

1987

In the Matter of the Estate of Katherine Wentland Gorrell v. Robert E. Gorrell : Brief in Opposition to Certiorari

Utah Supreme Court

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DOCKET NO. **870372**

IN THE SUPREME COURT

OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE)
OF KATHERINE WENTLAND GORRELL,)

Deceased,

vs.

ROBERT E. GORRELL,

Respondent.)

RESPONDENT'S BRIEF IN
OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI

NO: **870372**

(CATEGORY NO. 13)

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER
FIRST SECURITY BANK OF UTAH, N.A.'S
PETITION FOR A WRIT OF CERTIORARI

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Clerk, Supreme Court, Utah

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OF THE STATE OF UTAH

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)	
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)	(CATEGORY NO. 13)
Respondent.)	

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LIST OF PARTIES

First Security Bank of Utah, N.A., is the Personal Representative of the Estate of Katherine Wentland Gorrell, deceased.

Robert E. Gorrell was the husband of Katherine Wentland Gorrell, deceased, and is the Respondent herein.

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QUESTIONS FOR REVIEW

1. Did the Court of Appeals error by disturbing the District Court's findings of fact that Petitioner established a prima facie case that Katherine Wentland Gorrell owned certain money found in a heart shaped beauty box following her death?

2. Did the Court of Appeals error by requiring Petitioner to introduce evidence of the source of the money, as well as the fact that of its possession by Katherine Wentland Gorrell, to establish a prima facie case that Katherine Wentland Gorrell owned the money?

3. Did the Court of Appeals improperly place the burden of proof on Petitioner?

STATEMENT OF FACTS

The Respondent, Robert Gorrell, and his now deceased wife, Katherine Gorrell, were married on the 17th day of November, 1961, and ever since said time, until the demise of Katherine Gorrell, on the 4th day of May, 1984, at the age of eighty (80) years, Respondent and Katherine Gorrell lived together as husband and wife, constituting a marriage of twenty-two (22) years and six (6) months. (Tr. 58).

The Respondent, Robert Gorrell, testified at the trial that the Respondent had worked practically the whole time of

his marriage to the deceased, Katherine Wentland Gorrell. (Tr. 60, 62, 66, 70-73, 75-76, 90-91, 107-108).

A few days following the demise of Katherine Gorrell, the Appellant, Robert E. Gorrell, was rearranging the cupboards in the kitchen so that he could work around the range and around the counter sink due to his being confined to a wheelchair, having lost both his legs. The Respondent discovered in a small blue agate roasting pan a heart shaped beauty box that contained approximately \$43,000.00, the money in question. (Tr. 86-87).

Upon discovering the money in question, the Respondent contacted an employee of First Security Bank on Washington Boulevard, a Dennis Johnston, and informed Mr. Johnston that he had discovered some cash in the home in which he and the decedent resided. (Tr. 86) The money or property discovered by the Respondent is the property which Petitioner had petitioned the trial Court to recover as solely an asset of the estate of Katherine Wentland Gorrell.

On March 18, 1985, Judgment was rendered against the Respondent, in that the Respondent had allegedly failed to sustain a burden of proof in establishing that the cash asset was created either in whole or in part from assets contributed by the Respondent, therefore the trial Court

awarded the entire sum of \$43,748.00 as an asset of the estate of the decedent and required the Respondent to immediately turn over to the decedent's estate any unused portion of the \$43,748.00 in Appellant's control, and further ordered the Appellant not to dispose of, in any way, any assets purchased in whole or in part from the \$43,748.00 discovered in decedent's home. (R. 42, 43)

On appeal, the Court of Appeals reversed the District Court's Judgment, thereby effectively awarding the money to Mr. Gorrell. Gorrell v. Gorrell, 740 P.2d 267 (Utah Appellant 1987). The Court of Appeals ruled that First Security Bank had not presented a prima facie case that Mrs. Gorrell owned the cash at the time of death, id at 269, and further found that the lower or District Court had improperly placed the burden of proof on Mr. Gorrell.

ARGUMENT

I. THE UTAH SUPREME COURT SHOULD DENY PETITIONER'S WRIT OF CERTIORARI AS LACKING PROPER CHARACTER OF REASONS UNDER RULE 43 OF THE RULES OF THE UTAH SUPREME COURT.

Rule 43 of the Rules of the Utah Supreme Court entitled "Considerations Governing Review of Certiorari" deals with jurisdiction of a writ of certiorari from the Court of

Appeals to the Supreme Court. The Rule indicates that review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. The Rule then goes on to indicate some of the basis which indicate the character of reasons that will be considered in granting a writ of certiorari to review a Court of Appeals decision.

The first reason is as follows;

(1) When a panel of the Court of Appeals has rendered a decision in conflict with a decision of another panel of the Court of Appeals on the same issue of law;...

In the instant case, Petitioner has failed to cite this Court in its Petition for Writ of Certiorari to any conflict which this Court of Appeals decision has with the decision of another panel of the Court of Appeals on the same issue of law and therefore certiorari should not be allowed on this basis.

The second reason indicated is as follows:

(2) When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with a decision of this Court;...

The instant case involves no interpretation or a decision of a question of state or federal law, but simply deals

with ascertaining on the appellant level who has or had the burden or proof. Therefore, the writ of certiorari should not be considered on this point.

The third reason indicated by Rule 43 is as follows:

(3) When a panel of the Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision; or...

In this case, the panel of the Court of Appeals has simply exercised its discretion based on other case law as to which party bears the burden of proof as to ownership and thereupon reversed the decision of the lower Court, and having properly applied that standard or burden of proof to the facts found by the lower Court Judge, rendered a decision in favor of Respondent herein, such that the Court of Appeals did not depart from the accepted usual course of judicial proceedings and the writ of certiorari should not be considered on the third basis of Rule 43.

The fourth consideration of Rule 43 states as follows:

(4) When the Court of Appeals has decided an important question of municipal, state or federal law which has not been, but should be, settled by this Court.

There are no important questions of municipal, state or federal law in the immediate case at hand and therefore the writ of certiorari should not be considered on this basis.

WHEREFORE, based on Rule 43 of the Rules of the Utah Supreme Court as cited above and with regards to the Petitioner having previously petitioned for a rehearing, which was denied, this Court should deny Petitioner's writ of certiorari as lacking in the jurisdictional grounds and allow the decision of the Court of Appeals to stand.

II. THE COURT OF APPEALS DECISION IS IN
LINE WITH THE STANDARDS OF REVIEW
ADOPTED BY THE UTAH SUPREME COURT.

The Utah Supreme Court has stated tha appellant Courts must afford great deference to the factual findings by a trial Court, unless the trial Court has misapplied the law or its findings are clearly against the weight of evidence. Garcia vs Schwendiman, 645 P.2d 651 (Utah 1982); First Security Bank of Utah v. Hall, 504 P.2d 995 (Utah 1972).

The Court of Appeals found that the trial Court had misapplied the law at 740 P.2d 270, wherein it indicated "under those circumstances, there being no prima facie case of ownership by the bank, it was error for the trial Court to impose on the Appellant the burden of proving ownership

of the cash." The Court of Appeals analysis did not substitute its own assessment of the facts, but simply found that the trial Court had erred in imposing on the Appellant or the Respondent herein, the burden of proving ownership of the cash, and that when that burden was properly applied, the factual situation led the Court of Appeals, after giving proper deference to the District Court's factual findings, to reverse the Judgment of the trial Court.

The Petitioner cites this Honorable Court to the Utah Supreme Court case of Gray's Harbor Lumber Co. v. Burton Lumber Co., 236 P. 1102 (Utah 1925) as indicating that the Utah Supreme Court has held that once the representative of a decedent's estate establishes prima facie evidence, that the property was owned by the decedent at the time of death, the burden of proving title to the property shifts to the party asserting an adverse claim. The Court of Appeals in this case specifically held that the bank had failed to establish a prima facie case of ownership which is supported by the trial Court's finding that "there is no way I can determine which of those, or which combination of those events occurred" and that the bank established that the decedent owned the home in which the couple lived, and that the Appellant or Respondent herein had no prior knowledge of

the hidden cash. The Court of Appeals further held that no "other evidence" sufficient to establish a prima facie case of evidence was presented. "On the contrary, Appellant and decedent lived together in decedent's home for over 22 years. There was also no evidence the roasting pan, in which the money was found, was owned exclusively by the decedent. The Court of Appeals further pointed out, based on the trial Court's findings, that decedent worked for only three or four years after the marriage and then retired, receiving approximately \$225.00 per month in social security. The Appellant however made significant financial contributions to the marriage. He worked full time for most of the marriage and delivered all of his income to the decedent who handled the family finances."

There was no proof of possession of the cash constituting any prima facie evidence of ownership as required in Gary's Harbor, supra, therefore, the Court of Appeals correctly found that the trial Court had misapplied the law in placing the burden of proof on the Appellant or Respondent herein when a prima facie case of ownership was not established by the Petitioner.

III. THE COURT OF APPEALS RULING IS NOT
CONTRARY TO UTAH LAW.

Petitioner has cited this Honorable Court to the case of Gary's Harbor Lumber Co. v. Burton Lumber Co., supra, wherein this Court held that a prima facie case of ownership of cash was established by proving possession of the cash. Respondent's position, as well as that of the Court of Appeals, is that the case law in the State of Utah remains the same and that possession would establish a prima facie case of ownership. The Court of Appeals, in referring to the Bickford case, found that the "other evidence" which amply presented a prima facie case of ownership in the cash in the Bickford case included the decedent's exclusive ownership of the dress in which the cash was found, decedent's income through her own business, and the absence of contributions to the household income by the Respondent. The Court of Appeals went on to hold, in the instant case involving the Gorrells, that there was no "other evidence" which amply presented a prima facie case of ownership of the cash and therefore First Security Bank was required to produce evidence of the course of the money in order to establish the prima facie case of ownership, which would then shift the burden to the Respondent herein of proving ownership of the cash, all of which is in compliance with Utah State law.

Even the District Court found that there was an equal likelihood that the source of the money was Mrs. Gorrell's solely or Mr. Gorrell's solely or both Mr. and Mrs. Gorrell's, and the trial Court concluded that "there is absolutely no way I can determine which of those, or which combination of those events occurred." This, in effect, is the finding by the District or lower Court that the movant or Petitioner herein failed to establish a prima facie case of ownership leading to the conclusion that the burden of proof was improperly placed on the Respondent herein, all of which is in accordance with Utah State law.

IV. RESOLUTION OF THIS ISSUE BY THE
UTAH SUPREME COURT IS NOT IMPORTANT
TO THE DEVELOPMENT OF UTAH CASE
LAW.

Rule 43 of the Utah Supreme Court, as previously cited in topic I, indicates four (4) basic reasons, although not exclusive as a basis for reviewing a decision of a panel of the Court of Appeals through a writ of certiorari. As cited above, the Petitioner has failed to establish any of those reasons and therefore the writ of certiorari should be denied.

This case does represent the important issue of how claims of ownership of personal property, especially cash, could be resolved in probate proceedings. But contrary to

the position of the Petitioner, the decision of the Court of Appeals has not undermined prior Utah case law, but has actually reaffirmed that position, indicating that if possession cannot be established, as in this case and as found by the trial Court, then the burden of establishing a prima facie case of ownership rest upon the movant claiming ownership of the property. The Court of Appeals actually follows prior Utah Case law as cited by the Petitioner. To require the Utah Supreme Court to consider this case under these circumstances in a discretionary manner, would defeat the purpose of an intermediate Court of appeals and therefore the writ of certiorari should be denied.

CONCLUSION

The Petitioner, First Security Bank's writ of certiorari for review by this Court of a decision of the Court of Appeals should be denied as lacking proper discretionary consideration, in that the Court of Appeals decision is consistent with prior rulings of this Court and that the Court of Appeals, acting as an intermediate appellant Court has applied this prior Court's rulings and held that the trial Court misapplied the law and under reassessment and a proper application of the factual findings of the trial Court, held that the Petitioner had failed to establish a

prima facie case of ownership, and that the burden of proof had been improperly placed upon the Respondent herein or the Defendant in the trial Court.

DATED this 13 day of November, 1987.

VLAHOS & SHARP

BY

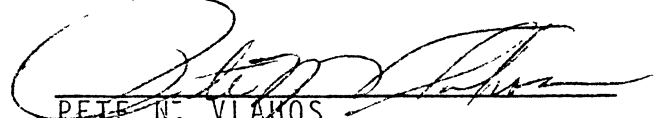


PETE N. VLAHOS,
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that four (4) copies of the foregoing RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI was placed in the United States mail, postage prepaid on this 13 day of November, 1987, to:

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