

1977

Lynda Cleverly v. Josephine Costley et al : Brief of Respondent

Utah Supreme Court

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Florence Powell; Attorney for Appellant;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

LYNDA CLEVERLY, Administratrix
of the Estate of EDNA LOUISE
S. BLANCH,

Plaintiff &
Respondent,

vs.

JOSEPHINE COSTLEY, Administra-
trix of the Estate of EDWARD
W. SHARP, & FLORENCE POWELL,

Defendants &
Respondent,

vs.

Case No. 14716

FLORENCE POWELL,

Cross-Complainant
& Appellant,

vs.

JOSEPHINE COSTLEY, Administra-
trix of the Estate of EDWARD
W. SHARP, deceased,

Cross-Defendant
& Respondent.

BRIEF OF RESPONDENT

Appeal from Judgment of the Second Judicial
District Court of Weber County, State of Utah,
the Honorable John F. Wahlquist presiding.

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

LYNDA CLEVERLY, Administratrix)
of the Estate of EDNA LOUISE)
S. BLANCH,)
)
Plaintiff &)
Respondent,)
vs.)
)
JOSEPHINE COSTLEY, Administra-)
trix of the Estate of EDWARD)
W. SHARP & FLORENCE POWELL,)
)
Defendant &)
Respondent,)
vs.) Case No. 14716
)
FLORENCE POWELL,)
)
Cross-Complainant)
& Appellant,)
vs.)
)
JOSEPHINE COSTLEY, Administra-)
trix of the Estate of EDWARD)
W. SHARP, deceased,)
)
Cross-Defendant)
& Respondent.)

BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

Plaintiff-Respondent, Lynda Cleverly, Administratrix of the Estate of Edna Louise S. Blanch, initiated this action in the Lower Court against Defendant-Respondent, Josephine Costley, Administratrix of the Estate of Edward W. Sharp, and Defendant-Appellant, Florence Powell, seeking specific performance of a written document dated February 17, 1945, pursuant to which it was claimed that during his lifetime, Edward W. Sharp had agreed to convey certain real property to Edna Louise S. Blanch.

Defendant-Appellant, Florence Powell, counterclaimed against Plaintiff-Respondent, Lynda Cleverly, alleging that she owned the real property in question by virtue of an olographic Will of Edna Louise S. Blanch, or, in the alternative, by parol gift from her. Defendant-Appellant, Florence Powell, also cross-claimed against Defendant-Respondent, Josephine Costley, claiming a parol gift of the real property from Edna Louise S. Blanch.

DISPOSITION IN THE LOWER COURT

This case was tried in the District Court of Weber County, State of Utah, on May 19, 1976, before the Honorable John F. Wahlquist. A Memorandum Decision was rendered by the Court on June 10, 1976, in which the Court held that the claim of Plaintiff-Respondent, Lynda Cleverly, and the claim of Defendant-Appellant, Florence Powell, to the subject real property, were without merit. The Court further determined the real property in question to be an asset of the estate of Edward W. Sharp, deceased. Florence Powell has appealed from this judgment.

RELIEF SOUGHT ON APPEAL

Respondents seek an order affirming the Lower Court's judgment determining the real property in question to be an asset of the estate of Edward W. Sharp. Plaintiff-Respondent, Lynda Cleverly, Administratrix of the estate of Edna Louise S. Blanch, whose claim in the Lower Court was denied, nevertheless joins in seeking affirmance of the Lower Court's ruling, since it leaves the subject real property in the estate of Edward W. Sharp, of which the estate of Edna Louise S. Blanch stands to

STATEMENT OF FACTS

Edward W. Sharp died testate on August 24, 1962, in Washington State, leaving modest amounts of real and personal property in Adams County, Washington, and Weber County, Utah. Included in the Weber County, Utah, estate is the parcel of real property involved in this appeal, which consists of .70 acres upon which a small frame house is located.

By written document dated February 17, 1945, (R-24) Edward W. Sharp agreed to sell to Edna Louise S. Blanch the .70 of an acre, onto which Edna Louise S. Blanch and her husband had moved a little log cabin and begun to live in 1935. The document of conveyance was never recorded and whatever rights in the subject real property it may have conveyed to Edna Louise S. Blanch were later abandoned and disclaimed by her when she moved to Washington State in 1945. (R-46). From 1945 on, Edward W. Sharp treated the property as his own, even selling a portion thereof to another daughter. (R-44).

After the death of Edward W. Sharp, Defendant-Appellant, Florence Powell, occupied the house on the subject real property and now claims ownership thereof by virtue of an alleged holographic Will of Edna Louise S. Blanch (R-25, 26, 27), or, in the alternative by parol gift.

ARGUMENT

Respondents acknowledge the difficulty Appellant has apparently had in pursuing this appeal pro se since the withdrawal of her counsel on October 13, 1976. (R-77). Neverthe-

less, Respondents must point out that Appellant's "Brief", in

the form of a letter to the Court dated March 9, 1977, is nothing more than a rambling narrative covering various long-settled issues involved in the estate of Edward W. Sharp. Nowhere in her letter does Appellant raise any issue or set forth any argument of fact or law to which Respondents can here reply.

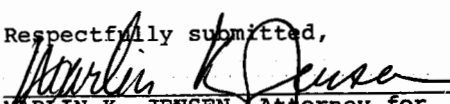
The only reference to the Lower Court's decision is at the bottom of page 2 of the letter, wherein Appellant indicates that the Memorandum Decision entered by Judge Wahlquist is "full of errors", but she does not mention what these might be.

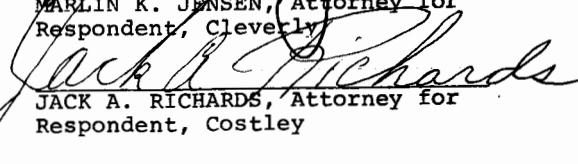
It is well settled under Utah law that the judgment of the trial court is presumed correct and in order to justify a reversal thereof, the burden is upon Appellant affirmatively to demonstrate error, and absent such, the judgment must be affirmed. Leithead vs. Adair, 10 Utah 2d 282, 351 P. 2d 956 (1960) at 957.

CONCLUSION

Appellant has failed to specify any error made by the Lower Court or to raise any issue on appeal to which a response can be made. Accordingly, this Honorable Court should affirm the judgment made below.

Respectfully submitted,


MARLIN K. JENSEN, Attorney for
Respondent, Cleverly


JACK A. RICHARDS, Attorney for
Respondent, Costley

CERTIFICATE OF MAILING

A copy of the above and foregoing Brief of Respondents was posted in the U. S. mail postage prepaid and addressed to Florence Powell, Cross-Complainant and Appellant, at Route 3, Box 150, North Plain City Road, Plain City, Utah, 84404, this 25th day of April, 1977.

Mary Marble
SECRETARY

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