

1978

In the Matter of the Estate of Goldwyn W. Cluff, Sr., Also Known As G.W. Cluff, Deceased : Brief of Appellant Aleith Cluff

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate)
 of
GOLDWYN W. CLUFF, SR.,) Case No. 15559
also known as G. W. CLUFF,
Deceased.)

BRIEF OF APPELLANT ALEITH CLUFF

Interlocutory Appeal from an Order Entered by
Honorable J. Harlan Burns, Judge,
Fifth District Court, Millard County

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FILED

FEB 10 1978

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE)

OF)

GOLDWYN W. CLUFF, SR., aka)
G. W. CLUFF,)

Deceased.)

Case No. 15559

BRIEF OF APPELLANT

NATURE OF THE CASE

This is a probate proceeding. After granting final discharge to the administratrix, the Fifth Judicial District Court in and for the County of Millard, State of Utah, reopened the estate and appointed the petitioner administratrix against her will.

DISPOSITION IN LOWER COURT

The District Court denied the petitioner's motion to set aside the Order appointing her the administratrix against her will.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the Court declare that Judge J. Harlan Burns of the Fifth Judicial District Court of Millard

County, State of Utah, does not have the power to force Aleith Cluff to be administratrix of the Estate of Goldwyn W. Cluff, Sr., deceased, because said order would be contrary to the Constitution of the United States, Amendment XIII, Section 1, and the Constitution of the State of Utah, Article 1, Section 21.

STATEMENT OF FACTS

Petitioner was appointed administratrix in the above entitled matter and continued to administer the estate up to the 15th day of January, 1975, when the court entered a decree of final distribution, approved her first and final account, and discharged her as the administratrix. Said decree is attached to the petition for order granting intermediate appeal and designated Exhibit B.

On the 19th day of May, 1977, the court made and entered an order reopening the estate and appointing Cluff Talbot as administrator De Bonis Non. Cluff Talbot refused to act. On the 31st day of May, 1977, the court made and entered an order discharging Cluff Talbot as administrator De Bonis Non and ordered that Aleith Cluff continue as administratrix solely for the purpose of completing Fifth Judicial District Court of Millard County, Civil No. 6400, Sharlene Wright and Jay Wright, Plaintiffs, vs. Aleith Cluff, Administratrix of the Estate of Goldwyn W. Cluff, Sr., Defendant.

Aleith Cluff has refused to act as administratrix and

has petitioned the court to set aside said order.

The court has refused to set aside the order but has stayed all proceedings in this matter until Aleith Cluff petitions the Court for an order allowing an appeal on this interlocutory order or decision.

On the 16th day of June, 1977, Ray H. Ivie, attorney for Aleith Cluff, prepared the motion and order and mailed them to Judge J. Harlan Burns. Said motion and order is attached to the petition for order granting intermediate appeal and designated Exhibit C.

Thereafter Ray H. Ivie checked with the Judge's office several times and was eventually advised that the motion and order had apparently been lost in the mail.

On September 19, 1977, Ray H. Ivie prepared the motion and order again and mailed them to Judge J. Harlan Burns. Said motion and order is attached to the petition for order granting intermediate appeal and designated Exhibit D.

Thereafter, on November 26, 1977, Ray H. Ivie received a copy of the signed order, a copy of which is attached to the petition for order granting intermediate appeal and designated Exhibit E. Ray H. Ivie thereafter discovered that the order must have been signed in June, 1977, and left with the County Clerk. A copy of said order is attached to the petition for order granting intermediate appeal and designated Exhibit F.

The Clerk has now advised Ray H. Ivie that Judge J.

Harlan Burns asked him to notify Ray H. Ivie of the signing and filing of the motion and order.

In the mail of December 5, 1977, Ray H. Ivie received a notice, dated November 22, 1977. A copy of the envelope is attached to the petition for order granting intermediate appeal and designated Exhibit G, and a copy of the notice is attached to the petition for order granting intermediate appeal and designated Exhibit H.

ARGUMENT

POINT I

COMPELLING THE PETITIONER TO SERVE AS ADMINISTRATRIX IS A VIOLATION OF HER CONSTITUTIONAL RIGHT TO BE FREE FROM INVOLUNTARY SERVITUDE.

The Constitution of the United States, Amendment XIII, Section 1, provides as follows:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Constitution of the State of Utah, Article 1, Section 21, provides as follows:

Neither slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

The Thirteenth Amendment to the Federal Constitution and Article 1, Section 21, of the Utah State Constitution not only abolish the institution of slavery, but both provisions go further and abolish "involuntary servitude". The essence of involuntary servitude is that a worker is compelled by law or force to labor against his will for the benefit of another. See Hodges v. United States, 203 US 1.

No issue of involuntary servitude arises when the complaining party has been lawfully convicted of a crime and imprisoned as a result thereof. Similarly, it has not been held to be a violation of involuntary servitude to enforce upon the citizens of this nation the duties they owe to the state. Involuntary servitude is not imposed upon an individual for compelling him to serve in the military, Selective Draft Law Cases, 245 US 366, (1918), or for the imposition of a penalty for the nonpayment of taxes, Weber v. New York 18 Misc 2d 543, 195 NYS 2d 269, (1959). However, the application of the above mentioned cases has been limited to the circumstances of public duty and responsibility and has never been extended to the area of private litigation and the imposition by the court of a burden or responsibility on an individual to affirmatively administer an estate. Compelling the petitioner to administer the estate of Goldwyn W. Cluff, Sr., forces her to work against her will for the benefit of another.

The Thirteenth Amendment to the Constitution of the

United States prevents the Court from enforcing involuntary servitude on any person, including attorneys who have historically been considered officers of the Court. See United States of America v. Lesser, 233 F Supp. 535 (1961) reversed on other grounds 335 F2d. 832 (1964). Regarding the issue of compelling a member of the Bar to represent an indigent defendant the court states:

Much has been heard concerning civil rights these days, but somehow or another people seem to overlook the provisions of the Thirteenth Amendment to the Constitution of the United States which reads as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Any statute of California or of the United States which is contrary to that amendment is void. The Sixth Amendment to the Constitution which prescribes that an accused shall "enjoy the right * * * to have the Assistance of Counsel for his defense," is just as much modified by the Thirteenth Amendment as all other parts of the Constitution which permitted slavery.

While the Court is mindful of the high duty of every member of the Bar to serve those who are oppressed it has no more power to compel a member of the Bar of the State of California to do the tremendous amount of work and put in the tremendous amount of time it would require to conscientiously examine the files and records in this case, and represent the defendants on appeal, and thus compel involuntary servitude by a lawyer to convicted criminals, than I have to make an order compelling these defendants, had they not been convicted, to pick cotton for a private individual. This lack of power is implicitly recognized in Section 1915 of Title 28 U.S. Code, inasmuch as that Section does not give the Court the power to appoint, or assign, or compel, or coerce an attorney to represent anyone, but merely gives the Court the power to request an attorney to do so.

The Utah Supreme Court has also made declarations regarding involuntary servitude. In McGrew v. Industrial Commission

85 P2d 608 (1938), the plaintiffs seek to have the Utah Minimum Wage Law declared void. They brought the action to enjoin the Industrial Commission from enforcing its order fixing minimum wages and maximum hours for women and minors engaged in retail trades. Speaking with respect to the property rights held by the plaintiffs the court said:

.....The right to work, the right to engage in gainful occupations, the right to receive compensation for one's work are essentially property rights.But no man can have a vested interest in the work or labor of another. He has no right in law to insist that another must work for him. Such right would amount to involuntary servitude or slavery and be in violation of Section 21 of Article 1 of the State Constitution. Labor is not a mere commodity to be bought and sold upon the market but is part of the warp and woof of the life of the laborer. The employer is entitled to have, to own, and use the result of the effort, energy and toil of his employee. That right is his property. But the activity exerted, the energy used, the strength expended and the skill applied belong to the workman. They are part of his body, part of his life and can neither be bought nor sold. One's body and life are his own and he cannot be required to yield up either except at his own desire, the call of his country, or the decree of his God. In and to those things no one else can acquire any rights whatsoever.

In 1968 the Utah Supreme Court made two significant statements with respect to the rights of lawyers as they were called upon to serve or represent indigent clients. In Washington County v. Day, 447 P2d 189, 22 Utah 2d 6, (1968), the appellant petitioned the Supreme Court of Utah to prohibit the enforcement of an order granting the defendant's request for an investigator at county expense. Speaking of the court's inherent power to prevent the miscarriage of justice and to watch over the rights

of the impecunious defendant the court said:

However, it must not be understood that lawyers alone among all the professions can be compelled by the legislative authority to undertake free services for impecunious people. The lawyer has the same rights as the doctor, the public accountant, or the surveyor. None of them can be compelled by the law to render services for free.

In Bedford v. Salt Lake County, 447 P2d 193, 22 Utah 2d 12, (1969) p. 194-195, the Supreme Court was again called on to decide the fate of lawyers when rendering services to indigent clients. Although the court held that a lawyer should represent the client and accept his assignment from the court as a part of his professional responsibility, the holding was clear in stating that the reason the lawyer would serve an indigent client for free is due to his relationship with the court and that the legislature could no more require a lawyer to represent a client free than it could compel a physician to treat a sick or injured indigent patient without pay.

For the legislature to attempt to compel a lawyer to work by passing a statute requiring the judge to order it done would be to take his property without giving just compensation, or to impose a form of involuntary servitude upon him.

Forcing the petitioner in the present case to serve as administratrix against her will is a clear violation of her constitutional right to be free from involuntary servitude. The District Court had no power to gain jurisdiction over the petitioner and require that she affirmatively take actions as administratrix, to do so would force her to serve against her

will for the benefit of another.

POINT II

THE POWER OF THE PROBATE COURTS TO APPOINT ADMINISTRATORS IS A POWER CONFERRED BY STATUTE AND BY NO OTHER METHOD.

Consent is an essential requirement to the appointment of an individual as an administrator of an estate. According to the laws of Utah and the statutory grant of authority given the probate court, a judge can only issue letters of administration after the appointee takes and subscribes to an oath that he will perform according to the laws and duties of an administrator. Section 75-5-1 U.C.A. 1953. This statute was applicable to the facts of this case because the order appointing Aleith Cluff administratrix was entered on May 31, 1977, a month prior to the effective date of the new Utah probate code. Incidentally, under the new probate code, the administrator must still file an answer with the court consenting to the appointment. Utah Uniform Probate Code 75-3-601, 75-3-602 (1977).

Section 75-5-1 U.C.A. 1953 states:

Before letters testamentary or of administration or of guardianship are issued the executor, administrator or guardian must take and subscribe an oath that he will perform according to law the duties of executor, administrator or guardian, which oath must be attached to the letters. All letters testamentary, of administration and of guardianship issued to, and all bonds executed by, executors, administrators or guardians,

with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estate, in books to be kept by him in his office for that purpose.

Section 75-12-19 U.C.A. (1953) states:

When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered under the order of the court all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

On January 15, 1975, Aleith Cluff was discharged as administratrix of the estate of Goldwyn W. Cluff, Sr., in the same proceeding the judge entered a decree of final distribution and approved her first and final account. According to Section 75-12-19 U.C.A. (1953), the administratrix or personal representative is discharged from all liability to be incurred after final discharge. Consequently, when the Honorable J. Harlan Burns entered the order appointing petitioner as administratrix on May 31, 1977, such action constituted a reopening of the estate and the appointment of the petitioner as administratrix would be valid and binding only by satisfying the statutory requirement of consent by the appointee and the taking of an oath as required by Section 75-5-1 U.C.A. (1953). Petitioner never consented to the appointment as administratrix and has never taken the oath as required by the above mentioned Code section, as a result, the court is without jurisdiction and has no power to appoint the petitioner administratrix without complying with the statutory grant of

authority. See Wink v. Marshall, 392 P2d 768, (Oregon 1964).

POINT III

PUBLIC POLICY REQUIRES THAT AN ADMINISTRATOR CONSENT TO HIS APPOINTMENT BEFORE LETTERS OF ADMINISTRATION BE ISSUED AND AUTHORITY TO BIND THE ESTATE BECOMES EFFECTIVE.

The administration of estates is a very sensitive and delicate area of civil litigation. Administrators serve as fiduciaries and as such owe a strict duty of care and honesty to all those involved in the probate of an estate. To compel an individual to serve as an administrator against his will and for the benefit of those to whom he has no obligation would be a flagrant violation of public policy. For the protection of heirs, creditors and the public in general, an administrator should not be forced to serve but should be allowed to serve only after consenting to requirements of the office and taking an oath swearing to perform in accordance with the rules governing estate administration.

In the case at bar, Aleith Cluff was appointed administratrix against her will and without taking an oath to adhere to the rules of administration, to compel her to serve the estate of Goldwyn W. Cluff, Sr., would be in direct conflict with the clearly established public policy of requiring administrators to assume and function in a fiduciary relationship with all those

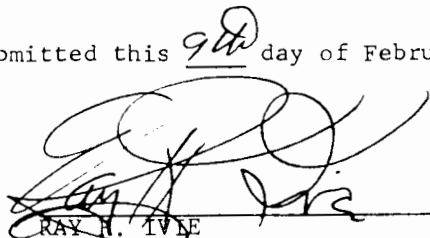
concerned in the estate.

CONCLUSION

Forcing Aleith Cluff to serve as administratrix against her will violates her constitutional right to be free from involuntary servitude, circumvents the statutory authority granted the probate court to appoint administrators only within the bounds of legislative authority and violates the logic of public policy demanding a fiduciary obligation imposed on administrators.

Petitioner contends that the Honorable J. Harlan Burns was in error in appointing her as administratrix against her will. Petitioner requests the Supreme Court to set aside the order of May 31, 1977, appointing her as the administratrix of the estate of Goldwyn W. Cluff, Sr.

Respectfully submitted this 9th day of February, 1978.



RAY H. IVIE
IVIE & YOUNG
Attorneys for Appellant

MAILING CERTIFICATE

I certify that on the 9th day of February, 1978,
I mailed two (2) true and correct copies of the foregoing
Brief of Appellant to Eldon A. Eliason, Attorney for Respondent,
Delta, Utah 84624.



RAY H. IVIE