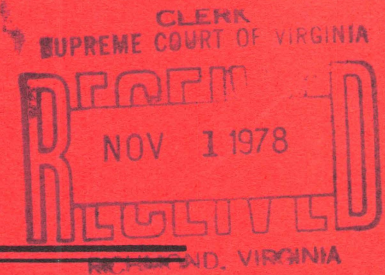


220 VA 954



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780946

WINIFRED DINGES LOOMAN,

.....Appellant

v.

VALLEY VIRGINIA BANKSHARES, INC., et al.,

.....Appellee

APPENDIX

Thomas V. Monahan
Nikolas E. Parthemos
Post Office Box 844
Winchester, Virginia 22601

William B. Allen, III
126 West Court Street
Woodstock, Virginia 22664

Counsel for Appellant

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VIRGINIA: IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

WINIFRED DINGES LOOMAN,

PLAINTIFF

V.

VALLEY VIRGINIA BANKSHARES, INC.,
ROCKINGHAM NATIONAL BANK,
EXECUTOR OF THE ESTATE OF
FRANK C. DINGES AND
MILDRED C. DINGES, DECEASED

DEFENDANT

Serve: Francis Bell, Jr.
141 E. Market Street
Harrisonburg, Virginia

AND

SHENANDOAH TELEPHONE COMPANY,
Serve: Warren B. French, Jr., President
Edinburg, Virginia

DEFENDANT

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, your Plaintiff, Winifred Dinges Looman,
complaining of Defendants, Rockingham National Bank, Executor of
the Estate of Frank C. Dinges and Mildred C. Dinges, and Defendant,
Shenandoah Telephone Company, and for cause of action would
respectfully show as follows:

(1) Plaintiff resides in the County of Shenandoah,
Virginia.

(2) Defendant, Rockingham National Bank, was named
as Testamentary Executors under the Last Will and Testament of Frank
C. Dinges and Mildred C. Dinges, which wills were admitted to
probate in the Clerk's Office of the Circuit Court of Shenandoah
County, Virginia, on the 2nd day of December, 1975.

(3) Plaintiff owns and is entitled to the immediate
possession of the following stock certificates:

Certificate No.	1984 for	39	Shares
Certificate No.	1985 for	3	Shares
Certificate No.	2131 for	9	Shares
Certificate No.	2186 for	3	Shares
Certificate No.	2199 for	3	Shares
Certificate No.	2232 for	6	Shares
Certificate No.	2274 for	3	Shares

Certificate No. 2317 for 134 Shares
Certificate No. 3727 for 500 Shares
Certificate No. 5473 for 1400 Shares

Said certificates represent Two Thousand One Hundred (2100) Shares of Common Stock of the Shenandoah Telephone Company, Defendant herein, valued at One Hundred Five Thousand Dollars (\$105,000.00).

(4) The above mentioned stock certificates were issued and registered in the name of Winifred D. Murry, same as your Plaintiff herein, and have remained so registered on the books of the Shenandoah Telephone Company.

(5) That on the 12th day of August, 1976, your Plaintiff demanded in writing that your Defendant, Rockingham National Bank, deliver said property to Plaintiff, but Defendant, Rockingham National Bank, failed and refused to comply with said demand, and continues to wrongfully detain said property. A copy of Plaintiff's demand is attached hereto, marked Exhibit "A", and made a part hereof.

(6) That the Defendant, Rockingham National Bank, has presented said stock certificates to the Defendant, Shenandoah Telephone Company, for registration and transfer, a copy of Notice from said Company is attached hereto marked Exhibit "B" and made a part hereof, and your Plaintiff alleges that said property is presently located at Defendant, Shenandoah Telephone Company's place of business at Edinburg, Shenandoah County, Virginia.

(7) That it is essential to enable Plaintiff to recover said stocks, that Defendant, Rockingham National Bank, be ordered not to transfer, assign, pledge or, otherwise dispose of said stock certificates or any part thereof until further order of this Court.

WHEREFORE, Plaintiff prays for judgment against Defendant,

Rockingham National Bank, Executors of the Estate of Frank C.
Dinges and Mildred C. Dinges:

(1) For recovery of said stock certificates described in Paragraph 3 above or for damages of \$105,000.00, the value of the shares represented by said certificates; if Plaintiff can not obtain recovery of said certificates;

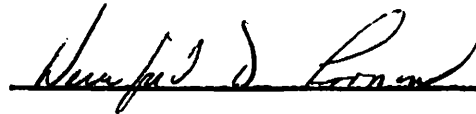
(2) To enjoin Defendant, Rockingham National Bank from transferring and registering said stock certificates, or otherwise disposing of said certificates;

(3) That Defendant, Shenandoah Telephone Company, be enjoined from transferring and registering said stock certificates;

(4) For costs of this action; and,

(5) For such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED:
WINIFRED D. LOOMAN



STATE OF VIRGINIA

COUNTY OF SHENANDOAH, to-wit:

Winifred Dinges Looman, being duly sworn, deposes, and says:

That she is the Plaintiff in the above-entitled action; that she has read the foregoing Complaint and knows the contents thereof; that the same are true of her own knowledge, except as to those matters that are therein stated on her information or

belief, and, as to those matters, that she believes them to be true.

Wm. J. D. Loran

Subscribed and sworn to before me this 13th day of October, 1976, in my aforesaid County and State.

My commission expires:

Allen B. Venable
Notary Public

December 20, 1976

THOMAS V. MONAHAN
HALL, MONAHAN, ENGLE, MAHAN & MITCHELL
Attorneys at Law
9 East Boscawen Street
Winchester, Virginia 22601
Counsel for Plaintiff

WILLIAM B. ALLEN, III
ALLEN & ALLEN
Attorneys at Law
126 West Court Street
Woodstock, Virginia 22664
Counsel for Plaintiff

STIPULATION OF FACT

It is stipulated and agreed by the respective parties that, if witnesses were called in this cause, their testimony would be:

Frank C. Dinges and Mildred C. Dinges, husband and wife, both died in a fire at their home in Shenandoah County, on November 26, 1975. Their wills were admitted to probate in the Clerk's Office of the Circuit Court of Shenandoah County, and the Defendant qualified as Executor on December 2, 1975. A copy of the will of Frank C. Dinges is attached as Exhibit "A", and a copy of the will of Mildred C. Dinges is attached as Exhibit "B". Winifred Dinges Looman was the only child of Frank C. Dinges and Mildred C. Dinges, and was loved by them until their deaths.

Pursuant to the terms of the will of Frank C. Dinges, certain parts of his estate will be held in trust for the Plaintiff, Winifred Dinges Looman, until her forty-fifth birthday, at which time she would be entitled to complete ownership of the property. (Plaintiff is now thirty-six years of age.)

In controversy in this suit are 2100 shares of common stock of the Shenandoah Telephone Company which represent a value of \$115,000.00, which value has been liquidated by sale of the stock by the Defendant. Plaintiff contends that the stock was hers at and before the death of her parents. Defendant contends it was her father's at his death and properly includible in the trust.

The shares of stock in question were issued by the following certificates and upon the following dates:

Certificate No.	1984	for	39	shares	11/29/61
Certificate No.	1985	for	3	shares	12/21/61
Certificate No.	2131	for	9	shares	12/ 5/63
Certificate No.	2186	for	3	shares	9/24/64
Certificate No.	2199	for	3	shares	11/19/64
Certificate No.	2232	for	6	shares	2/ 9/65
Certificate No.	2274	for	3	shares	5/20/65
Certificate No.	2317	for	134	shares	12/ 1/65
Certificate No.	3727	for	500	shares	10/23/70
Certificate No.	5473	for	1400	shares	8/ 1/72

Certificate Nos. 3727 and 5473 represent stock dividends

While Winifred Looman was married on September 25, 1960 to Mr. Murray, divorced on June 25, 1969 and married to Mr. Looman on June 28, 1969, all the stocks were issued to her in the name of Winifred D. Murray.

The decedent, Frank C. Dinges, often expressed strong objection to the second marriage of his daughter. Mr. Dinges did not have confidence in Winifred's husband in his business matters and also expressed concern for the possibility of creditors taking property that he had given his daughter. On occasion, he had had her deliver to him evidence of ownership of real estate, horses and stock belonging to her, and as to which her father never claimed ownership, apparently in an effort to insulate the property from claims of her creditors. Mrs. Looman states that her father described it as a form of protection. Mrs. Looman states that she complied with his requests simply because she was his daughter. She states that she did not intend to surrender the ownership of the stock.

All the stock in question in this suit was initially issued by the telephone company to Winifred Dinges. She states that it was issued as gifts from her father, Mr. Dinges, he informing her of the gift but taking possession of the certificates from the time of gift as he did other valuable papers of his daughter.

After the second marriage of Winifred and at least a couple of years prior to the death of Mr. Dinges, he brought the stock certificates to Winifred at her home and directed, she claims, without explanation of the reason or effect, that she endorse the certificates in blank, which she did. These endorsements were in pencil. She claims that she complied with his requests as she did all his requests pertaining to business matters. She also states that he often handled such affairs without full discussion as to the effect of such transactions. The stock was taken by Mr. Dinges to the Farmers Bank of Edinburg of which he was then Chairman of the Board and which is now a member of the same holding company as the defendant bank. There the certificates were given to Mr. Shirkey, the Cashier of the bank and now its Vice President and Executive Officer, with the request that they be placed with other stocks of Mr. Dinges for safekeeping. At the time Mr. Dinges had two lock boxes at the bank, at least one of which had ample space for the certificates, but he gave them to the bank instead. They were maintained in the collateral vault of the bank with other stocks belonging to Mr. Dinges, the other stocks being pledged by him at that time to secure loans. These stocks, however, did not secure any loan nor had any collateral been requested by the bank. Mr. Shirkey recalls no other incident where Mr. Dinges requested him to keep stock. However, stock belonging to Mrs. Dinges only was also commingled with that of Mr. Dinges.

At a subsequent date several years later, Mr. Dinges removed the stock certificates from the bank. Even later, he returned the certificates and again asked that they be held for

safekeeping at which time Mr. Shirkey told Mr. Dinges that the signature should be in ink. Mr. Dinges took the stock from the bank and subsequently returned the certificates bearing the inked signatures of Winifred Looman.

At the latter time the stock was returned to Mr. Shirkey, Mr. Dinges asked him to witness the signature of his daughter, which Mr. Shirkey declined to do since he had not seen her execute the document.

At this time, Mr. Shirkey told Mr. Dinges that the certificates should not be endorsed in blank, but should name a transferee. Mr. Dinges then stated to type in his name which Mr. Shirkey caused to be done. The stock was returned to the collateral vault where it was found upon the death of Mr. Dinges.

From the date of the initial issuance of the stock until the death of Mr. Dinges, dividends always came directly to the plaintiff, in her name, and she paid the income taxes thereon. No effort was ever made to change the name of the owner of the stock on the stock transfer records of the telephone company, and at the time of Mr. Dinges' death the telephone company records reflected that the stock was owned by the Plaintiff.

Mr. Dinges served as corporate secretary for the telephone company and when filing with the Federal Securities and Exchange Commission the mandatory disclosures of actual and constructive ownership of telephone company stock, he always disclosed the stock in question as being the property of his daughter. Upon his own purchase of additional stock in October, 1970, December, 1970, August, 1971, and May, 1972, Mr. Dinges showed on each occasion 750 shares belonging to his daughter.

When he acquired 50 of her shares (not here in dispute) on June 14, 1972, he promptly filed the necessary form with the SEC; showing the transfer from her to himself. When a 2-for-1 stock dividend occurred on July 15, 1972, he listed 2100 shares belonging to his daughter. He filed no subsequent statements as he would have been required to do if the stock changed hands.

Warren French, now President of the Shenandoah Telephone Company, states that it was in October, 1970, when Mr. Dinges told him that he had had his daughter endorse the shares, that Mr. Dinges was then Secretary of the company, and during the period participated in the issuance of other stocks as corporate secretary. The SEC forms were thereafter prepared showing indirect ownership, and signed by Mr. Dinges.

The Shenandoah Telephone Company and the Farmers Bank of Edinburg, in both of which Mr. Dinges was an officer, are located on adjacent lots in Edinburg, Virginia.

On the notes attached as Exhibit "C" compiled by the defendant bank during estate planning conferences with Mr. Dinges between 1971 and 1975, although other Shenandoah Telephone Company stock was listed as belonging to Mr. Dinges, the telephone company stock in question was not listed by Mr. Dinges as his property, nor was it listed in advising his attorney with respect to the conferences which led to the preparation of his will and continued into 1975.

On the death of Mr. Dinges, the defendant bank took custody of the stock, included it in the estate tax return filed with the Internal Revenue Service, and estimated the estate tax on the assumption that the stock was included in the estate. At

the first conference between the bank's representative and Mrs. Looman, when Mrs. Looman learned that the bank was in possession of the certificates she requested their delivery to her as her property.

Stipulated and agreed to by and between counsel for Plaintiff and counsel for Defendant.

O R D E R

The 22nd day of February, 1978, came again the parties in this cause, by counsel, upon the Order setting this cause for trial and upon the pleadings heretofore filed herein, the Stipulation of evidence filed herein, and the Memoranda of respective counsel.

Thereupon, counsel for the Plaintiff and the Defendant advised the Court that the matter in litigation involved a sum of money, formerly stock, in which the infant children of the Plaintiff would have a substantial interest if the Defendant prevailed, and that said infant children were, to-wit: Mary Mildred Murray, age 15; Nicole Dinges Murray, age 13; and Elizabeth Brown Looman, age 11; and were not previously made parties in this cause nor were they represented by counsel, and moved the Court that said infant children be made parties and that Phillip C. Stone, Esquire and Donald E. Showalter, Esquire, attorneys qualified to and practicing before the Bar of this Court, be permitted to appear as their counsel in accordance with Section 8.01-9 of the Code of Virginia, and that the Grounds of Defense heretofore filed on behalf of the Defendant bank be adopted by them.

It appearing to the Court that the said infants should be made parties to this cause and that, in accordance with Section 8.01-9 of the Code of Virginia, they would be properly represented by the said attorneys and their interests would be protected, it is, therefore, ADJUDGED and ORDERED that Mary Mildred Murray, Nicole Dinges Murray and Elizabeth Brown Looman be, and they are

hereby, made parties Defendant in this cause, and that Phillip C. Stone, Esquire and Donald E. Showalter, Esquire, be, and they are, permitted to appear for them in accordance with Section 8.01-9 of the Code of Virginia, and the pleadings heretofore filed on behalf of said Bank are adopted as responsive pleadings filed on behalf of said infants.

The said Phillip C. Stone and Donald E. Showalter appearing on behalf of said infants, the Court then proceeded to give consideration to the Stipulation of fact submitted and to the written memoranda, and heard argument of counsel.

The Court thereupon did, and doth, hold that endorsement and delivery of the physical stock certificates is not conclusive as a matter of law as a transfer of title and vesting of title, but that it creates only a prima facie case, subject to the introduction of parol evidence as to the intent of the parties.

After argument by counsel, the Court took the case under consideration and subsequently informed counsel of the Court's decision. The Court being of the opinion that the rebuttable presumption of valid transfer of the stock certificates from Winifred Dinges Looman to Frank C. Dinges, Jr. has not been overcome by the proffered stipulation of fact, it is accordingly ADJUDGED and ORDERED that the shares of stock in question were the property of Frank C. Dinges, Jr. and were properly included as assets of his estate, and this cause is accordingly dismissed with prejudice to the plaintiff.

ENTER this _____ day of March, 1978.

Judge

I ASK FOR THIS ORDER

Phillip C. Stone, counsel for
Rockingham National Bank and
Mary Mildred Murray, Nicole
Dinges Murray, and Elizabeth
Brown Looman

SEEN AND RULING OBJECTED TO ON THE GROUNDS THAT THERE IS NO SUCH
PRESUMPTION AS REFERRED TO BY THE COURT AND FURTHER THAT THE EVI-
DENCE CLEARLY ESTABLISHES NO TRANS-
FER OF THE INTEREST OF THE COMPLAIN-
ANT IN THE PROPERTY TO FRANK C.
DINGES, JR.

Thomas V. Monahan

William B. Allen, III

Counsel for plaintiff

ASSIGNMENT OF ERROR

The lower court erred in holding that the evidence, all of which was stipulated, as to the intention of the parties did not overcome the prima facie evidence of transfer arising from possession by the alleged transferee of endorsed stock certificates.