Trusts -- United States Savings Bonds -- Resulting or Constructive Trust on Proceeds in the Hands of Surviving Co-owner

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practice would lessen the number of insulations is unquestionable, and this in itself would be a laudable result in view of the fact that in every dual negligence situation a wrongdoing defendant has actually caused harm to an innocent plaintiff. At the same time, and probably more important in the long run, exclusive use of the foreseeability test would eliminate such confusion and inconsistency as that appearing in cases since 1954.

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Trusts—United States Savings Bonds—Resulting or Constructive Trust on Proceeds in the Hands of Surviving Co-owner

In the recent case of Tanner v. Ervin a husband and wife jointly purchased United States Savings Bonds, Series E. The bonds were issued in their names in the alternative. Subsequently they entered into a separation and property agreement wherein for a valuable consideration the wife transferred her interest in the bonds to her husband. Thereafter he died with the bonds in his possession but without having changed the registration of the bonds to his name alone.

The wife brought an action against the deceased’s executor claiming that under the treasury regulations she, as the surviving co-owner of the bonds, was the sole owner of the bonds and their proceeds. The trial court agreed with the wife’s contention that the treasury regulations were controlling.

On appeal, the North Carolina Supreme Court by a four-to-three decision reversed. The court held that while only the surviving co-owner might cash the bonds, this did not prevent a state court from directing the wife to do so and impressing the proceeds therefrom with a resulting trust for the benefit of the deceased’s executor.

Although the pertinent treasury regulation states in effect that upon the death of one co-owner the surviving co-owner is alone entitled to receive the proceeds from the government, most courts that have ruled on the issue have felt free to reach what they considered the equitable disposition of the proceeds. The reasoning behind this, as the court pointed out in Tanner v. Ervin, is that when the bonds are cashed,

2 By the property agreement the wife received two Orange Drink stores in Charlotte and the home in which she and her husband had lived; the husband received a 22,467.00 dollar savings account and two checking accounts totaling 24,367.45 dollars in addition to the bonds that had a present value of 17,323.00 dollars.
3 "If either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the surviving coowner will be recognized as the sole and absolute owner of the bond and payment or reissue, as though the bond were registered in his name alone, will be made only to such survivor." 31 C.F.R. § 315.45 (Supp. 1945) (as amended 31 C.F.R. § 315.61 (1959)). Substantially identical provisions and regulations apply to all the bonds here under consideration.
the contract between the federal government and the purchasers is completely executed and the federal government has no further interest therein. Thus notwithstanding the treasury regulations, numerous courts have ordered the registered co-owner to cash United States Savings Bonds and hold the proceeds in trust for the true owner.

In the principal case the court labeled the trust imposed upon the proceeds of the bonds a resulting trust. A resulting trust is one which "arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the persons taking or holding the property should have the beneficial interest therein and where the inference is not rebutted and the beneficial interest is not otherwise effectively disposed of."

The facts of the principal case might be interpreted as giving rise to a resulting trust on the inference that, in view of the terms of the separation agreement as a whole, neither the husband nor the wife intended her retention of the record interest in the bonds to constitute a beneficial interest.

Several courts when faced with facts similar to those in Tanner v. Ervin have used a constructive trust to reach the desired result. A constructive trust is defined as "a remedial device of the court of equity for taking property from one who has acquired it or retains it wrongfully and vesting title in another in order to prevent unjust enrichment." Although this type of trust is usually thought of as a "fraud-rectifying" trust, the element of fraud is by no means essential to it. At least two

4 In re Hendrickson's Estate, 156 Neb. 463, 56 N.W.2d 711 (1953); Katz v. Driscoll, 86 Cal. App. 2d 313, 322, 194 P.2d 822, 828 (1948), where the court said, "The purpose of the treasury regulations is to protect and hold the federal government immune from any attack on its performance of the contract as made in the bond. In other words, they were designed to prevent the implication of the government in any disputes concerning ownership of the bonds, protect it from any suits which might result from payment to a designated beneficiary or coowner, and, for the purpose of promoting sales, guarantee the performance of the government in strict accord with the contract."


4 RESTATEMENT (SECOND), TRUSTS, Introductory Note § 404, at 322 (1959). For examples of resulting trusts in North Carolina see Kelly Springfield Tire Co. v. Lester, 190 N.C. 411, 130 S.E. 45 (1925); Oakhurst Land Co. v. Newell, 185 N.C. 410, 117 S.E. 341 (1923); Harris v. Harris, 178 N.C. 7, 100 S.E. 125 (1919); Norcum v. Savage, 140 N.C. 472, 53 S.E. 289 (1906); see generally Edwards and Van Hecke, Purchase Money Resulting Trusts in North Carolina, 9 N.C.L. REV. 177 (1931); RESTATEMENT (SECOND), TRUSTS § 440 (1959).


4 Petersen v. Swan, 239 Minn. 96, 57 N.W.2d 842 (1953), which held that where a wrongdoer uses money of another to purchase United States Savings Bonds in
North Carolina cases have sanctioned constructive trusts notwithstanding the fact that no actual fraud was proved. In *Sorrell v. Sorrell*\(^{10}\) the evidence tended to show a conveyance of land by an uncle to his nephew pursuant to a general scheme for working out and liquidating the indebtedness owed by the uncle. Hence the court found a confidential relationship existed between the parties and impressed a constructive trust upon the land even though there were neither allegations nor evidence of fraud. In *Crew v. Crew*\(^{11}\) the plaintiff had arranged for his brother to manage his land while plaintiff was serving in the armed forces. When he returned his brother refused to give up the land. The court held that the question of whether a confidential relationship existed was one for the jury, but intimated that if one were found to exist, the mere breach of it would constitute grounds for impressing a constructive trust.

In the principal case the court could have utilized the above cases and declared a constructive trust. The wife in the principal case was in a confidential relationship with her husband and breached her property settlement agreement with him by claiming the ownership of the bond proceeds.

It should be noted, however, that the same result would have been reached had the court declared a constructive trust instead of a resulting trust. Either method would place the proceeds from the bonds in the husband's estate.\(^{12}\)

In *Tanner v. Ervin* the court was faced squarely with the question: Would the wife, the registered co-owner of the bonds, be unjustly enriched if she were allowed the proceeds therefrom? The majority of the court answered affirmatively, reasoning that it would be unfair to allow the wife to retain the benefits she had previously relinquished for valuable consideration.

The dissenting members of the court thought that equity should not act to give the proceeds of the bonds to the executor of the deceased's estate because there would be no inequity to correct when the United States had discharged its contractual obligation to the registered survivor of the co-owners. They believed that the husband knew what interest he received by the separation agreement, *i.e.*, an option to have the bonds cashed and alone receive the proceeds or to have them reissued

the name of a third person, the owner of the money is entitled to follow it into the property and enforce a constructive trust upon the property purchased. The court noted that where fraud might give rise to the establishment of a constructive trust, it need not always be shown before such a trust may be impressed.

\(^{10}\) 198 N.C. 460, 152 S.E. 157 (1930).

\(^{11}\) 236 N.C. 528, 73 S.E.2d 309 (1952); see also 31 N.C.L. Rev. 242 (1953).

\(^{12}\) Anderson v. Benson, 117 F. Supp. 765 (D. Neb. 1953), and Union Nat. Bank v. Jessell, 358 Mo. 467, 213 S.W.2d 474 (1948), are illustrative cases where courts imposed a resulting trust in what might have been considered a constructive trust situation.
in his name alone; or to do neither and have the proceeds of the bonds
go to the other co-owner, his wife, upon his death. The fact that he
chose the latter fairly indicated to the dissenting members his desire to
have his wife and business partner of many years enjoy what she helped
to acquire.

It is submitted that when one considers both the strong inference
that the husband did not intend his wife to take the proceeds from the
bonds, and the need for preventing the wife's unjust enrichment, the
majority would seem to present the more convincing argument.

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