

1987

# In the Matter of the Estate of Katherine Wentland Gorrell, Deceased v. Robert E. Gorrell : Response to Petition for Certiorari

Utah Supreme Court

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BRIEF

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DOCKET NO. 870372 IN THE SUPREME COURT

OF THE STATE OF UTAH

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IN THE MATTER OF THE ESTATE )	RESPONSE TO WRIT
OF KATHERINE WENTLAND GORRELL, )	OF CERTIORARI TO THE
Deceased, )	SUPREME COURT OF THE
)	STATE OF UTAH
Appellant, )	
)	
vs. )	NO: 870372
)	
ROBERT E. GORRELL, )	
)	(CATEGORY NO. 13)
Respondent. )	

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RESPONDENT'S BREIF IN RESPONSE TO PETITIONER  
FIRST SECURITY BANK OF UTAH, N.A.'S  
WRIT OF CERTIORARI

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FILED  
JUN 3 1988

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Clk. Supreme Court, Utah

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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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.

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### STATEMENT OF JURISDICTION

Jurisdiction of this Court has been invoked pursuant to Utah Code Ann. § 78-2-2(3)(a). The decision of the Court of Appeals was entered on July 27, 1987, and a Petition for Rehearing was filed by the Appellant. The Court of Appeals denied the Appellant's Petition for Rehearing on September 10, 1987, whereupon the Appellant petitioned for a Writ of Certiorari which was granted by this Court on December 30, 1987.

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by disturbing the District Court's findings of fact that certain cash found in a heart-shaped beauty box belonged to Katherine Wentland Gorrell's Estate?

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

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

### STATEMENT OF THE CASE

First Security bank of Utah, N.A. ("First Security"), as personal representative of the Estate of Katherine

Wentland Gorrell, deceased, initiated this action to determine the ownership of what was ultimately determined to be \$43,748.00 in cash that was found by Mrs. Gorrell's husband following his wife's death. Mr. Gorrell found the money in a heart-shaped beauty box that had been hidden in an agate blue roasting pan located in a kitchen cupboard in the couple's home. First Security claims the money is an asset of the Estate and should be distributed through the Estate. Mr. Gorrell challenged First Security's claim that the money was the property of the Estate and claims that the money belongs to him.

The District Court heard testimony from Mr. Gorrell and Norma D. W. Johnson, Mrs. Gorrell's daughter. Based upon that record, the District Court placed upon Mr. Gorrell the burden of proving his title to the money and the District Court found that on the evidence presented Mr. Gorrell failed to carry his burden of proof. The District Court therefore ruled that the cash was an asset of the Estate.

Mr. Gorrell appealed and the Court of Appeals reversed the District Court's judgment, thereby effectively awarding the money to Mr. Gorrell. 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 her death and based on that re-evaluation of the factual record, the



Court of Appeals ruled that the District Court had improperly placed the burden of proof on Mr. Gorrell.

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 time, until the demise of Katherine Gorrell, on the 4th day of May, 1984, at the age of 80 years, had lived as husband and wife, constituting a marriage of 22 years and 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 Respondent, 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 confinement to a wheel chair, having previously lost both his legs. The Respondent discovered in a 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 Blvd., 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. 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 App. 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 her death, Id. 267, and further

found that the District Court had improperly placed the burden of proof on Mr. Gorrell.

Petitioner herein petitioned this Court for a Writ of Certiorari after requesting a rehearing which was denied. The Writ of Certiorari was granted by an order of this Court on December 30, 1987.

#### SUMMARY OF THE ARGUMENTS

I. The Court of Appeals decision is in line with the standards of review adopted by the Utah Supreme Court in that the Court of Appeals in correctly applying the law found that Petitioner had failed to establish a prima facie case of ownership.

II. The Court of Appeals ruling is not contrary to Utah case law in that its decision is in compliance with this Court's decision of Gray's Harbor.

III. The Court of Appeals ruling is not contrary to sound public policy but in fact reaffirms Utah case law and public policy.

#### ARGUMENT

I. 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 that 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 v. Schwindimen, 645 P.2d 651 (Utah 1982); First  
Security Bank of Utah v. Hall, 504 P.2d 995 (Utah 1972).

The Court of Appeals did rule that the District Court had "incorrectly placed the burden of proof on [Mr. Gorrell]," Estate of Gorrell v. Gorrell, 740 P.2d 267 at 269, premised upon the conclusion that "the bank failed to establish a prima facie case of ownership". Id. The Court of Appeals found that the trial Court had misapplied the law, 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 Respondent the burden of proving ownership of the cash", at 270 Id. The Court of Appeals analysis did not substitute its own assessment of the facts, but found that the trial Court had erred in imposing on 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, and award the cash asset to the Respondent, because Petitioner failed to carry its burden of proof.

The Petitioner cites this Honorable Court to the Utah Supreme Court case of Gray's Harbor Lumber Company v. Burton

Lumber Company, 236 P. 1102 (Utah 1925) as an indication 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", referring to the equal likelihood that the source of money was Mrs. Gorrell's solely or Mr. Gorrell's sole, or both Mr. and Mrs. Gorrell's. The bank had only established that the decedent owned the home in which the couple lived, and that the Respondent had no prior knowledge of the hidden cash. The Court of Appeals further found that "no other evidence" sufficient to establish a prima facie case of evidence was presented. To the contrary, the Court of Appeals found that the Respondent and decedent had 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 the decedent had only

worked for three or four years after the marriage and then retired, receiving approximately \$225.00 per month in Social Security. The Respondent, however, had made significant financial contributions to the marriage. He had worked full time for most of the marriage and had 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 Gray's Harbor, supra, therefore, the Court of Appeals giving full deference to the factual findings by the trial Court correctly found that the trial Court had misapplied the law in placing the burden of proof on the Respondent. A prima facie case of ownership was not established by the Petitioner, so the Petitioner having failed to prove its burden of proof, the cash asset was awarded to the respondent.

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

Petitioner has cited this Honorable Court to the case of Gray's Harbor Lumber Company v. Burton Lumber Company, 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 evidenced by the decision 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 "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, 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 ownership of the money in order to establish the prima facie case of ownership, which would then shift the burden if proven to the Respondent herein of proving ownership of the cash, all of which is in compliance with Utah State law.

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 ultimately concluded that "there is absolutely no way I can determine which of those, or which combination of those events occurred". This is in effect, a finding by the District Court that the Petitioner herein failed to establish a prima facie case of ownership as interpreted by the Court of Appeals and once again the

Court of Appeals using Utah case law, to-wit the Gray's Harbor case with analogy to the Bickford case, and applying the facts as found by the District Court, the Court of Appeals correctly concluded and found that the District Court had failed to properly apply the law and found that the Petitioner had failed to prove a prima facie case of ownership of the property. The Utah Court of Appeals further found giving great deference to the findings of the trial Court that the property belonged to the Respondent because the Petitioner had failed to prove its burden of proof.

III. THE COURT OF APPEALS RULING IS NOT  
CONTRARY TO SOUND PUBLIC POLICY.

This case does represent the important issue of how claims of ownership of personal property, especially cash, should 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 Utah case law, by indicating that if possession cannot be established, as in this case and as found by the trial Court, that the burden of establishing a prima facie case of ownership rests upon the movant claiming ownership of the property. The Court of Appeals actually followed prior Utah case law as cited by the Petitioner and as further interpreted by the Illinois case of Bickford. To



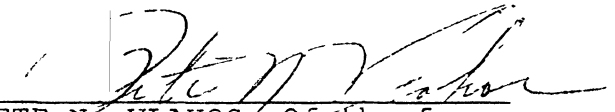
have the Utah Supreme Court overturn the ruling of the Utah Court of Appeals in this matter in a discretionary manner would in fact defeat the purpose of our intermediate Court of Appeals.

#### CONCLUSION

The Petitioner, First Security Bank's Writ of Certiorari should be denied as the Court of Appeals decision is consistent with prior rulings of this Court, and 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 or the Defendant in the trial Court, and that under that reassessment that the ownership of the property was actually that of the Respondent, Petitioner having failed to establish a prima facie case of ownership as the movant.

DATED this 26 day of February, 1988.

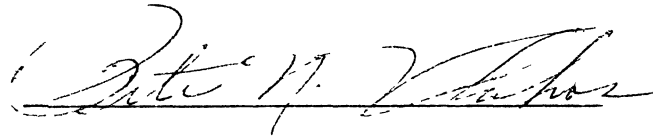
VLAHOS & SHARP

By   
PETE N. VLAHOS, Of the firm  
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that four (4) copies of the foregoing RESPONDENT TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH was placed in the United States Mail, postage prepaid, on this 26 day of February, 1988, to:

Michael J. Glasmann  
David L. Deisley  
VAN COTT, BAGLEY, CORNWALL  
& MCCARTHY  
2404 Washington Blvd., Suite 900  
Ogden, Utah 84401

A handwritten signature in cursive script, appearing to read "Deisley", written over a horizontal line.