

1978

Harold S. Sanders and Eleanor Sander v. Donn E. Cassity, Trustee, et al. : Appellant's Petition For Rehearing and Brief In Support of Petition For Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

HAROLD S. SANDERS and ELEANOR SANDERS,	}	
	}	
Plaintiffs-Respondents,	}	Case NO. 15515
	}	
vs.	}	
	}	
<u>DONN E. CASSITY, Trustee, et al.,</u>	}	
	}	
Defendants-Appellant.	}	

APPELLANT'S PETITION FOR REHEARING AND
BRIEF IN SUPPORT OF
PETITION FOR REHEARING

APPEAL FROM JUDGMENT
OF THE
DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF SUMMIT COUNTY
STATE OF UTAH
Honorable James S. Sawaya, Judge

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PETITION FOR REHEARING

The Supreme Court of the State of Utah erred in its opinion filed October 13, 1978, in the above entitled matter as follows:

1. The Supreme Court erred by assuming that Leoda Dunham was a qualified head of household, and therefore entitled to a homestead exemption at the time that appellant's judgment was docketed. This assumed fact has no foundation in the record on appeal nor in any evidentiary material submitted in these proceedings.

2. The Supreme Court erred by improperly placing a duty upon appellant to contest the declared value of the homestead property of Leoda Dunham, as set forth in her homestead declaration, at the time the declaration was recorded. The improper imposition of this duty was the basis

for the Court's finding that appellant waived his right to contest the declared value of the property in these proceedings.

3. The Supreme Court erred by failing to address a material issue on this appeal, i.e. whether Leoda Dunham retained her homestead exemption or conveyed it to respondents.

WHEREFORE, appellant petitions the Utah Supreme Court to reconsider its opinion in the above entitled case and to rule in favor of appellant by holding:

a. That appellant's judgment lien attached to Leoda Dunham's property before she was a qualified head of household, and consequently the subsequent declaration of homestead had no affect upon the judgment lien.

b. That appellant had no duty to contest the declared value of the homestead property, as set forth in Leoda Dunham's homestead declaration, and has consequently not waived his right to have the true value determined. If necessary, this matter should be remanded for a determination of the true value of the homestead property.

c. That the court erred in holding that it need not determine whether Leoda Dunham retained or

conveyed her homestead interest when the value of the homestead property at the time of the conveyance thereof has not been determined.

RESPECTFULLY, submitted this 30 day of October, 1978.



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