

1949

In the Matter of the Estate of James W. Linford : Brief of Respondent

Utah Supreme Court

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L. D. Naisbitt; W. Lee Skanchy; Attorneys for Respondent;

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In the Supreme Court of the State of Utah

IN THE MATTER OF THE
ESTATE OF
JAMES W. LINFORD,
Deceased.

**Respondent's
Brief**

Appeal from the District Court of the First Judicial
District of the State of Utah, in and for the
County of Cache.

Hon. Marriner M. Morrison, Judge.

L. D. Naisbitt

W. Lee Skanchy.

Attorneys for Respondent,

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The Statement of Facts as submitted by the appellants in their brief are substantially correct.

ARGUMENT

1. It is the contention of the Respondent that the Court did not err in sustaining her demurrer to the Appellant's Petition for the following reasons;

1. That the Petitioners had notice of the proceedings and failed to make an objection.
2. That action at this time is barred by the statute of Limitations.
3. That the said Minor Heir, James Stephen Linford, is not a party to the within action.

2. The record shows that the administratrix,

Beatrice E. Linford Sorenson, filed her petition asking for issuance to herself of Letters of Administration; that notice was given to the Petitioners herein; that appraisers were duly appointed by the Court; that they later filed their Inventory and Appraisement; that the value of the estate was fixed by the appraisers and not by the administratrix; that as a result of said valuation, being less than \$1500.00 the administratrix filed her account and Petition asking for Summary Distribution; that petitioners herein received notice of said account and petition for Summary distribution but failed to enter an objection.

The appellants argue that the only parties to this proceeding is the Court on one side and the administratrix on the other. Such a position is erroneous and untenable in view of the fact that the Court has closed the case and lost jurisdiction of the property by reason of its order and decree. And the only parties who can disturb the decree are those interested and then only those who have not had their day in court. The appellants had notice of all the proceedings and had the opportunity to object to any of the probate proceedings or to appeal from any orders or decrees; but having failed to exercise these rights, they are now, after six years, precluded from protesting.

The appellants further say that this is not an attack on the decree but merely an accounting. That

being the case then the decree must stand. To support these contentions we quote.

Utah Code Annotated 1943, Sec. 102-11-37.

“The settlement of the account, and the allowance thereof by the court or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability their right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person the allowance and settlement of the account is prima facie evidence of its correctness.”

130 Pacific Reporter, In Re Evans, Page 217, Sec. 33-34 page 234.

“The law is well settled that the decree of distribution in probate proceedings, after due and legal notice, by a court having jurisdiction of the subject-matter, is conclusive as to the fund, items, and matters covered by and properly included within the decree until set aside or modified by law, or until reversed on appeal.”

IN 2 Black on Judgments, paragraph 643, the author says: “Thus, where a judge of probate has, by a decree, allowed a widow her distributive share in her husband’s estate, the accuracy of the decree, as to the amount by law allowable to her, cannot be called in question collaterally.” And, again, in section 644, it is said: “A decree of the probate court settling an executor’s or administrator’s final account and

discharging him from his trust, after due legal notice, and in the absence of fraud, is conclusive upon all matters or items which come directly before the court, until reversed; and it will be presumed that it was founded upon proper evidence, and that every prerequisite to a valid discharge was complied with; nor can the decree be impeached in any collateral proceeding.”

158 Pacific Reporter, In Re Raleigh's Estate, page 705, Paragraph 1, 2 page 709.

“It is apparent, therefore that an executor's or administrator's account which has been allowed can be assailed only in equity and upon the same grounds as other judgments. Moreover, such attacks cannot be made, as they were attempted to be made in this proceeding, by a mere reference to some items in the objections filed to the allowance of the final account, but the attack must be made as in other cases where a judgment is assailed for fraud, etc. From the foregoing it follows that the demurrer to the so-called objections, in so far as it was thereby sought to reach items which had been included in either one of the preceding accounts which had been settled and allowed by the probate court, should have been sustained. Moreover, the objections on the part of the surviving executor to the reopening and re-examining of any items which were included in the preceding accounts, or in any one of them, and which had been allowed and approved by the probate court, should also have been sustained. For the same reason the court erred in vacating and setting aside the orders or judgments allowing and settling the two preceding accounts.”

24 Corpus Juris, page 528, paragraph 1400.

“e. Operation and Effect---(1) In General. A decree of distribution, if properly made after due notice, is in its nature final, and unless set aside for fraud, etc., or appealed from within the time limited by law, it concludes the rights of all parties interested in the estate.”

178 Pacific Reporter, page 753, paragraph 1, page 754, Moyes et al. vs. Agee, 53 Utah, 360.

“The account allowed and settled by the decree of October 13, 1916, states everything necessary to a final account, and it was allowed and settled by the decree aforesaid upon a proper hearing after notice as required by law. The fact that the decree settling the final account provided that the administrator “Shall make a complete statement of receipts and expenses paid by him since the rendition of his final account and file vouchers for the same” does not make the account less of a final account, and did not deprive the court of power to make and render the final decree of distribution.”

In paragraph 2, page 755.

“The decree was final, and after six months had elapsed could be assailed only in an independent action, and for proper cause.”

The appellants have inserted the words “False and Fraudulent” no doubt for the purpose of inferring that the decree was obtained by fraud but there has been no facts set forth that would indicate fraud; Mistakes or omissions, even if they existed, do not, in and of themselves, amount to fraud. If property was

ommitted, which we do not admit, it does not amount to fraud.

The appellants have set out certain items in the Inventory that they claim do not represent the true value (Pages 6-3, b-5, b-7 of Petition). These items were appraised by the duly appointed appraisers and cannot now be attacked for reasons above set forth and because the time for appeal has run. Under Section 104-41-2, Utah Code Annotated, 1943, all appeals must be taken within 90 days on entry of judgment or order made. There are no facts alleging fraud by the appraisers.

The appellants in the citation in the District Court allege that they brought this for themselves and also in behalf of a minor grandchild, James Sthephen Linford, It is our contention that the said minor Grandchild is not a party to said petition. That said minor child must if at all, appear by some duly appointed representative.

We do not contend that an heir that was omitted by the administratrix and who received no notice of the Probate proceedings is barred from any remedy. This problem, however, is not an issue in this case for the reason that the omitted heir, James Stephen Linford, has not appeared as a party in this matter and it is elementary that a minor child cannot be a party to an action unless represented by a guardian properly appointed by the Court. In this case the minor child not being a party, the petition, so far as he is concerned,

should be dismissed.

We quote. Section 102-13-12, Utah Code Annotated, 1943.

“The district court for each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county or who reside without the state and estate within the county. Such an appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment the court must cause such notice as it deems reasonable to be given to any person having the care of the minor, and to such relatives of the minor residing in the county as the court, may deem proper.”

It is respectfully submitted that the trial Court's order sustaining respondent's demurrer to Petition for Citation and its order dismissing said petition and citation should be sustained.

Respectfully submitted,

I. D. Naisbitt

W. Lee Skanchy.

Attorneys for Respondent,