

1998

IN THE MATTER OF THE ESTATE OF WELBY J. Van Dyke v. : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 980237-CA

IN THE UTAH COURT OF APPEALS

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IN THE MATTER OF THE ESTATE OF :
WELBY J. VAN DYKE, : *BRIEF OF APPELLANT*
:
Decedent. : Priority of Argument: 15
:
: APPELLATE NO. 980237-CA

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This is an appeal from an order of the Sixth District Court of Wayne County, Judge Tervort, denying Joe Van Dyke's Motion to Avoid the Transfers of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate and appointing Leon Van Dyke, Richard Van Dyke and Karl Van Dyke as personal representatives of the Estate of Welby J. Van Dyke.

FILED

JUN 24 1998

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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IN THE MATTER OF THE ESTATE OF
WELBY J. VAN DYKE,

BRIEF OF APPELLANT

Decedent.

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This is an appeal from an order of the Sixth District Court of Wayne County, Judge Tervort, denying Joe Van Dyke's Motion to Avoid the Transfers of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate and appointing Leon Van Dyke, Richard Van Dyke and Karl Van Dyke as personal representatives of the Estate of Welby J. Van Dyke.

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I
PARTIES TO THE APPEAL

The parties to the appeal are Joe Van Dyke, Appellant, and Rene Van Dyke, Albert Van Dyke and Judy LeFever Appellees.

II
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IV JURISDICTION

Original jurisdiction of this matter was vested in the Utah Supreme Court pursuant to Section 78-2-2 (3)(j), Utah Code Ann. 1953, as amended. Jurisdiction is now vested in this Court pursuant to the provisions of § 78-2-2(4) Utah Code Ann. 1953, as amended.

V ISSUES FOR REVIEW ON APPEAL AND STANDARD OF REVIEW

The issues for review on appeal are as follows:

Issues of Fact:

There are no issues of fact present in this appeal.

Standard of Review for Issues of Fact:

Issues of fact may be reversed on appeal only if they are found to be clearly erroneous. Cornish Town v. Koller, 758 P.2d 919 (Utah 1988).

Issues of Law:

Did the trial Court err as a matter of law when it denied Joe Van Dyke's Motion to avoid the transfers of Estate property by the Personal representatives of the Estate to themselves? (Record at pages 80-114)

Standard of Review for Issues of Law:

Issues of law are subject to de novo review by an appellate court, and the court gives no deference to the trial court's conclusions of law. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989).

VI
**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, RULES, AND OTHER AUTHORITIES**

Statutes:

Utah Code §75-3-712:

Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:

(1) The will or contract entered into by the decedent expressly authorized the transaction; or

(2) The transaction is approved by the court after notice to interested persons.

Rules: None.

Cases:

Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989)

Cornish Town v. Koller, 758 P.2d 919 (Utah 1988)

In Re Smith Estate, 162 P.2d 105 (Utah 1945)

VII
STATEMENT OF THE CASE

(A)
NATURE OF THE CASE

This is an appeal from an order of the Sixth District Court of Wayne County, Judge Tervort, denying Joe Van Dyke's Motion to Avoid the Transfers of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate and appointing Leon Van Dyke, Richard Van Dyke and Karl Van Dyke as personal representatives of the Estate of Welby J. Van Dyke.

(B)
COURSE OF PROCEEDINGS AT TRIAL COURT LEVEL

Welby J. Van Dyke died on October 5, 1994. Thereafter, Rene Van Dyke, Albert Van Dyke and Judy LeFever were appointed as "Informal Personal Representatives" of the Estate of the Decedent on or about February 2, 1996.

As personal representatives of the Estate of Welby J. Van Dyke, Rene Van Dyke and Albert Van Dyke transferred real property, farming equipment and water rights that were part of the Estate of Welby Van Dyke to an alleged trust of which they are allegedly trustees and beneficiaries. As alleged trustees, they then sold and/or otherwise transferred 80 acres of the property and certain equipment to Rene Van Dyke over a 30 year period at no interest. As alleged trustees, they also sold and/or transferred the Decedent's home and 1.2 acres to Albert Van Dyke over a 30 year period at no interest. As alleged trustees, they further sold and/or transferred water rights to Rene Van Dyke, even though the water rights were personal property, as evidenced by water shares, and not a part of the real property that could allegedly be transferred according to the terms of the alleged trust.

On July 25, 1997, Joe Van Dyke filed a Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate, i.e., Rene Van Dyke and Albert Van Dyke.

On November 5, 1997, the trial court entered an order denying Joe Van Dyke's Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate. On December 10, 1997, Joe Van Dyke filed his Notice of Appeal in the Sixth District Court.

(C)
DISPOSITION OF CASE AT TRIAL COURT

On July 25, 1997, Joe Van Dyke filed a Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate, i.e., Rene Van Dyke and Albert Van Dyke.

On November 5, 1997, without comment of any sort, the trial court entered an order denying Joe Van Dyke's Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate.

(D)
STATEMENT OF FACTS

1. The Decedent, Welby J. Van Dyke, died on October 5, 1994.
(Record at page 1)

2. Rene Van Dyke, Albert Van Dyke and Judy LeFever were appointed as "Informal Personal Representatives" of the Estate of the Decedent (hereinafter, "the Estate") on or about February 2, 1996.
(Record at pages 12-17)

3. As personal representatives Rene Van Dyke and Albert Van Dyke transferred real property and farming equipment that was a part of the Estate to an alleged trust of which they are allegedly trustees and beneficiaries. (Record at pages 90-91, 93-94)

4. As alleged trustees, they then sold and/or otherwise transferred 80 acres of the property and certain equipment to Rene Van Dyke over a 30 year period at no interest. (Record at pages 97-103)

5. As alleged trustees, they also sold and/or transferred the Decedent's home and 1.2 acres to Albert Van Dyke over a 30 year period at no interest. (Record at pages 105-109)

6. As alleged trustees, Rene Van Dyke and Albert Van Dyke also sold and/or transferred water rights to Rene Van Dyke, even though the water rights were personal property and not a part of the real property that could allegedly be transferred according to the alleged trust. (Record at pages 248)

7. The alleged Will of the Deceased, on file with the trial court, does not specify that Rene or Albert may transfer any property of the Estate to themselves. (Record at pages 463-466)

8. The Deceased had no contract with either Rene or Albert for transfer of the real property and/or equipment to them. (Record at pages 463-466)

9. There has been no court order permitting Rene or Albert to transfer any property of the Estate to themselves. (Record at page 83)

10. Under Utah law, as "Informal Personal Representatives" of the Estate and as alleged trustees and beneficiaries of the alleged trust, Rene Van Dyke and Albert Van Dyke have a per se conflict of interest in transferring any property of the Estate to the trust and then to themselves. (Record at page 84)

11. On July 25, 1997, Mr. Van Dyke filed a Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate. (Record at pages 80-81)

12. On November 5, 1997, the trial court entered an order denying Mr. Van Dyke's Motion to Avoid Transfer of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate. (Record at pages 316-317)

13. On September 10 1997, Joe Van Dyke filed his Notice of

Appeal with the Sixth District Court. (Record at page 322-323)

VIII SUMMARY OF ARGUMENT

The trial Court committed prejudicial and reversible error when it ignored the express provisions of Utah Code §75-3-512 and failed and refused to avoid the transfers of property of the Estate of Welby J. Van Dyke to Rene Van Dyke and Albert Van Dyke who, were at the time of the transfers, acting as both informal personal representatives of the Estate of Welby J. Van Dyke and as trustees for the alleged Welby J. Van Dyke family Trust. They were also beneficiaries of the alleged trust at the time of the transfers.

IX ARGUMENT

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT REFUSED TO AVOID THE TRANSFER OF ESTATE PROPERTY TO RENE VAN DYKE AND ALBERT VAN DYKE.

POINT I

BECAUSE RENE VAN DYKE AND ALBERT VAN DYKE, AS INFORMAL PERSONAL REPRESENTATIVES OF THE ESTATE AND AS ALLEGED TRUSTEES AND BENEFICIARIES OF THE ALLEGED TRUST, HAVE A PER SE CONFLICT OF INTEREST, WITH RESPECT TO ANY TRANSFER OF PROPERTY OF THE ESTATE TO THEMSELVES, THEY ARE PER SE PROHIBITED FROM TRANSFERRING ANY PROPERTY OF THE ESTATE TO THEMSELVES AND/OR THE ALLEGED TRUST, UNLESS THEY COMPLIED WITH THE PROVISIONS OF §75-3-512. THEREFORE, THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT AVOIDING THE TRANSFERS BY THE VAN DYKES TO THEMSELVES.

§75-3-512 provides as follows:

Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:

*(1) The will or contract entered into by the decedent expressly authorized the transaction;
or*

(2) The transaction is approved by the court after notice to interested persons.

As "Informal Personal Representatives" Rene and Albert are per se prohibited from transferring assets of the Estate to the alleged trust in which they are both trustees and beneficiaries and then to themselves from the alleged trust. As "Informal Personal Representatives" of the Estate, as alleged trustees and beneficiaries of the alleged trust, Rene Van Dyke and Albert Van Dyke have per se conflicts of interest in authorization of the transfer of the Estate property to the alleged trust and then authorizing a transfer of the property from the alleged trust to themselves.

The Decedent's will did not authorize any transfer of property by the personal representatives to themselves. No court order was obtained permitting Rene Van Dyke and Albert Van Dyke to transfer Estate property to the alleged trust in which they were alleged trustees and beneficiaries and then to themselves. Joe Van Dyke did not consent to the transfer of Estate property to the alleged trust and then to Rene Van Dyke and Albert Van Dyke.

Because the transfer of Estate property to the alleged trust in which Rene Van Dyke and Albert Van Dyke are trustees and beneficiaries is, under the facts of this case, per se prohibited by §75-3-512 and because Rene Van Dyke and Albert Van Dyke, under the facts of this case, have per se conflicts of interest as "Informal Personal Representatives" of the Estate and as "trustees" and beneficiaries of the alleged trust, the transfers of the Estate property to the trust and ultimately to themselves, must be avoided under the express language of §75-3-512. Therefore, the trial court committed

prejudicial and reversible error when it failed and refused to avoid the unlawful transfers of Estate property to the alleged trust and then to Rene Van Dyke and Albert Van Dyke.

Under the former version of Utah Code §75-3-712 an executor or administrator was prohibited under any circumstances from directly or indirectly purchasing any estate property or having any interest in any sale of estate property. See In Re Smith Estate, 162 P.2d 105 (Utah 1945). That absolute prohibition has been modified in the present version of Utah Code §75-3-712. Now a personal representative may under certain specified circumstances purchase estate property. However none of those circumstances are present in this case.

In this case Joe Van Dyke did not consent to the transfer of estate property to Rene Van Dyke and Albert Van Dyke. There is no court order approving the transfers prior to the transfers taking place. There is no provision in the Will of Welby J. Van Dyke authorizing Rene Van Dyke or Albert Van Dyke to transfer estate property to themselves. Therefore, the transfers to Rene Van Dyke and Albert Van Dyke, must be avoided as was the sale of estate property in In Re Smith Estate.

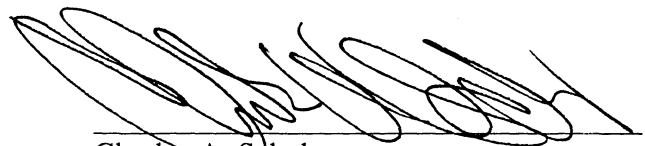
The provisions of Utah Code §75-3-712 are not discretionary with the trial court. Unless a party subject to the provisions of Utah Code §75-3-712 can demonstrate that a transfer was approved by all interested parties, sanctioned by the court, or authorized in a decedent's will, the transfer of estate property must be avoided under the provisions of Utah Code §75-3-712

In the instant matter, the trial court abused its discretion and ignored the express provisions of Utah Code §75-3-712. The trial court's actions constitute prejudicial and reversible error. Therefore, the trial court's denial of Joe van Dyke's Motion to Avoid Transfer of Estate Property must be reversed and the trial court directed to enter an order avoiding the unlawful transfers of estate property to Rene Van Dyke and Albert Van Dyke.

X
CONCLUSION AND REQUEST FOR RELIEF

The trial court committed prejudicial and reversible error when it failed and refused to avoid the unlawful transfers of Estate property to the alleged trust and then to Rene Van Dyke and Albert Van Dyke. Therefore, the trial court's denial of Joe van Dyke's Motion to Avoid Transfer of Estate Property must be reversed and the trial court directed to enter an order avoiding the unlawful transfers of estate property to Rene Van Dyke and Albert Van Dyke.

Dated this 17th day of June 1998.




Charles A. Schultz
Attorney for Joe Van Dyke

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 1998, I served 2 true and correct copy of the foregoing Appeal Brief to the persons at the addresses listed below by depositing a copy in the United States Mail, postage prepaid.

Michael Gottfredson
68 South main - 5th floor
Salt Lake City, Utah 84101

A handwritten signature in black ink, appearing to read 'Charles A. Schultz', is written over a horizontal line.

Charles A. Schultz
Attorney for Joe Van Dyke

CERTIFICATE OF SERVICE

I hereby certify that on the 93rd day of June, 1998, I served 2 true and correct copy of the foregoing Addendum to the persons at the addresses listed below by depositing a copy in the United States Mail, postage prepaid.

Michael Gottfredson
68 South main - 5th floor
Salt Lake City, Utah 84101

A handwritten signature in black ink, appearing to read 'Charles A. Schultz', written over a horizontal line.

Charles A. Schultz
Attorney for Joe Van Dyke