

1951

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

Utah Supreme Court

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In the Supreme Court of the State of Utah

IN THE MATTER OF THE

ESTATE OF

JAMES W. LINFORD,

Deceased.

7048
Case No. 4040

APPELLANT'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. Lewis Jones, Judge

FILED

L. D. Naisbitt

APR 3 - 1951

W. Lee Skanchy

Clerk, Supreme Court, Utah

Attorneys for Appellant

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STATEMENT OF FACT

The decedent, James W. Linford, died intestate, at Logan, Utah, on or about the 20th day of October, 1942, leaving as surviving heirs, Beatrice E. Linford, his widow, Jean H. Linford, a son, Phobe L. Bingham, a daughter, and James Linford, a minor child only child of a deceased son Leon H. Linford.

On November the 9th, 1942, the widow, Beatrice E. Linford filed her petition asking for the appointment of herself as administratrix. On hearing had, her petition was granted, and having duly qualified, letters of administration were issued to her on or about the 28th day of November, 1942.

W. H. Stewart, A. B. Harrison and E. J. Passey were duly appointed appraisers of the said estate and

on or about the 15th day of December, 1942, an Inventory and Appraisement was filed showing the appraised value of the estate to be \$1072.40, as follows; Equity in real estate being purchased under contract from George D. Preston and Wife, \$322.40; Notes signed by Ariel Larson and wife, \$500.00; one 1935 model, Chevrolet Sedan, \$200.00; tools and equipment at Linford upholstery, \$50.00.

Thereupon, the administratrix filed her "Final" account in said estate also her Petition for Summary Distribution, alleging that inasmuch as the value of the entire estate of the decedent did not exceed the sum of \$1,500.00 as shown by the Inventory and Appraisement on file therein, that she as the surviving widow, was entitled to the entire estate.

That notice of the said petition and hearing were duly mailed to the said heirs, including the petitioners, Jean H. Linford and Phobe L. Bingham. The receipt of said notices is not denied by the said petitioners.

No objections having been made or entered, on December 26th, 1942, the Court signed a decree of Summary Distribution distributing all the said property to the said widow, Beatrice E. Linford, including tools, equipment and real estate used and occupied by the Linford Upholstery Co.

Whereupon, Mrs. Linford, assuming the business to be hers, as she had been given all the assets by

Court Decree, proceeded to operate it, working long hours, until about October 15th, 1945, when she sold the entire business, including the real estate, to William A. Jones for the sum of \$6,000.00.

At the time of the decedent's death, the widow stated to the petitioners that there was not enough money in the estate to bury their father, James W. Linford. They thereupon assigned or gave to the widow their share of the proceeds of an insurance policy covering the life of the decedent, amounting to \$268.50.

That on April 22nd, 1948, more than six years later, the said heirs, Jean H. Linford and Phoebe L. Bingham, filed a Petition asking for a citation to be issued to the Administratrix to show cause why the said decree of summary distribution should not be vacated and why she should not be compelled to file a true and correct inventory in said estate and have the property reappraised.

To that petition the administratrix filed her general and special demurrer, which was sustained by the trial court and on July 1st, 1948, the Court entered its Judgement of Dismissal, dismissing said Petition and citation theretofore issued.

The Petitioners thereupon elected to stand on their said petition and on September 15th filed Notice of Appeal to the Supreme Court from the said Judgment of dismissal.

On or about the 1st day of June, 1949, the Supreme Court entered its decree reversing the said judgment and remitted the cause back to District Court for further hearing, refusing, however, to rule on any issues other than the fact that the administratrix must account for any property belonging to the said estate which was not listed in the Inventory and Appraisement hereto filed.

On or about the 16th day of November, 1949, the Administratrix filed her answer to the Said Petition (Tran. 10) denying all the allegations of the petition except that the said minor child, James Stephen Linford had not been listed among the heirs and that she had forgotten to list among the assets, one ford truck, valued at approximately \$75.00.

On the 5th day of April, 1950, a hearing was held on the above matter before the District Court of Cache County and various witnesses were called to testify. (Trans. b—136)

After the said hearing, on or about the 22nd day of May, 1950, the Court ordered the administratrix to file a new Inventory and Appraisement, same to include the Insurance money received from petitioners in the amount of \$268.50 also the William Hanson Contract in the sum of \$655.00 and the Ford truck. This Inventory and Appraisement was filed on or about June 5th, 1950, signed by the duly appointed appraisers of the

said estate, W. H. Stewart and A. B. Harrison, and showed the gross value of the estate to be \$2095.90, including the above disputed items, and the said truck. (Files P. 29)

On July 10th, 1950, the Court ordered the administratrix to file a new account, same to include the \$6,000.00 received from William A. Jones for sale of said property and unless order was complied with would strike certain items from consideration and fix the value of the estate at \$5,335.00 and order distribution on that basis. (Tr. 164)

The Court further ordered the administratrix to file a complete account of all receipts and disbursements in connection with the operation of the Linford Upholstery between the death of the decedent in 1942 and the 15th of October, 1945, when the business was sold to William A. Jones. (Tr. P—35) Which said orders were complied with.

On December 11th, 1950, the Court entered it's order striking \$300.00 attorneys fees, \$1,377.60 paid to George Preston on real estate contract, \$56.00 costs of appeal and \$7,200.00 salary to administratrix and allowed \$640.00 to administratrix as special compensation and fixed the value of the estate to be distributed at \$5,881.73, with judgment to be entered accordingly, which was done on the 22nd day of December, 1950. (Files 94).

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY FOR REVERSAL OF JUDGMENT AND DECREE

1. That the property belonging to the estate did not not exceed in value the sum of \$1,500.00 at time of death of the decedent and probaton.
2. That the decree of summary distribution entered by the Court on December 26th, 1942, was a final judgment and binding and conclusive as to all items listed therein, and as to all parties having notice.
3. That same could only be attacked by direct action or appeal.
4. That direct action or appeal was barred as to petitioners at time Petition was filed in April, 1948. (Utah Code Ano. 1943 Sec. 104-41-2).
5. That the Court erred in including the William Hanson contract of sale (Findings of Fact Par. 6, Page 91) in assets of estate.
6. That the Court erred in including insurance money contributed by Jean H. Linford and Phoebe L. Bingham as property of the estate. (Findings of Fact Par. 6. Page 91)
7. Court erred in declaring the \$6,000.00 received from William A. Jones for purchase of property as belonging to the estate. (Finding of Fact Par. 7. Page 91)

8. If said money was part of the estate, then, Court erred in not allowing \$300.00 as attorney's fees as fees are fixed by statute on Basis of value of estate.
9. If Mrs. Linford was operating business for estate, then Court erred in not allowing her a reasonable salary during the three years she worked, under the the circumstances. (Par. 9 of Findings and Judg. Page 94)
10. Court erred in allowing \$132.00 interest on Ariel Larson notes as same was not due or earned at time of death of Decedent.
11. Court erred in fixing value of estate at \$5,381.73. (Conclusions of Law Par. 1 Page 93 and Judgment Par. 1-2 Page 94)

ARGUMENT

This case presents for consideration two main questions: (1) Did the value of the decedent's estate at the time of his death and at the time it was probated, exceed in value the sum of \$1,500.00 and (2) Was Beatrice E. Linford operating a business for the estate?

We believe, as Judge Jones stated (P. 9 of Tr.) "That the test is the value of the property as of the death of the deceased". Let us examine the record in this light.

The deceased, James W. Linford, died intestate on November, 1942. In December of the same year his

widow, Beatrice E. Linford, was appointed administratrix of his estate. W. H. Stewart, A. B. Harrison and E. J. Passey were duly appointed as appraisers by the Court (File 1).

Appraisers Stewart and Harrison proceeded to appraise the property of the estate and after due consideration (Tr. Stewart P. 62-63-64-65) (Harrison Tr. P. 76-77-80-81-83) made and entered the following appraisal as shown by Inventory and Appraisal (File No. 1) which was duly and regularly filed; Equity in property being purchased from George D. Preston and wife, \$322.40; Ariel Larson note and Mortgage, (Stewart Tr. P 70) \$500.00; Chevrolet sedan, \$200.00; Tools and equipment at upholstery \$50.00, a total of \$1,072.40.

From the testimony of the appraisers above, they were qualified, and arrived at these values without pressure or influence and according to their best judgment.

Assuming these values to be correct, the administratrix petitioned the Court for Summary Distribution to herself of all the property of the estate in accordance with statute in relation to estates that do not exceed in value the sum of \$1,500.00.

Due notice of both these petitions were mailed to the heirs (affidavit of Clerk. File 1). including petitioners, Jean H. Linford and Phoebe L. Bingham, but not to minor heir, who was overlooked (Tr. P 98) and no claim is made that said notices were not received.

But no protest was made or objections filed, so on December 26th, 1942, a decree of distribution was signed by the Court, giving all the property mentioned to the widow, Beatrice E. Linford.

It is our contention, as the following authorities hold, that this decree was a *Final* Judgment and binding on all parties unless set aside by the Court during term or by the Supreme Court on Appeal.

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 Judgements, paragraph 643, the author says: “Thus, where a judge of pro-

bate has, by a decree, allowed a widow her distribution 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 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 al-

lowed 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."

No move was made by the Petitioners within the statutory period to have the decree set aside or modified, neither was an appeal taken within the 90 day

period in effect at that time, so the decree, as to all items listed was final. (Statute—Utah Code Anno. 104-41-2)). Consequently, when the petitioners appeared in April, 1948, six years later, they were too late so far as these items were concerned.

In their petition of April, 1948, petitioners alleged that there were various items belonging to the estate which were not listed. If this were true we agree with the Supreme Court that these items must be accounted for by the administratrix.

Let us examine these items:

1. A contract of sale of real estate to William Hanson (Pt. Ex. F) at the price of \$660.00. (Tr. Hanson P 29) The record shows (Bk 67 Deeds P. 527. Page 176 Tr.) that this land was on the 21st day of January, 1933, deeded to Jean H. Linford by the deceased, James W. Linford and his wife Beatrice E. Linford; that on the 23rd day of January, 1933, Jean H. Linford deeded the same property to Beatrice E. Linford (Bk. 78 of Deeds. P. 482. Tr. P. 177). That the said property remained in her name until the 16th day of August, 1944, two years after decedent's death, when she issued a deed to William Hanson (Bk. 82 of Deeds. P. 431. Tr. 179.)

The only evidence that decedent owned any interest in this property was his signature on the contract of sale. This is a customary procedure when property

is sold by a wife and is no direct evidence of title. Mrs. Lindford did not sign the deed as administratrix or trustee (Tr. Hanson P. 31) and to assume she is either, as to this property, would nulify the deed and make Mr. Hanson's title void.

2. The interest later collected on the Ariel Larson notes does not belong to the estate for two reasons; First. It was not due or earned at the time of the appraisal i.e. December 15th, 1942, hence could not be charged to the estate at that time. Second. The value of the Ariel Larson notes and mortgage was fixed by the appraisers at \$500.00. No objections being filed or registered by the heirs and no appeal being taken, this became a final judgment that could not be attacked six years later (See above citations). Hence the interest later paid in the amount of \$132.00 was not part of the estate.

3. *Insurance Money.* At the time of decedent's death he had a life insurance policy in which the widow and the petitioners were beneficiaries. The widow, Beatrice E. Linford was to receive one-half and the Petitioners, Jean H. Linford and Phoebe L. Bingham one-fourth each (Tr. P. 45) At that time the widow stated to petitioners, that there was not enough money available to bury their father so they contributed their share of the insurance money amounting to \$268.50 (Tr. P. 90. Def. Ex. 1) for this purpose. It was not part of the estate but was a gift for this purpose and they

did not expect to get it back. (Tr. P. 45-46).

4. Ford Truck. There was, however, a 1935 model Ford truck which belonged to the decedent worth \$75.00 according to Herbert Humphrey, (Tr. P. 83)

This was inadvertently left out of the appraisement (Tr. P. 85) and should be added to the value of the estate, so the appraised value would be \$1072.40 plus \$75.00 a total of \$1147.00. "The test is the value of the property as at the death of the deceased."

This according to the facts and figures was the duly appraised value of the estate at the time of the death of the deceased and at the time Beatrice E. Linford was appointed administratrix and the said estate was distributed to her by decree of the Court.

It is the duty of the appraisers to determine the value of the estate and not the Court, "They (the appraisers) must then proceed to estimate and appraise the property". (Utah Code Ann. 102-7-3).

So that after the Court had declared all of the above items to be part of the estate, erroneously as we have endeavored to show, the duly appointed and acting appraisers again made their appraisement and filed same on the 5th day of June, 1950. (File No. 2, B. 29) as follows; Equity in real property purchased on contract from George D. Preston, \$322.40; Ariel Larson note and mortgage, \$600.00; William Hanson contract \$550.00; Chevrolet sedan, \$200.00; Ford truck, \$75.00;

Insurance money received from Jean H. Linford and Phobe L. Bingham, \$268.50; Tools, equipment and materials at Linford Upholstery \$50.00; Furniture located in apartment (Tr. 100-101) Lindford Upholstery (Goodwill, etc.), \$25.00 (Tr. P. 94) a total of \$2095.50. This was the maximum figure at which the estate was and could be appraised.

To be subtracted from this amount was the unquestionable items of costs and expenses as listed (File No. 2. P. 25) such as, Funeral expenses \$387.50; Grave Marker, \$65.00; Sexton, \$18.00; Filing Petition, \$2.00; Filing Inventory, \$10.00; Attorney's fees, \$50.00; Services of Appraisers, \$20.00; Taxes \$87.78; Wages due Passey \$25.00; Johns Busk & Co. \$68.86; Upholstery Company, \$51.30; Hannah Linford note, \$290.00 and Crystal Furniture Co., \$10.70, a total of \$1,085.14 (Tr. P. 96) leaving a net value of said estate of \$1,008.76.

Hence taking the appraised value of everything that could have possibly belonged to the estate at the time of the death of the deceased and deducting the unquestionable charges as listed and undisputed the net value is only \$1,008.76, much less than \$1,500.00. This amount seems to be the highest possible amount there was to be distributed among the heirs, including all the items in dispute. If the Court, believes as we do, that the Hanson contract, Insurance and Interest do not belong, as heretofore argued, then the value is much less.

As to the \$6,000.00 received from the sale of the business to William A. Jones in October, 1945;

This money did not exist when the deceased died and was not therefore part of the estate, but was a result of three years of hard work on the part of Beatrice E. Linford plus increased values due to war conditions.

What was the Linford Upholstery at the time of the decedent's death? Tools and equipment, materials, used furniture, equity in the building they occupied, good will etc.

How much was it worth at that time? According to the appraisers, (File No. 2 P. 29) \$322.40 plus \$75.00, a total of \$397.40. This is the only appraisal in existence, hence this the figure we must accept.

The tools, equipment and equity in the building were transferred to Mrs. Linford by Court decree. They became her property and the fact that the value increased due to her sole efforts and inflation is not material. We are sure that if she had lost it all, the heirs would not be petitioning the court to let them share in the losses.

If the Court should agree with the trial Court that the said \$6,000.00 received by Mrs. Beatrice E. Linford for the sale of the property is part of the estate, then we submit that the court erred in denying her attorney's fees based on the size of the estate in accordance with

the statutes (Tr. P. 162). The Court agreed with this stand in his arguments (Tr. P. 162).

It is apparent that Mrs. Linford did not operate under Court order and it was so found but as an individual under the assumption and belief it was hers as the Court had decreed. (Tr. P. 97) Hence it seems only reasonable and just that she receive a reasonable salary for long hours spent and worry entailed in trying to make make it go. Not compensation as trustee or Administratrix but as on the job manager. (For further discussion see brief No. 2 Files P. 83 and citations.)

The petitioners did not turn a hand in working this business but stood by and let Mrs. Beatrice E. Linford do the work and assume the responsibility (Tr. 170) and now try to cash in on the fruits of her labors.

Therefore, we submit that the Court erred in fixing the value of the said estate at \$5,381.73, but it should be \$1,097.40 as fixed by the appraisers or at most \$2,095.50, after adding the items which the Court said were left out, less the legitimate expenses or charges as shown therein leaving a total net valuation of \$1,008.76.

The appellant in the citation in the District Court allege that they brought this action for themselves and also in behalf of a minor grandchild, James Stephen 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.” Therefore said minor is not bound by any decision court may make in this action.

The appellant respectively submits to the honorable Court that findings, conclusions and judgment of the trial Court be reversed and the case be remanded and

the Court directed to enter findings, conclusions and judgment in keeping with those submitted by the Administratrix and which were heretofore rejected and to direct a Summary Distribution of said estate to the widow, Beatrice E. Sorenson, and to enter such other judgment in respect to various items as equity and justice between the parties will dictate.

Respectfully submitted,

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W. Lee Skanchy

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