

1987

In the Matter of the Estate of Katherine Wentland Gorrell v. Robert E. Gorrell : Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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1987

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate
of KATHERINE WENTLAND GORRELL,
Deceased
Appellant,

v.

ROBERT E. GORRELL

Appellee.

WRIT OF CERTIORARI TO THE
UTAH COURT OF APPEALS

No. 870372

(Category No. 13)

REPLY BRIEF OF APPELLANT FIRST SECURITY BANK OF UTAH, N.A.

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FILED

MAR 25 1987

In the Matter of the Estate of KATHERINE WENTLAND GORRELL, Deceased Appellant,)	WRIT OF CERTIORARI TO THE UTAH COURT OF APPEALS
v.)	No. 870372
ROBERT E. GORRELL)	(Category No. 13)
Appellee.)	

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SUMMARY OF THE CASE

First Security Bank of Utah, N.A. ("First Security") as personal representative of the Estate of Katherine Wentland Gorrell initiated this proceeding to determine the ownership of \$43,748.00 in cash that was found by Mr. Robert E. Gorrell, Appellee, following his wife's death. Mr. Gorrell found the cash in a heart shaped beauty box that had been hidden in an agate blue roasting pan located in a kitchen cupboard in Mrs. Gorrell's home. (R. 86-87).¹ After hearing testimony, the District Court ruled that the cash was in Mrs. Gorrell's possession and control up until the time of her death. (R. 109-110). As required by Utah law, the District Court placed the burden of proving title to the cash on Mr. Gorrell. The District Court then ruled that Mr. Gorrell failed to satisfy his burden and, therefore, awarded the cash to the estate. (R. 110-111). On appeal, the Court of Appeals vacated the District Court's judgment and effectively awarded the cash to Mr. Gorrell. Gorrell v. Gorrell, 740 P.2d 267, 270 (Utah App. 1987). The Court of Appeals reevaluated the facts presented at trial and concluded that First Security had not presented a

¹ All citations to the record in this Reply Brief are to the Record on Appeal as paginated by the Clerk of the District Court. First Security incorporates by reference the full Statement of the Facts set forth in its Brief at pages 3-5 to supplement the summary of the facts presented in this Reply Brief.

prima facie case that Mrs. Gorrell owned the cash at the time of her death. Id. at 269. Based on that reassessment of the facts, the Court of Appeals ruled that the District Court improperly had placed the burden of proving title to the cash on Mr. Gorrell. Id.

SUMMARY OF THE ARGUMENTS

Mr. Gorrell's argument that the Court of Appeals' decision should be affirmed is premised upon the assertion that First Security did not establish a prima facie case that Mrs. Gorrell owned the cash because "[t]here was no proof of possession of the cash" by Mrs. Gorrell. Appellee's Brief at 8. This assertion is directly contradicted by the District Court's finding that the cash was in Mrs. Gorrell's possession and control until the time of her death. (R. 109-10). Mr. Gorrell has confused the District Court's ruling with respect to the source of the cash with the ruling as to possession and control of the cash. Under Utah law, possession and control of cash alone establishes a prima facie case of ownership. Accordingly, Mr. Gorrell's argument is without merit.

ARGUMENT

I. FIRST SECURITY ESTABLISHED A PRIMA FACIE CASE THAT MRS. GORRELL OWNED THE CASH AT THE TIME OF HER DEATH

A. The District Court Found That The Cash Was In Mrs. Gorrell's Possession And Control Until The Time Of Her Death

Mr. Gorrell argues that First Security did not establish a prima facie case that Mrs. Gorrell owned the cash

because "[t]here was no proof of possession of the cash."

Appellee's Brief at 8. However, the District Court expressly ruled that

I find first of all that this money, up until the time of the death of the deceased, was in her possession and control.

(R. 109-10). Based upon that finding, the District Court placed the burden of proving title to the cash on Mr. Gorrell.

(R. 110).

The District Court's finding that Mrs. Gorrell had possession and control of the cash until she died is sufficient by itself to establish a prima facie case of ownership of the cash. Gray's Harbor Lumber Co. v. Burton Lumber Co., 65 Utah 333, 236 P. 1102, 1103 (1925). Once First Security established a prima facie case that Mrs. Gorrell owned the cash by proving that she had possession and control of it until she died, the burden of proving title to the cash shifted to Mr. Gorrell. First Security Bank of Utah v. Hall, 29 Utah 2d 24, 504 P.2d 995, 996 (1972). The District Court found that Mr. Gorrell had not proved his title to the cash because the evidence was not sufficient to establish the source of the cash. (R. 110-11). Based on that finding, the District Court held that the cash was the property of Mrs. Gorrell's estate.

B. Mr. Gorrell Has Confused The District Court's Ruling Regarding Possession Of The Cash And The Ruling Regarding The Source Of The Cash

Mr. Gorrell errs in citing the District Court's ruling

that the source of the cash could have been Mrs. Gorrell solely, Mr. Gorrell solely or both Mrs. and Mr. Gorrell (R. 110-11) in his effort to demonstrate that First Security failed to establish a prima facie case that Mrs. Gorrell owned the cash at the time of her death. Appellee's Brief at 9-10. Gray's Harbor clearly states that possession of cash alone is sufficient to establish a prima facie case of ownership. 236 P. at 1103. The District Court's ruling with regard to the source of the cash is relevant only to the question whether Mr. Gorrell satisfied his burden of proving title to the cash.

The District Court ruled that it was "equally possible" that the source of the cash was any one of the three alternatives identified. (R. 111). Based on that finding, the District Court properly ruled that Mr. Gorrell had not satisfied his burden under Hall of proving his title to the cash, and, therefore, awarded the cash to the estate.

C. The District Court's Factual Findings
Are Supported By The Evidence

A trial court's factual findings are entitled to great deference on appeal, unless they are clearly against the weight of the evidence. Garcia v. Schwendimen, 645 P.2d 651, 653 (Utah 1982); Hall, 504 P.2d at 996. The District Court's finding that the cash was in Mrs. Gorrell's possession and control is amply supported by the evidence in the record. Mr. Gorrell had no knowledge of the cash's existence prior to

discovering it. (R. 39). Mr. Gorrell testified that Mrs. Gorrell handled the family's business affairs, (R. 80, 112-13), and was very careful with money. (R. 85). The cash was found in a heart shaped beauty box which had been hidden in a blue agate roasting pan in a kitchen cupboard. (R. 87). Mr. Gorrell testified that he had done no cooking while his wife was living. (R. 87). He found the heart shaped beauty box after his wife died while rearranging the kitchen cupboards to make access easier for himself. (R. 86). All of these facts support the District Court's finding that the cash was in the control and possession of Mrs. Gorrell up until the time of her death. The District Court's finding also is confirmed by the fact that the record contains absolutely no evidence that even so much as suggests that anyone other than Mrs. Gorrell had possession of the cash until Mr. Gorrell discovered it after his wife died.

II. MR. GORRELL HAS MISCONSTRUED THE BICKFORD DECISION

Mr. Gorrell and the Court of Appeals both erroneously cite In re Bickford, 74 Ill. App. 2d 190, 219 N.E. 2d 159 (1966), to support their conclusion that the District Court's ruling that the source of the cash was not proved precludes First Security from establishing a prima facie case that Mrs. Gorrell owned the cash at the time of her death. Appellee's Brief at 8-9, 740 P.2d at 270. In effect, Mr. Gorrell and the

Court of Appeals urge adoption of a rule that both possession and the source of cash must be proved to establish a prima facie case of ownership. Bickford states no such requirement. Instead, both Bickford, 219 N.E. 2d at 161, and Gray's Harbor, 236 P. at 1103, hold that possession alone is sufficient to establish a prima facie case of ownership. Consequently, the Court of Appeals erred in ruling that First Security did not establish a prima facie case of ownership.

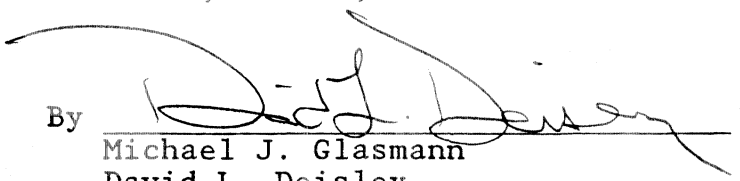
CONCLUSION

Mr. Gorrell's argument is premised upon a misunderstanding of the District Court's rulings and the applicable law. The District Court found that the cash at issue was in Mrs. Gorrell's possession and control until she died. Proof of possession and control of cash alone is sufficient to establish a prima facie case of ownership. Gray's Harbor, 236 P. at 1103. Once a personal representative establishes a prima facie case of ownership, the burden of proving title to the property in dispute shifts to the party asserting an adverse claim. Hall, 504 P.2d at 996. In this instance, the District Court found that Mr. Gorrell did not satisfy his burden of proving his title to the cash in dispute. (R. 110-11). For these reasons, the District Court's judgment was proper and the Court of Appeal's ruling must be reversed.

DATED this 29th day of March, 1988.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By


Michael J. Glasmann

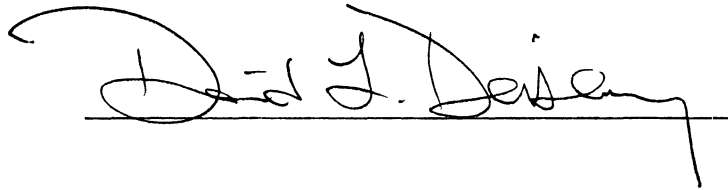
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CERTIFICATE OF MAILING

I hereby certify that I caused four true and correct copies of the within and foregoing REPLY BRIEF OF APPELLANT to be mailed, postage prepaid, this 29th day of March, 1988, to the following:

Pete N. Vlahos, Esq.
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Attorney for Appellee,
Robert E. Gorrell

A handwritten signature in dark ink, appearing to read "Pete N. Vlahos", is written over a horizontal line. The signature is stylized with a large, sweeping initial 'P' and a long, trailing flourish.

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