virtue of her legacy under the Will of MARY ELIZABETH SITTERDING. That as a result of said legacy, she held a vested interest in the income from said trust being received by WILLIAM SITTERDING, subject only to being divested of said interest by issue surviving WILLIAM SITTERDING. Said life tenant having died without leaving issue, CECELIA ANNE MAIORANO VALENTINE is now entitled to receive her one-third share of said income and she is also entitled to receive one-third of the principal upon distribution of same, twenty-one (21) years following the death of WILLIAM SITTERDING.

4. These defendants further allege that AGNES MAIORANO SITTERDING held a vested interest in the income and principal of the trust created under the Will of FRITZ SITTERDING. That she therefore held a vested interest in the income from said trust being received by WILLIAM SITTERDING, subject only to being divested of said interest, by issue, surviving WILLIAM SITTERDING. Said life tenant having died without leaving issue, AGNES MAIORANO SITTERDING is now entitled to receive her one-third share of said income and is also entitled to receive one-third of the principal upon distribution of same, twenty-one (21) years following the death of WILLIAM SITTERDING.

5. These defendants deny that the defendant TRAVIS W. POOLE is entitled to an attorney's lien upon the interests of these defendants and affirmatively allege that he is not entitled to receive any attorney's fees from these defendants other than fees which are presently being paid to him or accrued for his benefit.

6. These defendants join in the prayer of the Petition requesting the Court to approve payment from CECELIA ANNE MAIORANO VALENTINE'S share of the principal of the FRITZ SITTERDING trust attorney fees in the amount of $4,892.84 incurred by her in connection with a Federal Estate Tax deficiency assessed against her interest in said trust.

WHEREFORE, these defendants pray that they be protected in their interest in the trust created under the Will of FRITZ SITTERDING and that such other relief may be afforded them as to equity may seem meet and the notice of the case may require.

CECELIA ANNE MAIORANO VALENTINE,
AGNES SITTERDING MAIORANO,
and MICHAEL J. MAIORANO

By Nicholas A. Spinella
Nicholas A. Spinella, Counsel

Nicholas A. Spinella
Spinella, Spinella & Owings
P. O. Box 8596
5421 Patterson Avenue
Richmond, Virginia 23226

DATE FILED: - JUNE 6, 1973

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

VIRGINIA TRUST COMPANY,
Surviving Trustee under the
will of FRITZ SITTERDING,
deceased,

V.

FREDERICK B. SITTERDING, III, et als

ANSWER OF INFANT DEFENDANT AND PERSONS UNBORN
DEFENDANTS BY GUARDIAN AD LITEM

Filed October 15, 1973

The defendants for answer to the Bill of Complaint says that by reason of their status as defendants non sui juris, being an infant, and persons unborn, as stated, they are incapable of understanding the matters involved in this suit and ask that no decree be entered in their prejudice.

LILLIAN CECELIA SITTERDING, an Infant,
and Persons Unborn Who May Have An
Interest in the Subject Matter

By John W. Edmonds III
Guardian ad litem
1200 Ross Building
P. O. Box 1122
Richmond, Virginia 23208

CERTIFICATE OF SERVICE

This is to certify that I mailed a copy of the foregoing Answer to Fielding L. Williams, Esquire, Attorney for the Complainant, Williams, Mullen & Christian, United Virginia Bank Building, Richmond, Virginia, 23208; to Travis W. Poole, Esquire, Attorney for Thomas N. Gasque, Executor of the Estate of Mary Elizabeth Sitterding, deceased, 601 Mutual Building, Richmond, Virginia, 23219; to Alexander W. Neal, Jr., and Thomas S. Word, Esquires,

208 VA. 206 — SUPREME COURT CASE

Present: All of the Justices.

THOMAS N. GASQUE, EXECUTOR, ETC., ET AL.

OPINION BY JUSTICE C. VERNON SPRATLEY,
-v- Record No. 6457. Staunton, Va., Sept. 8, 1967.

FREDERICK B. SITTERDING, III, ET AL., ETC.

FROM THE CHANCERY COURT OF THE CITY OF RICHMOND;
William A. Moncure, Jr., Judge.

Fritz Sitterding of the city of Richmond died testate on April 4, 1928, at the age of 74. His will was duly probated, and William Sitterding, Fred B. Sitterding, Jr., sons of the testator, and Virginia Trust Company qualified as executors and trustees thereunder.

Fritz Sitterding, hereinafter designated as testator, left surviving him three children: Agnes, Fred B. Jr., William, and three grandchildren: Fred B. III, Mary Elizabeth and Agnes, children of Fred B. Jr.

Testator's daughter, Agnes, died May 9, 1958, unmarried and without issue. Fred B. Jr., testator's son, died in July, 1961, survived by his three children above named, the grandchildren of the testator. Agnes, the daughter of Fred B. Jr., later married Michael J. Maiorano. William Sitterding, testator's son, now 76

years of age, is married and without issue.

A conflict arising over the distribution of certain funds by the surviving executors and trustees, we are asked on this appeal to construe the will of the testator, especially the provisions of the third paragraph thereof, the pertinent portions of which, here designated as (a), (b), (c) and (d) (for the purpose of convenient reference) are as follows:

(a) "THIRD: I direct my Executors to set aside from my estate, and hold as a trust fund, Three Hundred Thousand Dollars ($300,000), * * *.

(b) "The said Trustees shall hold the said trust fund during the lifetime of my three children, and until the expiration of twenty-one years after the death of the last survivor of my said three children.

(c) "I direct the said Trustees to divide the income from the said trust estate quarterly among my three children. In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue. In the event that any of my children shall die leaving no issue surviving him or her, then the share of the income of such child so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue. (Emphasis added.)

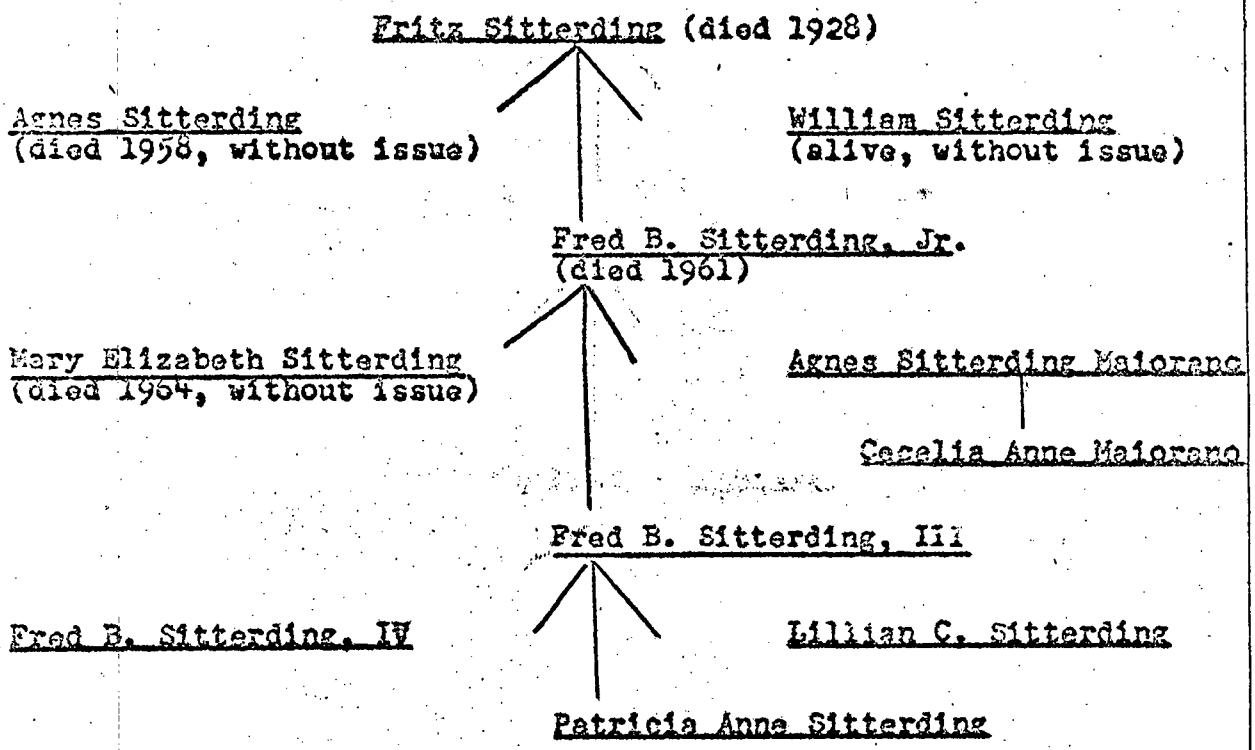
(d) "At the expiration of the period of twenty-one years after the death of the last survivor of my children, I direct that the said trust fund shall be divided per stirpes among the issue of my three children."

Fritz Sitterding left an estate appraised at $2,728,316.89. After making two specific bequests of personal

property, one to his daughter, Agnes, and the other to a grandson, and providing for the trust fund of $300,000, he left the bulk of his estate to his three children: Agnes, Fred B. Jr. and William. The value of the principal of the trust estate, in April, 1965, was approximately $1,847,000.

Mary Elizabeth Sitterding, granddaughter of the testator, died testate on March 16, 1964, unmarried and without issue. In her will she bequeathed her entire interest in the estate left by her grandfather to her niece, Cecelia Anne Maiorano, the infant daughter of Agnes Sitterding Maiorano.

The following chart may be helpful for reference:



Upon the death of Fritz Sitterding, his three children,

Agnes, Fred and William became entitled to and were paid the quarterly distribution of income of the trust. After the death of Agnes, the daughter of testator, the testator's two surviving children, Fred, Jr. and William thereafter became entitled to and were each paid 1/2 of the quarterly distribution of income. Upon the death of Fred, Jr., in 1961, his three children, Frederick B. III, Agnes S. Maiorano and Mary Elizabeth became entitled to and were paid their father's share in the quarterly distribution of income.

Thomas N. Gasque qualified as executor of the will of Mary Elizabeth Sitterding. William Sitterding and Virginia Trust Company, surviving trustees under the will of Fritz Sitterding, refused to pay to him, for the benefit of Cecelia Anne Maiorano, 1/6 of the income from the trust. The refusal gave rise to this proceeding.

In April, 1965, the surviving trustees instituted this proceeding against William Sitterding, Frederick B. Sitterding, III, Alma A. Sitterding, Frederick B. Sitterding, IV, Patricia Anne Sitterding, Lillian Cecelia Sitterding, an infant, Agnes Sitterding Maiorano, Michael J. Maiorano, Cecelia Anne Maiorano, an infant, Thomas N. Gasque, executor of the estate of Mary Elizabeth Sitterding,

deceased, and the unborn issue of Fritz Sitterding.

The bill alleged that the complainants believed "it was the intention of Fritz Sitterding, as expressed in his will, that no interest in either the income or principal of the trust fund would vest in any beneficiary until 21 years after the death of the last surviving child of" the testator; and "that twenty-one years after the death of William Sitterding, the trust estate will vest, per stirpes, in the then living issue of the children of Fritz Sitterding." They further alleged that until the court construed the will, they were not in a position to proceed with the administration of the trust insofar as the distribution of income is concerned, nor in a position to know who is, or will be entitled to a vested interest in the trust. They prayed for "the aid and guidance of the court in construing the will of the testator, and particularly the provisions thereof relating to the time at which the income and the principal of the trust will vest."

Thomas N. Gasque, executor, in his answer, alleged that his decedent bequeathed to Cecelia Anne Maiorano a vested interest in the trust estate, and that Fritz Sitterding, testator, intended, "as expressed in his will and trust, that Mary Elizabeth Sitterding and the other issue of the children of Fritz Sitterding, the testator,

take a vested interest in the principal and income of the aforesaid trust from the date of his death." He prayed that the court hold that the estate of Mary Elizabeth Sitterding, deceased, took a vested interest in 1/3 of 1/2 of the income of the trust estate, and "a 1/3 vested interest in 1/2 of the principal of the said trust, with the right of enjoyment of the said principal being postponed until 21 years after the death of William Sitterding, the last surviving child of the testator;" and that the two surviving children of Fred, Jr. took like vested estates.

Agnes Sitterding Maiorano and her husband filed an answer similar to that of Gasque, executor, and William H. Sitterding, Fred Sitterding, III, his wife and adult children in their answers took the same position as that of the surviving trustees.

The guardians ad litem of Lillian Cecelia Sitterding, an infant, "the unborn issue of Fritz Sitterding," and Cecelia Anne Maiorano, an infant, filed the usual answers submitting the interest of the infants to the protection of the court.

Over the objection and exception of Thomas N. Gasque, executor of the estate of Mary Elizabeth Sitterding, Agnes Sitterding Maiorano, Michael J. Maiorano, and Cecelia Anne Maiorano, by her guardian ad litem, the chancellor heard evidence showing the

type of man Fritz Sitterding was, his background and his close relationship to his family.

The chancellor held, for reasons set forth in his written opinion that "(N)o interest in the income from or principal of the trust created by section numbered THIRD of the will of Fritz Sitterding has vested or will vest until twenty-one (21) years after the death of the last to die of the three children of said Fritz Sitterding," and so adjudged, ordered and decreed.

Agnes Sitterding Maiorano, Michael J. Maiorano, her husband, Thomas N. Gasque, executor of the estate of Mary Elizabeth Sitterding, and Cecelia Anne Maiorano, an infant, by her guardain ad litem, hereinafter referred to as appellants, objected and excepted to the action of the court. They thereafter obtained this appeal.

Appellants contend that the provisions of the will are free from ambiguity, and that the intention of the testator is clearly shown by the language he used. They further say that if there be any ambiguity, the rule favoring the early vesting of estates should be applied. Many cases and authorities are cited relating to that rule.

Since we find that the will, as written, is clear and un-

ambiguous as to the vesting of the right to receive the income from the trust, it is not necessary to consider any other rule of construction, or extrinsic evidence.

The parties agree that the primary duty of the court is to ascertain the intention of a testator from the whole of his will, and the words used by him. They also agree that Fritz Sitterding was an intelligent and successful businessman, and say that "It is obvious that the will was drawn by a skilled draftsman."

"The primary significance of words should ordinarily attach and does attach, unless it is manifest from the will itself that other definitions are intended. Weight and meaning must be given to every word used if they make any sense at all. None are to be deleted and none added, for men make their own wills, nor should we search out obscure or recondite possibilities in simple words." Rady v. Stairs, 160 Va. 373, 376, 168 S. E. 452, 453.

"In construing a will the object is to ascertain and determine what the testator meant by what he said in the will. 'If the meaning of the words is plain, there is no room for construction.'" Boyd v. Fanelli, 199 Va. 357, 360, 99 S. E. 2d 619, 622; Conrad v.

Conrad's Executor, 123 Va. 711, 97 S. E. 336; Chavis v. Myrick, 190 Va. 875, 58 S. E. 2d 881.

As Mr. Justice Holt said in Rady v. Staiars, supra, 160 Va., at page 378: "(N)o will has a brother." We can but construe the words of a testator as used by him. Decided cases are of little value except where they are based on facts similar to the case under review.

Guided by the foregoing principles, we will consider paragraph three of the will, sentence by sentence. In it the testator disposed of the income from the trust quite differently from his disposal of the principal both as to the time of distribution and as to the beneficiaries.

In subparagraph (b) of the trust provision, he prescribed the duration of the trust. Subparagraph (c) deals solely with income from the trust, and directs how, to whom, and when that income shall be paid. In subparagraph (d), he directed the time when and to whom the principal of the trust fund shall be distributed upon the termination of the trust.

The will of Fritz Sitterding designated a class of persons

entitled to receive immediately the income of the trust. This class consisted of the testator's children, Fred B. Jr. and his brother and sister. The will also provided that the right of each of said children to receive income should terminate at his or her death.

Upon the death of Fred B. Jr., the will provided for the establishment of a new class to receive his share of the income--that is, "his issue." Thus, upon Fred B. Jr.'s death, the right to a share of the income from the trust estate vested in right and possession in Fred's daughter, Mary Elizabeth--a grandchild of the testator--she qualifying as a member of the second class designated in the will--with her brother, Fred B. III and her sister, Agnes, without any restriction, condition or limitation whatever.

The will, as we have said, provides expressly that the right of each of the testator's children to receive income shall cease upon the child's death. Furthermore, the will contains a gift-over upon the death of a child. The second sentence of subparagraph (c) (the income-giving paragraph) provides in language simple and clear that: "In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue," that is, upon the happen-

ing of the named event, the share that the deceased child of testator received immediately before his or her death--"shall be paid to his or her issue." The third sentence provides for the death of a child of testator without issue, and directs that such child's share shall go to the testator's surviving child or children, and the issue per stirpes of the testator's deceased children.

The will does not direct that the right of a grandchild to receive income shall terminate at the grandchild's death; nor does it contain any gift-over of a share of income that vested in a grandchild in his or her lifetime.

The second and third sentences of subparagraph (c) (the income-giving paragraph) provide only for the termination of a child's right to receive income; both sentences refer only to the death of a child. Even if it should be seen fit to infer that the testator intended a grandchild's share of income to cease at her death--that is, not to be payable to her estate, or to her legatee--Mary Elizabeth's share still cannot be payable to her Uncle William and to her brother and sister (as held by the trial court) because the will provides no gift-over of Mary Elizabeth's share of income. Thus, if Mary Elizabeth's right to receive a share of the income

terminated at her death, such income would fall into the residuary clause of the will (which obviously was not the testator's intention) or it would be held in limbo until the corpus is distributable 21 years or more in the future (which obviously was not the testator's intention).

In the fourth paragraph of his will, the testator disposed of the residue of his estate as follows:

"FOURTH: All of the balance of my estate I give, devise and bequeath to be equally divided among my three children. In the event that any of my children shall predecease me, leaving issue surviving, then I direct that the share of the child so dying shall go to his or her issue."

Manifestly, this clause shows that the testator did not intend to die intestate as to any portion of his estate.

In order to reach the same conclusion as that of the chancellor below, we must add a sentence that does not appear in the will: "In the event that any of my grandchildren shall die leaving no issue surviving him or her, then the share of the income of such grandchild so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue." Without such a sentence, there is no termination, and no gift-over of Mary Elizabeth's share of income at her death, with or without issue.

It needs no argument or authority to show that we have no right to add such a sentence which the testator did not use. Had he intended to make such a provision, he could have readily done so at the time when he made provision for a gift-over upon the death of any of his children who might die "leaving no issue surviving him or her."

We, therefore, hold that Mary Elizabeth Sitterding's vested right to receive income from the trust did not terminate at her death; but was a property right, which she could and did bequeath under her will.

Appellees argue that the testator, by directing that the trust endure 21 years beyond the death of all his children, and by using the words "issue" and "per stirpes" in the trust clause, manifested his intention to limit the benefits of the trust strictly to future generations of his issue, mindful of the rule against perpetuities. This is merely speculation or conjecture; and neither speculation nor conjecture may be substituted for the intention of the testator clearly shown by the language he employed.

We have confined our consideration of the will to the question: Who are the beneficiaries entitled to the present enjoyment of the income from the trust fund? The immediate distribution

of the principal is not before us. The time for its distribution is set in subparagraph (d) of the trust clause, that is, 21 years after the death of the last surviving child of the testator.

The decree of the trial court is reversed and set aside, and a final decree will be here entered, adjudging that the issue of Fred B. Sitterding, Jr., namely, Fred B. Sitterding, III, Mary Elizabeth Sitterding and Agnes Sitterding Maiorano, received under the will of Fritz Sitterding a vested interest in a share of the income of the trust created under the said will, and that Mary Elizabeth Sitterding's right to receive 1/3 of 1/2 of said income did not terminate at her death; but was a property right which she could and did bequeath to Cecelia Anne Maiorano. It follows that Cecelia Anne Maiorano, Fred B. Sitterding, III, and Agnes Sitterding Maiorano are each entitled to the present right and possession of 1/3 of 1/2 of the said income payable quarterly.

Reversed and final decree.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I.

Fritz Sitterding's Surviving Trustee

v.

Frederick B. Sitterding, III,
and others

OPINION OF HONORABLE WILLIAM A. MONCURE, JR.

Dated April 3, 1974

A brief recital of the facts will suffice, inasmuch as the legal questions arise from the wills of Fritz Sitterding (1928) and Mary Elizabeth Sitterding (1964), a daughter of Fred B. Sitterding, Jr., who had died in 1961. Agnes, the only daughter of Fritz, the testator, had died in 1958, intestate, unmarried and without issue. The first suit arising from the will of Fritz, the testator, sprung from the will of Mary Elizabeth, in which she bequeathed to her niece, Cecelia Anne Maiorano, whatever interest or right she may have, or subsequently acquire, or become entitled to, under the will of her grandfather, Fritz Sitterding.

The Supreme Court, in Gasque, Executor of Mary Elizabeth Sitterding v. Frederick B. Sitterding, III, and others (1967), 208 Va. 206, determined that upon the death of Fred B. Sitterding, Jr., the will of his father ("the testator") created " a new class" to receive Fred, Jr.'s share of the income, which class the court described as "his issue", and that Mary Elizabeth took a "vested" interest in the share, which her father had been receiving, and that

Mary Elizabeth owned an income interest in her grandfather's trust estate, which she could dispose of by her will, and that under Mary Elizabeth's will Cecelia Anne Maiorano (now Valentine) received the vested income of Mary Elizabeth Sitterding in Fritz's trust estate. It happened that Cecelia was, and is, a niece of Mary Elizabeth, being a daughter of her sister, Agnes Sitterding Maiorano.

Since that decision(in 1967), William Sitterding died on October 2, 1972, without issue. The testator's will provided for the devolution of the income from the trust estate upon the deaths of his children, with issue and without issue. Agnes had died in 1958, intestate, and without issue. Fred, Jr., died in 1961, survived by Fred, III, now living, Agnes Sitterding Maiorano, now living, and Mary Elizabeth, the above mentioned testatrix, whose death occurred in 1964.

The Supreme Court was considering the following sentences from the Third paragraph of the will (Third (c) in the opinion):

> "I direct the said trustees to divide the income from the said trust estate quarterly among my three children. In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue."

The child's share then under consideration by the court was that of Fred, Jr., (who had died in 1961), and from which Mary Elizabeth, the testatrix, had been receiving her one-third portion, which the court declared to have been vested in Mary Elizabeth, which, by her will, passed to Cecelia Anne.

The next sentence in the same paragraph (c) regarding the death of a child without issue is as follows:

"In the event that any of my children shall die leaving no issue surviving him or her, then the share of the income of such child so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue."

In the first quoted clause, the share passing to a child survived by issue shall be paid to such issue. The court held that a class was thereby created, namely Fred, Jr.'s issue, upon the death of Fred, Jr. Upon the latter's death, his daughter Mary Elizabeth had become vested in right and possession of an interest in the income formerly receivable by her father, as a member of the second class along with her brother, Fred, III, and her sister, Agnes, "without any restriction, condition or limitation whatever", to use the language of the opinion.

The last quoted sentence from the Third paragraph provides that upon the death of a child without issue the share of that child shall pass to the testator's surviving child or children, and the issue per stirpes of any child who may have died leaving issue. Mr. Justice Spratley declared that the will does not direct that the right of a grandchild to receive income shall terminate upon the death of that grandchild, and that the will does not contain a gift-over of a share of the income that had vested in a grandchild in his or her lifetime, and that her share cannot be payable to her brother and sister, Fred, III, and Agnes, because the will did not provide a gift-over of her share upon her death. It can therefore be said that the language of this last quoted sentence does not provide or require a gift-over upon the death of a child of the testator, the only essential difference in the two sentences being the survival or non-survival of issue. Again,

the new class has been affirmed or re-created with the same component members, Fred, III, Agnes S. Maiorano, and Cecelia Anne Valentine (nee Maiorano), as the legatee of Mary Elizabeth's share.

Mr. Justice Spratley said (page 213):

> "The immediate distribution of the principal is not before us. The time for its distribution is set in subparagraph (d) of the trust clause, that is, 21 years after the death of the last surviving child of the testator."

The language of the will referred to in the quotation is:

> "At the expiration of the period of twenty-one years after the death of the last surviving of my children, I direct that the trust fund be divided per stirpes among the issue of my children."

He stated (on page 211) that the above quoted sentence from the will directed (a) the time when, and (b) to whom the principal of the trust fund should be paid. Also, that the disposition of the income was quite different from the "disposal" of the principal, both as to the time of distribution and as to the beneficiaries. The declaration by the learned jurist that the death of Fred B., Jr., created a new income-receiving class, i. e., "his issue" (referring to Fred B., Jr.) followed the statement that the distribution of the income should be "quite differently" from that of the principal as to both time and beneficiaries.

The opinion of the Supreme Court held that the will was clear and unambiguous as to the right to receive income, and that consideration of rules of construction would be unnecessary. It may be said, with considerable force, that the distribution of the principal is even less subject to artificial rules of construction.

The testator had not once, but twice, declared in Article Third in extremely clear and plain language that the trust fund should be held "until the expiration of twenty-one years after the death of the last survivor of" his children. As in the case of the income, as declared in the opinion, neither construction nor evidence is needed to ascertain the intent of Mr. Sitterding. See Boyd v. Fanelli (1957), 199 Va. 357. As stated, he specified the duration of the trust estate and to whom it should be distributed upon its termination (page 211). It should not be overlooked that the trust estate was only one-ninth of the gross estate. It can be conjectured that Mr. Sitterding desired to safeguard his descendants from want by assuring to them a trust estate for the period permitted by the Rule against Perpetuities.

The Supreme Court, noting that the immediate distribution of the principal was not before the court, declined to determine to whom the principal of the trust should be distributed, contenting themselves with the observation that the time for its distribution would be 21 years after the death of the last surviving child of the testator. I cannot draw any conclusion therefrom that the court felt that the ultimate distribution of the corpus should follow the distribution which it made of income. There is nothing in the opinion to indicate that the court's declination to determine the disposition of the corpus was, or could have been, influenced by any consideration of the tax consequences of such determination.

The joint and separate answers of Cecelia Anne and her mother, Agnes S. Maiorano, and Michael J. Maiorano (husband of Agnes and father of Cecelia Anne) allege that Agnes is now

entitled to a vested interest in one-third of the income of the trust estate and one-third of the principal upon the distribution thereof, at twenty-one years following the death of William Sitterding. Their answer further alleges that Cecelia Anne is entitled to the same interest, as a legatee of Mary Elizabeth. Mary Elizabeth's executor, in his answer, alleges that Fred, III, Agnes, and Cecelia Anne are each entitled to one-sixth (1/6th) of the income formerly payable to William (making one-third in all to each of them), and that each has a vested one-third interest in the entire principal of the trust, but he does not allege any date for its distribution. The joint and several answers of Frederick B., III, his wife and adult children pray that Cecelia Anne has no interest in that portion of the income formerly paid to William.

As above stated, it appears that Cecelia Anne is entitled to one-third of the income formerly received by her great-uncle, William, which will be added to the portion receivable by her as a legatee of her aunt, Mary Elizabeth, making one-third of all of the income of the trust estate under the proper construction of the will of the testator and under the decision of Gasque. It further appears that Gasque extended Mary Elizabeth's income interest, hence Cecelia Anne's, to the termination. The income interests, all of them, must terminate when the trust estate is divided, 21 years after William's death.

To repeat for emphasis, the testator said twice in Article Third, the second and fourth paragraphs (both unnumbered), that his trustees should hold his trust estate until the expiration "of twenty-one years after the death of the last survivor of" his

children, at which time it should be divided. Thus, he pinpointed the time for the termination of the trust estate. In the fourth paragraph he directed how the trust should be distributed, to-wit: "I direct that the said trust fund shall be divided per stirpes among the issue of my three children." I believe that the distribution of the trust estate may not take place until twenty-one years after the death of William Sitterding, at which time it shall be distributed among the issue of his three children, who will be the issue of Fred B. Sitterding (the only one to leave issue), as they may then be determined, per stirpes. See §64.1-3 of the Code of Virginia of 1950, as amended. If all present parties to this suit were then alive, the estate would be distributed in equal parts to Fred B. Sitterding, III, and Agnes Sitterding Maiorano, one-half to each. While Cecelia Anne is a descendant, along with the children of Fred, III, of the testator, she could not share in the principal during the lifetime of her mother.

To quote from the opinion at page 213:

> "We have confined our consideration of the will to the question: Who are the beneficiaries entitled to the present enjoyment of the income from the trust fund? The immediate distribution of the principal is not before us. The time for its distribution is set in sub-paragraph (d) of the trust clause, that is, 21 years after the death of the last surviving child of the testator." (Emphasis supplied).

Judge Lamb, in his Virginia Probate Practice (1957), 243-246, declares the "early vesting rule" to be applicable in Virginia where there is no ambiguity, citing 18 cases beginning with Hansford v. Elliott, 9 Leigh 79, and through

Voigt v. Selander, 190 Va. 638. The cases mentioned by him include Rennolds v. Branch, 182 Va. 678, and Disney v. Wilson, 190 Va. 445. To emphasize the overwhelming importance of testamentary intent Judge Lamb continues (p. 245):

> "The waters seem at first blush a bit troubled, however, by Driskill v. Carwile, 145 Va. 116; Callis v. Ripley, 161 Va. 472; and Griffin v. Central Natl. Bk., 194 Va. 485.
>
> "But, after all, these three cases do not overthrow the rule of early vesting. The court found, in the particular wording of each of these wills, testamentary intent to postpone vesting 'clearly indicated in the will', thus bringing the cases within the qualification of the rule of early vesting. The Court of Appeals found the wills to be free from ambiguity. This being found, neither the rule of early vesting, nor any other rule of construction was needed; and none was invoked." (His emphasis).

The foregoing extract from Judge Lamb is cited to show that no rule of construction, specifically that of "early vesting", is superior to or overrides testamentary intent, "clearly indicated in the will".

Judge Lamb continued (page 246) by stating that the early vesting rule may be applied only where the testamentary language is ambiguous, and that Voigt removed any conflict with Harris v. Harris, 166 Va. 351, by its finding (p. 646) that the basis of Harris was the presence of clear testamentary intent that the remaindermen constituted a class.

The decree should make this opinion a part of the record.

W. A. Duckner

April 3, 1974.

DECREE ADJUDICATING THE ISSUES

Filed July 2, 1974

This cause, which has been regularly matured, set for hearing and docketed, came on to be again heard upon the bill of complaint and exhibits therewith, the answers of Frederick B. Sitterding, III, Alma A. Sitterding, Frederick B. Sitterding, IV, Patricia Ann Sitterding, Agnes Sitterding Maiorano, Michael J. Maiorano, Cecelia Anne Maiorano Valentine and Thomas N. Gasque, Executor of the Estate of Mary Elizabeth Sitterding, deceased, and the answer of Lillian Cecelia Sitterding, an infant, and the unborn defendants by John W. Edmonds, III, their guardian ad litem, and upon the evidence heard in open court and was argued by counsel;

And it appearing that Lillian Cecelia Sitterding has now attained her majority and is represented before this Court by counsel, John W. Edmonds, III, is relieved of further duties as guardian ad litem for said Lillian Cecelia Sitterding;

Upon consideration whereof, it appearing that Fritz Sitterding died in the City of Richmond, Virginia, on April 4, 1928, and by section THIRD of his will, which was admitted to probate in this court on April 30, 1928, at which time Fred B. Sitterding, Jr., and William Sitterding, who are now deceased, and the complainant, Virginia Trust Company, qualified as Executors and Trustees, directed that $300,000 be set aside as a trust fund and be administered as follows:

> "The said Trustees shall hold the said trust fund during the lifetime of my three children, and until the expiration of twenty-one years after the death of the last survivor of my said three children.

"I direct the said Trustees to divide the income from the said trust estate quarterly among my three children. In the event of the death of any one of my children leaving issue, the share of the income going to such child shall be paid to his or her issue. In the event that any of my children shall die leaving no issue surviving him or her, then the share of the income of such child so dying shall go to my surviving child or children, and the issue per stirpes of any who have died leaving issue.

"At the expiration of the period of twenty-one years after the death of the last survivor of my children, I direct that the said trust fund shall be divided per stirpes among the issue of my three children."

And it appearing that Fritz Sitterding left three children surviving him, namely, William Sitterding, who died on October 2, 1972, without issue; Frederick B. Sitterding, Jr., who died in 1961 leaving three children, to-wit: Frederick B. Sitterding, III, Agnes Sitterding Maiorano and Mary Elizabeth Sitterding, and no issue of deceased children; and Agnes Sitterding, who died in 1959 without issue;

And it further appearing that Mary Elizabeth Sitterding, who was a child of Frederick B. Sitterding, Jr., who died in 1961, died on March 16, 1964, and by her will probated in this court on March 24, 1964, at which time Thomas N. Gasque qualified as Executor, purported to bequeath to the defendant Cecelia Anne Maiorano Valentine her interest in the trust created by the will of Fritz Sitterding, but a question having been raised as to whether, at the death of William Sitterding, a part of the share in the income theretofore payable to him became payable to Cecelia Anne Maiorano Valentine as beneficiary under the will of Mary Elizabeth Sitterding and whether certain attorneys' fees should be paid out of the principal of the trust, the complainant has brought this suit seeking the aid and guidance of this court;

And further upon consideration whereof, the court, for the reasons set forth in its opinion dated April 3, 1974, which is hereby made a part of the record, being of the opinion that (i) an interest in the income from the trust created by section numbered THIRD of the will of Fritz Sitterding has vested in Cecelia Anne Maiorano Valentine, and (ii) no interest in the principal will vest until twenty-one (21) years after the death of the last to die of the three children of Fritz Sitterding, at which time it will be distributed among the issue of Frederick B. Sitterding, Jr., the only one of said children leaving issue, and being of the opinion that the attorneys' fees and expenses due McGuire, Woods & Battle in the amount of $6,124.62 for services in connection with estate tax deficiencies assessed against the estate of Mary Elizabeth Sitterding and Cecelia Anne Maiorano Valentine and other transferees of said estate on account of the inclusion in the estate of an interest in the trust should be paid out of the principal of the trust, doth so ADJUDGE, ORDER and DECREE;

And it is further ADJUDGED, ORDERED and DECREED that at the death of William Sitterding, Cecelia Anne Maiorano Valentine, as beneficiary under the will of Mary Elizabeth Sitterding, became entitled to receive one-third of the share in the income which William Sitterding had been receiving from the trust created by the section numbered THIRD of the will of Fritz Sitterding, until 21 years after the death of William Sitterding; that at each quarterly distribution thereof, the income of said trust be divided in equal shares among Frederick B. Sitterding, III, Agnes Sitterding Maiorano, and Cecelia Anne Maiorano Valentine, their personal representatives

and assigns; that, at the expiration of twenty-one (21) years after the death of William Sitterding, the principal of the trust be divided, per stirpes, among the issue of Frederick B. Sitterding, Jr., who then survive; and that the sum of $6,124.62 be paid by the Trustee out of the principal of the trust to McGuire, Woods & Battle in satisfaction of the attorneys' fees and expenses due said attorneys in connection with the handling of the estate tax deficiency claim asserted against the Estate of Mary Elizabeth Sitterding, deceased, and Cecelia Anne Maiorano Valentine, Transferee of said Estate;

It is ORDERED that the complainant pay $440.00 to John W. Edmonds, III, for his services as guardian ad litem for Lillian Cecelia Sitterding and the unborn defendants; $1,100.00 to Fielding L. Williams for his services in bringing and conducting this suit; $21.00 to Fielding L. Williams to reimburse him for costs advanced by him; and do further pay the costs payable to the clerk of this court, all of said payments to be made out of the principal of the trust.

To the action by the court in holding that the principal of the trust has not vested, the defendants Cecelia Anne Maiorano Valentine, Agnes Sitterding Maiorano, Michael J. Maiorano and Thomas N. Gasque, Executor of the estate of Mary Elizabeth Sitterding, by counsel, objected and excepted.

And the objects for which this suit was brought having been fully accomplished and nothing further remaining to be done herein, it is ORDERED that this cause be stricken from the docket and the papers placed amongst the ended causes, properly indexed.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Filed July 5, 1974

TO: HONORABLE EDWARD G. KIDD,
Clerk of the Circuit Court of the
City of Richmond, Division I
Courts Building,
Richmond, Virginia

Notice of Appeal and Assignments of Error is hereby given by the defendant, Thomas N. Gasque, Executor of the Estate of Mary Elizabeth Sitterding, deceased, who appeals from part of a final decree adjudicating the issues, entered by the Circuit Court of the City of Richmond, Division I, entered on July 2, 1974, which part of said Trial Court decreed that no part of the principal of the trust involved had vested and "that, at the expiration of twenty-one (21) years after the death of William Sitterding, the principal of the trust, be divided, per stirpes, among the issue of Frederick B. Sitterding, Jr. who then survive", against the defendants Agnes Sitterding Maiorano, Michael J. Maiorano, Cecelia Anne Maiorano Valentine and Thomas N. Gasque, Executor of the Estate of Mary Elizabeth Sitterding, deceased, signifies his intention of applying for a Writ of Error to the Supreme Court of Virginia as provided by law.

ASSIGNMENTS OF ERROR

1. That part of the Final Decree which decrees that no interest in the principal of the trust involved will vest until twenty-one (21) years after the last to die of the three children of Fritz Sitterding, as such is contrary to the intent of Fritz Sitterding as expressed in his will, and is contrary to establish applicable Rules of Construction of a will; thus contrary to law.

2. That part of the Final Decree which decrees that, at the expiration of twenty-one (21) years after the death of William Sitterding, the principal of the trust be divided, per stirpes, among the issue of Frederick B. Sitterding who then survive as it is contrary to the intent of the testator Fritz Sitterding as expressed in his will and which is contrary to applicable established rules of construction of a will, thus contrary to law.

3. That the Court erred in failing to find and decree that the principal, like the interest from the said trust is vested in the grandchildren of the testator or their legatees, and that twenty-one (21) years after the death of William Sitterding the principal of said trust be divided among Fritz Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine as legatee of Mary Elizabeth Sitterding, deceased, or their legatees or heirs as the testator intended clearly expressed in his will.

THOMAS N. GASQUE, EXECUTOR OF THE ESTATE
OF MARY ELIZABETH SITTERDING, DECEASED

By Travis W. Poole

Travis W. Poole
601 Mutual Building
Richmond, Virginia 23219
Counsel

CERTIFICATE

I certify that a copy of the Notice of Appeal and Assignments of Error was mailed to Fielding L. Williams, Esquire, Williams, Mullen & Christian, Counsel of record for the plaintiff, United Virginia Bank Building, Richmond, Virginia, 23219; Alexander W. Neal, Jr., Esquire, McGuire, Woods & Battle, 1400 Ross Building, Richmond, Virginia 23219; John W. Edmonds, III, Esquire, Mays, Valentine, Davenport & Moore, 1200 Ross Building, Richmond, Virginia 23219, and Nicholas A. Spinella, Esquire, Spinella, Spinella and Owings, 5421 Patterson Avenue, Richmond, Virginia 23226, on July 3, 1974.

Travis W. Poole

Travis W. Poole

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

VIRGINIA TRUST COMPANY,
Surviving Trustee Under the
Will of Fritz Sitterding, deceased, Complainant,

v.

FREDERICK B. SITTERDING, III, et als, Defendants.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Filed July 11, 1974

TO: HONORABLE EDWARD G. KIDD,
Clerk of the Circuit Court of
The City of Richmond, Division I
Courts Building
Richmond, Virginia 23219

Pursuant to Rule 5:6, Notice is hereby given that the defendants, CECELIA ANNE MAIORANO VALENTINE, AGNES SITTERDING MAIORANO and MICHAEL J. MAIORANO, appeal from a portion of the final Decree Adjudicating The Issues, entered by the Circuit Court of the City of Richmond, Division I, on July 2, 1974, and sets forth the following Assignments of Error:

(1) That portion of the Court's Final Decree entered on July 2, 1974, holding that the principal of the trust under the Will of Fritz Sitterding has not vested, is contrary to law. The Court erred in finding that no interest in the principal of said trust will vest until twenty-one (21) years after the death of the last to die of the three children of Fritz Sitterding, at which time it will be distributed among the issue of Frederick B. Sitterding, Jr., the only one of said children leaving issue and that, at the expiration of twenty-one (21) years after the death of William Sitterding, the principal of the trust be divided, per stirpes, among the issue of Frederick B. Sitterding, Jr., who then survive.

(2) The Court erred in failing to Adjudge, Order and Decree that Cecelia Anne Maiorano Valentine holds a vested interest in the principal of the trust created under the Will of Fritz Sitterding by virtue of her legacy under the Will of Mary Elizabeth Sitterding.

(3) The Court erred in failing to find and decree that Fred B. Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine hold vested interests in the principal of the trust created under the Will of Fritz Sitterding.

(4) The Court erred in failing to Adjudge, Order and Decree that the death of William Sitterding on October 2, 1972, did not create a new class, since he died, without issue, thereby causing the vested interest in the trust principal held by Fred B. Sitterding, III, Agnes Sitterding Maiorano and Cecelia Anne Maiorano Valentine to become absolute and to be distributed to them or their heirs or legatees twenty-one (21) years from the death of William Sitterding in three equal shares.

(5) A transcript of the evidence is to be filed hereafter.

CECELIA ANNE MAIORANO VALENTINE,
AGNES SITTERDING MAIORANO and
MICHAEL J. MAIORANO

By: Nicholas A. Spinella
Nicholas A. Spinella, Of Counsel

Nicholas A. Spinella
Spinella, Spinella & Owings
5421 Patterson Avenue
P. O. Box 8596
Richmond, Virginia 23226

PLAINTIFF EXHIBIT #1
CS140328

Filed: Oct 24, 1973

JUDGE

FRITZ SITTERDING (died 1928)

GNES SITTERDING
died 1958, without issue)

WILLIAM SITTERDING
(died 1972, without issue)

FRED B. SITTERDING, JR.
(died 1961)

ARY ELIZABETH SITTERDING
died 1964, without issue)

AGNES SITTERDING MAIORANO

CECELIA MAIORANO VALENTINE

FRED B. SITTERDING, III

RED B. SITTERDING, IV

LILLIAN C. SITTERDING MEYER
~~(an infant~~)

PATRICIA ANNE SITTERDING HAMLET

PLAINTIFF EXHIBIT # 2
CS140328

Filed: October 24, 1973
JUDGE

In connection with the audit of the Estate tax return of the Estate of Mary Elizabeth Sitterding, the Internal Revenue Service proposed to include, in the gross estate, income and remainder interests in the testamentary trust under the will of Fritz Sitterding. According to the Internal Revenue Service computations, such interests had a total value as of the decedent's death of $652,982.75. The taxable estate, as revised by the Internal Revenue Service, was $653,957.06. The revised gross estate tax was $199,584.97, and the revised net estate tax was $133,741.19. After reduction for state death tax credits, the proposed estate tax deficiency would be $115,071.25. The statute of limitations having apparently run with respect to the Executor of the Estate, the Internal Revenue Service commenced assessment proceedings against the beneficiaries as the transferees of the property of the Estate in an amount equal to the total amount shown by the records of the Internal Revenue Service as having been received by the transferees from the Estate. The tax deficiency was settled for $40,500.00, plus interest.

PLAINTIFF EXHIBIT #4.
CS140328

Filed: Feb 24, 1973

Frederick

JUDGE

2)

EDULE

ORM 2614 (TRANSLUCENT) (JULY 1963)	U. S. TREASURY DEPARTMENT ... ESTATE TAX	1

E

ate of Mary Elizabeth Sitterding

ABLE ESTATE ~~[illegible]~~ as shown in return	$ (13,999.30)
EASES (DECREASES) TO TAXABLE ESTATE	
) Stocks and bonds increased	549.02
) Mortgages, notes and cash decreased	(9.32)
) Insurance increased	2,000.00
) Miscellaneous property increased	652,982.75
) Administrative expenses decreased	12,137.91
) Charitable deduction decreased	296.00
ABLE ESTATE AS REVISED	$ 653,957.06
GROSS ESTATE TAX	$ 199,584.97
CREDIT FOR STATE DEATH TAXES SUBSTANTIATED	None
GROSS ESTATE TAX LESS CREDIT FOR STATE DEATH TAXES	$ 199,584.97
CREDIT: Tax on prior transfers - Schedule 2	65,843.78
ESTATE TAX LIABILITY	$ 133,741.19
ESTATE TAX ASSESSED:	None
GROSS DEFICIENCY (OVERASSESSMENT)	$ 133,741.19
ADDITIONAL CREDIT FOR STATE DEATH TAXES ALLOWABLE, IF SUBSTANTIATED	18,669.94
NET DEFICIENCY (OVERASSESSMENT)	$ 115,071.25

Frederick Sitterding, IV, Transferee (5)

Estate of Mary Elizabeth Sitterding Schedule 1-A

Explanation of Adjustments Cont'd

Factor for present value of remainder interest 21 years following death of William H. Sitterding, age 75	.37995	
Present value of decedent's share of corpus ($2,198,003.08 ÷ 3)	X $732,667.69	
Present value of remainder interest in one-third of corpus 21 years after the death of William H. Sitterding		278,377.09
Total increase in miscellaneous property		$ 652,982.75

	Return	Determined
(e) Administration Expenses		
Item B-1	$11,350.41	$ None
Item B-2	787.50	None
Total	$12,137.91	$ None
Decrease	12,137.91	
	$ None	

It is determined that amounts claimed for executor's commissions and attorney's fees claimed by the executor are not allowable deductions because it has not been established that such fees will not be taken as a bequest under the terms of the will. Additionally, the claimed amounts have not been paid.

	Return	Determined
(f) Charitable Deduction		
Item 5	$ 296.00	$ None

It is determined that Item 5 consisting of tangible personalty was given to Cathedral Central High School by heirs and not by the decedent. Accordingly, the deduction is not allowed.

Frederick Sitterding, IV, Transferee (4)

Estate of Mary Elizabeth Sitterding Schedule 1-A

Explanation of Adjustments Cont'd

New Items 10, 11, and 12 represent the values on the date of death of Mary Elizabeth Sitterding's rights to income from and a remainder interest in a testamentary trust created by Frederick B. Sitterding, also known as Fritz Sitterding, who died in 1928. The decedent acquired a one-sixth interest in trust income on the death of her father, Frederick B. Sitterding, Jr., who was one of three original beneficiaries. If the remaining living son of Fritz Sitterding, William H. Sitterding, leaves no issue, one-third of income for 21 years following his death and one-third of the corpus at the end of that period is distributable to the beneficiary designated by Mary Elizabeth Sitterding in Article XII of her will. Accordingly, it is determined that the present values of said interests are includible in the gross estate. The values of Items 10, 11, and 12 are computed as follows:

Value of assets in trust under will of Fritz Sitterding:		$2,198,003.08
Item 10: Right to one-sixth of trust income during life of William H. Sitterding, age 75, using factor of .21752 times one-sixth of $2,198,003.08		$ 79,684.94
Item 11: Present value of right to income from one-third of corpus for 21 years following the death of William H. Sitterding computed as follows:		
Factor for income rights for 21 years	.514429	
Factor for remainder interest at death of William H. Sitterding, age 75	X .78248	
Factor for present value of income rights for 21 years following death of William H. Sitterding, age 75	.40253	
Present value of decedent's share of corpus ($2,198,003.08 ÷ 3)	X $732,667.69	
Present value of income rights for 21 years in one-third of the corpus		294,920.72
Item 12: Present value of remainder interest in one-third of the corpus 21 years following the death of William H. Sitterding computed as follows:		
Factor for remainder interest following right to income for 21 years	.485571	
Factor for remainder interest at death of William H. Sitterding, age 75	X .78248	

Frederick Sitterding, IV, Transferee (3)

Estate of Mary Elizabeth Sitterding Schedule 1-A

Explanation of Adjustments

		Return	Determined
(a)	Stocks and Bonds		
	Item 1 40 sh. Morgan Guaranty Trust	$ None	$ 40.00
	Item 3 816 sh. Va. Electric & Power	None	212.16
	Item 5 125 sh. Air Products & Chem.	6,093.75	6,215.61
	Item 7 500 sh. First & Merch. Nat. Bk.	26,625.00	26,800.00
	Total	$ 32,718.75	$ 33,267.77
	Increase	549.02	
		$ 33,267.77	

Accrued cash dividends on Items 1 and 3 are held to be includible in the gross estate. The adjustment to Item 5 consists of a two percent stock dividend which is includible in the gross estate. Item 7 is adjusted to reflect the ex-dividend value as of the date of death.

		Return	Determined
(b)	Mortgages, Notes and Cash		
	Item 2	$ 9,303.54	$ 9,294.32
	Decrease	(9.32)	
		$ 9,294.22	

Interest on a savings account at Virginia Trust Company is adjusted to reflect the amount accrued as of the date of death.

		Return	Determined
(c)	Insurance		
	Increase	$ None	$ 2,000.00
		2,000.00	
		$ 2,000.00	

It is determined that the value of a group life insurance policy with Connecticut General Life Insurance Company is includible in the gross estate because the decedent possessed at her death incidents of ownership consisting of the right to change the beneficiary.

		Return	Determined
(d)	Miscellaneous Other Property		
	Item 10	$ None	$ 79,634.94
	Item 11	None	294,920.72
	Item 12	None	278,377.09
	Total	$ None	$652,982.75
	Increase	652,982.75	
		$652,982.75	