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Melba Wilcox v. District Court of Salt Lake County et al : Brief of Plaintiff

Utah Supreme Court

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In the
Supreme Court of the State of Utah

MELBA WILCOX, Executrix of the
Estate of Don E. Wilcox, Deceased,
Plaintiff,

vs.

DISTRICT COURT OF SALT LAKE
COUNTY, THE HONORABLE JO-
SEPH G. JEPPSON, District Judge
and EDNA ABBOTT WILCOX,
Defendants.

Case No.
8114

UNIVERSITY
BRIEF OF PLAINTIFF, MELBA WILCOX, EXECUTRIX
OF THE ESTATE OF DON E. WILCOX, DECEASED.

In Support of Extraordinary Writ.

APR 28 1965

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ARROW PRESS, SALT LAKE

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Case No.
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**BRIEF OF PLAINTIFF, MELBA WILCOX, EXECUTRIX
OF THE ESTATE OF DON E. WILCOX, DECEASED.**

In Support of Extraordinary Writ.

STATEMENT OF FACTS

The facts in this case are not in dispute. They are: The defendant, Edna Abbott Wilcox, (plaintiff below) obtained a decree of divorce from Don E. Wilcox in 1928 in an action

which she filed in the District Court of Salt Lake County, State of Utah.

The divorce decree provided, among other things, that Don E. Wilcox pay to Edna Abbott Wilcox the sum of \$30.00 per month for the support of herself and a minor child.

No further proceedings were had in this action until on or about the 21st day of September, 1953, when the defendant, Edna Abbott Wilcox filed in said divorce action her "Affidavit for Order" (Exhibit A attached to plaintiff's Complaint). In said affidavit she alleged that Don E. Wilcox had made no payments to her since June, 1930, and that there was due to her from the said Don E. Wilcox from June, 1930 to June, 1949, the sum of \$6,840.00, plus interest in the sum of \$7,113.60, or a total of \$13,953.60.

She then states that Don E. Wilcox died May 31, 1953, a resident of the County of San Mateo, California, and the plaintiff herein (defendant below) Melba Wilcox, is the duly appointed, present acting executrix of his estate under Probate No. 20202 in the Superior Court of the State of California in and for the County of San Mateo; that there is due and owing from the estate of the deceased \$13,953.60 to herself as aforesaid.

She then prayed for an order to show cause to be issued requiring Melba Wilcox, executrix of the estate of Don E. Wilcox, to show why judgment should not be rendered against Melba Wilcox, executrix and the estate of Don E. Wilcox, aforesaid, in the sum of \$13,953.60.

On or about September 21, 1953, the Honorable Clarence E. Baker, one of the judges of the District Court of Salt Lake County, State of Utah, entered an order that "Melba Wilcox, executrix in the matter of the estate of Don E. Wilcox, deceased, be and she hereby is ordered and required to appear before this court (the District Court of Salt Lake County, State of Utah) on the 6th day of October, 1953, at 10:00 o'clock, A. M., then and there to show cause why judgment should not be entered against the estate aforesaid in the sum of \$13,953.60 and for such other orders as may be proper in the premises" (Exhibit B attached to plaintiff's Complaint).

On or about September 23, 1953, a copy of the affidavit for order and the order to show cause were served on plaintiff, Melba Wilcox, as executrix of the estate of D. E. Wilcox, deceased in San Mateo County, California (Exhibit C attached to plaintiff's Complaint).

Thereafter on or about September 29, 1953, plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, filed a motion with the District Court of Salt Lake County, State of Utah, to quash the service of the order to show cause on the grounds (a) that the said Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, was not and is not now subject to process within the jurisdiction of the District Court of Salt Lake County, State of Utah, and (b) that the said Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, has not been properly served with process in this action as shown by the files and rec-

ords heretofore filed in this matter (Exhibit D attached to plaintiff's Complaint).

Said motion was set for hearing on October 6, 1953, and the motion argued to the court. Whereupon, the defendant, the Honorable Joseph G. Jeppson, one of the judges of the District Court of Salt Lake County, State of Utah, denied said motion and ordered that the order to show cause served on the plaintiff, Melba Wilcox, be heard at the hour of 10:30 o'clock, A. M., October 15, 1953, and ordered further that the plaintiff Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, be substituted as party defendant for the defendant Don E. Wilcox, in the action entitled, "Edna Abbott Wilcox vs. Don E. Wilcox" (Exhibit E attached to plaintiff's Complaint).

On October 15, 1953, the plaintiff Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, moved the court to set aside its previous order denying her motion to quash the service of the order to show cause and after argument by counsel, the defendant, the Honorable Joseph G. Jeppson, took the matter under advisement (Exhibit F attached to plaintiff's Complaint).

On or about October 16, 1953, the defendant, the Honorable Joseph G. Jeppson, entered an order denying the motion of plaintiff to set aside his previous order denying plaintiff's motion to quash the service of the order to show cause and further ordered that the matter proceed to a hearing (Exhibit 2 attached to defendants' answer).

The plaintiff alleges and it is not in dispute that a decree was entered in said divorce action entitled "Edna

Abbott Wilcox vs. Don E. Wilcox," and that the said Don E. Wilcox was ordered to pay \$30.00 per month for the support of Edna Abbott Wilcox and a minor child; that Don E. Wilcox died May 31, 1953; that at the time of his death he was a resident of San Mateo County, State of California, and that plaintiff is the duly appointed, acting and qualified executrix of his estate under Probate No. 20202, in the Superior Court of the State of California in and for the County of San Mateo.

STATEMENT OF POINTS

POINT I.

THE RULING OF THE DEFENDANT, THE HONORABLE JOSEPH G. JEPSON, IN DENYING PLAINTIFF'S MOTION TO QUASH THE SERVICE OF THE ORDER TO SHOW CAUSE IS CONTRARY TO LAW FOR THE REASON THAT THE COURT BELOW LACKS JURISDICTION OVER THE PERSON OF THE PLAINTIFF, MELBA WILCOX, EXECUTRIX OF THE ESTATE OF DON E. WILCOX, DECEASED.

(a) Personal service of process on the plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, was necessary to obtain jurisdiction over her to enter a judgment against her as executrix of the estate of Don E. Wilcox, deceased, or against his estate.

(b) An action upon a claim against the estate of a decedent cannot be maintained against the executrix of his estate in a state other than the state of her appointment.

ARGUMENT

POINT I.

THE RULING OF THE DEFENDANT, THE HONORABLE JOSEPH G. JEPSON, IN DENYING PLAINTIFF'S MOTION TO QUASH THE SERVICE OF THE ORDER TO SHOW CAUSE IS CONTRARY TO LAW FOR THE REASON THAT THE COURT BELOW LACKS JURISDICTION OVER THE PERSON OF THE PLAINTIFF, MELBA WILCOX, EXECUTRIX OF THE ESTATE OF DON E. WILCOX, DECEASED.

(a) Personal service of process on the plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, was necessary to obtain jurisdiction over her to enter a judgment against her as executrix of the estate of Don E. Wilcox, deceased, or against his estate.

Regardless of the designation or form given by defendant, Edna Abbott Wilcox to her pleading, stripped to its essential elements, it is an action to recover a judgment against Melba Wilcox, executrix of the estate of Don E.

Wilcox, deceased, and/or against his estate on a claim against the deceased for past due and unpaid installments of alimony and support money.

It is an elementary principle of law that to recover a judgment in such an action personal service of process was necessary to obtain jurisdiction over the person of plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased. *Pennoyer v. Neff*, 95 U. S. 714, 25 L. Ed. 565.

No personal service of process in the State of Utah was made on plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, and, therefore, the court below did not have jurisdiction over her person.

(b) An action upon a claim against the estate of a decedent cannot be maintained against the executrix of his estate in a state other than the state of her appointment.

The *Restatement of the Law of Conflict of Laws*, page 617, Section 512, states, "No action can be maintained against any administrator outside the state of his appointment upon a claim against the estate of the decedent". See also, to the same effect, 77 *A. L. R.*, page 251; 34 *C. J. S.*, page 1265, Section 1013, 21 *Am. Jur.*, page 929, Section 985.
15 *T. R. A. (M. S.)* 632

The undisputed facts in this case show that Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, was appointed by the Superior Court of the State of California in and for the County of San Mateo and, therefore, the court below did not have and cannot acquire jurisdiction over plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased.

CONCLUSION

This being purely and simply an action at law to recover a judgment, on a claim against the estate of Don E. Wilcox, deceased, against the plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased, who was appointed by the Superior Court of the State of California in and for the County of San Mateo the court below lacks jurisdiction over the person of the plaintiff, Melba Wilcox, executrix of the estate of Don E. Wilcox, deceased.

WHEREFORE, plaintiff prays that the alternative writ be made permanent.

Respectfully submitted,

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