

1968

Leonora K. Weaver v. Robert G. Weaver : Reply Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Gustin & Richards; Attorneys for Plaintiff and Respondent Worsley, Snow & Christensen; Attorneys for Defendant and Appellant

Recommended Citation

Reply Brief, *Weaver v. Weaver*, No. 11152 (Utah Supreme Court, 1968).
https://digitalcommons.law.byu.edu/uofu_sc2/82

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
of the
STATE OF UTAH

LENORA K. K. WEAVER,
Plaintiff and Respondent,

vs.

ROBERT G. WEAVER,
Defendant and Appellant.

Case No. 11152

REPLY BRIEF OF APPELLANT

Appeal from Judgment of the District Court of Salt Lake
County, Utah
The Honorable Aldon J. Anderson, *Judge*

WORSLEY, SNOW &
CHRISTENSEN
7th Floor, Continental Bank
Bldg.
Salt Lake City, Utah

*Attorneys for Defendant and
Appellant*

GUSTIN & RICHARDS
Walker Bank Building
Salt Lake City, Utah 84111

Attorneys for Plaintiff and Respondent

FILED

MAY 31 1906

IN THE SUPREME COURT
of the
STATE OF UTAH

LEONORA K. WEAVER,
Plaintiff and Respondent,

vs.

ROBERT G. WEAVER,
Defendant and Appellant.

Case No. 11152

REPLY BRIEF OF APPELLANT

These remarks are in reply to specific allegations made by Respondent's Brief.

Respondent takes issue with Appellant's use of the word "inheritance" to describe the Combined Insurance Company stock which his father gave to him during his father's lifetime and the stock which Appellant's sister Genrose received from their father and later gave to him, arguing that it was not bequeathed to Appellant in his father's will. The word is not limited to this meaning.

It includes any valuable possession received by gift or without purchase and would seem particularly appropriate when applied to gifts passing within a family. See Webster's New International Dictionary Second Edition.

Respondent also questions Appellant's assertion that the gift had a value at time of trial of \$500,000, saying that "better than \$690,000" had been invested in government obligations. Even a cursory examination of the financial reports of the trustee would disclose that the source of the money utilized to purchase the government obligations was sales of Combined Insurance Company stock. Sales totalled \$288,301.01; the value of the government obligations was \$221,637.41. The figure of \$690,000 represents "roll-over" or reinvestment of the same dollars as government obligations matured. (Ex. D-8, D-10, R. 151)

The statement that the cost of the stock in the hands of Genrose Weaver was 41c per share is an attempt to minimize the magnitude of her gift to her brother. The term "cost" is meaningless since it cost her nothing. What Respondent means is that the stock had a basis for tax purposes in her hands of 41c per share. Its value as shown by the sales before and after the February 19, 1963 gift was \$45.00 per share. (Ex. D-8, Schedule A.)

Respondent asserts that the reason the Appellant's sister made the gifts to him was she thought he was work-

ing too hard and needed recreation. That testimony has had no reference to the gifts of Combined Insurance Company stock which provided practically the entire corpus of the Robert G. Weaver trust. That reference was to \$4,000 gifts made during the last few years (Tr. 129).

Respondent argues that Appellant's statement that he had not used a cent of the money from his sister was untrue because it was used to pay taxes on capital gains from sales of the stock. It would be strange, indeed, if an investor converting a security from one form to another were to consider himself as "using" his capital by paying from the sale proceeds the taxes incident to the transaction.

Respondent also cites certain withdrawals appearing on Schedule E of Exhibit D-8 to support his claim of personal use by Appellant. It should be self-evident that withdrawals on April 16, 1965, April 15, 1966, April 17, 1967 were made for taxes accruing on those dates. The withdrawal of \$10,000 was made pursuant to Stipulation after the commencement of this action (R. 17). Although it is true that \$1,800 of said sum was used for expenses for a trip to attend meetings of the American Association of Genital Urinary Surgeons, the Society for Pediatric Urology, the National Meeting of American Urological Association and the International Urological Society, \$2,500 of the amount withdrawn was used for the purchase of an automobile for the plaintiff (R. 17).

Appellant has never "overlooked" the fact that when the trust was originally created, certain stocks forming a part of the trust corpus were registered in the name of Respondent. What Appellant contends is that by recognizing an interest in Respondent in the Eighth West property—placed in the trust after the commencement of this suit for the purpose of subjecting it to the Restraining Order—more than offsets the value of any "contribution" by Respondent, particularly where all property of Respondent came to her from Appellant (R. 118).

Although Respondent did testify that certain Combined Insurance Company stock was used as collateral on a loan to build an outside patio, this was not the stock given by Genrose Weaver to her brother. This was stock which Dr. Weaver received from his father by gift and which Dr. Weaver testified did not go into the trust (R. 110).

Dr. Floyd Cannon's testimony that the respondent was 100% disabled is no stronger than that opinion as modified on cross-examination wherein he stated that what he meant was that she was not physically capable of strenuous employment as a nurse, nothing more (R. 132).

The assertion that the Eighth West property was comingled with the trust corpus ignores the fact that this property was sold after commencement of the action and

the contract was placed in the trust merely to subject it to the Restraining Order. It was never a part of the trust until that time (R. 175).

Respondent's assertion that Genrose Weaver must have had in mind a "windfall" benefiting the entire family unit flies in the face of the entire record. Respondent, herself, admitted that the relationship between herself and Appellant's family had never been good. She said Genrose "harrassed her."

The reference to the wills goes beyond the record. Appellant did not submit them as an exhibit nor did Respondent. But, in any event, they support Appellant's theory as much as they do Respondent's. They are typical marital deduction wills. Both contain numerous powers in Genrose Weaver recognizing her role in the creation of the estate.

Respondent argues that the gift from Genrose has been expended and merged in new assets acquired during the marriage. The fact, as disclosed by the record, is that the Combined Insurance Company stock has been retained intact, except for sales from time to time whose proceeds were converted into government obligations also retained within the Robert G. Weaver Trust. Although in some instances the form has changed, the identity has remained.

Respondent appears to see herself as the woman scorned. She dwells at length upon the many sacrifices

and contributions made by her during particularly the early years of the marriage and laments her husband's lack of appreciation. Yet it is apparent from the record that these were no more than those of wives everywhere while their husbands were struggling for a foothold on the economics of life. She plays down her husband's talents and efforts and seems to forget that for at least the last twenty-three years she has lived in comfort and prominence.

Respectfully submitted,

WORSLEY, SNOW &
CHRISTENSEN

7th Floor, Continental Bank Bldg.
Salt Lake City, Utah 84101

*Attorney for Defendant and
Appellant*