

1997

Delbert M. Dickemore and Donna Penrod,  
Trustees of the Dickemore Family Revocable Trust,  
et al., v. Glen N. Dickemore and Myrla Dickemore,  
Trustees of the Glen N. & Myrla Dickmore Trust :  
Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Merlin G. Calver; Ronald J. Noyes; Attorneys for Appellees.

William J. Citchlow; Parker, Thornley & Critchlow; Attorney for Appellants.

---

### Recommended Citation

Reply Brief, *Dickemore v. Dickemore*, No. 970237 (Utah Court of Appeals, 1997).

[https://digitalcommons.law.byu.edu/byu\\_ca2/818](https://digitalcommons.law.byu.edu/byu_ca2/818)

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 Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**BRIEF**

UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 970237-CA

IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

DELBERT M. DICKEMORE )  
and DONNA PENROD, Trustees )  
of the Dickemore Family )  
Revocable Trust, et al., )

Plaintiffs and )  
Appellants, )

v. )

GLEN N. DICKEMORE )  
and MYRLA DICKEMORE, )  
Trustees of the Glen N. & )  
Myrla Dickemore Trust, )

Defendants, Appellees, )  
Counter-complainants and )  
Cross-complainants. )

No. 970237-CA

Priority of Argument (15)

REPLY BRIEF OF APPELLANTS

This appeal is from a final Order of the  
Second Judicial District Court of  
Weber County, State of Utah  
THE HONORABLE BRENT WEST  
DISTRICT COURT JUDGE

MERLIN G. CALVER #0549  
RONALD J. NOYES #6953  
2650 26th Street #101  
Ogden, Utah 84401

Attorneys for Appellees

WILLIAM J. CRITCHLOW, III #760  
PARKER, THORNLEY & CRITCHLOW  
2610 Washington Boulevard  
P. O. Box 107  
Ogden, Utah 84402  
(801) 399-3303

Attorney for Appellants

**FI**

MAY 20 1997

COURT OF APPEALS

LIST OF PARTIES

Appellants	Delbert M. Dickemore	Plaintiff and Counter-Defendant and Cross-Defendant
	Donna D. Penrod	Plaintiff and Counter-Defendant and Cross-Defendant
	Roland Dickemore	Cross-Defendant
	Robert Bennett	Cross-Defendant
	Joyce D. Bennett	Cross-Defendant
	Carolyn Davis	Cross-Defendant
Appellees	Glen M. Dickemore	Defendant, Counter- <i>Complainant and</i> Cross-Complainant
	Myrla K. Dickemore	Defendant, Counter- Complainant and Cross-Complainant

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

---

DELBERT M. DICKEMORE )  
and DONNA PENROD, Trustees )  
of the Dickemore Family )  
Revocable Trust, et al., )

Plaintiffs and )  
Appellants, )

v. )

GLEN N. DICKEMORE )  
and MYRLA DICKEMORE, )  
Trustees of the Glen N. & )  
Myrla Dickemore Trust, )

Defendants, Appellees, )  
Counter-complainants and )  
Cross-complainants. )

No. 970237-CA

Priority of Argument (15)

---

REPLY BRIEF OF APPELLANTS

---

This appeal is from a final Order of the  
Second Judicial District Court of  
Weber County, State of Utah  
THE HONORABLE BRENT WEST  
DISTRICT COURT JUDGE

---

MERLIN G. CALVER #0549  
RONALD J. NOYES #6953  
2650 26th Street #101  
Ogden, Utah 84401

Attorneys for Appellees

WILLIAM J. CRITCHLOW, III #760  
PARKER, THORNLEY & CRITCHLOW  
2610 Washington Boulevard  
P. O. Box 107  
Ogden, Utah 84402  
(801) 399-3303

Attorney for Appellants

TABLE OF CONTENTS

TABLES OF AUTHORITIES . . . . . ii  
ARGUMENT

POINT I           PARTIES MAY BE RELIEVED FROM THEIR  
                  STIPULATIONS FOR JUSTIFIABLE CAUSE,  
                  SUCH AS MUTUAL MISTAKE OF FACT . . . . . 1

POINT II           IN MOST STATES COURTS ARE NOT BOUND  
                  BY STIPULATIONS BETWEEN THE PARTIES  
                  WHEN POINTS OF LAW REQUIRING JUDICIAL  
                  DETERMINATION ARE INVOLVED . . . . . 3

CONCLUSION . . . . . 4

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page</u>
<u>First Denver Mortgage Investors v. C. N. Zundell,</u> 600 P.2d 521, 527 (Utah 1979) . . . . .	3
<u>Klein v. Klein,</u> 544 P.2d 472 (Utah 1975) . . . . .	2
<u>Matter of Gerber,</u> 652 P2d 937 (Utah 1982) . . . . .	3
<u>Robert Langston LTD. v. McQuarrie,</u> 741 P.2d 554 (Utah App. 1987) . . . . .	3
<u>State v. Velasquez,</u> 672 P.2d 1254, 1265 (Utah 1983) . . . . .	3
<u>United Factors v. T.C. Associates Inc.,</u> 445 P.2d 766 (Utah 1968) . . . . .	2

IN THE UTAH COURT OF APPEALS

DELBERT M. DICKEMORE and )  
 DONNA PENROD, )  
 Trustees of the )  
 Dickemore Family )  
 Revocable Trust, )  
 Plaintiffs and Appellants, )  
 vs. )  
 GLEN N. DICKEMORE and )  
 MYRLA K. DICKEMORE, )  
 Trustees of the Glen N. )  
 and Myrla Dickemore Trust, )  
 Defendants and Appellees. )

Case No. 970237-CA  
 Priority of Argument  
 (15)

---

REPLY BRIEF OF APPELLANTS

---

ARGUMENT

POINT I.

**PARTIES MAY BE RELIEVED FROM THEIR STIPULATIONS  
 FOR JUSTIFIABLE CAUSE, SUCH AS MUTUAL MISTAKE  
 OF FACT.**

The stipulation in the instant case was that the 1993 appraisal of the five  
 farm parcels could be used by the court to effect an equal division of the real property  
 among the three sons because it was assumed by all parties and the court that the

appraisal reflected the true relative values of the five parcels of real property. As to that assumption everyone was grossly mistaken.

Parcel #1, comprising one-half of all farm parcels, was considered to be the least valuable parcel of the farm by all parties and the court. This mistaken concept was best expressed by defendant's counsel when he falsely characterized it as "the crappiest piece of property, the driest piece of property, and the property that has no frontage on any side and is surrounded by railroad tracks...." (R. 756). No one during the trial had any inkling that the "crappiest piece of property" was really worth \$217,800, not the \$48,000 assumed by the court and all of the parties.

The 1993 appraisal simply did not reflect the relative values of the farm parcels during the trial, nor since, and should never have been used to divide "equally" the parcels among the three sons. Prior to the trial and unbeknownst to any of the parties and the court, the real value of Parcel #1 had been radically affected by a confidential sale of 22.4 acres for \$5,500 per acre which property was located but a short distance from Parcel #1 for which an actual option-offer was made prior to the court's final decision. (Appellants' Brief, Addendum 12). Consequently, "if there is any justification in law or equity for avoiding or repudiating a stipulation, and he timely does so, he is entitled to be relieved from it, otherwise not." Klein v. Klein, 544 P.2d 472 (Utah 1975).

It is within the trial court's discretion to determine whether a stipulation should be vacated. United Factors v. T.C. Associates, Inc., 445 P.2d 766 (Utah 1968); however, for a mistake of fact the parties may be relieved from their stipulation by the



court "in the interest of justice and fair play." State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983). The court had an overriding duty to carry out the trust mandated equal division among the three Dickemore sons - not to frustrate that purpose with the excuse of a non-binding party stipulation based on a mutual mistake of fact which should make any contract or party stipulation voidable. Robert Langston, LTD. v. McQuarrie, 741 P.2nd 544 (Utah App. 1987).

#### POINT II.

IN MOST STATES COURTS ARE NOT BOUND  
BY STIPULATIONS BETWEEN THE PARTIES  
WHEN POINTS OF LAW REQUIRING JUDICIAL  
DETERMINATION ARE INVOLVED.

The court's primary duty in the instant case was "to carry out the intent of the trustor or trustors." Matter of Gerber, 652 P.2d 937 (Utah 1982). Even though this duty was recognized by the trial court (TR. 165), it included in its conclusions of law the division of real property that was obviously disproportionate in amounts and grossly unequal in value. Although the court, in its decision apparently felt bound by the stipulated appraisal values, it was not bound by any stipulation of the parties because party stipulations are not binding on courts "when points of law requiring judicial determination are involved." First Denver Mortgage Investors v. C. N. Zundell, 600 P.2d 521, 527 (Utah 1979).

CONCLUSION

The trial court's decision of July 29, 1996, distributing the Dickemore Trust Estate disproportionately and unequally because of reliance on mistaken values of the property should be reversed and all four of the remaining farm properties should be sold to effect an equal distribution to all three Dickemore sons as provided in the Dickemore Family Trust.

Dated this 20<sup>th</sup> day of May, 1997.

Parker, Thornley & Critchlow

By: 

William J. Critchlow, III  
Attorneys for Appellants  
2610 Washington Boulevard  
P. O. Box 107  
Ogden, Utah 84402  
Telephone (801) 399-3303

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing REPLY BRIEF OF APPELLANTS were hand delivered this 20<sup>th</sup> day of May, 1997, to Merlin G. Calver, 2650 Washington Boulevard, Ogden, Utah 84401.

  
William J. Critchlow, III