1965

# Bernice Culley v. Garfield Smeltermen's Credit Union et al : Brief of Appellant

Utah Supreme Court


Roy F. Tygesen; Attorney for Plaintiff and Appellant;
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# IN THE SUPREME COURT
# of the
# STATE OF UTAH

BERNICE CULLEY, Executrix of the Estate of VIRGIL J. CULLEY, deceased,

*Plaintiff and Respondent,*

vs.

GARFIELD SMELTERMEN'S CREDIT UNION, and S. L. LESTER, President; GLEN M. JONES, Vice-President; and AL ROBINSON, Treasurer,

*Defendants,*

vs.

DOUGLAS K. CULLEY,
*Interpleading Plaintiff and Appellant*

Case No. 10247



## APPELLANT'S BRIEF

Appeal from judgment in favor of Plaintiff, holding that a joint account in credit union belonged to deceased estate, and not to surviving joint tenant. Judgment entered after trial without jury, before the Honorable A. H. Ellett, at Salt Lake City, Utah, in Third Judicial District Court, September 8, 1964.

A. H. ELLETT, *Judge*

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(Case dismissed as to Defendants in lower court)

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## APPELLANT'S BRIEF

## DISPOSITION MADE IN LOWER COURT

(A) VIRGIL J. CULLEY, deceased and his son DOUGLAS K. CULLEY, interpleading Plaintiff, and Appellant, had a saving account in credit Union under "Joint share account agreement." Plaintiff claimed account for the estate, the Credit Union deposited the monies in the account into Court, and case dismissed as to them.

(B) Judge Ellett, sitting without a jury, entered judgment in favor of Plaintiff.

## RELIEF SOUGHT ON APPEAL

(C) Appellant asks for reversal of lower court judgment, and judgment in his favor, on his motion for summary judgment awarding monies to him.

## STATEMENT OF MATERIAL FACTS

(D) Deceased, VIRGIL J. CULLEY, opened a joint saving account with the Credit Union, in his name and the name of his oldest son, DOUGLAS K. CULLEY, Appellant, on March 10, 1960. Both signed the usual form of "Joint Share Account Agreement" uniformly used by banks, saving and loan companies, and credit unions. This account remained in both names up to the death of VIRGIL J. CULLEY, on October 10, 1963. Up till the death of Virgil J. Culley, he deposited and withdrew money regularly from the savings account. Douglas K. Culley, neither withdrew or deposited any monies.

Plaintiff filed this action, claiming the account in behalf of the estate, the credit union deposited $1,540.14 into Court, and the case was dismissed as to Defendants. Appellant obtained permission to be made party to the action, and filed his complaint claiming the account, and his motion for summary judgment, which was denied. On September 8, 1964, Judge A. H. Ellett, sitting without a jury, gave judgment in favor of Plaintiff, awarding the account to her, as Executrix. This appeal followed.

The pleadings, motions, decrees, vacating decrees, are, to say the least, extensive and confusing.

Appellant submits that the issues he desires to have considered by this Court, be limited to the determination of what weight should be given a "Joint share account agreement; the evidence required to void the agreement; did Plaintiff meet that burden; and was the "Findings" of the lower Court supported by evidence sufficient to void the "Agreement".

At the trial, only the Plaintiff, wife of VIRGIL J. CULLEY; and Appellant, DOUGLAS K. CULLEY, son of deceased, testified. The transcript of their testimony, is the only evidence, other than voluminous exhibits, on which the judgment could be based.

For purpose of clarity and brevity, Appellant will refer to Plaintiff and Respondent, BERNICE CULLEY by name, wife, or stepmother, as well as Respondent. The Defendants as "Credit Union"; VIRGIL J. CULLEY, as the deceased, or father; and Appellant DOUGLAS K. CULLEY as "Appellant," or "the son."

The father was employed at the Garfield Smelter as Foreman for many years, and up until the time of his death, he had maintained an account with the Credit Union. At the time of his death he had two accounts with the Credit Union; one the saving account in the name of himself and his son; and another in his name only, which he used to finance car purchases, etc. He regularly made deposits in the saving account and made agreed payments on the loan account, from his payroll check, by payroll deduction.

The father never had the signature of the son on the loan account, nor was the son under any obligation to assume the loan account, as co-signer or otherwise.

The agreement card provided that either party could withdraw or deposit to the saving account. The son neither deposited, nor withdrew monies from the account.

On the other hand, the father, regularly deposited monies to the account, and withdrew monies from the account from time to time, to meet his needs, without the signature or authorization of the son. (The exhibits filed by the credit Union of their ledgers and records substantiate this point, and are not disputed.)

The father had been married before, his first wife having died leaving five children, the eldest being Douglas, Appellant herein, (TR. 19-20-21). At the time the joint account was set up, (March 10, 1960) the father was a widower, and Douglas, the son, then married, had the responsibility of the care of his younger brothers and baby sister, the father having contributed only 30.00 toward their care. (TR. 19-20-21)

The joint account card was signed by the father and son, in the son's home, at the father's request, while most of the brothers were living with the son Douglas. (TR. 19-20-21)

The marriage to Plaintiff occurred after the card was signed. The father made a will dated September 21, 1963, giving his wife the entire estate, and disowning his five children. (See will.) The son and father repeatedly

discussed the saving account, and the wife repeatedly asked that the name of Douglas be taken off the account. The wife was repeatedly promised that it would be done, but the account remained unchanged at the time of death of the father. (TR. 11-12-13-18) (Affidavit of Bernice Culley, paragraph 5.)

The will was made just nineteen days before father's death, October 10, 1963. No mention in the will was made as to the savings account. (See will — see Plaintiff's complaint — paragraph 4.)

At the time of death there was in the savings account, $770.07, which was doubled by insurance policy carried by credit union, so the account amounted to $1,540.14, which was deposited with the Court.

## ARGUMENT

### POINT I.

### WHAT WAS THE INTENT OF THE FATHER IN SETTING UP THE ACCOUNT ON MARCH 10, 1960?

Appellant, has done substantial research on the problem of joint accounts, as here involved, but in view of *Braegger vs. Loveland,* 12 Utah 2d 384, 367 Pac. 2d 177; and *Tangren vs. Ingalls,* 12 Utah 2d 388, 367 Pac. 2d 179, being the most current Utah decisions we could find, and since these two cases establish the rule governing joint accounts, in this jurisdiction, Appellant will refer to these two almost exclusively in his argument.

Now, as to intent, at time of opening the account. The father was a widower, with five children, three of

them minors, some of them living with the son, at the time the card was signed. (TR 19-20-21) The eldest son was chosen to have his name on the joint account. The eldest son, at the time of signing,was furnishing a home and support for the younger brothers. (TR. 21-line 14)

The father said to the son, at time of signing, "Dad told me point blank that I was to see that the boys were provided and taken care of." (TR. 24-line 1)

The account was never changed in his lifetime, from March 10, 1960 till death, Octobre 10, 1963. He repeatedly discussed the account with his son, on the job. (Tr. 5-line 1) (Tr. 7-line 14) ((TR. 7-line 25)

His wife repeatedly asked that he change the name on the account, and was promised repeatedly it would be, or had been done. (TR 11-12-13-18) (Bernice Culley Affidavit Paragraph 3) (4) (5) (9) (10 Appellant submits that the intent of Virgil J. Culley at the time of opening the account, was to make his son co-owner, with right of survivorship, and that subsequent conduct on his part supports such intent, and no action afterwards, changed that position. Judge Ellett, during the time of trial seemed to stress the fact that the intent, at time of creating the account was controlling. (TR. 2-line 4, line 25) (TR. 10-line 8) (TR. 10-line 17)

How and why he court abandoned the position that intent governed, and decided it an effort to make a will, is not clear. Certainly the record does not support that change.

## POINT II.

THE SIGNING OF THE JOINT SHARE ACCOUNT AGREEMENT CREATED A VALID JOINT ACCOUNT, WITH FULL RIGHT OF SURVIVORSHIP IN THE SON.

> "In determining the true ownership of joint savings account, survivor is presumed to be the owner." (*Braegger vs. Loveland, supra.*)
>
> "This Court has adopted the rule that where such bank account card recites an agreement of joint ownership with right of survivorship, there is a presumption that it is valid and represents the true intent of the parties, . . ." (Same case.)

In *Tangren vs. Ingalls,* at page 180, it is stated:

> "Joint tenancy 6—Where there is a written agreement of joint tenancy with right of survivorship, presumption of validity arises . . . "

The same case at page 181:

> "An agreement on the account card is presumptively valid."

Judge Henriod at page 185 of the same case said:

> "Where a clearly worded written agreement between depositors specifically and clearly states that the survivor shall own the fund, interdicting the bank to carry out its terms."

Nowhere in the record is any evidence the account was not signed.

## POINT III.

THE PRESUMPTION OF VALIDITY OF THE WRITTEN AGREEMENT IS ACCEPTED AND PASSES THE BURDEN TO ONE QUESTIONING IT.

*Braegger vs. Loveland, supra,* page 177:

> "2 Joint tenancy 6 — In determining true ownership of joint savings accounts, survivor is presumed to be the owner, and burden of attacking such ownership is upon the party contesting it."

Same case, page 177:

> "3 Joint Tenancy 6 — Presumption exists that agreement is valid and represents true intent of the parties, and such presumption will be given effect unless attacked for fraud, mistake, incapacity, or other infirmity, or unless it is shown by clear and convincing evidence that parties intended otherwise."

Same case, page 178:

> "As we see the record in this case, it points conclusively the other way: that there was intent to make a gift. In making such appraisal, it should be kept in mind initially, that the burden was on the plaintiff to make an affirmative showing of such intent. As survivor she was presumed to be the owner and the burden of attacking her ownership was upon the Plaintiff Administrator. This Court has adopted the rule that where such bank account card recites an agreement of joint ownership with right of survivorship, there is a presumption it is valid and represents the true intent of the parties, which 'will be given effect unless it is attacked for fraud, mistake, incapacity, or other infirmity, or unless it is shown by clear and convincing evidence that the parties intended otherwise."

*Tangren vs. Ingalls,* supra, sets up the same rule. At page 181, the Court said:

> "In earlier times in cases dealing with such accounts, this Court indicated the view that a survivor claiming the fund after the death of the original owner had the burden of showing that the latter intended to make a gift of the fund. But that view is long since outmoded . . ."

Same case at page 181:

> "This presumption injected by Courts of equity since ancient times, continues and can be overcome by the intervenor only by clear and convincing proof to the contrary."

Same case at page 183:

> "There is a substantial defensive shield in the presumption of the validity of the agreement which can be overcome only by clear and convincing evidence. . . ."

The same rule was repeated at page 184.

Judge Henriod in the same cases argues strongly for the validity of the written contract.

Appelant submits that the agreement was valid, and properly signed, and in full force and affect at the death of the father. That the Plaintiff neither pleaded or proved that there was fraud, mistake, incapacity, etc. The record is barren of any such proof, let alone a type that is clear and convincing.

The Court should have granted Douglas K. Culley summary judgment, as prayed.

Plaintiff's pleadings are extensive in claiming hidden records, and absolute knowledge (see Bernice Culley affidavit) without supporting proof of any kind.

They allege they have clear and convincing proof, but nowhwere produce supporting evidence.

Appellant challenges Respondent to show to this Court anywhwere in the record, evidence of assuming the burden, let alone proof of fraud, mistake, incapacity, etc.

## POINT IV.

### APPELLANT CONTENDS THAT THERE IS NO EVIDENCE SUPPORTING THE COURT'S "FINDINGS."

7 of the Court's findings, "At no time did Virgil J. Culley intend that Douglas K. Culley was to have said account . . ." Yet at 2 and 3 of the same "Findings," the Court said the agreement was signed. The Court presumably ignored the presumption of validity, and the shifting of the burden of proof.

8-9-10 of said "Findings" relate to the attempt to make a will. This record is bare of any such evidence, nor has it a part in this proceedings.

## POINT V.

### THE WELL FOUNDED AND ESTABLISHED RULE GIVING STRONG SUPPORT TO THE LOWER COURT'S DETERMINATION OF THE ISSUES, SHOULD NOT APPLY FOR THE REASON THAT THE LOWER COURT'S JUDGMENT IS NOT SUPPORTED EITHER IN LAW OR IN FACT; AND THIS COURT SHOULD EXAMINE THE RECORD IN EQUITY AND MAKE ITS OWN DECISION.

*First Security Bank of Utah vs. Demiris,* 10 Utah 2d 405, 354 Pac. 2nd 97, at page 97:

> "2 Appeal and Error — 987(3)1149. It is the Supreme Court's prerogative and duty under the constitution to review the evidence in equity cases and to modify or make new findings if the record compels it."

At page 98 of the same case:

> "It is recognized that in reviewing the findings of fact we should indulge considerable lattitude to the findings of the trial court and not disturb them unless the evidence clearly preponderates to the contrary. However it is our prerogative and duty under the constitution to review the evidence in equity cases and to modify or make new findings if the record compels it."

We invite the Court to review the evidence to find support for the findings questioned. We have searched the record and found none.

## CONCLUSIONS

1. That the joint share account agreement was valid and in full force and effect at the death of the father.

2. That this created a presumption that Douglas K. Culley was entitled to the money.

3. That at the time of signing the agreement it was the "intent" of Virgil J. Culley, that his son receive the account.

4. That Respondent failed completely to allege or prove fraud, mistake, incapacity, or other infirmity, or did she show by clear and convincing evidence, or any evidence at all, that the parties intended otherwise.

5. That the Court's findings, conclusions and judgment is not supported by the record.

6. That the judgment of the lower court should be reversed, with instruction to enter summary judgment for Interpleading Plaintiff, Douglas K. Culley, Appellant.

Respectfully submitted,

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