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Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

IN THE MATTER OF THE ESTATE OF	:	
GEORGE R. POWELL,	:	
Deceased.	:	
CENTRAL BANK AND TRUST COMPANY, (Administrator) and THE HEIRS OF FLORENCE EUNICE POWELL,	:	Case No. 16,877
Respondents,	:	
vs.	:	
LAMAR P. WEST,	:	
Appellant.	:	

RESPONDENT'S BRIEF

APPEAL FROM ORDER AND DECREE OF DISTRIBUTION OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH, HONORABLE J. ROBERT BULLOCK, JUDGE

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FILED

JUN 5

Clerk, Supreme Court

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LAMAR P. WEST,	:	
Appellant.	:	

BRIEF OF RESPONDENT
CENTRAL BANK AND TRUST COMPANY

NATURE OF THE CASE

This is a petition for declaratory relief in a contested probate where the administrator of the estate is seeking to clarify its duties in distributing the assets of the decedent.

DISPOSITION IN THE LOWER COURT

The trial court, after a trial on the merits of apellant's objections to the respondent's petition, held that the Court's Findings of Fact, Conclusions of Law, and Judgment in Civil Number 7416 in the Fourth Judicial District Court for Uintah County, were res judicata as to any claims for relief requested by the appellant. There being no other objectors, the court granted the relief requested by the respondent, Central Bank and Trust Company.

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RELIEF SOUGHT ON APPEAL

Respondent, Central Bank and Trust Company, seeks to have this court affirm the lower court's judgment.

STATEMENT OF FACTS

Although some of the facts cited in the appellant's brief are true, there are no citations to the record supporting said facts as required by Rule 75(p)(2)(2)(d), Utah Rules of Civil Procedure. Respondent will, therefore, set forth the material facts of the case.

On July 2, 1974, the appellant filed a petition for admission of will to probate seeking to have herself appointed as personal representative of the decedent's estate. (R.2) She contended that the will was valid (R.21), but other heirs challenged venue (R.16-31, R.40-58). After the court determined that the probate was properly commenced in Utah County (R.65), the appellant testified a second time in support of its admission to probate (R.77). The will was then admitted to probate, and the appellant was appointed the executrix (R.83).

On October 6, 1975, the appellant resigned as the executrix (R.106) and she and the other heirs nominated the respondent, Central Bank and Trust Company as the administrator of the decedent's estate (R.95-109). The respondent was appointed by the court on February 18, 1976 (R.111).

Florence A. Powell of Vernal Utah, and Florence Eunice Powell of Laural, Montana, asserted claims against the

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estate, asserting that they were both the same named beneficiary under the decedent's will. Since it appeared that there were conflicting claims against the estate, the respondent simultaneously filed a petition to determine heirship in this probate (R.113), and a separate complaint and interpleader as Civil Number 44,913 in Utah County (R.290). The petition to determine heirship was held to be moot since the complaint and interpleader were filed (R.129), and the complaint and interpleader were later consolidated with this probate matter (R.454). At the time of the filing of the petition to determine heirship, the appellant filed an affidavit alleging that the co-respondent, Florence Eunice Powell of Laurel, Montana, was the proper "Florence Powell" to receive the bequest under the decedent's will.

Another action had been instituted in Uintah County as Civil Number 7416, among all of the heirs of the decedent and beneficiaries under his will, except Florence Eunice Powell of Laurel, Montana. On the basis of a stipulation made between the parties in that action (R.228-238), the court entered an order in this probate matter declaring the will null and void, directing the respondent to proceed with the probate of the estate as if the decedent had died intestate (R.142), and to otherwise comply with the stipulation of the parties as set forth in the Court's Findings of Fact, Conclusions of Law and Judgment (R.150-159).

Since Florence Eunice Powell was not before the court, the settlement stipulation as to "Florence Powell", was con-

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ditioned upon Florence A. Powell prevailing as the named person in the will of the decedent (R.158, paragraph (h).

The complaint and interpleader was then tried by the lower court. The court ruled that Florence Eunice Powell of Laurel Montana (now her assignees, she having died) was the named "Florence Powell", and was entitled to the distribution intended for said person under the decedent's will (R.181).

The respondent then filed the petition for declaratory relief since there were conflicting orders and it wanted to know how distribution was to be made among the competing claimants (R.182-210). The appellant filed an objection to the respondent's motion claiming she did not understand the stipulation when made two years previously, and further seeking to raise other issues regarding distribution of the estate settled two years previously (R.216).

After a trial on the merits of appellant's objections to the respondent's petition, the court granted the relief requested by the respondent, Central Bank and Trust Company.

ARGUMENT ON APPEAL

POINT I

THE RESPONDENT-ADMINISTRATOR IS A STAKEHOLDER FACED WITH CONFLICTING COURT ORDERS.

The respondent, as the administrator of the estate of George R. Powell, deceased, has the statutory duty to settle and distribute the estate of the decedent. This must be done in accordance with the terms of any probated will or court order §75-3-703 U.C.A., (see also predecessor sta-

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tutes, §75-11-2 and §75-11-3 U.C.A.). It has responsibility similar to that of a trustee, holding legal title to the decedent's property for the benefit of the heirs of the decedent or the beneficiaries of his will. §75-3-703 U.C.A. C.f. Wilson v. Martinez, 76 Wyo 196, 301 P.2d 785 (1956). As such, it has, in this matter, no claim to the assets of the estate and is a mere stakeholder, but must ascertain who of the competing claimants are to receive them.

The probate of the decedent's will was commenced by the appellant prior to the adoption of the Utah Uniform Probate Code. She was appointed as the executrix of the decedent's Will by court order dated October 21, 1974 (R.83). The Utah statute in force at that time governing contests of probated wills provided in part as follows:

> "Any person who has not contested a will. . . may contest the same or the probate thereof at any time within six months after the admission to probate, and not afterward; . . ." §75-3-12 U.C.A.

The Utah Supreme Court had an occasion to review that statute in the two appeals of In Re Howard's Estate. 2 Ut. 2d 112, 269 P.2d 1049 (1954), and 3 Ut.2d 76, 278 P.2d 622 (1955). In the first case, this court held on interlocutory appeal, that the probate of the wills became final at the expiration of the six months period. No contest could thereafter be brought as to their validity because the court lost jurisdiction to entertain any such contest.

In the second Howard's Estate case, the inconsistent instruments had been entered for probate and construed by

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the lower court. The Supreme Court was then faced with the problem of constructing those inconsistent instruments. Upholding its prior decision this court held:

> ". . .since under the facts of this case it can reasonably be found that the later instruments did not dispose of the entire estate and are not wholly inconsistent with each other the court did not err in admitting all the instruments as the last will and testament of the testatrix and in construing all to be effective insofar as their dispositions are consistent with each other, and where they are inconsistent that the later dispositions revoke the earlier. 2 Ut.2d at 82, 228 P.2d at 24.

Since the time for contest of the will filed by the appellant had clearly passed before the respondent was appointed the administrator of the estate, it had no choice but to administer the estate of the decedent in accordance with said will. In fact, the 12 months period for contest under the Utah Uniform Probate Code, §75-3-412 (3)(c) U.C.A., had likewise expired before the appointment of respondent.

When the parties entered into the stipulation in Civil Number 7416 in Uintah County, the appellant was a party before the court, but Florence Eunice Powell of Laurel, Montana was not. The parties before the court in effect agreed to let the estate pass by the laws of intestacy, reserving the question of the amount passing to "Florence Powell". Since they could not bind her, the parties expressly stipulated for the contingency of Florence Eunice Powell's claim against the estate. Subparagraph 10(h) of the Findings of Facts and Conclusions of law provided:

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> The settlement is conditioned upon the intervener or other litigant obtaining from the court a determination by litigation or otherwise that Florence Eunice Powell of Montana was and is not, the Florence Powell named as executor and heir in the will of June 4, 1974. This matter is at issue before this court in Uintah County. In the event that Florence Powell of Montana shall establish that she is in fact an heir, this stipulation insofar as it applies to the defendant (who was Florence A. Powell) shall fail (R.158 insert added).

After the lower court's determination that Florence Eunice Powell of Laurel Montana was indeed the "Florence Powell" under the decedent's will, the respondent was faced with the tough choice of how much Florence Powell's share was to be. Since it appears that the administrator could not contest the validity of the will as cited above, and the court had ruled that the estate was to pass by intestacy as to all of the parties except "Florence Eunice Powell" of Laurel Montana, the respondent's only recourse was to seek court approval of any distribution of the estate.

POINT II

DECLARATORY JUDGMENT IS THE PROPER METHOD TO RESOLVE CONFLICTING ORDERS OF THE COURT WHERE THE APPEAL PERIOD HAS PASSED.

Section 75-3-1001 U.C.A. provides for a method to approve a distribution scheme proposed by a personal representative. Said section is akin to Rule 57 of the Utah Rules of Civil Procedure, and §78-33-1 U.C.A. et. seq. In fact, §78-33-2 and §78-33-4 U.C.A. have expressed statutory language providing for the constuction of wills and the legal rights between parties arising therefrom. Finally, that chapter provides the following guideline in determining the scope of matters that may properly be brought before the court:

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"This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered." §78-33-12 U.C.A. See also: Citizen's Committee v. Marston, 109 Ariz 188, 507 P.2d 113 (1973); Toncray v. Dolan, 593 P.2d 956 (Colo 1979); and State v. Lanton, 523 P.2d 1064 (Okl 1974).

In light of the remedial nature of the statute and the conflicting orders of the court, it was only proper for the respondent administrator to seek the assistance of the court by bringing the petition for declaratory relief.

POINT III

THE APPELLANT'S ATTACK ON THE LOWER COURT'S FINDINGS OF FACT ARE NOT SUPPORTED BY THE RECORD ON APPEAL.

The appellant spends considerable time in her brief discussing the issues of her testimony at the time of trial on the respondent's motion for declaratory judgment. None of these allegations, however, are properly before this court since the appellant has failed to designate a transcript of that testimony she is trying to further.

On appeal it is the duty of the Supreme Court to sustain rulings made if it can be done, even though it may be upon matters not even urged on appeal. Peterson v. Fowler 29 Ut.2d 266 570 P.2d 523 (1973). See also Sears v. Ogden City, 533 P.2d 118 (1975). Though this court will not reverse a lower court's decision on errors claimed for the first time on appeal, this court has stated that it will affirm a lower court's judgment if sustainable on any legal ground or theory apparent in the record. Limb v. Federated Milk Producers Ass'n, 23 Ut.2d 222, 461 P.2d 290 (1969).

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The respondent contends, however, that the appellant has failed to raise any persuasive arguments on appeal which attack the lower court's decision. Instead, she has referred to numerous facts which are not a part of the record on appeal, and are in some instances being raised for the first time on appeal.

The issues of her lack of understanding of the stipulation entered in Civil Number 7416, her purported ownership of two certificates of deposit totaling $70,000, her purported ownership of the boat and motor-home, and her purported ownership of the $20,000 "trust fund" were all raised by her pleadings and were heard at the time of the trial. It is from the court's findings regarding those issues that she is appealing; yet, she offers no evidence other than her allegations to refute the court's findings. The Supreme Court has no alternative but to sustain the trial court's determination on those issues since it does not have any evidence before it to contradict the court's findings.

POINT IV

THE TRIAL COURT WAS CORRECT IN FINDING THAT THE PRIOR CIVIL CASE WAS RES JUDICATA AS AGAINST THE APPELLANT.

A judgment based on a stipulation is res judicata as to the issues submitted to the court. In Re Evans, 42 Ut. 282, 130 P. 217 (1913); Matthews v. Matthews, 102 Ut. 428, 132 P.2d 111 (1942); and McCarthy v. State, Ut.2d 205, 265 P.2d 387 (1953).

For questions which are material to the merits of the case which are considered in a former opinion, the court's

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judgment is binding as to such questions. In such cases, a determination of the merits or a stipulation uncontested after entry, is conclusive upon the parties in a subsequent action under the same or a different cause of action. See generally 49 A.L.R. 2d 1031, section 8.

Furthermore, a party is bound by his judicial declaration and may not contradict them in subsequent actions or proceedings. This is true of witnesses in prior and subsequent litigation involving even different parties. Strum v. Boker, 150 U.S. 312, and Loomis v. Church, 76 Ida. 87, 277 P.2d 56 (1954). In the absence of inadvertance or misapprehensive as to law, one who takes a position in one case as to the facts will be estopped to deny or alter such position or statement in a subsequent action although the parties may not be the same. Tracy Loan & Trust Co., v. Openshaw Investment Co., 102 Ut. 509, 132 P.2d 388 (1943). See also Hatton Realty Co. v. Baylus, 42 Wyo. 69, 190 P.561 (1930).

In this case on appeal, the appellant would have the Supreme Court remove the res judicata effect of her prior stipulation and the court's prior independent findings. In fact, she is seeking to have "the entire probate proceeding remanded with instructions to have the entire probate retried and all of the matters pertaining to this estate reheard."

The reason for the doctrine of res adjudicata is to bar the assertion of just this type of claim. The appellant had her day in court in the civil case in Uintah County. She failed to exercise her appeal rights from that decision. She is in

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fact stipulated in open court to the very order she is now attacking. The trial court was correct in holding that the prior order was res judicata to the appellant's claim.

CONCLUSION

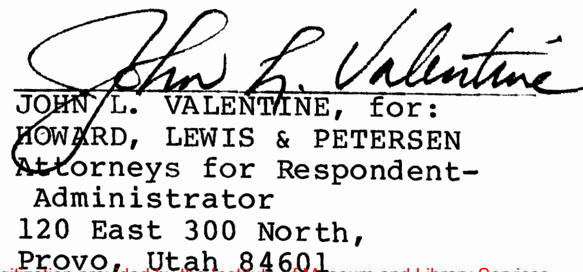
Even though the respondent, Central Bank and Trust Company as administrator of the estate of George R. Powell, deceased, is a mere stakeholder, it has the statutory duty to determine how the assets of the estate are to be distributed. When faced with conflicting court orders, it is proper for the administrator to seek court assistance in the form of declaratory judgment in determining how such distributions are to be made. The appellant's attack on the lower court's findings can not be maintained on appeal since she has offered no evidence whatsoever to contradict those findings. Finally, the trial court correctly applied the doctrine of res judicata to the appellant's attempt to avoid the prior court's orders, including her own stipulation.

The respondent respectfully requests this court to affirm the lower court's Findings of Fact, Conclusions of Law and Judgment.

DATED at Provo, Utah, this 5th day of June, 1980.

Respectfully submitted,

JACKSON HOWARD



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MAILING CERTIFICATE

MAILED two copies of the foregoing briefs to Hugh W. Colton and Whitney D. Hammond for COLTON & HAMMOND, Attorneys for Appellant, 55 East Main Street, Vernal, Utah 84078 and M. Dayle Jeffs, Attorney for Respondent, Heirs of Florence Eunice Powell, 90 North 100 East, Provo, Utah 84601 this 5th day of June, 1980.

Kristi Roundy
Secretary

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