

1978

In the Matter of the Estate of Goldwyn W. Cluff, Sr., Also Known As G.W. Cluff, Deceased : Brief of Respondents Sharleen Wright and Jay Wright

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

In The Matter Of The Estate)
)
) Case No. 15559
)
GOLDWYN W. CLUFF, SR.,)
Also known as)
G. W. CLUFF, Deceased.)

BRIEF OF RESPONDENTS

SHARLEEN WRIGHT AND JAY WRIGHT

Appeal From Order of Fifth District Court,
Honorable J. Harlan Burns, Judge

ELDON A. ELIASON
Attorney for Respondents
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Delta, Utah 84624

RAY H. IVIE for
IVIE AND YOUNG
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Provo, Utah 84601

FILED

MAR 14 1978

Clark, Supreme Court, Utah

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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 RESPONDENTS

NATURE OF THE CASE

This case, though described by the Appellant's brief as a probate proceeding, involves the matter of a claim submitted by Sharleen Wright and Jay Wright as plaintiffs vs. Aleith Cluff, Administratrix of the estate of Goldwyn W. Cluff, Sr., deceased. It emanates from a claim filed against the personal representative in the form of a Complaint by claimants, (respondents) in the District Court of Millard County, State of Utah, Civil No. 6400; which when filed on October 26, 1974 was unliquidated; requesting damages for injury and property loss. Simultaneously with the filing of the Complaint against the personal representative, a copy of the Complaint and Summons was mailed to State Farm Mutual Automobile Insurance Company, who was the insurer and/or indemnifier of the claim.

Within three months and on January 15, 1975 the Sheriff of Salt Lake County served upon and delivered to the personal representative, Aleith Cluff a copy of the said claim by way of Complaint and Summons.

The insurer through its legal counsel, Ray H. Ivie filed an Answer to the said claim on the 31st of January, 1975. Under an Order of Distribution filed with the Clerk of the District Court of Millard County on January 16, 1975, the account of the administratrix was allowed and approved with authorization to distribute to Aleith Cluff, certain assets of the estate, and the Order further provided that the administratrix be discharged from her trust and from further liability by reason of her future acts. The Court was apparently not mindful of the claim of the respondents, but after subsequent review, the Court upon petition, reopened the said probate proceedings and 'set aside' the release and discharge of Aleith Cluff and authorized and empowered her to continue as administratrix of the estate of Goldwyn W. Cluff, Sr., deceased, for the purpose of adjudicating the said claim.

The personal representative, through her legal counsel, LeRay G. Jackson, declined to continue in the said office, and in effect, resigned. Whereupon, with the consent of counsel for the personal representative, Aleith Cluff, and upon petition and consent of a nephew of the decedent, Cluff Talbot was appointed administrator De Bonis Non to continue the administration as related to the settlement of the creditors' claims of the respondents, Sharleen Wright and Jay Wright.

The Court was in the process of liquidating the claim of the respondents on May 31, 1977 with an impanelled jury when the insurer of the decedent appeared with two counsel, one, LeRay G. Jackson, who represented to the Court that he was employed by State Farm Mutual Automobile

Insurance Company to request the release and discharge of Cluff Talbot as administrator De Bonis Non; and counsel Ray H. Ivie, who then argued to the Court that with the administratrix having declined or refused to act and the administrator De Bonis Non having been released and discharged through the efforts of the insurer, the Court could not continue its efforts to liquidate the claim. The administratrix, Aleith Cluff being then in the courtroom, and the jury too, being ready to hear the facts of the claim, the Court in it's sole discretion, ordered Aleith Cluff to continue as administratrix for the purpose of resolving the claim. Whereupon Ray H. Ivie, counsel for the insurer took upon himself, an appearance for Aleith Cluff, personal representative, and filed objections to the Judge's Order of May 31, 1977, requiring the administratrix to complete the resolve of the claim, Civil No. 6400, and requested that proceedings stop until an intermediate appeal could be had on his motion to vacate the Order.

The valid claim of the respondents was by the action of the personal representative and the insurer, left in default by the refusal to liquidate or pay the claim, and in effect, resigning, and the respondents, Sharleen Wright and Jay Wright are entitled to judgment by default in the sum of \$30,109.00 or liquidation of the claim.

DISPOSITION IN LOWER COURT

The trial court, by an Order dated May 31st, 1977, in it's discretion, and as supervisor of the administration proceedings of the personal representative, required the personal representative, Aleith Cluff

who had administered entirely, the estate except for the personal injury, property damage claim of the respondents to continue to represent the estate for the sole purpose of resolving their claim.

RELIEF SOUGHT ON APPEAL

The Appellant seeks to have the administratrix relieved and released from further duties as personal representative, thereby defaulting upon the bona fide claim of the respondents. The respondents, based upon the default and refusal of the personal representative with the acquiescence and urging and approval of the insurer of said claim, requests the court to enter judgment against the personal representative under the respondents' Complaint of October 26, 1974, and award respondents judgment in the sum of \$30,109.00, together with interest on the said claim, or liquidate the claim.

STATEMENT OF FACTS

On May 31, 1977 at 3 a.m. the District Court of Millard County was set to hear a jury trial involving a claim of the respondents, Sharleen Wright and Jay Wright versus the personal representative of the estate of Goldwyn W. Cluff, Sr., deceased.

For more than two years last past, the court had, by pretrial and motions, pursued the liquidating of the said claim.

Aleith Cluff had on the 26th day of August, 1974, signed a petition requesting Letters of Administration and the appointment of herself as the personal representative, which was granted by the Court and on the 26th

day of August, 1974, Aleith Cluff did take an oath of administration, and did solemnly swear that she "will perform according to law, the duties of administratrix of the estate of Goldwyn W. Cluff, Sr., aka G. W. Cluff, deceased" (which sworn oath is contained in F-11 of the Court Records on Appeal.)

On or about the 26th day of October, 1974, the respondents, Sharleen Wright and Jay Wright filed a claim against the administratrix of the estate by a Complaint filed in the District Court of Millard County, a copy of which claim is attached hereto as Exhibit 2. The claim was unliquidated, but requested the payment for personal injury and property damage of \$14,730.00 general damages, and \$15,379.00 special damages, for a total claim of \$30,109.00. The claim was served on the insurer, State Farm Insurance on November 8, 1974 as evidenced by Exhibit 1. That service of a copy of the claim was delivered to the personal representative and served by the Sheriff of Salt Lake County on the 15th day of January, 1975, as shown by attached Exhibit 3.

That on January 16, 1975 there was filed with the Clerk of the District Court of Millard County, a Decree of Final Distribution, signed by the District Judge, January 15, 1975, distributing real property of the estate to Aleith Cluff, administratrix. Said Decree was based on the petition of Aleith Cluff, administratrix, through her counsel, LeRay G. Jackson, which petition was noticed on the 8th day of January, 1975 for hearing on the 15th day of January, 1975, having been noticed a total of seven days.

The Court, by inadvertence had overlooked a claim of the creditors herein, as not having been settled when the Order of settlement and discharge was ordered. (Exhibit R-29, Records of Appeal) And to correct the matter and resolve the claim, the Court after petition for reopening, ordered the said personal representative on January 25, 1977 to continue as administratrix of the estate of Goldwyn W. Cluff, Sr., deceased for the resolving of said claim. (Record on Appeal X-4)

Thereafter, said personal representative Aleith Cluff, by her counsel, LeRay G. Jackson, appeared before the Court and reported the personal representative as unwilling to continue the administration of the estate, which was contrary to the oath to which she had subscribed on the 26th day of August, 1974. (Record on Appeal F-11)

Whereupon Cluff Talbot, a nephew of the decedent filed with the Court under date of April 19, 1977, a consent to act as an administrator De Bonis Non for the sole purpose of completing the estate with respect to the claim of the respondents herein. (Record on Appeal, F 1-46)

The administrator De Bonis Non filed bond. Notification of his appointment was given the insurer as evidenced by a letter of Ray H. Ivie to Cluff Talbot, (designated as Entry D 1-48 of Records on Appeal).

The Judge on May 31st was using his every resource to resolve the claim filed by the respondents against the personal representative, and under the statutes relative to probate proceedings, Title 75, Utah Code Annotated (1953), and within his sole discretion after the insurer of the deceased of the personal representative had fought down the efforts

of the Court to resolve the claim through the administrator De Bonis Non, required Aleith Cluff, the personal representative, to continue and entered the Order of May 31, 1977, from which this action is appealed. (Court Records on Appeal, G 1-53)

The insurer had no standing in the probate proceedings and without filing an appearance the insurer through counsel, Ray H. Ivie, by usurpation, filed an objection to the Order on behalf of the administratrix. (See Motion, Record on Appeal, H 1-54) The said Motion being dated the 16th of June, 1977. And even though the Order staying the proceedings to allow the insurer to file an intermediate appeal was June 16th, the appeal was not taken in the thirty days required under Rule 73, Utah Rules of Civil Procedure, but Notice of Appeal was filed December 14, 1977.

Counsel for the insurer obtained another order dated September 22, 1977, (Exhibit K 1-60) which was the same order as June 16, 1977, and an interlocutory appeal was eventually filed December 14, 1977, six months and fifteen days after the Order appealed from had been granted by the Court.

ARGUMENT

POINT I

REQUIRING THE PETITIONER TO CONTINUE TO SERVE AS ADMINISTRATRIX FOR WHICH SHE HAD VOLUNTARILY FILED AND TAKEN AN OATH TO COMPLETE IS NOT IN VIOLATION OF HER CONSTITUTIONAL RIGHT TO BE FREE FROM INVOLUNTARY SERVITUDE, BUT THE STRENUOUS EFFORTS OF TWO LEGAL COUNSEL

REPRESENTING THE INSUROR, STATE FARM MUTUAL INSURANCE COMPANY TO SEEK THE DISCHARGE AND RELEASE OF THE ADMINISTRATOR DE BONIS NON AND THE RELEASE AND RESIGNATION OF THE ADMINISTRATRIX CONSTITUTES A DEFAULT BY THE PERSONAL REPRESENTATIVE OF THE RESPONDENTS' CLAIM AND THE RESPONDENTS ARE ENTITLED TO A JUDGMENT FOR THE AMOUNT OF THEIR VALID CLAIM FILED AGAINST THE PERSONAL REPRESENTATIVE.

Aleith Cluff, of her own volition, petitioned the Court on August 26, 1974 to be named personal representative of the estate of Goldwyn W. Cluff, Sr., deceased. The Court upon the verified petition and in accordance with the court granted power to supervise the estate of the decedent appointed the said Aleith Cluff administratrix. (Record of Appeal, A-1)

The said Aleith Cluff did on the 26th day of August, 1974, subscribe her name before a Notary Public under oath, that she would perform according to law, the duties of the administratrix of the estate of Goldwyn W. Cluff, Sr., deceased. (Record on Appeal, F-11)

A part of that duty was to administer and pass upon claims of the creditors of the estate of Goldwyn W. Cluff, Sr., and one such claim was that of Sharleen Wright and Jay Wright filed October 26, 1974 against the said Aleith Cluff, administratrix of the estate of Goldwyn W. Cluff, Sr., deceased, praying for damages, personal injuries, property loss of \$30,109.00, which claim was served upon her as personal representative on January 15, 1975, and served upon the insurer who is required to

indemnify on the claim, on the 8th day of November, 1974.

Under Rule 3 C of Utah Rules of Civil Procedure, the Court shall have jurisdiction from the time of filing the Complaint or the Service of Summons, (which occurred October 26, 1974) and since said time the claim has been a valid existing claim to be resolved by the personal representative.

The insurer under policy obtained by the decedent, was required to indemnify or pay, under certain limitations, the claim for which the insured became liable. A voluntary action of the personal representative in refusing to administer the claim of the respondents and the efforts of the insurer to seek the release of a previously appointed administrator De Bonis Non in face of the Court's best efforts to liquidate, adjudicate and resolve the claim, constitutes a default. The respondents are entitled to a judgment, awarding payment of the said claim. To date the accounting of the administratrix has completely ignored the claim of the respondents, and seeking her release leaves the claim outstanding. Even though the claim was unliquidated before the respondents could assert a claim concurrently with other creditors of the estate, it was necessary that it be liquidated; that is to say, established by proof. The only purpose of the respondents in bringing suit against the personal representative was to liquidate their claim, to establish it by proof in order that the judgment thereon, if one is obtained, could be executed in concourse with other creditors of the estate. The law grants to parties this special action to accomplish that purpose. A creditor holding unliquidated claim against

an administrator under administration may bring a direct action against the administrator to establish his claim. In the case of Washburn Cross Company in the succession of Albert Ott, 162 Southern, Reporter 642, the Court in that same situation, said:

"Possessed of the information disclosed by the petition the administratrix was afforded the amplest opportunity to investigate and resist the plaintiff's demand since the suit was brought. Since the suit was brought and issue joined therein under the provisions of Article 986 of the Code of Practice, we do not think the administratrix was in a position to ignore the claim and applying for discharge."

By the same reasoning the administratrix Aleith Cluff cannot seek to be released and discharged without the settlement of the claim of the respondents.

POINT II

THE POWER OF THE PROBATE COURT TO APPOINT ADMINISTRATORS IS A POWER CONFERRED BY STATUTE AND THE COURT IN ITS SOUND DISCRETION IS REQUIRED TO SUPERVISE THE ADMINISTRATION OF SAID ESTATE, AND THE ORDER OF MAY 31, 1977 WAS IN THE SOLE DISCRETION OF THE COURT, DESIGNED TO JUDICIOUSLY RESOLVE THE CLAIM OF RESPONDENTS.

When Aleith Cluff filed a petition in the District Court of Millard County requesting the appointment of herself as administratrix of the estate of Goldwyn W. Cluff, Sr., deceased, she submitted to the jurisdiction of the Court, and the Judge of the Court was required, under Section 75-51, Utah Code Annotated (1953) to supervise the administration to require the administratrix to conform to not only the statutory

law, but the orders, regulations and requirements of the Court. And the administratrix, when she signed her oath of administration, stated:

(Exhibit F-11)

"Before me, Richard Belliston, Notary Public, on this 26th day of August, A. D., 1974, personally appeared ALEITH CLUFF, who being duly sworn, did say that she will perform according to law the duties of Administratrix of the estate of Goldwyn W. Cluff, Sr., aka G. W. Cluff, deceased. Signed, Aleith Cluff."

The Court had the right and the duty to see that she performed the duties of that office as supervised by him. He could require her to file certain bonds for the performance of those duties or require her to file notice, to pay a creditor's claim or resolve a creditor's claim, all of which is a part of the responsibility and authority granted to the Court.

The administratrix could not be heard to complain that it is involuntary servitude by compulsion to require her to file a notice to creditors, to require her to approve or disapprove claims submitted to the personal representative, and when the administratrix was prematurely and inadvertently released before the claim of the respondents was resolved, the Court exercising its supervisory authority of the estate, and in its discretion, held the right to request her to continue for the purpose of resolving the claim. In this regard the case of Clarence W. Brooks, 306 P 2d, 1005 is quoted from page 1968 as follows:

The ultimate end to be accomplished by a probate proceedings is to vest possession or both title and possession of the property of the estate in those entitled thereto. The duties of an administrator are not completed until the property of the estate has been delivered to the persons to whom the probate court directs that it shall be delivered whether it be

a claim allowed against the estate or a decree of distribution; the administrator has not performed the trust imposed upon him by law until and unless he pays the claim or delivers the property to the distributee. The duties of an administrator are not fully performed until he has not only accounted for, but also distributed, as ordered by the Court, all of the assets of the estate which has come into his possession as administrator. Ehrngren v. Gronlund, 19 Utah, 411 57 P. 268.

Also quoting from page 1068, Jensen v. Ogden State Bank, 30 P2 106:

The Court in which the estate of Clarence W. Brooks was being probated retained jurisdiction of the property of the estate and the administratrix thereof until its orders were complied with. Any other doctrine would render the Court powerless to compel its officers to comply with its orders.

And in regards to the Robison Estate, 204 P2d 321, it is stated:

District Courts are, and as a matter of necessity, must be given a wide discretion in the conduct of estates and should not be limited or restricted unnecessarily.

Under provisions of 34 Corpus Juris Secundum the fundamental law is stated:

That the court that granted original letters and holds supervision of the estate alone has the right to grant, administrator De Bonis Non.

And by the same reasoning has the right to require the administratrix to perform the duties of the office which she undertook when she accepted the office.

The case of Succession of Ott, 162 So. 642 is determinative and quote from page 643 of said case:

"With respect to those creditors whose debts are not liquidated administrator shall retain in his hands the sums for which they been placed upon the statement or tableau, until the amount due

is settled by a definitive judgment."

And the administrators of successions are clothed with the same powers and are subject to the same duties and responsibilities as the curators of vacant estates. Civ. Code, Art. 1049.

Under the provisions of articles 1182 and 1185 of the Civil Code hereinabove quoted, it was the clear duty of the administratrix to include in her tableau of distribution the unliquidated claim of Washburn-Crosby Company, Inc., retaining in her hands the amount of the claim, until its validity could be settled by a definitive judgment. She had been cited and served with a copy of the petition, and had joined issue in the suit brought to establish the claim, and she knew that the suit was pending and undetermined. Hence she was not justified in omitting the claim from her final account, which should be a full, complete, and final exhibit of all the affairs of the deceased. Succession of Gardere, 48 La. Ann 289, 19 So. 134. And the Washburn-Crosby Company, Inc., cannot be precluded from pursuing its suit against the administratrix because she obtained a judgment to which she was not legally entitled. That company was fully warranted in the belief that the administratrix would comply with the duty imposed upon her by law and would not seek to obtain her discharge until the validity of its unliquidated claim which it was litigating with her had been settled by a definitive judgment. As to the Washburn-Crosby Company Inc., the judgment granting the administratrix a discharge and canceling her bond can have no legal effect for the reason assigned the judgment appealed from is affirmed.

POINT III

THE NOTICE OF APPEAL BY COUNSEL FOR THE INSUROR CLAIMING TO REPRESENT THE PERSONAL REPRESENTATIVE WAS FILED MORE THAN FOUR MONTHS AFTER FILING PERIOD HAD EXPIRED.

Filing of notice of appeal within time required by law is essential to clothe the Supreme Court with jurisdiction to adjudicate question

raised by appeal. Anderson v. Halthusen Merchantile Company, 83 Pac 560.

If the Clerk of the Court where the case originated and was tried, certifies: No Notice of Appeal nor undertaking on appeal has been filed in my office, appeal will be dismissed. McEwan v. Anderson

The District Court on May 31st, 1977, upon request of counsel for the insurer claiming to represent the administratrix, terminated the proceedings, to liquidate and resolve the claim of the claimants. From May 31, 1977 the Order of the Court was subject to an intermediate appeal. The appeal was not filed until December 4, 1977.

POINT IV

THE JUDGE OF THE DISTRICT COURT IS NOT CREATING INVOLUNTARY SERVITUDE IN REQUESTING THE ADMINISTRATRIX TO COMPLETE THE ADMINISTRATION.

There is little or no similarity between the cases cited by counsel, namely, requiring legal counsel as a member of the Bar to represent impecunious defendant without adequate compensation, or other case cited; counsel involving compulsory military service against the will of the serviceman, and the case at Bar, where Aleith Cluff petitioned the Court for permission to act as administratrix of the estate of her deceased father-in-law, and agreed under oath to perform all the duties, responsibilities of that office as required by law and thereafter, distributed to herself, distributable assets, and after it was determined that a creditor's claim had not been resolved, that she refused to resolve or liquidate the said claim.

even though it would have created no personal liability or liability to the estate or involvement of personal effort on her part. The refusal is designed solely to avoid a legitimate claim, properly filed against the personal representative of the estate.

Had the transcript of the proceedings on the day of the refusal of the administratrix to continue, then been included in the record as it should have been, the transcript would show that the administratrix was in Court on the 31st day of May, 1977, and could have gone forward without incident or inconvenience.

The appellant has represented that they are attempting to require the claimant, Sharleen Wright and Jay Wright to begin their action with a newly appointed administrator De Bonis Non, with the thought that the statute of limitations will have run against the personal injury claim, and that the parties liable thereon, will by this delaying procedure, avoid such claim to the extreme loss and injury of the claimants. To permit the appellant with her insurance counsel to accomplish such an inequity, both upon the claimants and upon the Court would not only be against public policy but would be violative of legal and equitable principles upon which the law of decedents' estates is based.

Under the law, 75-12-19, Utah Code Annotated (1953) the administrator is entitled to discharge after the following conditions are met:

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 of the property of the estate to the parties

entitled, and performed all of the acts lawfully required of him, the court must make a judgment or decree, discharging him from all liability to be incurred thereafter.

By the untimely refusal to continue in settling the claim which is tantamount to resignation, the claim has been defaulted upon, and the action should be remanded to the District Court with direction to order the claim paid as per the complaint.

CONCLUSION


Permitting Aleith Cluff, a self-petitioned administratrix of the estate of Goldwyn W. Cluff, Sr., deceased, to elect which duties of the office she will perform and which she will not when the court is under the responsibility of supervising the equitable and fair administration of the estate does not constitute involuntary servitude when the Court in its discretion, determines that injustice, inequity, permanent injury will or may result if the court does not continue its orderly and obliged supervision of the administratrix and require her to resolve the claim presented to the estate through accepted procedure.

Accordingly, it is respectfully requested that the Appellate Court remand the matter to the District Court with direction to require the claim defaulted upon by the personal representative and the insurer attorney be paid or in the alternative, that the said Aleith Cluff be required to complete the administration which she voluntarily undertook under oath to discharge.

Respectfully submitted this 10 day of March, 1978.

MAILING CERTIFICATION

I hereby certify that on the 13 day of March, 1978, two true and correct copies of the foregoing Brief of Respondents were mailed postage prepaid to Ray H. Ivie of Ivie And Young, the attorneys for Appellant, at 48 North University Avenue, Provo, Utah 84601.


ELDON A. ELIASON

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November 8, 1974

RAY H. IVIE
DALLAS H. YOUNG, JR.
GARY D. STOTT
ALLEN K. YOUNG

Eldon A. Eliason
Attorney at Law
Delta, Utah 84624

Re: Wright vs. Cluff

Dear Eldon:

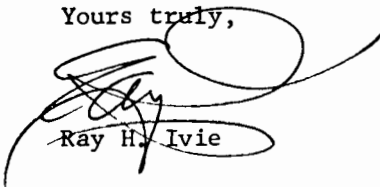
Apparently you have mailed a Summons and Complaint to State Farm Insurance, a photocopy of which I enclose for your easy reference.

State Farm Insurance tells me that they have no knowledge of the defendant, Aleith Cluff, being served.

Please let me know whether or not you have served Aleith Cluff.

It is my intention to file an Answer and make responsive pleadings when and if service is made.

Yours truly,



Ray H. Ivie

RHI/ke

Enclosure

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR MILLARD COUNTY, STATE OF UTAH

SHARLEEN WRIGHT and
JAY WRIGHT,

Plaintiffs,

vs.

COMPLAINT

ALEITH CLUFF,
Administrator of the estate of
GOLDWYN W. CLUFF SR.,

Defendant.

Comes now the Plaintiffs and allege:

I.

Plaintiffs allege that Aleith Cluff is the duly appointed and acting administrator in the estate of Goldwyn W. Cluff Sr., deceased.

II.

That at all times herein mentioned, there was and is certain highway in Hinckley, Millard County, State of Utah designated as Highway 50-6 (FR 27) and is also one of the designated streets in Hinckley, Utah, by the third street north of Academy Avenue. That the said road intersects with the main street of Hinckley, Utah.

III.

That on or about the 28th day of March, 1973, the plaintiff Sharleen Wright was driving a 1967 Rambler Vehicle belonging to Jay Wright or Sharleen Wright in an easterly direction along said highway 50-6 at a point approximately 75 yards east of where the said road intersects with main street of Hinckley, Utah. That the plaintiff was driving the said vehicle

in a careful and prudent manner and with regard to the traffic regulations.

IV.

That at the said time and place Goldwyn W. Cluff Sr. drove his 1973 Ford pickup truck in a westerly direction along said highway 50-6 to a point approximately 75 yards east of the intersection of main street and Highway 50-6 and without signaling, and in violation of the law, drove across a double yellow line into the east bound traffic lane and without keeping a proper lookout and failing to have his car under immediate and proper control, collided with the vehicle being then and there driven by the plaintiff.

V.

That as a result of the defendants negligence, carelessness and unlawful conduct in driving across the center of the road into the on-coming traffic, the vehicle of the plaintiff was damaged requiring mechanical repairs and replacement of parts to the plaintiff's loss and damage in the sum of \$149.00. That plaintiff's vehicle was in the Stoneking garage at Delta, Utah for repairs for more than four months and the plaintiff was required to rent, hire and obtain other vehicles during the loss of use of his own. That as a result of the negligence, carelessness acts of the said Goldwyn W. Cluff, Sr., the plaintiff Sharleen Wright suffered serious bodily injury including permanent injury in the left cervical area, left shoulder and arm, which injury has rendered her physically unable to perform her normal regular activity and has caused continuous pain to her neck, shoulder, arm and has caused her extremities to become numb.

Plaintiff Sharleen Wright further received serious abrasion and contusion about the head, arm and hand, of which injuries the plaintiff alleges to be permanent to her general damage in the sum of \$14,730.00.

VI.

Plaintiff was required to obtain medical and hospital treatment for her injuries including that of an orthopaedic specialist and has incurred medical expenses in the amount of \$200.00.

WHEREFORE, plaintiffs pray judgment against the defendant for general damages in the sum of \$14,730.00 and was damaged ^{in special} in the sum of \$15,270.00. Plaintiffs pray for such other and further relief as the court may deem just and equitable and for costs herein expended.

Dated this 15 day of October, A. D., 1974.

