

1989

Velma Foote, Lucile S. Dalley, June Scott, W. Duane Burge, Shirley B. Coleman, Linda B. Saxey, Carol B. Butterfield, Louise B. Perry, and David W. Burge v. Norma S. Smith : Brief of Appellant

Utah Court of Appeals

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BRIEF

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DOCKET NO. 89-0277

IN THE SUPREME COURT OF THE STATE OF UTAH

VELMA FOOTE, LUCILE S.)
DALLEY, JUNE SCOTT, W.)
DUANE BURGE, SHIRLEY B.)
COLEMAN, LINDA B. SAXEY,)
CAROL B. BUTTERFIELD, LOUISE)
B. PERRY, AND DAVID W. BURGE,)
Plaintiffs/Respondents,)
vs.)
NORMA S. SMITH,)
Defendant/Appellant.)

Case No. 880394

89-0277-CA

BRIEF OF APPELLANT NORMA S. SMITH

APPEAL FROM JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH
HONORABLE BOYD L. PARK PRESIDING

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DEPOSITED BY THE
STATE OF UTAH
AUG 17 1990

IN THE SUPREME COURT OF THE STATE OF UTAH

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DALLEY, JUNE SCOTT, W.)	Case No. 880394
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LIST OF PARTIES

The parties are as set forth in the caption of the case.

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NORMA S. SMITH,)	
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Defendant/Appellant.)	

STATEMENT OF ISSUES PRESENTED ON APPEAL

Whether there is clear and convincing evidence that the deed, Exhibit 11, was altered after it was executed by the grantors and is therefore a nullity.

STATEMENT OF THE CASE

This is an appeal from a trial court's determination that a certain deed, Exhibit 11, was materially altered and is therefore a nullity. The action was brought by certain of the children and grandchildren of True and Emma Scott, the grantors of the deed in question. The trial court determined applying the burden of clear and convincing evidence that the deed was materially altered.

STATEMENT OF FACTS

1. This was an action commenced on March 12, 1987 to reform a deed dated February 16, 1970, which was recorded on May 18, 1970, at the request of the plaintiff, Velma Foote. (Trial Exhibit #11).

2. The deed, on its face, conveyed three parcels of land.

3. The grantors to the deed were True and Emma Scott who were then husband and wife.

4. The grantees, joint tenants with full rights of survivorship, were Emma Scott and the surviving children of True and Emma. The surviving children in February, 1970, were Velma S. Foote, Lucile S. Dalley, Verlon Scott, and Norma Smith.

5. True and Emma Scott had a daughter who died before February, 1970. She was Ina S. Burge. Mrs. Burge left six children. (Record page 190, lines 18-25).

6. In February and March of 1970 True and Emma Scott also made, executed and had recorded the following other deeds:

a) On February 25, 1970 True and Emma Scott deeded 700 acres of property in Juab County, as follows: an undivided 1/6th interest to their children, Norma S. Smith, Velma S. Foote, Verlon Scott, Lucile S. Dalley, June Scott and an undivided 1/36th interest each to the children of deceased daughter, Ina S. Burge, Willard Duane

Burge, Shirley Ann Burge, Linda Marie Burge Saxey, Carol Joyce Burge, Ina Louise Burge and David William Burge as tenants in common. (Exhibit #12; Record page 209, lines 3, 7-9; page 210, lines 3-4). This deed was recorded February 27, 1970 at the request of Norma S. Smith.

b) On February 25, 1970, True and Emma Scott deeded a .043 acre parcel of property in Utah County to their daughter, Norma S. Smith as grantee. (Record page 196 line 22; Exhibit #9). This deed was recorded February 26, 1970 at the request of Norma Smith. (Exhibit #9). There was a home on this property at the time of conveyance. (Record page 220, lines 9-10).

c) On February 26, 1970, True and Emma Scott deeded a 52.298 acre parcel of property in Utah County to their son, Verlon, and his wife, Dorothy Scott, grantees, as joint tenants with full rights of survivorship. (Exhibit #10; Record page 197, lines 22-24). This deed was recorded February 26, 1970 at the request of Verlon Scott. (Exhibit #10).

d) On March 24, 1970, True and Emma Scott deeded a .535 acre parcel of property in Utah County to their daughter, June Scott, and her son, Alan Scott, grantees, as joint tenants with full rights of survivorship.

(Exhibit #2). This deed was recorded March 26, 1970 at the request of Velma Foote. (Exhibit #2). There was no home on this property at the time of conveyance. (Record page 217, lines 9-11).

e) On March 24, 1970 True and Emma Scott deeded a .535 acre parcel of property in Utah County to True and Emma Scott, grantees as joint tenants with full rights of survivorship. Exhibit #3. This deed was recorded March 26, 1970 at the request of Velma Foote. (Exhibit #3).

f) On March 24, 1970, True and Emma Scott deeded a .60 acre parcel of property in Utah County to their daughter, Lucile Dalley and Gloria B. Petersen, grantees. (Record page 189, line 1, Exhibit #4). This deed was recorded March 26, 1970 at the request of Velma Foote. Exhibit #4. There was a home on this property at the time of conveyance. (Record page 218, lines 15-17).

g) On March 24, 1970, True and Emma Scott deeded a .50 acre parcel of property to their daughter, Velma Foote, and her husband, Dell Foote, grantees, as joint tenants with full rights of survivorship. (Exhibit #5). This deed was recorded at the request of Velma Foote. (Exhibit #5). There was no home on this property at the time of conveyance. (Record page 219, lines 2-3).

h) On March 24, 1970, True and Emma Scott deeded a .50 acre parcel of property to the children of their deceased daughter Ina S. Burge as follows: Willard Duane Burge, Jr., Shirley Ann Burge, Ina Marie Burge Saxey, Carol Joyce Burge, Ina Louise Burge, and David William Burge, grantees, an undivided 1/6th interest each. (Exhibit #6). This deed was recorded March 26, 1970 at the request of Velma Foote. (Exhibit #6). There was a home on this property at the time of conveyance. (Record page 219, lines 7-9).

i) On March 24, 1970, True and Emma Scott deeded a .517 acre parcel of ground to their son, Verlon Scott, and his wife, Dorothy Scott, grantees as joint tenants with full rights of survivorship. (Record p. 195, line 12; Exhibit #7). This deed was also recorded March 26, 1970 at the request of Velma Foote. There was a home on this property at the time of conveyance. (Record page 219, lines 20-24).

j) On March 24, 1970 True and Emma Scott deeded a 20.13 acre parcel of property to True and Emma Scott, grantees as joint tenants with full rights of survivorship. (Exhibit #8). This deed was recorded March 26, 1970 at the request of Velma Foote. (Exhibit #8).

7. True Scott died April 19, 1970. (Record page 73, paragraph 2; page 110, paragraph 1).

8. After the deed, Exhibit 11, was recorded on May 18, 1970, it was sent to Emma Scott who had possession of the deed. (Record page 211). Emma Scott told her daughter Velma that all of the names were on it and that it was in joint tenancy. (Record page 211). Emma Scott died March 1, 1985. (Record page 251, line 4).

9. When True and Emma Scott's son Verlon Scott died, July 6, 1986, Verlon's wife Dorothy examined the deed. (Exhibit 11). She learned the property was then in the following childrens' names: Velma S. Foote, Lucille Dalley, June Scott, and Norma Smith. (Record page 211, lines 19-24; page 2, paragraph 7; page 3, paragraph 1; Record page 242, line 9)

10. Plaintiffs' theory at trial was that the property evidenced by the deed sought to be reformed, Exhibit 11, and certain property located in Juab County, Exhibit 12, was to have been divided equally among the children of the grantors. (See Exhibit 12). (Record page 3, paragraph 1.)

11. Defendant claims that the deed, Exhibit 11, should remain as recorded because it correctly reflects the grantors' intentions. She claims the deed was not altered. (Record page 9, paragraph 1).

12. At trial, the Honorable Boyd L. Park presiding in the Fourth Judicial District Court, found that the subject deed, Exhibit 11, was materially altered and that the alteration therefore rendered the deed a nullity. (Record page 136). The court's finding the deed was altered was based upon the court's scrutiny of the deed. (Record page 136, paragraph 7).

a) "The distance between the comma after the word 'wife' on the third line of the deed is closer than the other commas."

b) "The next two lines angle upward toward the right with the bottom of the beginning letter of the 'Velma' being slightly below the line and the final letter of the word 'Smith' on the same line being substantially above the line."

c) Finally an "s" was not added to the word "grantee" on line 6 of the warranty deed. (Record page 137).

The court's finding was also based upon "other credible testimony that the warranty deed was altered by Arnold Meham at the direction of Emma Scott after the death of True Scott ... " (Record, page 137).

Judgment was entered on 23 September, 1988, and the defendants filed their notice of appeal on 21 October, 1988.

Plaintiffs' motion to dismiss because of untimely filing of the docketing statement was not granted. On January 19, 1989, appellant moved and both parties stipulated to an extension of time for appellant to file her brief. The date for filing appellant's brief was set for February 18, 1989. Counsel stipulated the brief could be mailed on Friday, February 24, 1989.

SUMMARY OF ARGUMENT

Defendant relies on the findings of the court and the record to establish there was not clear and convincing evidence to find this deed, Exhibit 11, was materially altered. The court found incongruities on the face of the deed and determined it was apparent on the face of the deed it had been altered. This court can examine the same deed and draw whatever inferences it thinks appropriate. The trial court found as clear and convincing evidence the following: the letter "s" was omitted after the word "grantee". Some of the typed lines were not parallel with the lines on the form deed. There was a comma which was too close or closer to a word than other commas, and lastly, the court relied on other "credible evidence". The other credible evidence would have to be the testimony of plaintiff, Velma Foote, which the defendant claims

to have been absolutely rebutted or which the defendant claims to be in and of itself inconsistent, and not clear and convincing, and on a most critical point, obviously incorrect.

In the course of the trial, Exhibits 2 through 12 were offered and received. Exhibits 2, 3, 4, 5, 6, 7 and 8 were executed on 24 March, 1970. Exhibits 9 and 12 were executed on 25 February, 1970. Exhibit 10 was executed on 26 February, 1970. Exhibit 11 was executed on 16 February, 1970. All of these deeds were prepared by Arnold Mecham and transferred property from True and Emma Scott to certain of their children and grandchildren. All of the deeds which transferred property to more than one grantee omitted the "s" after "grantee". Almost all of the deeds appear to have type which is not parallel to the lines on the form deed. There is left alone then the issue of the comma on Exhibit 11 after the word "wife".

The defendant finally claims the plaintiff, Velma Foote's, testimony was not consistent and a critical part of her testimony is clearly wrong.

The inconsistencies are she claimed not to have seen the deed after she gave instruction for the names to be added to it, yet it is clear it was she who recorded it. She also claims to have recorded or caused to be recorded the deed,

Exhibit 11, in her mother's name only. An examination of Exhibit 11 shows she is clearly wrong. Exhibit 11 is a certified copy of the recorded deed. If it were recorded as Mrs. Foote testified it would show only the name of her mother. It does not. It contains the names of the other grantees.

ARGUMENT

POINT I

IF A PARTY IS TO PROVE A RECORDED DEED HAS BEEN ALTERED HE MUST PROVE THE ALTERATION BY CLEAR AND CONVINCING EVIDENCE

It is a well settled rule that one seeking to assert the invalidity of a deed must carry the heavy burden of clear and convincing evidence. This position was stated by the court in Controlled Receivables, Inc. v. Harman, 413 P. 2d 807 (Utah 1966). There the court said at page 809:

Of prime importance is the rule that one who asserts the invalidity of a deed must so prove by clear and convincing evidence. The recording of a deed raises a presumption of delivery, which presumption is entitled to great and controlling weight and which can only be overcome by clear and convincing evidence.

See also the case of Northcrest, Inc. v. Walker Bank and Trust Co., 248 P. 2d 692 (Utah 1952) where the court said at page 694:

It is true that such acknowledgment and recordation give

rise to a presumption of the genuineness and the due execution and delivery of the deed and is prima facie evidence thereof. *Thomas v. Peterson*, 213 Cal. 672, 3 P.2d 306, and see Sec. 104-48-12, U.C.A. 1943. This presumption should not be regarded lightly but should be given great weight. The authorities generally hold that the effect of such certificate of acknowledgment will not be overthrown upon a mere preponderance of the evidence, but it must be clear and convincing.

Emphasis added.

See also Gold Oil Land Development Corp. v. Davis et al., 611 P.2d 711, at page 712 (Utah 1980) where the court said:

Defendants place reliance upon the fact that the deed in question was duly acknowledged and recorded. With respect thereto we agree with these propositions advocated by them: that when a deed is duly acknowledged and recorded, there arise the presumptions that it was duly executed and that there was a valid delivery thereof; and further, that those presumptions can only be overcome by clear and convincing evidence.

The trial court found this deed, Exhibit 11, to have been altered and therefore invalid. The same burden should apply to an alteration of a deed as where a mistake is alleged to have been made in a deed.

Utah law is clear that a party claiming a mistake in an instrument is required to prove or establish the "mistake by clear and convincing proof that clinches what might be otherwise only probable to the mind." Greener v. Greener, 212 P. 2d 194, 204 (Utah 1949). Briggs v. Liddell, 699 P. 2d 700, 772 (Utah 1985). In Greener v. Greener, the court explained at

page 205:

But for a matter to be clear and convincing to a particular mind it must at least have reached the point where there remains no serious or substantial doubt as to the correctness of the conclusion. A mind which was of the opinion that it was convinced and yet which entertained, not a slight, but a reasonable doubt as to the correctness of its conclusion, would seem to be in a state of confusion.

The trial court properly concluded in this case the burden to be applied was clear and convincing. (Record, page 137, Conclusions of Law). The trial court erred in finding a material alteration because there is no clear and convincing evidence that the deed was altered.

The trial court has identified specific facts upon which it relied in its finding that there is or was clear and convincing evidence of a material alteration of the deed, Exhibit 11.

The court's decision, Record page 136, is to the effect that on February 16, 1970, True Scott transferred certain property to his wife, Emma. On April 19, 1970, True Scott died. (Record, page 136). Emma Scott intended to add the names of her living children to the deed, including the children of her late daughter. At the direction of Emma Scott, Arnold Mecham altered the deed by adding the names of Velma S. Foote, Lucille S. Dalley, June Scott, Verlon Scott, and Norma

Smith. The court concluded the deed was materially altered and therefore a nullity. (Record, page 137).

The court placed great weight and significance upon the appearance or face of Exhibit 11. The theory of the plaintiffs becomes significant here. Their argument is or was that the Provo properties (Exhibit 11) should have been divided in the same proportions as the Juab County (Levan) properties (Exhibit 12), the underlying inference being that all of True and Emma's property was to have been divided equally. The inference the two deeds comprised the property owned by True and Emma Scott is soundly rebutted by the fact there were not two deeds but there were eleven.

The problem with the assumption that all property was to have been divided equally leads to the evidence which shows the trial court erred when it found the alteration was apparent on the face of the deed. All of the deeds except Exhibit 10 were apparently drawn by the same person, Mr. Mecham at Provo Abstract. For example, the following deeds, the other deeds signed about the same period of time, are all notarized by the same notary, Charlotte R. Mecham:

Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.

Of much more significance however, the court found that Exhibit 11 was altered because the word "grantee" did not have

an "s" or that the "s" was not filled in. Neither did Exhibits 2, 3, 4, 5, 6, 7, 8, or 12 have the "s" filled in after "grantee". Exhibit 9 is the only deed with a single grantee.

The trial court found as evidence Exhibit 11 was altered in that the typed names or grantees were not parallel to the lines on the deed.

The same irregularities can be observed on the following deeds:

Exhibit 2

The first line (grantors) does not run parallel with the line on the deed. Neither does the second.

Exhibit 3

The first typed line is not parallel with the line on the deed, neither is the fourth typewritten line parallel with the line on the deed.

Exhibit 4

The first typed line is not parallel with the line on the deed, neither is the second.

Exhibit 5

The second line angles down from left to right. The fourth line angles up from left to right.

Exhibit 6

Most lines on Exhibit 6 are parallel. However, an examination of the fifth line down shows it is slightly elevated on the left, and perhaps line 3 angles slightly up from left to right.

Exhibit 7

The first line on the left side is slightly higher. The third line slants down from left to right.

Exhibit 8

The first line appears to angle down from left to right. The fourth line angles up from left to right.

Exhibit 9

The eighth line angles down from left to right.

Exhibit 10

The first line, second part, appears to be slightly elevated. The second and third line slant down from left to right, and the fourth line from left to right slants up.

It appears from the face of the deeds the only "irregularity" if it is, in fact, an irregularity which does not as clearly appear on all of the deeds is the position of the comma after the word "wife" on Exhibit 11. Because the original deed was not offered and because the court was only examining a certified copy this observation means very little and is certainly not, in and of itself, significant, let alone clear and convincing.

It ought to be clear from examining the deeds that there is not anything different on the face of Exhibit 11 than appears on the faces of the other deeds. The question then becomes, is there other clear and convincing evidence that this deed was altered? Velma Foote's testimony must be examined to

answer this question. Apparently, this was the other credible evidence to which the court referred. It would have to have come from Mrs. Foote or Mrs. Smith because they were the only witnesses to the execution of the deed.

The examination of Velma Foote commences on page 180 of the Record and ends on page 241. (See also pages 260-262, and pages 291-301). It is significant as a whole because there are many inconsistencies. The inconsistencies are significant because in order for plaintiffs to prevail there must be evidence which is clear and convincing the deed was altered. Her testimony is attached as an appendix to the brief for the readers' quick reference. (Record pages 180 through 241, pages 260-262, and pages 291-301).

The significant point begins about page 198 where the references to Exhibit 11 begins. We learn at page 200 from Mrs. Foote the deed was drafted by Mecham for her, signed on 16 February, 1970, and recorded in May of 1970. At page 203 she claims the deed was recorded and only had her mother's name on it. (Page 203 lines 20-22). (See also Record page 293, lines 2-7). After her father died, Mrs. Foote and her mother, Emma Scott, went to the courthouse to talk to Mr. Mecham. (Page 205). At page 206, lines 4 through 6 she testified, in effect, that she gave the names to Mr. Mecham to add to the deed and

"that is the last I knew about that." (Page 208).

At page 210 she is asked at line 16:

Q: ... after you directed Mr. Mecham to draft this particular deed when you did next see the deed?

A: I never seen the deed until my brother died in 1986.

It is clear she was referring to Exhibit 11, the subject deed. She was again asked at line 25, page 210.

Q: So you never saw the deed until 1986.

A: Right.

Q: And why did not receive a copy of the deed after it was recorded?

A: It was sent to my mother and my mother said that all of our names were on it ...

At line 8 on page 211 she was asked if she ever had any indication from 1970 to 1986 that the deed was recorded in some names different from her instructions to Mr. Mecham. Her answer was "No, I never knew anything about it." She then explained that her sister-in-law discovered the grantees listed on deed in 1986.

It becomes apparent that Mrs. Foote understood the difference between the tenancy in common relationship v. the joint tenancy relationship. (See also page 228 and 229). This is important because she would have seen any irregularity on the deed when she delivered it to the County Recorder. She

claims it only had here mother's name on it. However, Exhibit 11 is a document which, on its face, appears to have only been recorded once. It simply is not possible to record the document with one name on it and have the recorded document reflect otherwise.

There are also inconsistencies in Mrs. Foote's testimony as pointed out in the cross examination at page 232, line 10.

Q: That deed was signed in February of 1970 and that then your father died and then some more names were added to the deed.

A: Right.

At line 25.

Witness: After they signed it I just took it up and had it recorded.

At page 233:

Q: The deed was recorded in May?

A: Yes.

Q: So you held it from (sic) a short period of time from February when it was signed until May was it was recorded?

A: No it was recorded in to (sic) my mother's name from my father to my mother in February ...

At this point counsel for the defendant, knowing the deed showed clearly that it was not recorded in February, undertook, at line 3 page 234, to lay the foundation and to define the terms being used, specifically, the word "record". (See

Record, page 234, lines 3-18). He then asked the question again. Page 234 line 15.

Q: And sometime later in May on the 18th at 2:50 p.m. it is recorded at your request.

A: Yes I took the deed up after my dad died and had it recorded without the childrens' names on it ... (Emphasis added)

It is clear from the record that could not be the fact. If the deed had been recorded (Exhibit 11) without the childrens' names on the deed, (Exhibit 11) the certified copy of the deed would so show. It does not. The recorded deed shows all the names, not just her mother's. Moreover, Mrs. Foote said she took the deed to the courthouse the same time the other deeds were taken care of. (Record page 235). That is not accurate. The other deeds were recorded in March, on or about the 26th. Exhibit 11 was recorded in May. Upon redirect examination Mrs. Foote again testified at page 240 she gave Mr. Mecham the names to be added to the deed but never saw the deed again yet it was recorded at her specific request.

It is significant to understand the procedures of recording in Utah County. It is for that reason the defendant called Nina Reid. She testified that in 1970 when a stranger presented a deed to be recorded, the clerk would ask the stranger's name and address or the address of the grantee so the deed could be mailed to the grantee. That name is written

on the document and the document is mailed to the proper addressee. (Record pages 289-290). Mrs. Reid was acquainted with Arnold Mecham. Had he brought in the deed it would have been stamped with his business stamp according to County procedures. This deed, Exhibit 11, was recorded at the request of Velma Foote and mailed to the address of Emma Scott. It is not at all clear that Mr. Mecham recorded the deed as Mrs. Foote's testimony suggests. Rather, it is clear, if the procedures of the County Recorder's Office were followed, that Mrs. Foote caused Exhibit 11 to be recorded and therefore had to know of its contents.

Although her testimony must be considered as a whole, it is abundantly clear Velma Foote testified she caused this deed to be recorded without the childrens' names on it. If that were true it would so appear on the certified copy of the deed obtained from the Recorder. It does not.

The court was concerned about this point. The court asked at page 237 "Let me ask you this last question. After your father died you took this deed back to Mr. Mecham and the names of the children as they now appear on this deed were added?" Her reply at line 16, page 237 was "Yes." Her testimony to this point clearly was she caused the deed to be recorded in her parents' name only, and then caused the childrens' names to

be added. Because the court was confused on this point it asked a leading question at line 17 page 237: "And then you immediately took it to the Recorder's office and recorded it?" Her answer was "I didn't. I come (sic) up and had Mecham talk to my mother into have the childrens' names put on in case she died."

Her claim fails right here. Her testimony is not clear and convincing. Rather, her testimony is clear and consistent that what she claimed to have done was not done, specifically, record the deed in her mother's name only. Her statement that it was recorded in her mother's name only and her answer to the court's question that she did not immediately take it to be recorded after the childrens' names were added are inconsistent. However, they lead to the opposite conclusion found by the court. By way of contrast, Mrs. Smith's testimony is clear and unequivocal (Record page 264) that she witnessed the deed and that it appears now, exactly as it was in February of 1970.

CONCLUSION

The facts the court relied upon to find the deed was altered are common to almost all of the deeds which were prepared by Arnold Mecham. All of the deeds prepared by Mr. Mecham which conveyed property to multiple grantees did not

have the "s" after "grantee". Almost all of the deeds contain words which are not parallel to the lines on the prepared form.

Mrs. Foote's testimony is not credible at all. She claims to have recorded a document when it conveyed property to her mother only. The deed on its face reflects the contrary. Her testimony is not accurate or "credible" on this vital point, let alone, clear and convincing.

Accordingly, the trial court should be reversed and an order entered vacating the judgment.

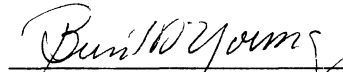
Dated this 24 day of February, 1989.


BRENT D. YOUNG

MAILING CERTIFICATE

I hereby certify that on this 24 day of February, 1989, I mailed a true and correct copy of the foregoing Brief of Appellant Norma S. Smith, to Mark Dalton Dunn, Attorney for Plaintiffs/Respondents, by placing it in the United States Mail, postage prepaid, addressed as follows:

Mark Dalton Dunn
Attorney at Law
230 S. 500 East #460
Salt Lake City, Utah 84102


BRENT D. YOUNG

smthbrf/c

ADDENDUM

1. Defendant's Exhibit 2.
2. Defendant's Exhibit 3.
3. Defendant's Exhibit 4.
4. Defendant's Exhibit 5.
5. Defendant's Exhibit 6.
6. Defendant's Exhibit 7.
7. Defendant's Exhibit 8.
8. Defendant's Exhibit 9.
9. Defendant's Exhibit 10.
10. Defendant's Exhibit 11.
11. Defendant's Exhibit 12.
12. Defendant's Exhibit 13.

RECORD

Testimony of Velma Foote page 180-241; pages 260-262; and pages 291-301.

338

2906 F2004-A
WARRANTY DEED

True Scott and Emma L. Scott, his wife
Grantor^s, of Provo, Utah County, State of Utah
hereby CONVEY AND WARRANT to June Scott and Alan D. Scott, her son
as joint tenants, with rights of survivorship
Grantee, of Provo, Utah County, Utah
for the sum of ten DOLLARS
and other valuable consideration
the following described tract of land in Utah County,
State of Utah, to-wit:

NE NW 4
7655-33
Commencing in the West boundary of 1600 West Street, Provo, Utah at
a point South along the quarter section line 769.46 feet and West 744.26
feet from the North quarter corner of Section 11, Township 7 South, Range
2 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said
street boundary 81.34 feet; thence North 89°10'40" West 286.86 feet; thence
North 0°49'20" East 81.34 feet; thence South 89°10'40" East 286.86 feet
to beginning. Area = 0.535 acres.

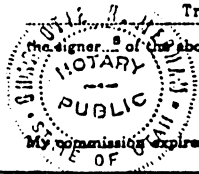
WITNESS THE HANDS of said Grantor^s this 24th day of
March, A. D. 1970

Signed in the presence of
Joseph P. Young
Angelise L. Young
True Scott
Emma L. Scott

STATE OF UTAH
County of Utah ss.

On the 24th day of March, A. D. 1970, personally appeared
before me, a Notary Public in and for the State of Utah,
True Scott and Emma L. Scott, his wife

the signer^s of the above instrument, who duly acknowledged to me that they executed the same.



E. L. A. [Signature]
Notary Public

My commission expires August 25, 1971 Residing at Provo, Utah

2906
MAIL TAX NOTICE
March 26 PM 11:20
165 So. 1600 St.
Provo
7

DEFENDANT'S
EXHIBIT
CV-87-576

WARRANTY DEED

2
NW NW
655-53

2

My commission expires August 25, 1921 Residing at Lincoln, Neb.

2907

CLERK OF THE DISTRICT COURT
Alameda County
Alameda, California

RECEIVED
JUN 26 PM 1:21
JUN 27 1932

1000

2908

340

F2007-C

WARRANTY DEED

True Scott and Emma L. Scott, his wife
 Grantor, of Provo, Utah County, State of Utah
 hereby CONVEY AND WARRANT to Lucile Dalley
 Gloria B. Peterson
 Grantee, of Provo, Utah County, Utah
 for the sum of ten DOLLARS
 and other valuable consideration
 the following described tract of land in Utah County,
 State of Utah, to-wit:

Commencing in the West boundary of 1600 West Street, Provo, Utah at
 a point South along the quarter section line 597.33 feet and West 741.79
 feet from the North quarter corner of Section 11, Township 7 South, Range
 2 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said
 street boundary 90.80 feet; thence North 89°10'40" West 286.86 feet; thence
 North 0°49'20" East 90.80 feet; thence South 89°10'40" East 236.86 feet
 to beginning. Area = 0.60 acres.

WITNESS THE HANDS of said Grantor, this 24th day of

March, A. D. 1970

Signed in the presence of

Joseph L. Young
 Angelina L. Young

True Scott
 Emma L. Scott

STATE OF UTAH,

County of Utah

On the 24th day of March, A. D. 1970, personally appeared

before me, a Notary Public in and for the State of Utah,

True Scott and Emma L. Scott, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.



Charles A. McNamee
 Notary Public

My commission expires August 25, 1971 Residing at Provo, Utah

2908
 MAIL TAX NOTICE
 FEB 26 PM 1:22
 2

Standard Supply Co., Provo, Utah

DEFENDANT'S
 EXHIBIT

CV-87-576

2

341

2909 F2004-D
WARRANTY DEED

True Scott and Emma L. Scott, his wife
Grantor^s, of Provo, Utah County, State of Utah
hereby CONVEY AND WARRANT to Dell S. Foote and Velma S. Foote.
as joint tenants with full rights of survivorship
Grantee^s, of Provo, Utah County, Utah
for the sum of _____ and other valuable consideration _____ DOLLARS
the following described tract of land in _____ Utah County,
State of Utah, to-wit:

Commencing in the West boundary of 1600 West Street, Provo, Utah at
a point South along the Section line 521.62 feet and West 740.70 feet
from the North quarter corner of Section 11, Township 7 South, Range 2
East, Salt Lake Base and Meridian; thence South 0°49'20" West along said
street boundary 75.72 feet; thence North 89°10'40" West 286.86 feet; thence
North 0°49'20" East 75.72 feet; thence South 89°10'40" East 286.86 feet
to beginning, Area = 0.50 acres.

WITNESS THE HANDS of said Grantor^s this 24th day of
March, A. D. 1970

Signed in the presence of
Joseph V. Young
Angeline L. Young
True Scott
Emma L. Scott
STATE OF UTAH
County of Utah ss.

On the 24th day of March, A. D. 1970, personally appeared
before me, a Notary Public in and for the State of Utah,
True Scott and Emma L. Scott, his wife

the signer^s of the above instrument, who duly acknowledged to me that they executed the same.



Robert A. Johnson
Notary Public

My commission expires August 25, 1971 Residing at Springville, Utah

7	MAIL TAX NOTICE TO	2909
1	RECEIVED & THE REQUEST OF	
2	APR 25 PM 1:23	
3	PAGE	
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Standard Supply Co., Provo, Utah

DEFENDANT'S
EXHIBIT

CV-87-576

342

2910 F2003
WARRANTY DEED

True Scott and Emma L. Scott, his wife
Grantor^s of Provo, Utah County, State of Utah
hereby CONVEY AND WARRANT to Willard Duane Burge, Jr., Shirley Ann Burge,
Linda Marie Burge Saxer, Carol Joyce Burge, Ina Louise Burge and
David William Burge an undivided 1/6th interest each
Grantee^s of Provo, Utah County, Utah
for the sum of ten DOLLARS
and other valuable consideration
the following described tract of land in Utah County,
State of Utah, to-wit:

Commencing in the West boundary of 1600 West Street, Provo, Utah at
a point South along the Section line 442.90 feet and West 739.57 feet
from the North quarter corner of Section 11, Township 7 South, Range 2
East, Salt Lake Base and Meridian; thence South 0°49'20" West along said
street boundary 78.73 feet; thence North 89°10'40" West 286.86 feet;
thence North 0°49'20" East 72.73 feet; thence North 89°37'30" East 286.92
feet to beginning. Area = 0.50 acres.

WITNESS THE HANDS of said Grantor^s this 24th day of
March, A. D. 1970
Signed in the presence of
True Scott
Emma L. Scott
STATE OF UTAH
County of Utah
On the 24th day of March, A. D. 1970, personally appeared
before me, a Notary Public in and for the State of Utah,
True Scott and Emma L. Scott, his wife



Notary Public
Residing at Springville, Utah

MAIL TAX NOTICE TO
2910
MAR 26 PM 1:24
COUNTY CLERK
PROVO, UTAH

DEFENDANT'S
EXHIBIT
CV-87-576

343

2911 F 2001
WARRANTY DEED

True Scott and Emma L. Scott, his wife
Grantor, of Provo, Utah County, State of Utah
hereby CONVEY AND WARRANT to Verlon G. Scott and Dorothy H. Scott, his wife
as joint tenants, with full rights of survivorship
Grantee, of Provo, Utah County, Utah
for the sum of _____ DOLLARS
and other valuable consideration
the following described tract of land in Utah County,
State of Utah, to-wit:

NEW
1296

Commencing at the intersection of the grantors' North fence line and the West boundary of 1600 West Street, Provo, Utah said point of intersection being South along the Section line 366.66 feet and West 738.48 feet from the North quarter corner of Section 11, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said street boundary 76.25 feet; thence South 89°37'30" West 286.92 feet; thence North 0°49'20" East 80.76 feet to said fence line; thence South 87°29' East along said fence line 286.86 feet to beginning. Area = 0.517 acres.

WITNESS THE HANDS of said Grantors this 24th day of

March, A. D. 1970

Signed in the presence of

Joseph V. Young
Angelina L. Young

True Scott

Emma L. Scott

STATE OF UTAH,

County of Utah

On the 24th day of March, A. D. 1970, personally appeared

before me, a Notary Public in and for the State of Utah,

True Scott and Emma L. Scott, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.



Notary Public

My commission expires August 25, 1971 Residing at _____, Utah

MAIL TAX NOTICE TO
1970 MAR 26 PM 1:45
2911

Standard Supply Co., Inc., Utah

DEFENDANT'S
EXHIBIT
CV-87-576
7

2912 F2004

WARRANTY DEED

True Scott and Emma L. Scott, his wife
 Grantor, of Provo, Utah County, State of Utah
 hereby CONVEY AND WARRANT to True Scott and Emma L. Scott, his wife
 as joint tenants, with full rights of survivorship
 Grantee, of Provo, Utah County, Utah
 for the sum of ten DOLLARS
 and other valuable consideration
 the following described tract of land in Utah County,
 State of Utah, to-wit:

Commencing in the West boundary of 1600 West Street, Provo, Utah at
 a point South along the Section line 850.79 feet and West 745.43 feet
 from the North quarter corner of Section 11, Township 7 South, Range 2
 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said
 street boundary 385.16 feet to a fence corner; thence North 89°19'50" West
 along said fence line 1307.60 feet; thence North 1°07'20" East along the
 fence line 390.46 feet; thence South 89°30'20" East along the fence line
 246.27 feet; thence North 1°07'10" East along the fence line 475.29 feet;
 thence South 89°29' East along the fence line 769.97 feet; thence South
 0°49'20" West parallel with said street boundary 482.69 feet; thence South
 89°10'40" East 286.86 feet to said street boundary and the point of beg-
 inning. Area = 20.13 acres.

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 7655-100

WITNESS THE HANDS of said Grantor, this 24th day of
 March, A. D. 1970

Signed in the presence of
 Joseph V. Young
 Angelina L. Young
 True Scott
 Emma L. Scott

STATE OF UTAH,
 Utah
 County of } ss.

On the 24th day of March, A. D. 1970, personally appeared
 before me, a Notary Public in and for the State of Utah,
 True Scott and Emma L. Scott, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.
 My commission expires August 25, 1971 Residing at Provo, Utah



MAIL FAX NOTICE TO
 2912
 5711 28 PM 1-76
 2912

DEFENDANT'S
 EXHIBIT
 CV-87-576
 NO. 8

1919
WARRANTY DEED F 1939-B

213

True Scott and Emma Scott, his wife
Grantor^s, of Provo, Utah County, Utah
hereby CONVEY AND WARRANT to Norma S. Smith
Grantee, of Provo, Utah County, Utah
for the sum of ten and other valuable consideration DOLLARS
the following described tract of land in Utah County,
State of Utah, to-wit:

11-7-2E
NE-2W
23-2N
Commencing at a point in the west line of 1600 West Street,
in Provo, Utah which point is 100 feet south of the Southeast
corner of Lot 1 of Block 5, of Mont Aire Subdivision, which
Southeast corner of Lot 1 is 747.31 feet west and 18 1/2 feet
North of the south 1/4 corner of Section 2, Township 7 south,
Range 2 east, Salt Lake Base and Meridian; thence north 89 deg.
west 159.72 feet; thence south 1 deg. east 110 feet; thence
south 89 deg. east 160 feet to the West line of 1600 West Street;
thence north 1 deg. west 110 feet to the point of beginning.

WITNESS THE HANDS of said Grantor & this 25th day of
Feb., A. D. 1970

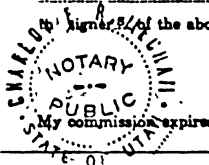
Signed in the presence of
Dorothy H. Scott } True Scott
Norma S. Smith } Emma Scott

STATE OF UTAH,
County of Utah ss.

On the 25th day of Feb., A. D. 1970, personally appeared
before me, a Notary Public in and for the State of Utah,

True Scott and Emma Scott, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.



Charles H. Williams
Notary Public

Residing at Springville, Utah

MAIL TAX NOTICE TO

1919

DEFENDANT'S
EXHIBIT
CV-87-576
NO. 9

1921
WARRANTY DEED

F2260
F2273
F2261

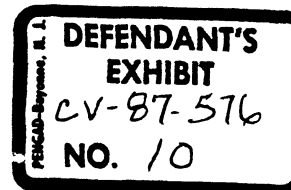
218

True Scott and Emma Scott, his wife
Grantor of Provo, Utah County, Utah
hereby CONVEY AND WARRANT to Varion G. Scott and Dorothy H. Scott,
his wife as joint tenants, with full rights of survivorship
Grantor of Provo, Utah County, Utah
for the sum of \$100 and other valuable consideration Utah County,
the following described tract of land in State of Utah, to-wit:

Commencing 18.15 chains south of the $\frac{1}{4}$ section corner between Sections 11 and 14, Township 7 south, Range 2 east, Salt Lake Base and Meridian;
thence north 65 deg. 30' east 4.43 chains;
thence south 45' west 31.25 chains;
thence north 82 deg. west 4.22 chains;
thence north 1 deg. east 19.85 chains;
thence north 88 deg. west 6.60 chains;
thence north 74 deg. east 2.95 chains;
thence north 10 deg. east 5 chains;
thence north 40 deg. east 3.40 chains;
thence north 65 deg. 30' east 1 chain to beginning.
Area 14.01 acres, more or less.

Commencing 27.10 chains south and 0.21 chain west of the Northeast corner of the Northwest quarter of Section 14, Township 7 south, Range 2 east, Salt Lake Base and Meridian;
thence north 88 deg. west 5.27 chains;
thence south 1 deg. west 18.23 chains;
thence south 76 deg. east 5.43 chains;
thence north 1 deg. east 19.36 chains to beginning.
Area 9.91 acres, more or less.

Commencing east along the section line 850.96 feet and south 1320 feet from the Northwest corner of the Northeast quarter of Section 14, Township 7 south, Range 2 east, Salt Lake Base and Meridian;
thence south 45' west 1890.46 feet;
thence north 82 deg. west 594.30 feet;
thence north 45' east 2065.77 feet;
thence along fence line north 66 deg. 17' 40" east 453.94 feet;
thence south 441.50 feet;
thence east 170.57 feet to beginning.
Area 28.378 acres, more or less.



WITNESS THE HANDS of said Grantor this 26th day of Feb., A. D. 1970

Signed in the presence of
Neil Scott True Scott
Iris Scott Emma Scott

STATE OF UTAH,
 County of Utah }

On the 26th day of Feb., A. D. 1970, personally appeared before me, a Notary Public in and for the State of Utah, True Scott and Emma Scott, his wife signers of the above instrument, who duly acknowledged to me that they executed the same.

Charles Wilson
 Notary Public
 My commission expires Aug-18-1971 Residing at Provo Utah

MAIL TAX NOTICE TO

340 do. 160000.
 1970 FEB 25 P. 12.23
 1971
 1921

4847

WARRANTY DEED

F 2282

F 2004

F 2004-2

True Scott and Emma Scott, his wife

Grantor, of Provo, Utah County, Utah

hereby CONVEY AND WARRANT to Emma Scott, his wife,

Velma S. Foote, Lucile S. Dalley, June Scott, Varlon Scott and Norma Smith
as joint tenants, with full rights of survivorship

Grantee, of Provo, Utah County, Utah

for the sum of _____ DOLLARS
and other valuable consideration Utah County,
the following described tract of land in State of Utah, to-wit:

Commencing 16.72 chains west and 0.25 chain south of the Northeast corner of the Northwest quarter of Section 14, Township 7 south, Range 2 east of the Salt Lake Base and Meridian;
thence south 1 deg. west 33.20 chains;
thence south 52 deg. west 2.28 chains;
thence north 40 deg. west 4.95 chains;
thence north 1 deg. east 31 chains;
thence east 3.18 chains;
thence south 0.25 chain;
thence east 1.77 chain to beginning.
Area 16.20 acres, more or less.

Together with a right of way described as follows:
Commencing 11.50 chains west of the Northeast corner of the Northwest quarter of Section 14, Township 7 south, Range 2 east, S.L.B. & M.;
thence south 1 deg. west 27.30 chains;
thence south 52 deg. west 0.32 chain;
thence north 1 deg. east 29.25 chains;
thence west 6.74 chains;
thence north 0.25 chain;
thence east 6.99 chains to beginning.

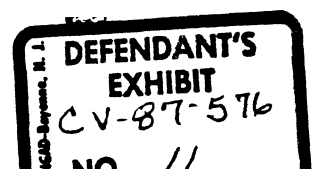
Commencing 21.67 chains west of the Northeast corner of the Northwest quarter of Section 14, Township 7 south, Range 2 east, S.L.B. & M.;
thence west 3.02 chains;
thence south 1 deg. west 26.13 chains;
thence south 40 deg. east 4.51 chains;
thence north 1 deg. east 29.19 chains
to the place of beginning.

Together with accretion land lying south of the above described lands.

Commencing in the West boundary of 1600 West Street, Provo, Utah at a point South along the section line 850.79 feet and West 745.43 feet from the North quarter corner of Section 11, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said street boundary 385.16 feet to a fence corner; thence North 89°19'50" West along said fence line 1307.60 feet; thence North 1°07'20" East along the fence line 390.48 feet; thence South 89°30'20" East along the fence line 246.27 feet; thence North 1°07'10" East along the fence line 475.29 feet; thence South 89°29' East along the fence line 769.97 feet; thence South 0°49'20" West parallel with said street boundary 482.69 feet; thence South 89°10'40" East 286.86 feet to said street boundary; and the point of beginning. Area = 20.13 acres.

Commencing in the West boundary of 1600 West Street, Provo, Utah at a point South along the quarter section line 688.12 feet and West 743.09 feet from the North quarter corner of Section 11, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 0°49'20" West along said street boundary 81.34 feet; thence North 89°10'40" West 286.86 feet; thence North 0°49'20" East 81.34 feet; thence South 89°10'40" East 286.86 feet to beginning. Area = 0.535 acres.

Together with all water rights.
Together with any undiscovered property.



WITNESS THE HAND of said Grantor this 16th day of

Feb. A. D. 19 70

Signed in the presence of

Norma A. Smith
Thelma S. Fichte

True Scott
True Scott

Emma Scott
Emma Scott

STATE OF UTAH

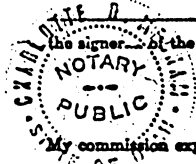
County of Utah

On the 16th day of Feb. A. D. 19 70, personally appeared

before me, a Notary Public in and for the State of Utah,

True Scott and Emma Scott, his wife

the signer of the above instrument, who duly acknowledged to me that he executed the same.



Charlotte A. McKee
Notary Public

My commission expires August 25, 1971 Residing at *Springville, Utah*

MAIL TAX NOTICE TO

4847

RECORDED AT THE OFFICE OF THE
CLERK OF THE DISTRICT COURT
IN THE COUNTY OF KANE, ARIZONA
ON FEBRUARY 18, 1970
AT 2:50 PM
BOOK PAGE

*309 South
1690 West
Provo, Utah*

WARRANTY DEED

True Scott and Emma Scott, his wife

Grantor S. of Provo, Utah County, Utah
Norma S. Scott, Velma S. Foote, Lucile S.
hereby CONVEY AND WARRANT to Dalley, June Scott and Verlon G. Scott
to each an undivided 1/6th interest; and to Willard Diane Burge, Jr.,
Shirley Ann Burge, Carol Joyce Burge, Linda Marie Saxey, Louise Burge and
David William Burge, to each an undivided 1/36th interest
Grantee, of Provo, Utah County, Utah

Street Address City County State
for the sum of ten DOLLARS
and other valuable consideration
the following described tract of land in Juab County,
State of Utah, to-wit:

the Southeast 1/4 of the Southeast 1/4 of Section 21; The South 1/2 of the Southeast 1/4 of Section 22; the Southwest 1/4 of the Southeast 1/4 of Section 22; the East 1/2 of the Northwest 1/4 of Section 22; the Southeast 1/4 of the Southeast 1/4 of Section 22; the South 1/2 of the Northwest 1/4 of Section 23; the Northwest 1/4 of the Northwest 1/4 of Section 23; the Southwest 1/4 of the Northwest 1/4 of Section 23; the Northwest 1/4 of the Northwest 1/4 of Section 26; all of the South 1/2 of the Northwest 1/4 of Section 26; the Northwest 1/4 of the Southeast 1/4 and all of the Northeast 1/4 of the Southeast 1/4 of Section 27; the Northeast 1/4 of the Northeast 1/4 of Section 27; the Northeast 1/4 of the Northwest 1/4 of Section 34; all in Township 15 South, Range 1 West, S1M.

WITNESS THE HANDS of said Grantor this 25th day of
Feb., A. D. 1970

Signed in the presence of

True Scott

Emma Scott

STATE OF UTAH,

County of Utah ss.

On the 25th day of Feb., A. D. 1970, personally appeared

before me, a Notary Public in and for the State of Utah,

True Scott and Emma Scott, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.

Notary Public

My commission expires Residing at

MAIL TAX NOTICE TO

128166

Feb 27 1970 10:00 225

Norma S. Smith

Lucille S. Barber

DEFENDANT'S

EXHIBIT

CV-67-576

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

AFFIDAVIT OF
VELMA SCOTT FOOTE

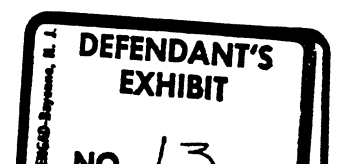
I, Velma Scott Foote do hereby write down my recollections of the events that transpired in the spring of 1970 concerning the transfer of property belonging to my father, True Scott, to my mother, Emma Scott.

When my father became quite ill in the early spring, he decided along with my mother to put his property in her name so that there would be no problem upon his death. This was done and two Warranty Deeds, one for property in Levan and one for the property in question in Provo, were signed over to my mother, Emma Scott.

After my father's death on April 19, 1970, we children became concerned that somebody elses name besides our mothers should be on the deeds.

I took mom up to the court house in May where we met with Mr. Arnold Meachem. He confirmed that if other names were not on the deed when mom died, it could go to probate and most of the money would end up going for court costs and attorney fees. Mom agreed to do this, but she wanted to make sure that everyones names were on the deed and that they all got an equal share.

Mr. Meachem had some concerns about putting the names of my deceased sister's children on because that would make eleven names and because there were minors involved. I told him that it had been done that way on the other deed for the property in Levan. I left mom in the car and went back to Mr. Meachem's office to give him the list of names to be added to the Warranty Deed. The list included the six children of my sister Ina Scott Burge, who passed away four years earlier. I never saw the deed after that day



Mom always told us that everyones name was on it and that we all got our equal share. This was something both our parents wanted.

I never attempted to get a copy of the deed because I knew mom had one and I had no reason to believe it was not in order as I had been with mom when she gave the instructions to Mr. Meachem and assumed that he had followed her instructions.

After the death of my brother, Verlon Scott on July 6, 1986, my sister-in-law, Dorothy Scott obtained a copy of the deed. This is when the mistakes were discovered.

I know that my mother intended for the Warranty Deed to read the same as the Warranty Deed for property in Levan as I was with her when she gave the instructions to Mr. Meachem. I can't understand the reasons for my sister, Norma Smith, refusing to sign the new Warranty Deed. Norma was always the one who made sure that the Burge children received their mother's share of everything that was divided.

DATED this 13th day of May, 1987.

Velma S. Foote
VELMA SCOTT FOOTE

Subscribed and sworn to before me this 13th day
of May, 1987.

Geraldine Carson
NOTARY PUBLIC
Residing at Sandy Utah

My Commission Expires:

9-9-90

1 may rule one way or the other on various objections that
2 I will make. I would ask the court to be patient with
3 me because I have written out some of my objections
4 and they are lengthy. They are evidentiary in nature
5 and I will just state them for the record and then the
6 court can rule. I don't want you to think that I am
7 arguing just because the objections are lengthy they will
8 be but I will need to preserve my record, thank you.

9 THE COURT: Okay very good, you may proceed.

10 MR. DUNN: We would call Velma Foote to the stand
11 please.

12 VELMA FOOTE

13 called as a witness by and on behalf of the plaintiff
14 first being duly sworn was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. DUNN:

18 Q Would you please state your name?

19 A Velma Scott Foote.

20 Q And would you please give us some of your background
21 your family relationship?

22 A Well I thought our family got along very well
23 together up until after my mother died.

24 Q And who were your parents?

25 A True and Emma Scoot.

1 Q And where did they reside?

2 A At 308 South 1600 West.

3 Q And could you tell me something about the real

4 property holdings of your father and mother prior to their

5 deaths?

6 A Well one day I noticed that the or the tax notices

7 had come to mom and dad and that one of the or two of the

8 deeds had just my dad's name on it.

9 Q And what property would this be concerning?

10 A That around the house.

11 Q Which house do you refer to?

12 A My mothers and dads at 308 South.

13 Q Did they own any additional real property besides

14 that around their own home?

15 A Down on 1600 West and I don't know how far south

16 it is down towards the lake he owned 24 acres.

17 Q And did he own - -

18 A He owned the house that Norma lived in.

19 Q Okay did he own some property in any other counties?

20 A In Juab.

21 Q How many acres did he own there?

22 A I think it was 700 and something.

23 Q Okay so he owned some 700 acres in Juab County

24 and also owned 20 acres around his home and an additional

25 24 acres by the lake?

1 A And their home?

2 Q Plus their home and some 50 acres else where?

3 A Down at the lake farm that he owned some of

4 that that was down there that we used to do our growing

5 of vegetables.

6 Q Did any of his family members such as yourself or

7 your brothers or sisters live in that same area prior to

8 your father's death?

9 A My brothers and sisters lived in that area.

10 Q All of them did?

11 A With the exception of Norma I think when she got

12 married she took up nursing and she was in Salt Lake for

13 a while and then I think they went to Idaho and she worked

14 at the hospital in Idaho.

15 Q Did she live in the area prior to your father's

16 death?

17 A Yes.

18 Q And did she live on one of the lots that would have

19 been owned by your father?

20 A She lived in the Seth home that my dad had acquired

21 from him.

22 Q From whom?

23 A Seth Scott Family.

24 Q But it was a home that your father owned?

25 A Yes he owned it.

1 Q So did all of your brothers and sisters then
2 live in homes that were owned by your father or on land that
3 was owned by your father?

4 A Yes.

5 Q You stated a little bit earlier that you noticed at
6 some time that all of these homes and lots were in your father
7 name?

8 A Yes, he had told us we was to get a strip of ground
9 for our home there and some of the homes were brought in
10 and Ina paid for hers and Lucile paid for hers. I don't
11 know whether Verlon did or not, I have no idea.

12 Q When you say "paid for the homes" could you - -

13 A The home that was brought in my dad paid for it
14 first and she paid - -

15 MR. YOUNG: Your Honor I am going to object on
16 foundation I just need to know when a period of time
17 thank you.

18 THE COURT: Okay lay some foundation.

19 MR. DUNN: That is fine.

20 BY MR. DUNN:

21 Q When we are talking about these particular homes
22 could you give me some dates as to when they lived in these
23 homes or when they were brought onto the land or - -

24 A I really couldn't tell you but it is quite a while
25 before I noticed that the deeds or tax notices was made out

1 to my dad.

2 Q Would it be a period of five years prior to that time
3 or ten years prior to that time?

4 A I think so about maybe about ten years or more.

5 Q And how long would have Norma lived on this
6 particular land prior to your father's death?

7 A I don't know we moved from our place across the
8 street in 1973.

9 Q Yes.

10 A And she lived in that home I imagine five or six
11 before then. I am not positive on that but - -

12 Q You stated that some homes were actually brought on
13 to the land as opposed to being built could you explain
14 that to me?

15 A They had the land in front of dad's place and on
16 up to Uncle Seth that was vacant and my dad had three
17 homes brought in. The one that my sister Lucile Scott Dalley
18 is in now and the one that the Burge family is in now and
19 Verlons and then there was a lot for me and a lot on the
20 other side of father's piece that was for June.

21 Q So up in 1970 if I understand this correctly
22 all of these lots were in just your father and mothers'
23 names?

24 A Yes.

25 Q Were they ever transferred into anyone elses names?

1 A We transferred them when I found out that my
2 dad had just some of his property in his name. Then
3 I started thinking about it.

4 Q Why was that a concern?

5 A Well I figured that mom would have to go to court
6 and she just couldn't take that. I thought well I just
7 let it go and go through court and then I was disturbed
8 three nights in succession waking up and like I was
9 to do something about it.

10 Q And what did you do?

11 A Well I called a meeting for to tell the kids what
12 we had found out that was in my dad's name and not my mothers.

13 MR. YOUNG: Objection we need some foundation we need
14 when we are talking about.

15 BY MR. DUNN:

16 Q When would that have been this meeting that you
17 called?

18 A Well it was quite a while a little while before
19 I had anything to do with getting the deeds changed
20 into the kids' names.

21 Q Okay do you have any idea about what time that would
22 have been?

23 A That was a year or two before my dad died.

24 Q So that would have been in 1968, 1969 is that
25 correct?

1 A Somewhere around there.

2 Q Who attended that meeting?

3 a My mother was supposed to and my brother Verlon,
4 my sister June and my sister Norma, my sister Lucile and
5 we held it at her home and myself.

6 THE COURT: Is that all of the brothers and sisters?

7 THE WITNESS: Yes .

8 MR. DUNN: That was living at that time?

9 THE WITNESS: Yes living at that time.

10 BY MR. DUNN:

11 Q What was discussed at that meeting?

12 MR. YOUNG: Objection hearsay.

13 THE COURT: Didn't you say that your client was
14 present?

15 MR. YOUNG: Yes sir.

16 THE COURT: Then it is not hearsay to her if she heard.
17 Lay your foundation.

18 BY MR. DUNN:

19 Q What did you have accomplished at that meeting what
20 did you have done at that meeting?

21 A Wel I had lost my voice and I called them and told
22 them my situation and what I had found out. That I was
23 wondering what we could do about it and the kids started
24 arguing and shouting and they said that well you are
25 shouting and I said that I have got to to make myself

1 heard. I felt like the Devil was there so I didn't go
2 on with the meeting because I said that nothing will be
3 accomplished there would just be arguing so I left.

4 Q Was there at some point anything done with
5 regard to these lots that you and your brothers and sisters
6 were living on?

7 A I went down to my dad and mom was there and I asked
8 them if it was all right if I got the lots done up for the
9 kids so they could have the deeds to their places.

10 Q Okay I would like to show you what has been
11 marked as Defendant's Exhibit No. 2 (indicating) and
12 ask if you recognize it and have any knowledge regarding
13 that particular document.

14 A Yes I recognize it.

15 Q Would you please explain to me what that is?

16 A It is a deed to my father's home I believe no it is
17 a deed to the lot just opposite my dad's home one that
18 was June was supposed to get.

19 Q And this one of the deeds that came out of your
20 efforts to have - -

21 A Yes.

22 Q And when was it signed by your parents?

23 A It was signed on the 24th day of March, 1970.

24 Q And who had it recorded?

25 A I did.

1 Q And when did you have it recorded?

2 A March 26 at 1:20 P.M.

3 Q Okay thank you.

4 THE COURT: What year was that?

5 THE WITNESS: 1970.

6 MR. DUNN: We have stipulated that this particular
7 document that they may be placed into evidence.

8 THE COURT: Okay.

9 MR. DUNN: These will be all the deeds that were
10 conveyed by True and Emma Scott.

11 THE COURT: All right, no objections?

12 MR. YOUNG: No objection.

13 THE COURT: If that is the stipulation then Exhibit
14 No. 2 will be received.

15 BY MR. DUNN:

16 Q I would like you to look at Exhibit No. 3 ?

17 A Yes this here is the deed of my father's
18 home was a strip of ground that it was on and my mother
19 wanted it to own something herself so we had all this
20 property put in True Scott and Emma Scott his wife as joint
21 tenants with full rights of surviorship.

22 Q Now is that partiucular property part of what is being
23 disputed?

24 A Yes.

25 Q And what is the date on that?

1 A It is the date it was recorded March 26th.
2 Q And who had it recorded?
3 A Velma Foote.
4 Q That is you?
5 A Yes.
6 Q Okay I would like to place Exhibit No. 3 into
7 evidence?
8 MR. YOUNG: No objection.
9 THE COURT: Exhibit No. 3 will be received.
10 THE WITNESS: This strip right next to my father's
11 home?
12 BY MR. DUNN:
13 Q This is Exhibit No. 4 correct?
14 A Yes and it was deeded over to Lucile Dalley my
15 sister just younger than I am.
16 Q And how much acreage is on that if you can tell?
17 A Well it is had got it here (indicating) .60.
18 Q And when was that recorded?
19 A That was recorded March 26, 1970 at 1:22.
20 Q And by whom was it recorded?
21 A Velma Foote.
22 Q Thank you. I would like to place Defendant's Exhibit
23 No. 4 into evidence.
24 THE COURT: Exhibit No. 4 will be received.
25 MR. YOUNG: No objection.

1 BY MR. DUNN:

2 Q I would like to show you what has been marked as
3 Defendant's Exhibit No. 5 and ask if you could explain
4 that particular document as well?

5 A This is my property that was deeded to Velma S.
6 Foote as joint tenants with full rights of survivorship
7 and this was witnessed by my Aunt Angeline S. Young and
8 Joseph Lunsford my Uncle.

9 Q When was it recorded?

10 A It was recorded March 26, 1970 at 1:23.

11 Q Recorded by you as well?

12 A Velma Foote yes.

13 Q Like to place Exhibit No. 5 into evidence?

14 MR. YOUNG: No objection.

15 THE COURT: Exhibit No. 5 will be received.

16 BY MR. DUNN:

17 Q Would you please do the same with Exhibit No. 6?

18 A This is a deed that was deeded over to the Burge
19 Children Willard Duane Burge Jr., Shirley Ann Burge, Linda
20 Marie Burge Saxey and Carol Joyce Burge, Ina Louise Bruge
21 and David William Burge .

22 Q And who are those individuals?

23 A My nieces and nephews and my sister Ina's children.

24 Q Was Ina living at the time that deed was written
25 up?

1 A No.

2 Q And when did she die?

3 A She died in May of 27th in 1966.

4 Q And so why then was this particular deed done
5 in the name of her six children?

6 MR. YOUNG: Objection foundation , competency.
7 The deed speaks for itself.

8 THE COURT: Lay a little more foundation as to whether
9 or not why she would even know why the deed was - -

10 MR. YOUNG: Your Honor another thing if I could have
11 counsel move over here so I could see the witness.

12 MR. DUNN: I am sorry, yes I will do that.

13 BY MR. DUNN:

14 Q Now it is my understanding that you were
15 involved in the preparation of all of these deeds is that
16 correct?

17 A Yes I was.

18 Q And with the previous documents I believe four of
19 them were you involved in the preparation of those documents?

20 A Yes.

21 Q And what did you do with those previous four documents
22 with regard to having the names listed?

23 A My father had stated to me several times - -

24 MR. YOUNG: Objection hearsay?

25 THE COURT: Do you want to be heard on that?

1 MR. DUNN: I think we can probably get around
2 that.

3 THE COURT: All right rephrase your question,
4 objection sustained.

5 BY MR. DUNN:

6 Q Without telling us exactly what your father may
7 have said why was the what was the purpose of having
8 these deeds recorded why did you go to this effort
9 etc.?

10 MR. YOUNG: Objection foundation and competency.
11 She is not the grantor of the deed can I make a long
12 objection here?

13 THE COURT: Yes.

14 MR. YOUNG: The objection will be hearsay and
15 competency. She wouldn't be competent because while
16 it is true she can understand the oath and she can perceive
17 things and she has the ability to raise the lay things
18 she wouldn't have had the ability to perceive what his
19 intent would have been in any event she heard what he said
20 would have been is hearsay. Furthermore the competency
21 runs to the Statute of Frauds and the Statute of
22 Limitations the problem that I have discussed earlier.

23 THE COURT: It might run to the Statute of Frauds
24 I don't know why it would run to Statute of Limitations.

25 MR. YOUNG: I think the Statute of Limitations

1 given the fact that well - -

2 THE COURT: All she is doing is all he asked
3 her is what the intent was what does that have to do
4 with Statute of Limitations?

5 MR. YOUNG: The three year statute it would have
6 ran in 1973 if recorded the deed as against her.

7 THE COURT: That may be something else that you are
8 going to have to question about on cross examination or
9 otherwise.

10 MR. YOUNG: I just wanted to make my record on the
11 objection thank you very much.

12 THE COURT: All right.

13 MR. DUNN: With regard to the competency I believe
14 the foundation has been laid that she was the individual who
15 was impetus to having these deeds recorded that she assisted
16 her parents in listing the names on the deeds. That she
17 was the one who basically had this work done for them.

18 MR. YOUNG: On competency she has to be able to
19 relate something that she has observed or seen. Now she may
20 have seen her parents sign the deed and she can testify
21 to that but if she heard them say something about their
22 intent that is hearsay and we object. Therefore that
23 would render her not competent, she wouldn't be competent.

24 THE COURT: Want to be heard?

25 MR. DUNN: I believe she has stated that she was the

1 one who basically had these deeds drafted up. That she was
2 under the direction of her parents whether she went and
3 acted upon their direction. I think that falls outside of
4 hearsay.

5 THE COURT: I am going to let her answer objection
6 overruled.

7 BY MR. DUNN:

8 Q You can go ahead and answer now as to why the
9 Burge children were listed on this particular deed?

10 A Because I heard my dad and mother say that they
11 were each supposed to get a lot of their living children but
12 my sister had died and I think they should get it. My
13 mother and father stated that they were to get that
14 home but they also stated - -

15 THE COURT: You are getting beyond the question
16 now don't volunteer information just be responsive
17 to the question.

18 BY MR. DUNN:

19 Q Now your parents in 1970 had how many living
20 children?

21 A They had five living children.

22 Q Ina Burge was the only other of the deceased children
23 who had children herself?

24 A Yes.

25 Q We would place Exhibit No. 6 into evidence?

1 MR. YOUNG: No objection.

2 THE COURT: Exhibit No. 6 will be received in
3 evidence.

4 BY MR. DUNN:

5 Q I would like to show you Defendant's Exhibit No. 7
6 and ask if you recognize that document? (indicating)

7 A This was deeded to my brother Verlon Gene Scott
8 and Dorothy H. Scott, his wife as joint tenants, with
9 full rights of survivorship. It was done in 24th day of
10 March, 1970.

11 Q How many acres did that contain?

12 A That included .517 acres.

13 Q And is that the approximate size of all of these
14 other lots that has been mentioned?

15 A Yes.

16 Q I would like to submit Exhibit No. 7 into evidence?

17 MR. YOUNG: No objection.

18 THE COURT: Exhibit No. 7 will be received.

19 BY MR. DUNN:

20 Q Now Exhibit No. 8 (indicating) will you tell us
21 what that relates to?

22 A This is the deed of the home that I had done from
23 True Scott and Emma Scott, his wife equal rights of
24 survivorship as joint tenants. This was done the same time
25 March 26, 1970 at 1:24.

1 Q All right now is that particular deed involved
2 in the disputed property today?

3 A Yes.

4 Q And what exact property is that?

5 A That is their home.

6 Q I would like to place Exhibit No. 8 into evidence?

7 MR. YOUNG: No objection.

8 THE COURT: Exhibit No. 8 will be received.

9 BY MR. DUNN:

10 Q I would like to show you Exhibit No. 9 and please
11 do the same thing with that document? (indicating)

12 A This is the piece that is up the road just a little
13 ways oh I imagine about 190 South and 1600 West and
14 it was deeded to Norma S. Smith.

15 Q And what is the approximate size of that particular
16 lot?

17 A Well it doesn't have it down here but it is a little
18 less than the others I believe.

19 Q So it is approximately?

20 A It is approximately the same.

21 Q Okay like to place - -

22 THE COURT: .043 is an acre is what it is.

23 BY MR. DUNN:

24 Q I would like you to look at Exhibit No. 10
25 (indicating)?

1 A This is Verlon G. Scott and Dorothy H. Scott

2 THE COURT: Wait just a moment mam. You offered
3 Exhibit No. 9?

4 MR. DUNN: Yes.

5 MR. YOUNG: No objection.

6 THE COURT: Exhibit No. 9 will be received.

7 THE WITNESS: This is the lake farm ground that we
8 used to grow our crops on and this is made out to Verlon
9 G. Scott and Dorothy H. Smith his wife in joint
10 teneants with full rights of surviorship. That is down
11 there by the lake.

12 BY MR. DUNN:

13 Q All right and how many acres does this include?

14 A Oh one area is 14.01 acres and the other one is
15 9.91 - -

16 MR. YOUNG: We will stipulate that is some where
17 aorund 52 to 53 acres.

18 MR. DUNN: That is fine.

19 THE COURT: Doesn't the deed say 52.298 acres.

20 MR. DUNN: It is broken up in smaller portions.

21 THE WITNESS: It is 9191 acres.

22 THE COURT: If you add them together it is 52.298
23 acres?

24 MR. YOUNG: Yes that is correct.

25 BY MR. DUNN:

1 Q And this was something in addition to Verlon
2 receiving a half acre lot for his home is that correct?

3 A Yes.

4 Q And why was that?

5 A I don't know while I was getting it surveyed
6 for the childrens' deeds to their homes and property
7 my brother got my dad to sign this and I guess he wanted
8 him to have the farm.

9 MR. YOUNG: Objection hearsay and speculation I guess.

10 THE WITNESS: Well I assume - -

11 THE COURT: I suppose the deed speaks for itself
12 and I don't suppose that term I guess means one way or
13 the other now. I guess he wanted it. I guess the deed
14 says that so if that is what the exhibit says that is what
15 it says. Your objection will be sustained and if you want
16 to have that stricken from the record but it won't matter
17 one way or the other.

18 MR. YOUNG: That is fine Your Honor.

19 THE WITNESS: This was witnessed by Verlon Scott.

20 MR. YOUNG: Objection volunteering statements.

21 I don't have any objection to the admissibility of the
22 deed in fact it is my exhibit. Exhibit No. 10 is received.

23 BY MR. DUNN:

24 Q I would like to show you what has been marked
25 as Defendant's Exhibit No. 11 (indicating) and ask if you

1 could tell me what this particular document is?

2 A It is around 20.3 acres around the home.

3 Q This is the document that the dispute is over is
4 that correct?

5 A This is the document that the dispute is over.

6 Q Okay and what do you know about this particular
7 document ? What was your involvement in its drafting?

8 MR. YOUNG: Objection foundation.

9 THE COURT: Well I suppose that is a foundational
10 question, what her involvement was. If you want him to
11 ask specific questions who had the deed prepared and when
12 was it prepared and by whom and all this you can do that.

13 MR. YOUNG: I just want a time frame moved into
14 chronologically so I can track it.

15 THE COURT: All right. Go ahead and ask your
16 specific questions rather than general questions.

17 BY MR. DUNN:

18 Q When was this particular document drafted?

19 A This was drafted when I got put into mother's
20 name as well as some of the property and all put into one
21 deed then the lake ground the Verle piece and around
22 the home and the home.

23 Q Was this document drafted at the same time as all
24 of the other documents or approximately the same time?

25 A Yes.

1 Q Within what period of time were all these documents
2 drafted?

3 A Well I think it is stated March this here one is in
4 May.

5 Q That is when it was recorded?

6 A Yes.

7 Q And when was it signed by your parents?

8 A It was the 16th day of February 1970.

9 Q And who in fact drafted this document?

10 A Meacham did it for me.

11 Q And who gave him the direction as to what he should
12 do with this particular document?

13 A I guess I did.

14 Q Could you explain to me how that came about
15 and what directions you gave him or what involvement
16 that there was there?

17 A I went up to find out my mother wouldn't give me
18 the deeds to see what was going and so I went up to Meacham
19 and asked him about it. I wanted to know for sure
20 whether it just was in my dad's name or not.

21 Q Were you particularly concerned about this deed or all
22 of the deeds in general?

23 A All of the deeds in general because they were in
24 separate deeds before. When I got this done they were
25 put all in one.

1 Q Okay so this is a compilation of certain
2 properties then?

3 A Right.

4 Q And what did you direct Mr. Meacham to do?

5 A To have it put in my mothers and fathers, my
6 father and his wife's name.

7 Q Okay now there is some delay on this particular
8 document your parents signed it I believe on the 16th of
9 February and it was not recorded until May, could you
10 explain to me why this particular document was delayed?

11 A This was from dad to my mother and when my dad
12 indicated that he wanted the kids' name on it - -

13 MR. YOUNG: Objection hearsay.

14 THE WITNESS: I am sorry.

15 THE COURT: Want to be heard.

16 MR. DUNN: I believe that she can indicate to
17 what she had done as to directions from the grantor, she
18 was basically acting as their agent.

19 THE COURT: Yes she can testify as to what she
20 done, the objection is to hearsay as to what her father
21 said.

22 MR. DUNN: I understand that.

23 THE COURT: I will sustain that objection.

24 THE WITNESS: Mr. Meacham had a deed made out to
25 him and his mother or his wife and then we recorded that

1 one and then later this one here.

2 BY MR. DUNN:

3 Q So originally these properties then if I understand
4 your testimony so we can make sure it is clear were
5 deeded from your father to himself and his wife Emma Scott?

6 A Yes.

7 Q Okay.

8 A And at the same time we did one to my mother my
9 dad leaving it to my mother.

10 Q Solely to your mother?

11 A Yes because she wanted to own some ground and
12 know what it felt like to own something.

13 THE COURT: This is the deed that is in dispute?

14 MR. DUNN: Yes Your Honor.

15 THE COURT: Are you going to object to Exhibit No.
16 11?

17 MR. YOUNG: No sir.

18 THE COURT: I am going to receive it because I want
19 to look at it. Exhibit No. 11 will be received. I just
20 want to make sure that I know what she is talking about.

21 MR. DUNN: All right.

22 BY MR. DUNN:

23 Q When this deed was first originally drafted how
24 did it appear?

25 MR. YOUNG: Objection, competency, foundation, the

1 deed speaks for itself.

2 THE COURT: Well I don't know what you mean by when
3 this deed was originally drafted. Are you talking
4 about another deed that was drafted?

5 MR. DUNN: That actual deed there.

6 THE COURT: If she knows I will let her testify
7 if she knows how it appeared when it was first drafted
8 if there has been a change to it?

9 BY MR. DUNN:

10 Q Do you know that?

11 A Yes. Mr. Meacham suggested that we make out a
12 will directly to where my dad gave it to my mother.

13 MR. YOUNG: I am going to object on hearsay
14 grounds as to what Mr. Meacham said.

15 THE COURT: That is clearly hearsay.

16 BY MR. DUNN:

17 Q My question is how was this originally drafted
18 were there all of the names listed on this particular deed?

19 A No.

20 Q Okay how many names were listed on this particular
21 deed?

22 A My mothers.

23 Q Your mothers only?

24 A Yes.

25 Q Okay was that deed recorded at the time it was

1 drafted with your mother's name solely on it?

2 A No.

3 MR. YOUNG: Objection which deed is she talking
4 about.

5 THE COURT: Exhibit No. 11.

6 MR. DUNN: Yes.

7 MR. YOUNG: The answer to the question is? I am
8 sorry I missed the answer to the question?

9 THE COURT: She answered "no".

10 MR. DUNN: At the time it was recorded it just
11 had the mother's name on it.

12 BY MR. DUNN:

13 Q Did that become a concern to you or any of your
14 family members that it just had your mother's name on it
15 at some point?

16 A Yes it concerned me because I didn't want it, her
17 to die on us to go to court.

18 Q Well at what point did it become a concern to you?

19 A It came a concern when they had it done but my
20 mother wanted to own something all herself.

21 Q Had your father died in the intrim?

22 A He hadn't died when this was done.

23 Q When it was done originally?

24 A Yes.

25 Q So when it was done originally in February of 1970

1 your father was still living?

2 A Yes.

3 Q Then after your father's death did that become
4 a concern to you that only your mother's name was on it?

5 A Yes.

6 Q So what action did you take to make any correction
7 to that?

8 A I tried to talk her into getting our names on it
9 and she thought I was out to get everything I guess. So
10 one day when we paid for my dad's funeral I stopped here
11 at the courthouse and had Mr. Meacham sit down and talk to
12 her.

13 Q Just so we can get this clear, you came to the
14 courthouse and were you by yourself?

15 A No my mother was with me.

16 THE COURT: This is after the father died?

17 MR. DUNN: That is correct.

18 THE COURT: Okay.

19 BY MR. DUNN:

20 Q what did you tell Mr. Meacham to do?

21 A Well I told him to explain to mother what would
22 happen and he said that we have done pretty good so far on
23 the property he said that this will probably go to probate
24 if you don't sign you could go anytime. Would you like the
25 courts to get it and the lawyers. She didn't want them to.

1 So she agreed to have all the names put on.

2 Q So when you say "all the names" what names would
3 those be?

4 A All the children and the Burge Children. I went
5 up and wrote down all the names for Mr. Meacham and that is
6 the last I know about that.

7 Q All right so after it was directed by your mother
8 and yourself in the automobile that - -

9 THE COURT: Let me make sure of this. The witness
10 wrote down the names for the grantees other than the mother
11 which included the children and the six grand children
12 is that right?

13 MR. DUNN: That is correct. I wanted to make sure
14 that we were clear on that?

15 THE WITNESS: Yes that is true.

16 BY MR. DUNN:

17 Q You wrote them down to Mr. Meacham?

18 A Yes.

19 Q In his office here in this building is that
20 correct?

21 A Yes.

22 Q And why was it that the Burge children were to be
23 listed on this particular deed as you directed Mr. Meacham?

24 A Well as I understood from my father and mother - -

25 MR. YOUNG: Objection hearsay.

1 THE COURT: Sustained.

2 BY MR. DUNN:

3 Q But it is your testimony then that you directed
4 Meacham to list the names of your five living children
5 and the Burge children on this particular document?

6 A Yes.

7 Q The one that is in question?

8 A Yes that is the understanding I got from the
9 conversation at the car.

10 Q And that is what you directed him to do?

11 A Yes.

12 Q Is that how that deed appears today as you directed
13 him to draft it?

14 A Well it was the intent supposed to be intended that
15 each get their fair share after my mother died.

16 Q And when you say "they" who would that have been?

17 A That would be my brothers and sisters the ones that
18 were involved here.

19 Q And that would include the Burge Children as well?

20 A Yes.

21 Q They would get their mother's interest?

22 A Yes.

23 Q As the document now stands what percentage
24 of this property do you own?

25 MR. YOUNG: Objection it calls for a legal conclusion

1 and the court can figure that out?

2 THE COURT: Well if she knows I will let her
3 answer.

4 BY MR. DUNN:

5 Q Do you know what percentage of this particular
6 property you own if it was as it stands now?

7 A The way it stands now that we were each to get our
8 share but it has got as joint tenants with full rights
9 of survivorship.

10 Q What percentage would you be getting would it be
11 a fifth, a fourth?

12 A I figured it would be a sixth.

13 Q As it stands now?

14 A Not as it stands now no a fifth.

15 Q So if the Burge children then were to be added
16 which is what you are wanting to do as one of the plaintiffs
17 you would lose a percentage of your interest is that correct?

18 A Right.

19 Q And why are you willing to give up that percentage
20 of your interest?

21 A Because I want peace among the family. I
22 figured this would be the way and I think that my sister's
23 children should have just the same as the rest of us
24 children should have.

25 Q And that is what you directed Mr. Meacham how he

1 should write up that deed is that correct?

2 A Yes.

3 Q I would like to show you Exhibit No. 12 (indicating)

4 which I believe that Exhibit No. 11 has already been

5 admitted into evidence?

6 THE COURT: Yes it has been received.

7 THE WITNESS: This is the land, ground about

8 700 acres or a little better and we had Meacham do this

9 into each of the childrens' names.

10 BY MR. DUNN:

11 Q Okay.

12 A But with the Burge children as my sister, Ina's

13 share.

14 Q Right could you explain to me a little bit about

15 when that meeting would have occurred and who was there?

16 Who directed Meacham to draft the deed?

17 A I directed him on dad's approval.

18 Q And when would that have been?

19 A That is the 25th day of February 1970.

20 Q And is that the way the this partiuciar deed

21 Exhibit No. 12 is drafted is that the identical way you wanted

22 the property which is not in dispute to be drafted?

23 A Yes.

24 Q So you gave him the same directions for both deeds?

25 A Yes.

1 Q After these by the way with Exhibit No. 12 when
2 was it recorded?

3 A It was recorded the 27th of February 1970 at 10:00
4 A. M.

5 Q And by whom was it recorded?

6 A Norma Smith.

7 Q That is the defendant?

8 A Yes.

9 Q We would offer Plaintiff's Exhibit No. 12 into
10 evidence?

11 MR. YOUNG: No objection.

12 THE COURT: Plaintiff's Exhibit No. 12 will be
13 received into evidence.

14 BY MR. DUNN:

15 Q Once again with regard to Exhibit No. 11
16 after you directed Mr. Meacham to draft this particular
17 deed when did you next see the deed?

18 A I never seen the deed until my brother died
19 in 1986.

20 MR. YOUNG: I have got an objection. I need
21 the record to show which exhibit she is referring to?

22 MR. DUNN: I think I said Exhibit No. 11?

23 MR. YOUNG: Exhibit No. 11 , I am sorry, pardon me.

24 BY MR. DUNN:

25 Q So you never saw the deed until 1986?

1 A Right.

2 Q And why did you not receive a copy of the
3 deed after it was recorded?

4 A It was sent to my mother and my mother said that
5 all of our names was on it. I said that how is it worded
6 and she said, "joint tenants" so I just figured that
7 was done right.

8 Q Did you ever receive any indication from the time
9 it was recorded in 1970 to your brother's death that this
10 deed was recorded in some manner different from the way
11 you had instructed Mr. Meacham?

12 A No I never knew anything about it.

13 THE COURT: Recorded or prepared?

14 MR. DUNN: Prepared, thank you.

15 BY MR. DUNN:

16 Q Prepared and then actually recorded?

17 A And he sent it to my mother after it was finished.

18 Q And how did you come about finding the mistake?

19 A When my sister-in-law Dorothy when her husband
20 died in 1986 why she went up and was going to get her name
21 put on all the property and she found out that the deed
22 was made this way and so then I didn't know anything about
23 it and wanted to get a partition for all of us to sign
24 so her name could be put on it.

25 Q That is when the deeds were uncovered?

1 A Yes that is when we noticed the mistake.

2 Q How is the relationship among the brothers
3 and sisters between 1970 your father's death and 1985
4 your time of your mother's death?

5 MR. YOUNG: Objection relevancy.

6 MR. DUNN: It would have some relevancy to show why at
7 this time there is the fight. Why there is the dispute
8 between these parties as to these particular deeds.

9 MR. YOUNG: Your Honor this isn't an action over
10 the dispute between the parties. This is an action to
11 reform a deed. How the parties feel among themselves
12 although well it just is not relevant. The action has
13 to do with the intent of the deed.

14 THE COURT: The intent of the grantor.

15 MR. YOUNG: I don't think the feelings among
16 themselves although significant to them are relevant.

17 THE COURT: Thank you.

18 MR. DUNN: It also has to show Your Honor that Norma
19 Smith during this period of time was also under the
20 understanding that this particular document Exhibit No. 11
21 was drafted so that the Burge children would have a share.
22 That everyone was to receive equally aside from that larger
23 portion given to Verlon, the youngest son the only son
24 that lived to maturity.

25 MR. YOUNG: If counsel is making a proffer it certainly

1 exceeds by the question if he is making an argument I think
2 it is inappropriate, this isn't an appropriate time in the
3 proceeding to make argument.

4 THE COURT: I will allow you to question her with
5 regard to what normally the deed provided with regard
6 to the grantees which may or may not have anything
7 to do with how they got along.

8 MR. YOUNG: That is fine.

9 THE COURT: All right.

10 BY MR. DUNN:

11 Q Were there discussions between yourself and
12 Norma Smith as to the division of these properties
13 between 1970 and 1985?

14 a Well I aksed her to go up to the courthouse with me
15 to get Meacham to do these and so that they could each get
16 their property, deeds to their property?

17 MR. YOUNG: I am assuming by way of foundation
18 we are talking about in 1970?

19 THE WITNESS: Yes.

20 THE COURT: Let's lay some foundation as to the
21 conversations and who was present and when. I recognize
22 that we are not going to get specific dates but according
23 to the best memory your witness has.

24 MR. DUNN: Fine.

25 BY MR. DUNN:

1 Q Let's focus in on the time when these deeds
2 were being prepared and as to when you and Norma would
3 have had discussions as to those. You referred to you
4 wanted her to go to the courthouse with you and when would
5 that have been?

6 A When this took place?

7 Q When you say when this took place when was that?

8 A When these deeds were made to the children and
9 this deed for my mother.

10 Q And so this would have been in Spring months of
11 1970?

12 A Yes.

13 Q And did she go with you to the courthouse?

14 A Yes.

15 Q And did she meet with you and with some other
16 individuals?

17 A Other than the one I discovered that the ground
18 wasn't on it, I don't recall.

19 Q Okay did she meet with you and Mr. Meacham to
20 have these deeds drafted?

21 A Yes.

22 Q Did she ever voice any objection to having the
23 Burge children listed on the property which is conveyed to
24 them in the Juab property?

25 A No not that I know of not a word.

1 Q Did she know that they were going to receive a
2 share of the Juab property?

3 A Yes she was there when it was made out and she
4 was the one that took it down to my dad and mother to sign.

5 Q Did you ever have any discussion with her as
6 to adding the names of the Burge children to the property
7 which is in dispute?

8 A No I didn't but she was there when we had it
9 done and I figured she understood.

10 Q Did she voice any objection to them being a part
11 of that?

12 A Not that I recall.

13 Q That is all I have at this time, thank you.

14 THE COURT: All right Mr. Young you may cross
15 examine the witness.

16 CROSS EXAMINATION

17 BY MR. YOUNG:

18 Q Mrs. Foote I am going to show you what has been marked
19 as Defendant's Exhibit No. 1 (indicating) now this is a
20 Utah County plat map and the way that I am pointing
21 now is north and I am going to orient the plat north
22 and you have had an opportunity to view that this morning
23 have you not?

24 A Yes I believe so.

25 Q Now I am going to, with a green marker, I am going

1 to go around the edge of the property the subject property
2 the 20 acres that is out behind your folks' home and you
3 tell me if I had it properly outlined. Let's do this so
4 the Judge can see it.

5 Okay you tell me if I am outlining it properly the
6 property correctly? Now this is the 20 acre piece
7 (indicating) Do you agree that this is more or less accurate?

8 A Yes.

9 Q All right now the what I would like to do
10 with this red pen it I would like to refer to the deeds
11 just very briefly just running through them all of them
12 please if I may.

13 THE COURT: Here is another one here.

14 BY MR. YOUNG:

15 Q All right now let's move through them numerically
16 so we can see. Exhibit No. 1 is the deed to the
17 Burge kids right you look at it you tell me what that is?

18 A Yes.

19 Q Now and that is Exhibit No. 1 and I am going - -

20 A That isn't Exhibit No. 1.

21 Q Excuse me that is Exhibit No. 6?

22 MR. DUNN: So you aren't going to go through them
23 numerically?

24 MR. YOUNG: I am sorry counsel I am trying to go
25 too fast. All right that is the deed to June and Allen?

1 THE WITNESS: Yes.

2 BY MR. YOUNG:

3 Q Now counsel you watch me close I am going to put
4 a block aorund this plot that says Allen Scott and ask if you
5 understand that is where Allen's property is?

6 A Yes.

7 Q Now June and Allen?

8 A Yes.

9 Q Now at the time of this conveyance this deed was
10 there a home on it?

11 A No.

12 Q All right I am going to put an arrow pointing there
13 and I am going to put a Number 2 to show Number 2?

14 A Yes.

15 Q And there was not a home on Number 2?

16 A No.

17 Q I am going to put out here to the side, "no home".

18 A Yes.

19 Q Let's go to Number 3?

20 A Yes.

21 Q Okay Number 3 is to whom?

22 A This is to True and Emma Scott.

23 Q Now all right that is the old home?

24 A Yes.

25 Q And that is just next to Allens?

1 A Yes.

2 Q And I will just put a red box around that and an
3 arrow there and I will put Number 3 on that okay?

4 A Yes.

5 Q Have I got it marked right?

6 A Yes.

7 Q Let's go to Number 4?

8 A Yes.

9 Q You tell me what that is?

10 A That is made out to Lucile Dalley and Gloria
11 B. Peterson.

12 Q Put a box around that one and I am going to mark
13 that Number 4 so that will be consistent with Number 4.

14 A Okay.

15 Q Was there a home on that one at the time of
16 conveyance?

17 A Yes.

18 Q I am going to put a home here. (indicating)

19 A Yes.

20 Q Now the next one is Number 5, what is Number 5?

21 A Number five is the property that was deeded to
22 me Velma Foote.

23 Q Where is that?

24 A Right next to us.

25 Q And that is a lot?

1 A Yes.

2 Q There is no home on that?

3 A No home.

4 Q And that is Exhibit No. 5?

5 A Yes.

6 Q All right Number 6?

7 A 6 is the Burge family.

8 Q Okay.

9 A There is a home on it.

10 Q All right put a box around Number 6?

11 A Yes.

12 Q And there is a home there?

13 A Yes.

14 Q All right Number 7 if you can find it, what is 7?

15 A This is the property that Verlon had and that

16 was the end of the True Scott lot. There was a home on

17 it.

18 Q Is that just on the otherside of the Burge?

19 A Yes.

20 Q Okay that is Number seven?

21 A Yes.

22 Q Have a box around there. And there is a home there?

23 A Right.

24 Q Okay Number 8 is the area in green that we have

25 already marked?

1 A Yes.

2 Q Number 9 is what?

3 A Is the home Norma got that was my dad got from

4 Seth Scott.

5 Q That is up here right?

6 A Right 190 South.

7 Q And that is exhibit what?

8 A Exhibit No. 9.

9 Q That has a home on it right?

10 A Yes.

11 Q Okay Number 10 is the property 50 acres right?

12 A This is the ground yes.

13 Q And Number 11 is the deed that we have been talking

14 so much about correct?

15 A 20 acres and mother's home.

16 Q And Number 11 deed that just so we are clear that

17 deed describes the house, the old home correct?

18 A Right.

19 Q The 20 acres in green?

20 A Yes right.

21 Q And it also describes the Virl Piece down by the

22 lake?

23 A Yes.

24 Q Okay, now I am happy. I believe in your prior

25 testimony that you stated that all of the children lived in

1 homes given to them by their , your parents I think that
2 is what you said now - -

3 MR. DUNN: I object to that I don't believe I recall
4 it that way Your Honor.

5 THE COURT: What she said is that they all lived
6 in homes or on lots that were given by the father and mother.

7 MR. YOUNG: Let's clear it up then.

8 BY MR. YOUNG:

9 Q Mrs. Smith certainly lived in a home and a lot
10 given to by your folks did she not?

11 A Yes.

12 Q And Verlon did didn't he?

13 A Yes.

14 Q And the Burge children did didn't they?

15 A They paid for their home that was brought in.

16 Q But they paid for the home that was moved on?

17 A Yes.

18 Q But the deed does reflect does it not that at the
19 same time in March of 1970 that the deed was made to the
20 Burge children?

21 A Yes.

22 Q And there was not a home on the Number 5 lot or
23 Exhibit No. 5 which was your lot?

24 A Yes.

25 Q And you didn't live on that lot did you?

1 A No.

2 Q You lived across the street?

3 A Yes.

4 Q And the lot that you lived in across the street

5 did not come from your father did it?

6 A No.

7 Q You and your husband purchased that?

8 A Yes.

9 Q And the Number 3 that is just the old home the

10 old farm home in fact June lives there correct?

11 A Yes.

12 Q And June has never lived on a lot here has she?

13 A No.

14 Q In fact June was given the lot, June and her son

15 Allen correct?

16 A Yes.

17 Q Is that - -

18 A The one that Allen got is the one that his mother

19 got and she give it to him.

20 Q Okay all right so she was given a lot and they

21 later built a house on it?

22 A Right.

23 Q So in fact of the children who lived in homes on lots

24 that were conveyed to the children by your father of the

25 six children we have Norma, Verlon, the Burge children and Mrs.

1 Dalley ?

2 A Yes.

3 Q So four of the six lived in homes that were on
4 lots that were transferred by the folks and two did not?

5 A Yes.

6 Q Okay. Now you testified that some time either
7 1970 or before when you had a sore throat there was a meeting?

8 A Yes.

9 Q And the members of the family were present at that
10 meeting isn't that correct?

11 A Yes.

12 Q And that meeting as I understand your testimony
13 did not result in any agreement?

14 A No.

15 Q I think we are understanding one another but I
16 think if we read the transcript there will be confusion so let
17 me ask the question again.

18 A Yes.

19 Q Did an agreement come from the meeting?

20 A No.

21 Q Thank you. In fact there was you expressed some
22 emotion you felt that there was some contention at that
23 meeting?

24 A Yes.

25 THE COURT: The Devil was there.

1 BY MR. YOUNG:

2 Q Now I think when you testified let me give you a
3 little foundation a little background , may I use the board?

4 THE COURT: Yes certainly.

5 BY MR. YOUNG:

6 Q You tell me if this is consistent with your
7 understanding and if you would like to refresh your
8 memory you may look at these deeds but my understanding
9 is that the deeds which we are talking about appeared
10 generally in three groups. (Mr. Young at the blackboard)

11 A Yes.

12 Q And those groups are these. First there is a deed
13 dated 16th of February of 1970, this is the subject deed
14 and this is not recorded until 18th of May and we have talked
15 about that and we will talk about that in a minute.

16 There was a deed on 25th of February and this was
17 recorded about that same time.

18 MR. DUNN: Which deed was that?

19 MR. YOUNG: The deed to Norma's house this is Number
20 recorded on 26th of February.

21 THE COURT: Why don't you put Exhibit numbers by those
22 and then it will be easier for all of them to follow.

23 MR. YOUNG: That is a good idea. Norma is Number
24 9 this would be the subject deed which is in green and that
25 is Exhibit No. 11, counsel can I mark this in a circle so I

1 can remember.

2 MR. DUNN: Certainly.

3 BY MR. YOUNG:

4 Q All right that was recorded Exhibit No. 11 was
5 recorded in May and then there is this February deed that
6 is Norma's deed and that is Exhibit No. 9 and I am going to
7 change pens. Then we have one on the 26th of February
8 and that is the 50 some odd acres and that is Exhibit
9 No. 10. That is recorded if I recall your testimony
10 that is recorded on 26th of February.

11 A Yes.

12 Q Now let me skip and go clear down here to 24th
13 of March and the deed to June and Allen Exhibit No. 2
14 is recorded on the 26th these are all in March and then
15 we go to there is one, two, three, four, five, six, seven
16 deeds let's go through them real quick, we got Number 2
17 that is June and Allen. Then we have got on March 24th
18 we have got one on the old home which is Number 3 and that
19 again is recorded on the 26th and then we have got March
20 24th again. Then we have got the Lucile Dalley's home
21 that is Number 4 and that is recorded on the 26th. Then
22 we have got Velma and I think that is Number 5 again recorded
23 on the 26th. Then we have got March 24th and then the Burge
24 children and that is Number 6 again recorded on the 26th
25 and I am almost done. Then we have got March 24th, Verlon

1 and Dorothy on the home and that is Number 7 and that
2 again is recorded on the 26th. Then we have got 24th of March
3 deed that is Number - -

4 THE COURT: Number 8 that is the only one you haven't
5 got up there yet.

6 MR. YOUNG: I know let me check.

7 MR. DUNN: Doesn't have 12 yet.

8 MR. YOUNG: Right and that is Number 8 and that
9 is the green piece right?

10 THE WITNESS: Yes.

11 BY MR. YOUNG:

12 Q That is the same as Number 8 and Number 11 are the
13 same in the sense that Number 8 just covers the green
14 piece whereas Number 11 covers the home ground and the Virl
15 piece okay?

16 A Yes.

17 Q And your counsel has reminded me that we have got
18 25th of February and I will just put it up here out of order.
19 We have got the Juab property Number 12.

20 A Yes.

21 Q Okay you have had a chance to look at those and
22 my these numbers that I put on the board are accurate
23 aren't they?

24 A Yes.

25 Q All right now my questions to you are now you

1 stated that there is was a time and one of the reasons
2 you suggested or you said that Mr. Meacham you had Mr.
3 Meacham and went to Mr. Meacham was becuse your mother
4 would not give you the deeds?

5 A Right.

6 Q Okay now if your mother so is it fair to say that
7 you took upon yourself the endeavor to see that things
8 were put in order?

9 A Yes.

10 Q And apparently directing your attention to this
11 Juab County Deed let's focus on the Juab County Deed on
12 it and on Exhibit No. 11 let's get these others out
13 of your way and those are the two deeds that have been
14 referred to in the Complaint are they not?

15 A Yes.

16 Q And the Juab County Deed is the deed that provides
17 that irrespective of how people die there interest or their
18 children are protected and you understand that?

19 A Yes.

20 Q And you understood that in 1970 did you not?

21 A Yes.

22 Q And you understood that on when you saw Exhibit No.
23 11 that because of the right of surviorship concept if
24 somebody were to die then they and their errors would be
25 omitted you understood that didn't you?

1 A Yes when I found out how it was made.

2 Q But you testified let me back up again. When
3 this deed this Warranty Deed, Defendant's Exhibit No. 2
4 was made out (indicating) in 1970 you understood the legal
5 concept of that deed did you not?

6 A Yes Meacham explained it to me.

7 Q And therefore you understood the consequence of
8 what would happen if a deed were in joint tenancy with the
9 right of survivorship didn't you?

10 A Well I knew what it meant when I saw it. I knew it
11 was wrong.

12 Q Yes.

13 A Okay.

14 Q My question is did you understand at that time in
15 1970 when the Juab County Deed was made out the difference
16 between the tenancy in common and the right of survivorship
17 as explained to you by Mr. Meacham, did you understand
18 that the difference between the two concepts?

19 A Yes.

20 Q And those concepts being that as far as it was
21 way insofar as it was set up in Juab Property was concerned
22 if a parent died their children had their interest correct?

23 A On the Juab?

24 Q Right, I am talking concepts now?

25 A That was it was made out right for each of them to get

1 their share and that was the way it was supposed to have
2 been.

3 Q All right and the point I just want to be sure of
4 is that you understood the concept as it appeared on the
5 Juab County Deed?

6 A Yes I did.

7 Q And so if you hadn't seen in 1970 the deed, Defendant
8 Exhibit No. 11 you would have then understood there was a
9 problem wouldn't you?

10 A There wasn't a problem then because it was just
11 in my mother's name.

12 Q Okay.

13 A Fathers and mothers.

14 Q Let me try again. If you had seen this deed
15 (indicating) as it is filled out now in 1970 and looked
16 at it you would have understood the nature of the mistake
17 because you understood what was happening on the Juab County
18 Deed?

19 A Yes.

20 Q All right now and that is your understanding further
21 bolstered by the concept when your attorney asked you whether
22 or not you had a fifth or a sixth interest and you understand
23 that?

24 A Yes.

25 Q Now you have testified that you didn't see Exhibit

1 No. 11 until sometime after July 6, 1986 when Mr. Verior
2 Scott died correct?

3 A Yes.

4 Q Now I am going to direct your attention to the
5 back of Defendant's Exhibit No. 2 (indicating) and
6 ask you to read this statement and that name?

7 A I recorded it in 1970 , May 18th.

8 Q It says recorded at the request of somebody
9 does it not?

10 A Velma Foote.

11 Q And that is you?

12 A Yes.

13 Q And you took that deed to the County Recorder's
14 Office did you not?

15 A Yes.

16 Q And had it recorded?

17 A Yes.

18 Q And had it mailed to your mother's address?

19 A Yes.

20 Q And you did that at a time when you took Plaintiff's
21 Exhibit No. 2,3,4,5,6,7, and 8?

22 A Approximately that time yes.

23 Q Excuse me I am misleading you, you took that
24 on in May on the 18th of May correct , the recorded day
25 is May 18th, just double check me on that.

1 A It was taken care of on the 16th day of February,
2 1970.

3 Q But it was recorded in May?

4 A Yes sir.

5 Q And that was after the time however many days
6 it is between March 24th and May 18th it was after
7 the period of time that you took down all of these deeds
8 2,3,4,5,6,7,8 which are recorded at the county office
9 correct?

10 A Right.

11 THE COURT: Let me look at that deed please.
12 (indicating)

13 MR. YOUNG: Your Honor this would be a real good
14 time for a 5 minute break if I could because I think I
15 am done and I need to check a couple of things.

16 THE COURT: Let's take a five minute recess.

17 THE BAILIFF: Everyone please arise, court will be
18 in recess for 5 minutes.

19 (WHERUEPON, the court took a five minute recess)

20 THE COURT: Mr. Young you may continue.

21 MR. YOUNG: Your Honor you had Exhibit No. 11.

22 THE COURT: Yes.

23 MR. YOUNG: Can I just look at that a minute.

24 THE COURT: Yes.

25 BY MR. YOUNG:

1 Q Mrs. Foote let me show you again what has
2 been marked as Exhibit No. 11 (indicating) which we have
3 been talking about.

4 A Yes.

5 Q Now my understanding is that on the 16th of
6 February 1970 that that deed was , first I just want to
7 run through just my brief understanding with regard
8 to this deed and then ask you a question.

9 A Yes.

10 Q That deed was signed in February of 1970 and that
11 then your father died and then some more names were
12 adeed to the deed?

13 A Right.

14 Q Okay now when that deed was signed by your
15 folks did you have custody of that deed? Were you the one
16 that took it back to Mr. Meacham?

17 A Yes.

18 Q So you had the deed in your possession?

19 A Short time.

20 Q Okay.

21 THE COURT: What was that answer?

22 THE WITNESS: Just a short time just take it up
23 there.

24 THE COURT: Pick it up from whom?

25 THE WITNESS: After they signed it I just took it up

1 and had it recorded.

2 BY MR. YOUNG:

3 Q Now let's pin the time down that we are talking
4 about in February of 1970 this apparently happens on the
5 16th True and Emma signed it in the presence of Norma
6 and Velma?

7 A Yes.

8 Q Now you tell me if I am wrong? They give this deed
9 to you?

10 A Meacham gave it to me and had me take it down and
11 get it signed.

12 Q When was that?

13 A At their approval.

14 Q And they signed it?

15 A Yes.

16 Q And they gave it back to you?

17 A Yes.

18 Q And you held it for a while?

19 A No I took it up and recorded it about the same
20 time as these homes, the property.

21 Q The deed was recorded in May?

22 A Yes.

23 Q So you held it from a short period of time from
24 February when it was signed until May when it was recorded?

25 A No it was recorded in to my mother's name from

1 my father to my mother in February. The same time as the
2 other deed was made out to Emma Scott.

3 Q Let's talk about some definitions of words and I am
4 not trying to trick you but I think we are using words
5 perhaps inappropriately. Record means take it upstairs
6 to the County Recorder and they give it a stamp and a number?

7 A Yes.

8 Q Okay that is what we mean by recording, so let me ask
9 you the question again. There is no question but what it
10 was signed on the 16th day of February by True and Emma
11 Scott and Charlotte was the Notary correct?

12 A Yes.

13 Q Now and that is in February?

14 A Yes.

15 Q And some time later in May on the 18th at 2:50
16 P.M. it is recorded at your request?

17 A Yes I took the deed up after my dad died and had
18 it recorded without the childrens' names on it. They had
19 done it before and Meacham says that we will make out a
20 deed that your dad signs that is knows what is going on.

21 Q Okay my question is after this deed was signed by
22 True and Emma this one this Exhibit No. 11 (indicating)
23 was the deed given to you?

24 A After they signed it I took it and took it up
25 to Meacham and have them taken care of.

1 Q So this deed was in your possession after it was
2 signed in February 1970?

3 A Yes I took it right up and had it done the same
4 time I had the childrens' homes or property.

5 Q I understand your testimony. That is all I have.

6 THE COURT: Anything further Mr. Dunn?

7 MR. DUNN: I have a few questions.

8 THE COURT: Let me ask a couple of questions.

9 MR. DUNN: That is some what different than she
10 testified earlier?

11 THE COURT: I understand. I just want to get some
12 clarity. This deed was prepared by Mr. Meacham originally?

13 THE WITNESS: Yes.

14 THE COURT: And that deed indicated that it was a
15 deed from True Scott and Emma Scott his wife to Emma Scott
16 his wife?

17 THE WITNESS: Yes.

18 THE COURT: And that was the way the deed read
19 on the 16th day of February 1970?

20 THE WITNESS: Yes.

21 THE COURT: Was all of this land descriptions still
22 the same at that time?

23 THE WITNESS: Yes.

24 THE COURT: So this has been circled in red and has
25 not been added later?

1 THE WITNESS: No.

2 THE COURT: Are the other parcels below that was not
3 added later?

4 THE WITNESS: No.

5 THE COURT: They were all the descriptions as they
6 are appear here today?

7 THE WITNESS: Yes.

8 THE COURT: Now subsequent to or on the 16th day
9 of February 1970 was this deed handed to you to keep in
10 your possession?

11 THE WITNESS: No.

12 THE COURT: It was given to your mother is that right?

13 THE WITNESS: I took it up to Meacham and never saw
14 it.

15 THE COURT: I am just trying to find out what
16 happened on the 16th day of February who had possession of
17 this deed?

18 MR. YOUNG: She testified she had it?

19 THE WITNESS: I had it and I took it down for them
20 to sign it and then I took it back up to Meacham.

21 THE COURT: Okay then what happened ot it between
22 the 16th of February and the 18th day of May?

23 THE WITNESS: My mother had the deed.

24 THE COURT: Then you took it back to your mother?

25 THE WITNESS: I guess I sent it to her.

1 THE COURT: This wasn't recorded?

2 THE WITNESS: Until then I don't know how to explain
3 this but he made out two deeds at the time that I took
4 care of the property for the children and he said that
5 when your dad dies take this up and have it recorded well
6 the one that is made out to my mother.

7 MR. DUNN: Would this have been one of these
8 other deeds that refer to this same property. I believe
9 it is what 8 or 9 is that what you are referring to?

10 THE WITNESS: I guess so I don't know which one
11 is 8.

12 THE COURT: Let me ask you one more question. After
13 your father died you took this back to Mr. Meacham
14 and the names of the children as they now appear on this
15 deed were added?

16 THE WITNESS: Yes.

17 THE COURT: And then you immediately took it
18 to the Recorder's Office and recorded it?

19 THE WITNESS: I didn't, I come up and had Meacham
20 talk my mother into having the childrens' names put on in
21 case she died.

22 THE COURT: Okay.

23 THE WITNESS: And he took care of it I never seen
24 or heard anything about it since Verlon died.

25 THE COURT: You didn't have this recorded. It has

1 your name on it as having being recorded?

2 THE WITNESS: I was with Meacham when they had
3 it done. I didn't sign it.

4 THE COURT: Okay. All right you may redirect
5 counsel.

6 REDIRECT EXAMINATION

7 BY MR. DUNN:

8 Q In an attempt to clarify it Your Honor. This
9 document on the 16th of February just had your mother's
10 name on it?

11 A Yes.

12 Q Then there was another meeting with Mr. Meacham
13 regarding this particular document?

14 A Yes I drove mom over here after she paid for my
15 dad's funeral and had him come down and talk to her.

16 Q And what took place at that meeting?

17 A When he came down - -

18 MR. YOUNG: Objection foundation.

19 MR. DUNN: I believe it was laid in Direct
20 Examination.

21 MR. YOUNG: Then it has been asked and answered?

22 MR. DUNN: I think we are having a little bit
23 of confusion here.

24 THE COURT: I am going to allow him to continue.

25 MR. YOUNG: Want to know who was there and present
at the meeting?

1 THE COURT: Yes and where.

2 THE WITNESS: I brought my mother up to pay for
3 dad's funeral expense at Bergs and I stopped here and
4 went up and got Meacham to come down to do that.

5 BY MR. DUNN:

6 Q Your mother stayed in the automobile?

7 A Yes she stayed in the automobile.

8 Q Mr. Meacham came down to your car?

9 A Yes.

10 Q And you discussed about this particular deed?

11 A Yes.

12 Q And what did you direct him to do?

13 A To put all the childrens' names on it and plus
14 Ina's children.

15 Q Okay.

16 A So that each would get our sixth.

17 Q All right did you do anything else beyond that
18 did you speak with him again after you left the automobile?

19 A After I left the automobile I went upstairs
20 and wrote down the names of the ones of the children
21 and grand children.

22 Q Okay and so you handed him that list of names?

23 A Yes.

24 Q And that included the Burge children?

25 A Yes.

1. Q Okay and it says here that this is recorded at
2 your request? I would like you to look at that and
3 tell me if that is your signature?

4 A That is not my signature. I think it is Thelma
5 West or something that wrote that up.

6 Q Did you see that document from the time you
7 spoke with Mr. Meacham and gave him the list and until
8 1986 when - -

9 A No.

10 Q But you did direct him to record it with all the
11 names of the living children?

12 A Yes so each would get their share we discussed
13 that down with mom.

14 Q Hopefully that clarifies some what Your Honor.

15 THE COURT: Okay thank you.

16 MR. YOUNG: I have got to follow-up.

17 RECROSS EXAMINATION

18 BY MR. YOUNG:

19 Q Now again directing your attention to Plaintiff's
20 or Defendant's Exhibit No. 11, now it is my understanding
21 that incorrect that you took that deed and caused
22 that deed to be recorded on the 18th day of May , 1970?

23 A Yes I got it from my mother and brought it up
24 here after my dad died and had it recorded.

25 Q Did you walk up to the second floor of the courthouse?

1 A Yes.

2 Q And walked up to the window in the southeast

3 corner?

4 A I went to Meacham and he helped me through the

5 process.

6 Q And you paid the money the recording fee?

7 A Yes.

8 Q And so it was recorded at your request?

9 A Yes.

10 Q All right thank you.

11 THE COURT: Do you have anything further counsel?

12 MR. DUNN: No Your Honor.

13 THE COURT: You may step down. Call your next

14 witness.

15 MR. DUNN: I would like to call Dorothy H. Scott.

16 THE COURT: Ms. Scott come forward and be

17 administered an oath and take the witness stand.

18 DOROTHY H. SCOTT

19 called as a witness by and on behalf of the plaintiff

20 being first duly sworn was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DUNN:

23 Q Would you please state your full name for the

24 record?

25 A Dorothy H. Scott.

1 THE COURT: Do you have anything further Mr. Dunn?

2 MR. DUNN: Nothing further.

3 THE COURT: Ms. Butterfield you may step down.

4 MR. DUNN: The plaintiff rests Your Honor.

5 THE COURT: Okay thank you Mr. Young you may
6 proceed.

7 MR. YOUNG: We would like to call Velma Foote as
8 an adverse witness for just a very few questions.

9 THE COURT: Ms. Foote come forward and be
10 administered an oath and take the witness stand.

11

VELMA FOOTE

12

13 called as an adverse witness by and on behalf of the
14 defendant being previously sworn was examined and testified
15 as follows:

16

DIRECT EXAMINATION

17

BY MR. YOUNG:

18

19 Q Mrs. Foote directing your attention please to
20 the three items of personal or real estate, the 20 acre
21 piece out behind the house, your parents' house and the
22 Vir1 piece down by the lake?

22

A Yes.

23

24 Q Now with these three parcels of ground in mind
25 let me ask you this question. Isn't it a fact that neither
you or June or Lucile have conveyed , made out a deed, given

1 like making out a deed, any interest in that property to
2 any of the Burge children?

3 A I guess not when I went up to Meacham - -

4 Q Answer it "yes " or "no"?

5 A Yes sir.

6 Q And I am talking asbout since the time of the death
7 of your mother?

8 A Yes.

9 Q That is all I have let me think. Now I am going
10 to direct your attention to three deeds Number Exhibit No.
11 8 and Number 3 and ask you to look at those? (indicating)

12 A Yes.

13 Q Okay you are looking now at Number 8 right?

14 A Right.

15 Q Now that is the deed to the 20 acres in green this
16 Number 11?

17 A Yes.

18 Q The piece?

19 A Yes.

20 Q And that was conveyed to your father and your
21 mother in March correct?

22 A Right.

23 Q And this deed Number 3 conveys the interest of your
24 parents to your parents in the home and that is Number 3?

25 A Yes.

1 Q And that was recorded in dated in March?

2 A Yes.

3 Q Now did you understand at the time that you were
4 to take those deeds down to the Recorder's Office in
5 March that the property was going to be in both of your
6 parents' name?

7 A Yes.

8 Q That is all I have.

9 THE COURT: Mr. Dunn anything?

10 MR. DUNN: No questions Your Honor.

11 THE COURT: Okay you may step down. You may
12 call your next witness.

13 MR. YOUNG: We would call Norma S. Smith.

14 THE COURT: Ms. Smith come forward and be
15 administered an oath and take the witness stand.

16 NORMA S. SMITH

17 called as a witness by and on behalf of the defendant
18 being first duly sworn was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. YOUNG:

22 Q Would you tell me your name please?

23 A Norma S. Smith.

24 Q Where do you live?

25 A 190 South 1600 West in Provo, Utah.

1 Q Okay that is all I have Your Honor.

2 THE COURT: Any cross examination?

3 MR. DUNN: I have no questions.

4 THE COURT: All right you may step down thank you.

5 MR. YOUNG: May she be excused?

6 THE COURT: Any objection?

7 MR. DUNN: No objection.

8 THE COURT: Yes you may be excused.

9 MR. YOUNG: Defendant rests.

10 THE COURT: Any rebuttal?

11 MR. DUNN: Yes I would like to recall Velma
12 Scott Foote.

13 VELMA SCOTT FOOTE

14 called as a rebuttal witness by and on behalf of the
15 plaintiffs being previously sworn was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DUNN:

19 Q Mrs. Foote you were here during the testimony
20 of your sister Norma Smith weren't you?

21 A Yes.

22 Q And she had some testimony regarding meetings
23 which took place with you in attendance , Mr. Meacham and
24 Norma?

25 A Yes.

1 Q Do you recall those meetings yourself?

2 A Fairly well.

3 Q Okay could you please explain what took place at
4 those meetings and when they would have been first of all
5 tell me when they were?

6 A Days that we took them into be done and this was
7 in February.

8 Q Would they be the same days as a appear on the various
9 Warranty Deeds?

10 A Yes.

11 Q Were they on the same day or were they different
12 days?

13 A That I can't quite remember. It kind of seems like
14 the deed rushed back up - -

15 THE COURT: Would you speak up I am having a little
16 difficulty hearing you.

17 THE WITNESS: At that time I can't remember too
18 well but it seems like we did take one home and have them
19 sign it and then we brought it back up and got the other
20 one done and took care of it. Norma took care of it.

21 Q With regard to the first meeting with Mr. Meacham
22 do you recall which deed was prepared at that time whether
23 it would be the Juab Property or the Utah County Property?

24 A I think it was the Utah County Property and the
25 Juab both but he got Utah or County property done first.

1 Then we rushed up and got the other one done.

2 Q Now when he prepared the Utah County Property
3 that is Exhibit No. 11 at that time when he first prepared
4 it was only your mother's name at the top?

5 A Yes.

6 Q None of the names of the other children appeared?

7 A No.

8 Q And why was that?

9 A Because my mother wanted to own something all by
10 herself and so it was in her dad's name and her name and
11 then they had the second deed made that we was to record
12 when dad died.

13 Q Okay do you recall the meeting which took place
14 where - -

15 A Norma didn't only go with me the one day

16 THE COURT: What was that?

17 THE WITNESS: Norma didn't go with me only the one
18 day.

19 BY MR. DUNN:

20 Q Which meeting did she go with you? Did she go with
21 you when the Utah Property Deed was prepared?

22 A Yes.

23 Q Did she go with you when the Juab Property Deed
24 was prepared?

25 A Yes.

1 Q She went with you when both those deeds were
2 prepared?

3 A Yes.

4 THE COURT: That was the same day as I recall
5 wasn't it? Isn't that what you are saying?

6 THE WITNESS: Yes.

7 BY MR. DUNN:

8 Q Did Norma voice any objection to how the
9 Juab Property Deed was prepared?

10 A She says that Velma Scott was present but if
11 she will notice this was Verlin Scott.

12 Q I am going back if I could direct your attention
13 to when you met with Mr. Meacham?

14 A Yes.

15 Q Did she at that time offer any objections to Mr.
16 Meacham to drafting that?

17 A Not that I know of. Mr. Meacham said there might
18 be a little bit of problem in that many names.

19 Q But did Norma voice an objection?

20 A As I remember no.

21 Q Were you present when your parents signed the
22 Juab Property Deed?

23 A No.

24 Q Is that your signature as one of the witnesses?

25 A No it is Verlin Scott.

1 Q That is all I have Your Honor.

2 THE COURT: Anything further Mr. Young?

3 MR. YOUNG: May I approach the witness?

4 THE COURT: Approach who?

5 MR. YOUNG: The witness ?

6 THE COURT: Yes you may.

7 CROSS EXAMINATION

8 BY MR. YOUNG:

9 Q Mrs. Foote I am going to direct your attention
10 to this Exhibit No. 11 and I understand that your
11 testimony and that Norma's testimony differ greatly
12 particularly with regard to the who the grantees or who the
13 persons that were to be awarded the property are and I
14 understand your testimony to be that only Emma Scott's
15 name was there?

16 A To begin with yes.

17 Q And that your testimony is that later on
18 on this next second line was completed or the first
19 line was completed the second line was completed and the
20 third line was completed correct?

21 THE COURT: That is the grantee line that you
22 are talking about?

23 MR. YOUNG: Correct. I am understanding your
24 testimony the only the name of Norma Scott appeared
25 on this document, Emma Scott pardon me?

1 THE WITNESS: Yes.

2 BY MR. YOUNG:

3 Q And it is your testimony that everything else
4 was written after - -

5 A After she changed her mind and wanted that.

6 Q That was after your father died is what you
7 mean?

8 A Yes.

9 Q I need just a minute Judge.

10 THE COURT: Fine.

11 BY MR. YOUNG:

12 Q Now do you recall and counsel maybe if you have
13 got an extra copy of her affidavit dated 13th day of
14 1987 if you would like to furnish a copy of it to her
15 because I am going to ask her some questions about it?

16 MR. DUNN: I do have another copy.

17 THE COURT: I would remind counsel that I don't
18 have those in the record.

19 MR. YOUNG: I understand that you got an extra
20 copy.

21 MR. DUNN: Just this one copy.

22 MR. YOUNG: Well can we have again a further
23 agreement that those get filed in the record before we
24 leave the courthouse today?

25 MR. DUNN: I have no objection. Again I thought they

1 were in the record along with the others?

2 THE COURT: Sure I understand.

3 BY MR. YOUNG:

4 Q Now do you have that affidavit in front of you?

5 A Yes.

6 Q Now I am going to just review it very briefly
7 with you and then I am going to focus your attention to
8 a couple of statements the first is , the first paragraph
9 is an introductory statement telling who you are and
10 that you are writing your recollections of 1970 correct?

11 MR. DUNN: Do you want that read into the record or no
12 do you want to proceed with this Your Honor. Is this an
13 impeachment device or what?

14 THE COURT: Do you want it marked and made a part
15 of the record.

16 MR. DUNN: We have a live witness.

17 MR. YOUNG: Why don't we have marked as an exhibit
18 Your Honor.

19 THE COURT: Then you can withdraw it to just make
20 a copy for me.

21 MR. YOUNG: Right.

22 THE COURT: And then copies of the others I don't
23 know if the others are material.

24 BY MR. YOUNG:

25 Q I am going to show you a document two pages marked

1 Defendant's Exhibit No. 13 and that is the document
2 and that is the document that you have been looking at
3 and it is your affidavit of May 13, 1987 right?

4 A When I made this yes I believe it was.

5 Q Look at the second page (indicating) bottom the day
6 you signed it.

7 THE COURT: Going to read any part of it into
8 the record we probably should have it received?

9 MR. YOUNG: We offer Defendant's Exhibit No. 13?

10 THE COURT: Any objections?

11 MR. DUNN: Well it would be accumulative in the
12 record offered in the record and also read.

13 THE COURT: Well as long as he is going to make
14 reference to it and not in the record right now let's
15 receive Exhibit No. 13. The court will receive Exhibit
16 No. 13?

17 BY MR. YOUNG:

18 Q Now you state in there in paragraph , one, two, three
19 four that you took mom to the courthouse in May where you met
20 with Mr. Arnold Meacham correct?

21 A Right.

22 Q And the last sentence of that paragraph says that
23 mom agreed to do this but she wanted to make sure that
24 everyone's names were on the deed and that they all got an
25 equal share right?

1 A Right.

2 Q The next paragraph says that Mr. Meacham had concerns
3 about putting the name of my deceased sisters' children
4 on because that would make eleven names and because there
5 were minors involved, am I reading it correctly am I not?

6 A Whereabouts are you at?

7 Q Next paragraph down the - -

8 A The bottom paragraph.

9 Q Well I started at the last paragraph on page one
10 where Mr. Meacham had some concerns about putting the
11 names of the deceased sisters' children on that because
12 it would make eleven names and because there were minors
13 involved correct?

14 A Yes.

15 Q And then you say that you told him that it had to
16 be done that way on the other deed for it had been done
17 that way on the Levan property right?

18 A Right.

19 Q And here you say, I left mom in the car and
20 went back to Mr. Meacham's office to give him the list of
21 names to be added to the Warranty Deed right?

22 A Right.

23 Q The list included the six children of my sister Ina
24 Scott Burge right?

25 A Yes.

1 Q And then you say I never saw the deed after that
2 day correct?

3 A Right.

4 Q But that is the deed you - -

5 A Until my brother died and they come around with a
6 partition for us to sign and then I noticed that it had been
7 made out with rights of surviorship.

8 Q That is Exhibit No. 11?

9 A Yes.

10 Q That is all the questions I have.

11 THE COURT: Do you have anything further.

12 MR. DUNN: I object to the affidavit being a part
13 of the trial transcript and that there was no use for
14 it as part of the impeachment or anything. It was consistent
15 with what her testimony was and there is no purpose where
16 we have a live witness.

17 THE COURT: It should be a part of the file anyway.

18 MR. DUNN: I agree with that Your Honor.

19 THE COURT: And I don't know as there was any
20 impeachment as a result of that.

21 MR. YOUNG: Well that is a matter of argument isn't
22 it?

23 THE COURT: It is a matter of argument other than the
24 only thing that I can see is what has already been raised as
25 she signed didn't sign but rather the recorder indicated

1 that it was recorded at her request and she said
2 that she hadn't seen the deed until Verlin had died?

3 MR. YOUNG: Your Honor- -

4 THE COURT: But other than that everything seems
5 consistent to me.

6 MR. YOUNG: The portion and I think it is a matter
7 of argument and I think it is argument made to the court
8 rather than argument with Mrs. Foote and that is that the
9 deed or the affidavit recites that use the word "equal"
10 things were divided equally. Things weren't divided
11 equally not by any stretch of the imagination and that
12 is because a question of argument.

13 THE COURT: I didn't hear you bring that up?

14 MR. YOUNG: I read it. I certainly intended
15 to and we offered the deed and the deed has been received
16 or the affidavit and it says , mom agreed to do this but
17 she wanted to make sure that everyones' names were on the
18 deed and they all got an "equal" share.

19 THE COURT: Yes I remember that.

20 MR. DUNN: I have no problem with that Your Honor
21 and that can be easily explained in argument as to why
22 Verlin received - -

23 MR. YOUNG: It has been offered and it has been
24 received.

25 THE COURT: Well I am going to receive it.