

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 : Appellant'S Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM B. HARRIS,
Plaintiff-Appellant,
vs.
GENAVE H. TANNER, GRACE H.
McPHIE, BANNIE H. DURFEE,
and GRANT H. HARRIS,
Defendants-Respondents,
and
JAMES H. HARRIS,
Plaintiff in Inter-
vention-Respondent,
vs.
WILLIAM B. HARRIS,
Defendant in Inter-
vention-Appellant.

In the Matter of the Estate
of

JAMES HENRY HARRIS, also
known as JAMES H. HARRIS,
Deceased.

WILLIAM B. HARRIS,
Plaintiff-Appellant
vs.
GRACE HARRIS McPHIE, et al,
Defendants-Respondents.

Supreme Court
Case No. 16810

APPELLANT'S REPLY BRIEF

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

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No authorities or cases cited

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APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

There is an apparent misapprehension indicated in the respondent's brief as to the nature of the proceedings before Judge Winder. It is stated in their statement of facts that Judge Winder conducted a trial of issues reserved by Judge Croft. No issues were reserved. The hearing before Judge Winder was on motions to enforce Judge Croft's judgments and to designate items of property which are partnership property.

ARGUMENT

In response to the appellant's argument under Point I in the appellant's brief that the court erred 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, the respondents argue:

1. 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. (Res. br. pp. 6, 7.)

2. The funds in the bank accounts were to be accounted for in the probate estate and "...Judge Croft did not include the funds held at any time in bank accounts as partnership assets...." (Res. br. p. 8)

3. Such accounting as was required by Judge Croft's decision was made at the trial before Judge Winder. (Res. br. p. 9.)

4. The accounting as demanded by the appellant is premature. (Res. br. 9, 10.)

These points will be discussed in the order stated.

POINT I

THE DOCTRINE OF RES JUDICATA IS NOT APPLICABLE

We quote from the respondent's brief, page 8:

"....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 Utah 2d 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."

There is no res judicata question involved. The two consolidated cases are the only cases before the court. The references to a "prior action", the "former action" and "the earlier action" are all erroneous and misleading. Judge Croft's memorandum decision was stipulated to be the findings of fact

and conclusions of law in these cases. The formal judgment was signed by Judge Croft on December 14, 1977, was made and entered in the same adversary cases as those before Judge Winder. Judge Croft's judgment was final and no appeal was taken therefrom. It decided all issues before the court in the consolidated adversary cases, but did not designate with particularity the items which were determined to be partnership property and which were retained or sold as follows:

1. Horses and sheep sold by the temporary administrator.

2. All property that came to James and William from Harris-Fidler upon its dissolution, including money, sheep, other personal property, and the proceeds from the sale of partnership property not included in partnership income tax returns of the partners for 1972, 1973, and 1974.

3. Money in the bank accounts of James H. Harris and his estate which were unidentified and unaccounted for by the Personal Representatives.

The appellant's brief, pages 9, 14, 15, and 16, lists specified items of partnership property which were sold by the personal representatives of James' Estate. Mr. Harris died in 1975, so obviously these items were not covered by the 1972 - 1974 income tax return. The respondent's attempt to dispose of the question as to the identity of partnership property by vague and incomprehensible arguments about res judicata, discussed above, and the accounting by Judge Winder.

It is also argued that the accounting as demanded is premature. The accounting arguments will be discussed under the next heading.

POINT II

THE RESPONDENT'S ARGUMENTS REGARDING ACCOUNTING ARE NOT SUPPORTED BY THE RECORD

As indicated in the appellant's opening brief, the motion filed on July 20, 1978, to enforce Judge Croft's 1977 judgment by requiring an accounting by the Personal Representatives of James' Estate for partnership property covered the following:

1. Money received by James upon the Harris-Fidler dissolution.

2. All items of livestock and livestock equipment in their possession.

3. All Harris-Harris partnership property sold by James and by his estate.

4. Money on deposit in James' and Estate bank accounts and amounts withdrawn. (App. br. pp. 6, 7.)

The respondents filed a list of items of partnership property in their possession and listed the following items of partnership property which were sold:

- a. A new sheep camp, appraised value \$2,200.00.
- b. Miscellaneous horses and sheep sold through temporary administrators.

Judge Winder included the sheep camp in his computation of the amount owed by William to the estate, but ignored miscellaneous horses and sheep which the respondents admitted in writing were partnership property. (R. 8984 pp. 132 - 130) The total sales price was \$1,305.53. See probate file p. 139. This was obviously error.

The probate file, p. 139, lists items of partnership property in addition to sheep and horses which were sold after the death of James, such as:

Commodity Credit wool settlement	\$ 266.40
Production Credit Ass'n shares sale	265.00
Commodity Credit Corporation wool incentive payment	<u>2,206.89</u>
Total	\$2,738.29

The omission of these items from an accounting was error.

It is clearly the intent of the 1977 judgment that there should be an accounting between the partners on an equal basis of partnership assets listed in the judgment in sub-paragraphs a, b, c, and d. (R. 8326, p. 67A) The judgment appealed from relates only to sub-paragraphs a, b, and d, but does not dispose of sub-paragraph c. (R. 8984, pp. 165 - 161)

The 1977 judgment deals with the money contained in the James H. Harris bank accounts as testified to by Genave H. Tanner by directing that they be accounted for in the probate estate. (R. 8326, p. 64) The error of the trial court in disposing of this issue is discussed under the next heading.

POINT III

THE COURT ERRED IN DETERMINING THAT WILLIAM,
AS A PARTNER, SHALL HAVE NO CLAIM AGAINST
THE ESTATE OF JAMES H. HARRIS

In response to the appellant's argument on this point, the respondents state that William filed a "Withdrawal of Objections and Waiver of Interest" which should be dispositive of the matter. (Res. br. p. 11) Reference is made to the probate file, pp. 207, 206. IT WILL BE NOTED THAT THE DOCUMENT REFERRED TO IS NOT SIGNED.

There is in the file a withdrawal of objections to probate of the will. (Probate - p. 123) It makes no reference to waiver of any interest in the estate. The effect of the document is to withdraw the objections to the admission of the will to probate. It cannot be construed as a withdrawal of William's claim as an heir or as a claimant to property which was inventoried as estate property. The Croft judgment declares in paragraph 8 (R. 8326, p. 64) that William owned one half of the partnership property, and that his one-half was not subject to probate in James' estate. The reference to the unsigned "Withdrawal of Objections and Waiver of Interest" appears to be a deliberate effort to mislead this Court.

The respondent further argues that if the waiver is not dispositive of the issue, the determination that William has no claim against the estate "is simply a restatement of the other provisions of the judgment determining interests of the parties and winding up the affairs". It is stated further that "...it is consistent with the Court having received the account-

funds were not partnership property." (Res. br. pp. 11, 12) This argument misstates the facts. The judgment appealed from is not based on findings that the money that was on deposit in James' name or taken from his bank accounts immediately prior to his death was not partnership money. Judge Winder made no such findings. (R. 8984 pp. 160-152)

The judgment of the court after the hearing on the motion to enforce was based upon findings that the only matters to be tried and determined were the values and proper division of the items of farm machinery, trucks, and equipment listed in Judge Croft's judgment and property depreciated out. (Tr. 6-19-79, pp. 116 - 120) The court, in its oral remarks at the conclusion of the hearing on October 29, 1979, stated:

"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. (Tr. 10-29-79 - p. 18)"

The respondents have completely ignored the argument in appellant's brief that in the hearing on the motion to enforce the judgment (1) that the probate proceeding had not been consolidated for trial; (2) that the Croft judgment deferred action in the probate proceeding until after the determination of the consolidated adversary cases; (3) that the court had no jurisdiction of William for the determination of the issues set out in the Executrices petition as discussed on page 19 of Judge Croft's Memorandum decision; (4) that since the entry of the

1977 judgment, no action had been taken to give the court jurisdiction of William in the probate proceeding; (5) William's property rights in the partnership money, the Harris-Fidler assets, the sheep and horses cannot be disposed of in the consolidated cases as such claims were not asserted in the pleadings in either case; (6) the probate proceeding must be permitted to proceed in accordance with the statutes; (7) an accounting must be filed in the probate and (8) William's right to object and to challenge efforts to distribute to the heirs his sheep, horses, hay and money cannot be denied except by a court with jurisdiction of the subject matter and of William's person.

The judgment appealed from on the motion to enforce ignored the clear and controlling direction in the 1977 judgment that an accounting be filed in the probate proceeding. (R. 8326 - p. 64) William would have an opportunity to object and to raise an issue as to the ownership of the money and property which he claimed as a partner and individually. The judgment on the motion, if sustained, would overturn the final 1977 judgment in the particulars discussed above.

The denial of William's right as a partner to assert his claims against the estate was without jurisdiction, was contrary to the plain provisions of the 1977 judgment, was without support of pleadings and evidence, and was contrary to law.

CONCLUSION

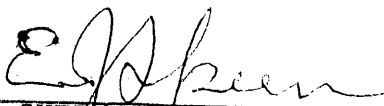
The judgment on appeal was based upon an erroneous interpretation of the findings and of the judgment sought to be enforced. The trial court arbitrarily limited the issues to the determination of the division and value of only a part of the partnership property. Issues regarding an accounting for partnership money, sheep, horses, and other items belonging to the partnership were excluded. The adjudication of the winding up of partnership affairs without an accounting by the respondents was contrary to the evidence and the law.

The judgment that William, as a partner, had no claim against the estate in the probate proceeding was contrary to the controlling 1977 judgment, was without jurisdiction, and was entered in a proceeding which had not been consolidated for trial and hearing.

The judgment should be reversed and the consolidated cases should be remanded with direction to the trial court to hear such evidence as may be necessary to enforce and carry out the 1977 judgment.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing Appellant's Reply Brief were mailed to the attorneys of the defendants-respondents, postage prepaid, addressed as follows:

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on this 7th day of November, 1980.


Secretary