

2001

Etta Jean Horn v. First Security Bank of Utah
Michael Peters, Peggy Peters Cunningham, Kayleen
Jones and Janice Jones : Unknown

Utah Supreme Court

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Case No. 14161

Additional authorities in behalf of Respondents as further authority for POINT I

Since the filing of respondents Brief the First District Appellant Court of Illinois has rendered a decision further interpreting the case of Montgomery v. Michaels, 54 Ill. 2d 552, 301 N. E. 2d 465, which case was cited by the appellant as authority. The recent decision is entitled Helen H. Elliott v. Olympia Alexson. (This decision was rendered late in December, 1975, and is not reported, but it was a decision of the First District Appellant Court of Illinois, Appellant No. 61448.)

In this case Justice Simon, speaking for the Court, states:

"The petitioner attacks these conclusions urging that they are inconsistent with the holding in Montgomery which she contends established the rule that an inter vivos trust cannot deprive a surviving spouse of her statutory share in the property of the deceased spouse. This argument requires us to review Montgomery ... involving the validity of inter vivos trusts ... We read Montgomery to relate only to Totten Trusts, and not to other types of inter vivos trusts. The court emphasized that a Totten Trust is distinguishable from other trusts because of the complete control over the bank account exercised by the depositor, and that is the reason for the holding that such a trust should not be effective to cut out the distributive share of a surviving spouse. Since the trusts in which petitioner seeks to share are not Totten Trusts, petitioner's reliance on Montgomery is misplaced. ... The petitioner's theory that the trusts are testamentary in character and illusory and, therefore, invalid because of the reservation by the settlor of the power to convey is not supported by the decisions of Illinois courts. Even in Montgomery, the court relying on Holmes v. Mims (1953), 1 Ill. 2d 274, 279, 115 N. E. 2d 790, acknowledged that 'one may dispose of his property during his lifetime and thus deprive a spouse of his, or her, statutory share, so long as the disposition was sufficiently effective and complete, unless the transaction is illusory or tantamount to fraud.' The petitioner does not allege, and offers no proof of fraud;

Additional authorities in behalf of Respondents as further authority for POINT I

she alleges only that the trusts are illusory. The possibility of destructibility of the interest of a beneficiary does not negate the existence of a valid trust. (Montgomery v. Michaels (1973), 54 Ill. 2d 532, 301 N.E. 2d 465; Farkas v. Williams (1955), 5 Ill. 2d 417, 125 N.E. 2d 600; In re Estate of Taggart (1973), 15 Ill. App. 3d 1079, 1083, 305 N.E. 2d 301.) In Gurnett v. Mutual Life Insurance Company (1934), 356 Ill. 612, 622, 191 N.E. 250, the court answered the petitioner's contention by stating:

'The reservation of the power to revoke an entire trust does not invalidate the agreement presently creating it or render it testamentary. (citing cases).'

The trusts established by the decedent were not illusory or for his benefit. On the contrary, they were effective and complete and Mr. Elliott's joint interest in them as a joint tenant with the respondent passed to her upon his death."

Respectfully submitted,

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