



## Tom Clancy's widow prevails over stepchildren in estate taxes dispute

By: Danny Jacobs Legal Editor August 24, 2016



Author Tom Clancy's estate, valued at \$86 million, includes a 12-percent ownership stake in the Baltimore Orioles, valued at \$65 million, and a World War II tank. The Court of Appeals on Wednesday agreed with Clancy's widow, Alexandra, that the estate's \$11.8 million tax bill should be paid out of a trust left to the late author's four adult children. (File photo)

Maryland's top court has answered a \$6 million question.

A divided Court of Appeals on Wednesday sided with Tom Clancy's widow in her dispute with his adult children over how taxes should be paid from his \$86 million estate.

Alexandra M. Clancy argued the will requires the estate's \$11.8 million tax bill to be paid out of the roughly \$16.7 million trust left to the late author's four adult children rather than a family trust, of which Alexandra Clancy and the couple's daughter are primary beneficiaries.

Had the tax bill been paid from the family trust, Clancy claimed the trust's value would have been reduced by about \$7.8 million, with the cost to her being \$6 million.

A Baltimore City Orphans' Court judge agreed with Clancy's interpretation of the will, which the Court of Appeals affirmed in a 4-3 decision.

"To burden the Family Trust with payment of federal estate taxes at the time of Mr. Clancy's death when the property is conveyed in trust for the benefit of Mrs. Clancy would be in direct derogation of Mr. Clancy's intent," Judge Lynne A. Battaglia, a retired jurist sitting by special assignment, wrote for the majority.

Alexandra Clancy was "very pleased" the with court's decision, according to Jeffrey E. Nusinov of Nusinov Smith LLP in Baltimore, one of her lawyers.

Norman L. Smith, Nusinov's colleague, called the opinion "well-reasoned"

"This affirms that shortly before his death, Tom Clancy wrote a codicil for the purpose of changing his will to exonerate the family trust from the payment of estate taxes," he said.

Amended will



Tom Clancy died Oct. 1, 2013. His estate includes a 12-percent ownership stake in the Baltimore Orioles, valued at \$65 million, and a World War II tank.

Clancy amended his will in late July 2013, approximately two months before his death. Under the amended will, Alexandra was to be the sole beneficiary of Clancy's personal property, receive one-third of his estate through a marital trust and be the primary beneficiary of a family trust, which also included his four grown children.

In September 2014, Alexandra Clancy filed a motion in orphans' court asking that her late husband's will be read so that no taxes should come from the two-thirds share of his estate divided into a marital trust and family trust.

There was no dispute that the remaining one-third share, established as a trust for the adult children, was liable for estate taxes.

Alexandra Clancy argued that the family residuary trust was intended to qualify for the estate tax marital deduction in addition to the marital trust established for her, and that any reduction caused by estate taxes would cause the trust to lose a portion of the marital deduction, according to court documents.

Lawyers for the estate had argued while Tom Clancy specifically instructed his wife's share of the estate not be responsible for paying taxes, there was no "similar or express carve out exception" for the remaining trusts.

Orphans' Court Chief Judge Lewyn Scott Garrett, in ruling last August in Alexandra Clancy's favor, cited a 2013 codicil which removed some of the language of the will which would have disqualified the family trust as a qualified terminable interest property, according to the opinion.



The Court of Appeals opinion 'affirms that shortly before his death, Tom Clancy wrote a codicil for the purpose of changing his will to exonerate the family trust from the payment of estate,' says Norman L. Smith, right, of Nusinov Smith LLP in Baltimore, who represented Clancy's widow along with Jeffrey E. Nusinov. (File photo)

## Misplaced value

Battaglia agreed with Tom Clancy's adult children that their father could have directed the estate taxes to be paid as they claimed. But the elder Clancy "did not burden" the marital trust with payment of federal taxes, she wrote.

"Moreover, were the Family Trust to bear the burden of federal estate taxes, at the time of Mr. Clancy's death, the corpus of that trust would be subject to imposition of federal estate taxes twice, at the time of Mr. Clancy's death as well as when Mrs. Clancy died," wrote Battaglia, who was joined in the opinion by Judges Sally D. Adkins, Shirley M. Watts and Michele D. Hotten.

In his dissent, Judge Robert N. McDonald criticized the majority for basing its decision on the premise that the "pre-eminent value" for anyone creating a will is to avoid paying taxes. The majority also did not have to "resort to such radical surgery" in interpreting Clancy's will, he added.

"Mrs. Clancy's interpretation – adopted by the Majority opinion – would skew the distribution of the residual estate significantly in her favor contrary to basic provisions of the will while reducing the estate's tax liability somewhat more than what it would otherwise be," wrote McDonald, who was joined by Chief Judge Mary Ellen Barbera and Judge Clayton Greene Jr.

The case is *Michelle Bandy, et al., v. Alexandra Clancy*, No. 93, Sept. Term 2015.