

1980

William B. Harris v. Genave H. Tanner, Grace H. Mcphie, Bannie H. Durfee, and Grant H. Harris and James H. Harris v. William B. Harris : Brief of Respondents

Utah Supreme Court

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WILLIAM B. HARRIS, :
Plaintiff-Appellant, :

v. :

GENAVE H. TANNER, GRACE H. :
McPHIE, BANNIE H. DURFEE, :
and GRANT H. HARRIS, :

Defendants-Respondents, :

and :

Case No. 16810

JAMES H. HARRIS, :

Plaintiff in Inter- :
vention-Respondent, :

v. :

WILLIAM B. HARRIS, :

Defendant in Inter- :
vention-Appellant, :

etc. :

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third Judicial District
in and for Tooele County
Honorable David K. Winder, District Judge

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JUN 4 1980

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Attorneys for Appellant

WILLIAM B. HARRIS, :
 :
 Plaintiff-Appellant, :

v. :

GENAVE H. TANNER, GRACE H. :
 McPHIE, BANNIE H. DURFEE, :
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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM B. HARRIS, :
Plaintiff-Appellant :
v. :
GENAVE H. TANNER, GRACE H. :
McPHIE, BANNIE H. DURFEE, :
and GRANT H. HARRIS, :
Defendants-Respondents, : Case No. 16810
and :
JAMES H. HARRIS, :
Plaintiff in Inter- :
vention-Respondent, :
v. :
WILLIAM B. HARRIS, :
Defendant in Inter- :
vention-Appellant, :
etc. :
:

BRIEF OF RESPONDENTS

NATURE OF THE CASE

The above consolidated cases Nos. C-8326 and C-8984 arose out of a partnership between James H. Harris, now deceased, and his son William B. Harris, appellant, and involve the identification of partnership property, accounting and the winding-up of partnership affairs.

DISPOSITION IN LOWER COURT

After trial of the matters the court below made and entered a judgment determining the value and possession of the property of the -

thereof, determined that William B. Harris be ordered to pay to the estate of James H. Harris the difference between the valued amounts of the personal property held by the parties, i.e., that William B. Harris pay to the Estate of James H. Harris the sum of \$8,243.50, denied further partnership accounting, and declared that there had been a winding-up of the affairs of the partnership and that William B. Harris had no further claim against the Estate of James H. Harris.

RELIEF SOUGHT ON APPEAL

Respondents request that the judgment of the District Court be affirmed in all respects.

STATEMENT OF THE FACTS

James H. Harris and his son William B. Harris, hereinafter referred to as "James" and "William", became partners in the operation of a livestock and farming business in the 1930's, which partnership is herein referred to as the "Harris-Harris" partnership. Subsequent to that time the Harris' entered into a partnership with Wilton and Merrill Fidler, the "Harris-Fidler" partnership, which partnership was dissolved by court decree in 1970. William subsequently filed suit No. C-8326 against his sisters and brother alleging certain interferences and seeking damages and a restraining order. In November, 1974, James intervened in that suit and claimed ownership of certain lands that appeared on the records in William's name and certain personal property, and that William had defrauded him. In May, 1975, James died and the probate proceeding (No. 3552) was filed (R. 3552 - p.3). In November, 1976, William filed his second suit, No. 8984, against the personal representatives of the estate for an accounting for the Harris-Harris partnership assets

and for the winding-up of the partnership business (R. 8984 - p.8).

The above three cases were consolidated for trial and were tried before Hon. Bryant H. Croft, who wrote a detailed memorandum decision, dated November 3, 1977 (R. 8984, pp. 110-90), which the parties stipulated would be considered findings of fact and conclusions of law (R. 8326, pp.62-61). Judge Croft's judgment dated December 14, 1977, based on the findings and conclusions determined that James and William were partners, that they were equal partners in the Harris-Fidler partnership, that William individually owned certain land and that other land was partnership land, that certain designated and described personal property was partnership property (R. 8326, pp. 69-62). The Court determined that the assets of the Harris-Harris partnership consisted of those items itemized in Appellant's Brief at pp. 4-5 together with those items fully depreciated in the partnership depreciation schedule which were on hand at the end of 1970; all Bureau of Land Management grazing permits; all property which came to James and William from the Harris-Fidler partnership upon its dissolution; certain cashier's checks; and certain lands in Tooele County. The Court gave judgment to William for \$5,287.50 for William's one-half of the proceeds from the sale of certain grazing permits and directed that the cashier's checks be cashed and the proceeds be equally divided. All claims and counterclaims for money damages asserted by the parties in the civil cases and for attorneys fees and costs were dismissed. It was also ordered that:

"6. All monies contained in the James H. Harris bank accounts as testified to by Genave H. Tanner including those funds transferred by be before the death of James H. Harris, shall be accounted for by the co-executrices in the probate estate.

"7. That the claims of the Estate of James Henry Harris, Deceased, against William B. Harris and the claims of William B. Harris against the Estate of James H. Harris for an accounting for income received from the farming and sheep businesses conducted by the partnership through the years 1972 to 1974, inclusive, are dismissed, as the income tax returns show that the partners had approximately equal receipts.

"8. Only one-half of the assets that came out of the Harris-Fidler partnership and one-half of the assets of hte James Henry Harris and William B. Harris partnership, are assets of the estate of James Henry Harris, deceased, and are subject to probate, and none of the interest of William B. Harris in such partnership assets are subject to the obligations or expenses of said estate." (R. 8326, p.64)

It is significant to note that the trial on the above matter was held July 6, 1977, two years after the death of James. That trial specifically determined the assets of the Harris-Harris partnership as shown above. No appeal was taken from Judge Croft's judgment.

In July, 1978, William filed a motion in the consolidated cases as mentioned in Appellant's Brief at pp. 6-7 seeking various forms of relief. In September, 1978, the respondents filed their objections to William's motion (R. 8984, pp. 129-126) and filed a list of items of personal property in the possession of the Estate of James (R. 8984, pp. 132-130).

The motions were set for trial before the Honorable David Winder and trial was held June 19 & 20, 1979. At the outset of the trial counsel for Appellant indicated that he sought at the hearing to wind-up the partnership affairs (Trans. p.3) and complete the areas unresolved by Judge Croft's earlier decision (Trans. p. 4). Counsel for the respondents urged that all areas unresolved by the earlier decision other than those specifically identified by Judge

that with the exception of the 1971 depreciation schedule all accounting had been completed (Trans. pp. 6-14).

Initially, the Court disagreed with respondents' contention and allowed evidence to come in (Trans. pp.14-116). After further review of Judge Croft's earlier decision, Judge Winder reversed himself and ruled that:

"[I]t appears to me that all we ought to be concerned with as far as the partnership is concerned is the property listed on the Depreciation Schedules in 1971. As you know, he listed the 1970 and '71 Depreciation Schedules and then he indicated that purchased in 1971 and on the '71 schedule were five other items. And then at page 7 of his decision, he says that any personal property formerly included in the Depreciation Schedules that had been fully depreciated by 1970 would also be partnership property.

"So in other words, it seems to me that all we are talking about, really, is what is listed on the Depreciation Schedules plus personal property fully depreciated prior thereto. And he specifically said that the \$5,287.50 settled it, squared the account through 1974." (Trans. 6/19/79, p. 117)

Judge Winder than inquired of counsel for Appellant whether "we are here on the probate estate?" (Trans. p.117), which was responded to affirmatively, whereas Appellant in his Point 2 denies that the court had jurisdiction to make the ruling regarding the probate estate.

The judgment appealed from, that of Judge Winder dated November 8, 1979, held that Judge Croft had determined the assets of the partnership to be accounted for were those as referred to in the quotation from the transcript above and declared that the property listed in Paragraph 1.a. of the Judgment was in the possession of William and had a value of \$13,080.00, was Harris-Harris Partnership property, and that William has the right to retain possession of the listed items; declared that the property listed

in Paragraph 1.b. of the Judgment was in the possession of the James H. Harris Estate and had a value of \$3,540.00, was Harris-Harris partnership property, and the the Estate has the right to retain possession of those listed items; and declared that the final distribution from the winding-up of the Harris-Harris partnership be made by William paying to the Estate of James the sum of \$8,243.50 (R. 8326, pp.106-102). Judge Winder ordered that the Harris-Harris partnership is, quoting from paragraph 7,

"...hereby terminated, wound up and the assets consisting of real and personal property are hereby fully and completely designated and distributed to the partners, their heirs and assigns. This termination and distribution of all partnership property both real and personal is inclusive of all the proceeds of the Harris-Fidler Partnership terminated in 1970, which proceeds are included in the distribution of the partnership property of James H. Harris and William B. Harris.

"8. William B. Harris, as a partner and on behalf of his partnership interest in the Harris-Fidler Partnership and in the James H. Harris and William B. Harris Partnership, shall have no further claim whatsoever on the Estate of James H. Harris; his partnership interests being fully adjudicated and determined in this Court proceeding and the prior proceeding before Judge Bryant H. Croft, on July 6, 1977, whose decision was filed on or about November 3, 1977." (R.8326, p.103)

ARGUMENT

POINT I

THE COURT DID NOT ERR IN DECLARING AND DETERMINING THAT THE ASSETS OF THE HARRIS-HARRIS PARTNERSHIP, INCLUDING THE PROCEEDS FROM THE HARRIS-FIDLER PARTNERSHIP, HAVE BEEN FULLY AND COMPLETELY DESIGNATED AND DISTRIBUTED AND THAT THERE HAS BEEN A WINDING-UP OF THE AFFAIRS OF THE HARRIS-HARRIS PARTNERSHIP.

Judge Croft's 1977 judgment is res judicata as to the

determination of the assets held and to be accounted for in the Harris-Harris partnership. Judge Croft's judgment was had on both complaints brought by William Harris, the appellant herein. The Complaint in Civil No. 8984 sought a determination of the real and personal property of the Harris partnerships, for an accounting, for damages, for a stay in the proceedings of the James H. Harris Estate pending determination of estate and partnership assets, for damages and for other relief (R.8984, pp. 8-1). The Complaint in Civil No. 8326 sought an accounting by the respondents for partnership activities, a restraining order and damages. The complaints were brought in 1976 and 1974, respectively. Trial was had on the consolidated cases in 1977 before Judge Croft, James having earlier intervened and the probate case being consolidated (R.8326, pp.69-63) and R.3552, p.168) (In the probate proceeding, William contested the will of James alleging undue influence on the part of the respondents (R. 3552, pp. 9-6). William and the respondents herein engaged in discovery of each other's positions and facts (R.3552, pp. 16-18; 31-37; 59-64; 38-44; 45-58; 75-85; 65; 111; 263; 264; 265; 266; and 267 (pp. 263-267 represent individual depositions, see index to probate file)). On September 23, 1976, the Special Administrator of the James Harris Estate files a listing of receipts and expenditures in behalf of the estate (R.3552, pp. 141-127). Demand for Notice was filed by Appellant in the probate file on or about July 6, 1977 (R.3552, p. 170). Thereafter, on or about April 9, 1979, Respondents filed and served its "Petition for Determining Heirship" (R. 3552, p. 200-195) and Notice of Hearing therefore (R.3552, pp. 194-193). William filed his response thereto

(R.3552, p. 204) and the probate file otherwise shows activity and familiarity on the part of all concerned with this appeal.)

The Appellant framed the issues in the case before Judge Croft regarding the assets of the partnership. Judge Croft specifically ruled "That the assets of the partnership are... the items listed in Paragraph 1.a. through e. of his judgment (R.8326, pp.68-66). This case presents a circumstance where the same parties are involved, the same causes of action, issues that were litigated in a prior action and in which judgment thereon was rendered and the Appellant should not be allowed to raise issues which were or should have been raised in the former action. Richards v. Hodson, 26 Utah2d 113, 485 P.2d 1044 (Utah 1971). Judge Winder properly rejected evidence regarding matters that were or should have been raised in the earlier action before Judge Croft. This includes evidence regarding assets already mentioned herein and those other assets as mentioned in Appellant's Brief at pp. 8-9.

Testimony was given at the trial before Judge Winder regarding the bank accounts mentioned by Judge Croft. It should be particularly noted that Judge Croft did not include the funds held at any time in bank accounts as partnership assets. His Order was that those funds were to be "accounted for". That does not mean that Appellant William Harris has, has had or may have or have had any interest or claim whatsoever to those funds. The order requires only that an accounting be made in the probate estate. At the trial before Judge Winder, Grace McPhie testified regarding the bank accounts and was cross-examined by counsel for Appellant (Trans. 6/19/79, pp.77-86).

The Respondents alternatively allege in support of the judgment rendered by Judge Winder that (1) such accounting as was required by Judge Croft's decision was made at the trial before Judge Winder, or (2) that the accounting as demanded by Appellant is premature.

1. The accounting has been made. The parties agreed at the outset of the Winder trial that all three cases, including the probate case, were before the court at that time and that it was the desire of the parties to have all matters regarding the partnership resolved at that hearing, as mentioned and referred to earlier in this brief. Respondents were examined regarding the bank accounts and no evidence was adduced that the funds that were in or had been in any of the accounts were partnership funds. While it appears from the transcript that Appellant probably would have taken additional testimony regarding those accounts had Judge Winder not reversed himself on the scope of the trial, Appellant nevertheless failed to make a record showing in any manner that the accounts were partly or wholly partnership funds and this Court must therefore rule on what is in the record and upon the judgment rendered, which by implication denies any right, title or interest in the said funds to the Appellant, the Court having determined apparently that either by the evidence presented, or by Appellant's failure to produce other or additional evidence, or that by Judge Croft's decision any such funds were not part of the partnership's assets. (It may also be noted that no proffer of evidence was made regarding the funds by Appellant so as to have a fully informed court and preserve the point on appeal. See, e.g., Cameron v. Boone

2. The demanded accounting is premature. As mentioned, Judge Croft's Order was that there be an accounting made in the probate estate. If the trial before Judge Winder is not deemed to have met that requirement in spite of the representations and desires of counsel, then it must be seen that the matters before Judge Winder were for a determination of partnership assets only, was only a preliminary step in determining what assets were in the Estate so that a later accounting could be made and was not the probate action wherein the accounting was to be rendered.

The Appellant claims, beginning at page 17 of his brief:

"The winding of [sic] the Harris-Harris partnership affairs has been irregular and contrary to law from the beginning."

Appellant has not at any time in the courts below made such a claim nor in any manner relied on, mentioned or alleged the statutes and case law presented in his brief on appeal. It is well-settled that matters not raised in trial cannot be considered on appeal. State by and through Road Commission v. Larkin, 27 Utah 2d 295, 495 P.2d 817.

What does appear clearly is that at James' death in May, 1975, dissolved such partnership as may have existed theretofore between James and William. Utah Code Ann. §48-1-28(4), which restates the common-law rule that absent a contrary agreement, a partnership is dissolved by the death of a partner. No contrary agreement has ever been alleged or proved. The subsequent judgments have specified the extent of partnership assets and properly "wound up" the partnership. The judgment of the trial court should be affirmed as to that winding-up of affairs and distribution decree.

POINT II

THE COURT DID NOT ERR IN DETERMINING THAT WILLIAM "...SHALL HAVE NO FURTHER CLAIM WHATSOEVER ON THE ESTATE OF JAMES H. HARRIS."

William B. Harris, Appellant herein, made and filed a "Withdrawal of Objections and Waiver of Interest" purporting to waive any and all objections to the interpretation of the James H. Harris will, to the determination of heirship, of any interest in the will of James H. Harris or to take as an heir pursuant to the terms and conditions of that will, to further proceedings in regard to the probate of the will or the accounting thereof, excepting his interest as a Creditor/Claimant pursuant to the terms and conditions of his claim against the Estate of James H. Harris subsequent to a trial on July 6, 1977, for the consolidated cases of Civil No. 8326, Civil No. 8984, and Probate No. 3552 (R. 3552, pp. 207-206). That waiver appears to be in accord with the judgment of the Court and should be dispositive of the matter.

In the event, however, that the waiver is not dispositive, Respondents argue as follows. The language used in an opinion must be read in light of the problems addressed therein. Nielson's Estate v. Nielson, 107 Utah 564, 155 P.2d 968, 972. Judge Winder's Order reads as follows:

"8. William B. Harris, as a partner and on behalf of his partnership interest in the Harris-Fidler Partnership and in the James H. Harris and William G. Harris partnership, shall have no further claim whatsoever on the estate of James H. Harris; his partnership interests being fully adjudicated and determined in this Court proceeding and the prior proceeding before Judge Bryant H. Croft, on July 7, 1977, whose decision was filed on or about November 3, 1977. (R. 8326, p. 103) (Emphasis added).

arise out of the partnerships mentioned and it is simply a restatement of the other provisions of the judgment determining interests of the parties and winding up the affairs. Further, it is consistent with the Court having received the accounting of the bank deposit funds or with a determination that those funds were not partnership property. Judge Winder was clearly apprised of Judge Croft's decision as he mentions many times throughout the arguments. On Appellant's hearing on his Objections of Draft Order of Accounting, Distribution and Termination of October 29, 1979, (Trans. 10/29/79) the Court again mentioned that it had read and re-read Judge Croft's Order and that the few issues left by Judge Croft had been dealt with at the June, 1979, trial before Judge Winder. Judge Winder stated that:

"[W]hat I intended to do, and this is such a complex matter and I know nobody is satisfied but we can't litigate it time after time after time, and I've gone back and read Judge Croft's decision again today, or partially read it, and I had read it about three or four times, and I reiterated again and again at the June 19th-20th hearing that I thought there were just a few issues that had been left by Judge Croft. It was my idea that they were dealt with on June 19th and 20th, and the only sense in which I think the probate matter remains open is simply that-- that I wasn't dealing with the probate matter in the sense of decreeing the distribution but I certainly--it was not my intention that you [Appellant herein] come back now in the probate matter. And if it hasn't been decided and relitigated in the probate matter, what I decided at the 19th and 20th trial, because that was the opportunity to try all of these issues about the partnership and whether hay or wheat or equipment or anything else belonged. And as Judge Croft noted when he decided this and as was so apparent to me, to go back and try and reconstruct things in this complicated situation after years have gone by and memories have faded and records are gone, it is virtually an impossibility. And I'll be the first to acknowledge that maybe what I did at the end of the June 19-20 hearing may seem a little arbitrary but I think there's such a great advantage to laying this matter to rest, and I tried to do it as fairly as I could. (Trans. 10/29/79, pp. 17-18)

The effect of Judge Winder's ruling is not to cut William off from the Estate of James or to adjust the accounts of the probate estate with William but simply and solely determines that William has no further claims against the Estate based on the partnerships interests that William had.

The Appellant alludes to §75-3-1001 as being ignored in the closing of the Estate (Appellant's Brief at p. 26) whereas the Estate has not yet been closed and the trials before Judges Croft and Winder were preliminary to the closing of the estate and necessary to determine what the estate consists of. The Appellant has had two separate "days in Court" to resolve the disputes regarding the partnership properties, has had ample opportunity to litigate its issues and should not be allowed to relitigate issues it did or should have properly litigated in the trials below.

CONCLUSION

The judgment of the trial court should be affirmed

Respectfully submitted,

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MAILING CERTIFICATE

I hereby certify that I caused two copies of the foregoing Respondents' Brief to be mailed, postage pre-paid, to E. J. Skeen, at the offices of SKEEN & SKEEN, 536 East 400 South, Salt Lake City, Utah 84102, this ____ day of June, 1980.
