1980

In the Matter of the Estate of George R. Powell, Deceased. Central Bank and Trust Company, (Administrator) and the Heirs of Florence Case No. Eunice Powell v. Lamar P. West : Amicus Curiae Brief

Utah Supreme Court

M. Dayle Jeffs; Attorney for Amicus Curiae Hugh W. Colton; Attorney for AppellantJohn L. Valentine; Attorneys for Administrator-Respondent

JPREME 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, Respondents, vs. LAMAR P. WEST, Appellant.	Case No. 16,877

AMICUS CURIAE 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

M. Dayle Jeffs
Jeffs and Jeffs
90 North 100 East
P. O. Box 683
Provo, Utah 84601

Attorneys for Amicus Curiae

Hugh W. Colton
Whitney D. Hammond
COLTON & HAMMOND
55 East Main Street
Vernal, Utah 84078

Attorneys for Appellant

John L. Valentine
Jackson Howard
HOWARD, LEWIS & PETERSEN
P. O. Box 778
Provo, Utah 84601

Attorneys for Administrator-Respondent

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BRIEF OF AMICUS CURIAE

Richard Owen Powell
Eunice Ann Powell
David Juel Powell

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 the rulings and obtain from the Court an Order defining the distribution of assets of the decedent.

DISPOSITION IN THE LOWER COURT

The administrator of the estate filed a motion for declaratory relief on the 18th day of May, 1979 asking the

trial court to declare the respective interests of the beneficiaries of the estate in the assets to be distributed (Rec. 182). Appellant herein filed a protest to the motion for declaratory relief of the administrator (Rec. 216). The matter was tried to the trial court and a full evidentiary hearing was held on September 26, 1979. The trial court entered its Memorandum Decision on the 9th of October, 1979 granting the Motion for Declaratory Relief (Rec. 249) and upon such decision the administrator submitted and the trial court signed the Findings of Fact and Conclusions of Law and an Order and Decree of Distribution (Rec. 250, 254).

RELIEF SOUGHT ON APPEAL

Amicus Curiae seeks to have this Court affirm the lower court's judgment and Decree of Distribution.

STATEMENT OF FACTS

Amicus Curiae are the three children of Florence Eunice Powell of Laurel, Montana, and are the grandchildren of the decedent, George R. Powell. They are not only the heirs of Florence Eunice Powell, but were the assignees of her interest in the estate prior to her death (Rec. 210:14-19, 181:14-19). This writer does not agree with the Statement of Facts of appellant as contained in appellant's brief and believes it does not reflect

state of the record. Amicus Curiae does agree generally with the Statement of Facts set forth in respondent's brief; however, adds thereto that the stipulation in Civil No. 7416 in the District Court of Uintah County was entered into in open court on the 28th of January, 1977 and was confirmed by appellant in open court on that date (Rec. 234:26-30).

POINT I

THE DISTRICT COURT OF UINTAH COUNTY IN CIVIL NO. 7416 WAS WITHOUT JURISDICTION TO DECLARE THE WILL NULL AND VOID AND THE RULING IN THIS MATTER GRANTING THE MOTION ON DISTRIBUTION IS IN COMPLIANCE WITH THE LAW

The original petition for admission of the will to probate in this matter was filed under oath by the appellant herein. In such petition, she alleged that the decedent left a Last Will and Testament executed June 3, 1974 (Rec. 2, 3, 4). the trial Court heard the testimony of the appellant, LaMar P. West, on October 3, 1974 and her testimony was placed of record as testimony in support of the will (Rec. 78, 79). The trial court entered the certificate of Proof of Will and of Facts Found (Rec. 80, 81) and entered the Order Admitting the Will to Probate on October 21, 1974 (Rec. 82). Letters Testamentary were issued to the appellant on the 23rd of October, 1974 (Rec. 85, 86). Pursuant to the statute then in force, the time for contest of the will expired six months after October 21, 1974. The limitations of actions of contests of wills at that time was determined by 75-3-12, Utah Code Annotated, 1953, as amended. It is significant that appellant herein is

attempting to contest the provisions of the will which was submitted to the lower court on her petition and her testimon at a time when the contest of will provisions of the code hav long since expired.

After the issuance of the Letters Testamentary in this case and effective July 1, 1977, the new Utah Uniform Probate Code came into being which established a new period for contest of a will prescribed by Section 75-3-412 (3)(c), Utah Code Annotated, 1953, as amended. Even if the Court were to rule that the new Utah Uniform Probate Code provisions on limitations of action for contests of wills were to apply in this case, pursuant to the provisions of 75-8-101, the period of contest would have expired on October 21, 1975. Thereafter the will became incontestable and only subject to interpretation by the trial court.

This Court dealt specifically with the matter of contestability of such a will In Re Howard's Estate, 3 Utah 2d 76, 278 P.2d 622 (1955), wherein the Court said at Page 78:

> ...contestants did not contest the validity of the 1949 and 1952 instruments, under the limitations period prescribed in Sec. 75-3-12, U.C.A. 1953, the probate of those instruments became final at the expiration of the six months' period and no contest could thereafter be brought as to their validity because the court lost jurisdiction to entertain any such contest under the provisions of the above cited state. (Emphasis Added)

The Court went on to say:

> There being no timely contest of the 1949 and 1952 instruments, their admission to probate is final.

After the expiration of the period of limitation of actions for contests of wills, the appellant herein petitioned to resign as executrix and for the substitution of the administrator herein. Letters of Administration with will annexed were issued to the administrator on the 25th of March, 1976.

Thereafter, two parties appeared to the administrator claiming to be the "Florence Powell" designated in the Last Will and Testament of George R. Powell. The one being a Florence Akers Powell residing in Vernal, Utah, being the wife of decedent's half-brother, and the other being Florence Eunice Powell of Laurel, Montana, the daughter-in-law of decedent. She is the predecessor in interest of the Amicus Curiae parties herein.

On the 9th of August, 1976, the administrator, because of the appearance of the two claimants claiming to being Florence Powell named in the will, filed simultaneously in these proceedings a petition to determine heirship and separately a Complaint and interpleader in Civil No. 44913 in the District Court.

On the 18th of August, 1976, appellant herein, LaMar P. West, signed an Affidavit regarding the determination of heirship wherein she swore under oath that Florence Powell who resides in Laurel, Montana is the heir named in the Last Will and Testament of the deceased, George R. Powell. Thus, in August of 1976, she was again reaffirming the will of George R. Powell and the status of the predecessor in interest of your Amicus Curiae herein as the named party under the will (Rec. 116).

Pursuant to the statutes pertaining to the contest of wills and the former decisions of this Court, the probate court lost jurisdiction to consider any challenge to the validity of the will after (at the very latest date) October 21, 1975.

Appellant herein now attempts by this appeal to ignore the statute and the former decisions of this Court and to have the will declared null and void. This appeal is an attempt by the appellant to challenge the validity of the will which is long past the limitation of action statutes involved and to refute her own petition for admission of the will to probate and her prior Affidavit above cited. Appellant is estopped to assert the very basis on which she lodged this appeal by her own actions, her own Affidavits and the limitations of action statutes involved. This challenge to the will is without legal basis.

POINT II

THE TRIAL COURT'S RULING THAT THE APPELLANT IS BOUND BY HER STIPULATION IN CIVIL NO. 7416 IS CORRECT BECAUSE IT IS SUPPORTED BY THE LAW AND THE FACTS

On the 28th of January, 1977, in Civil No. 7416 in the District Court of Uintah County, the transcript shows that the parties to that proceeding entered into an agreement to declare the will executed June 3, 1974 to be considered to be void (Rec. 230). The parties present in that proceeding and before the District Court according to the pleadings, were

LaMar P. West, Florence A. Powell of Vernal, Utah, and Central Bank & Trust Company, the administrator of the estate of George R. Powell. That proceeding was an action commenced by LaMar West, the appellant herein, against Florence A. Powell, Vernal, Utah, in connection with assets of the estate of George Powell alleged to be in the possession of Florence A. Powell and belonging to the estate. Central Bank & Trust had appeared as an intervenor in the proceeding as the administrator of the estate of George R. Powell. The pleadings in that civil action show that the action was to recover specific assets and had no pleadings or allegations pertaining to the validity of the will or the probate proceedings in the estate of George R. Powell. In appellant's brief at line 1 of page 8, appellant alleges that the order was entered sua sponte. Such is not the case, as the record in this proceeding discloses at record 230, the following statement by counsel for the intervenor and respondent herein:

> Subject to the approval of the Court, we have agreed that the will that was executed on June 3, 1974, will be considered to be void, on the basis that it was executed under undue influence and that the will that preceded it will have the same connotation that it can be considered to be void and that the assets of the estate be admitted to probate as if there were no will.

The parties present in the courtroom were LaMar Powell West, appellant herein, Owen Powell, one of the named beneficiaries and Florence A. Powell, Vernal, Utah. Florence Eunice Powell of Laurel, Montana, named beneficiary under the will, was not present

in the Court, nor represented by counsel, nor joined in the proceedings. This matter is res judicata as to the appellant herein by her stipulation and the judgment entered thereon. The District Court is cited to Tanner v. Bacon, 103 Utah 494, 136 P.2d 957 (1943), where this Court held that a judgment is res judicata only as to the parties before the court at the time of the making of the judgment.

> It is well settled that the doctrine of res judicata does not operate to affect strangers to a judgment; but only affects the parties and their successors in interest and those who are in privity with the party thereto. (Emphasis Added)

The Court is also cited to In The Matter Of The Disconnection of a Part of the Territory of the Town of West Jordan, Inc., 7 Utah 2d 391, 326 P.2d 105 (1958), where the Court ruled that the doctrine of collateral estoppel prohibits the relitigation of issues determinative in a prior action as between the parties to the action. The appellant herein was a party to that action and her stipulation is binding as to her though it would not be binding as to the Amicus Curiae parties herein, they not being party to that action. See also Brandon v. Teague, 5 Utah 2d 214, 299 P.2d 1113 (1956), wherein this Court has ruled that a matter is not res judicata as to a party to which no jurisdiction has been acquired of the person. Thus in this matter, the stipulation of the four children of George R. Powell to ignore the provisions of the will and to distribute as between themselves equal shares of that portion of the

estate to which they are entitled and the order entered on such stipulation in Civil No. 7416 in the District Court of Uintah County is binding as to them but not binding as to those not made a party.

The Court is also cited to the case of In re Evans, et al, 42 Utah 282, 130 P.2d 217 (1913), where the Court said:

> It is fundamental that pleadings are the juridical means of investing a court with jurisdiction of the subject matter to adjudicate it; and that a court can judicially consider only what is presented by the pleadings.

Although we have liberalized the form of pleadings in this state by the Rules of Civil Procedure, there was, nevertheless, in the civil action in Uintah County, no pleadings on which the District Court could consider the validity of the will in a probate matter not before the District Court and on which all parties were not joined. The will had already passed the limitation of actions for a challenge to its validity. Appellant cannot now assert the alleged decision declaring the will null and void founded on her stipulation as a basis of refuting her own prior affidavits and petitions to the probate Court.

It is important to note that the Findings of Fact and Conclusions of Law entered in Civil No. 7416 in the District Court of Uintah County, specifically provided that if Florence Eunice Powell of Laurel, Montana, should establish that she was the heir under the will, that the stipulation, as far as it

applied to Florence A. Powell of Vernal, Utah should fail (Rec. 200:15-17). It did not provide that it should fail as to the other parties to the stipulation. Thus it is still binding as to the remaining parties to the stipulation, a stipulation upheld by the trial court in the order of distribution. See also Mathews v. Mathews, 102 Utah 2d 428, 132 P.2d but 111 (1942), Ray v. Consolidated Freightways, 4 Utah 2d 137, 289 P.2d 196 (1955), and McCarthy v. State, 1 Utah 2d 205, 265 P.2d 387 (1953).

On the administrator's motion for declaratory judgment defining the distribution, the trial court was correct in holding that the stipulation of the appellant herein in the Uintah County case was binding as to her and awarding her that which was provided by the stipulation. It would have been error for the trial court to have ignored the stipulation and order in the Uintah County case as it applied to those who were parties to the stipulation and order.

POINT III

THE TRIAL COURT'S HOLDING THAT UPON DECREE OF DISTRIBUTION THE AMICUS CURIAE ARE ENTITLED TO ONE-THIRD OF THE ESTATE IS CORRECT AND SUPPORTED BY THE LAW AND THE FACTS

Amicus Curiae, not being made a party in the Uintah County proceeding and not having entered into the stipulation, are still entitled to the provisions of the will which was interpreted by the Court to be their entitlement on distributio

The respondent, administrator, was obligated to distribute to Amicus Curiae the one-third of the estate spelled out in the will as having been devised by their grandfather, George R. Powell, to their mother Florence Eunice Powell of Laurel, Montana. The interest of the children of Florence Eunice Powell, of Laurel, Montana, was confirmed by the decision of Judge Ballif in the judgment rendered March 12, 1979 in the interpleader action which had been consolidated into the probate proceeding (Rec. 181:14-19). Thus, the administrator in the motion for declaratory determination correctly petitioned that one-third of the estate should be awarded to the assignees and children of Florence Eunice Powell pursuant to the will. The administrator was also correct in asking the trial court to rule that pursuant to the stipulation of the other four children of George R. Powell, the balance of the estate should be divided equally between said four children.

The allegations by the appellant of the apparent inconsistency in the prior court decisions pertaining to this matter are more apparent than real. At the time of the administrator's motion for declaratory judgment defining the distribution of the estate, the administrator and the trial court had the following facts before it:

(a) The will had been admitted to probate on the petition of the appellant and the time for contestability had passed years before.

(b) The District Court in Uintah County was

without jurisdiction to declare the will null and void both on the basis of statute of limitations and on the basis of lack of pleadings and lack of all parties being before the court.

(c) Four of the children of George R. Powell had entered into a stipulation in open court in an ancillary proceeding that as between themselves the estate to which they were entitled should be distributed equally between the four.

Under those circumstances, the trial court was under mandate of the probate statutes to distribute the estate in accordance with the will and the law as declared by this Court.

In the first full paragraph on page 6 of appellant's brief, appellant alleges that upon the full evidentiary hearing of her protest to the administrator's motion for declaratory judgment, she testified that she did not understand the stipulation and agreement. That record is not before this Court as it was not cited to this Court in the appeal. However, there is in the record the transcript of the testimony of the appellant herself in the District Court of Uintah County wherein the appellant declared to the trial court that she understood the stipulation and agreed to be bound by its terms (Rec. 234:2(

Appellant herein petitioned the trial court in this proceeding for the admission of this will to probate. Later she filed an affidavit affirming the will and declaring that Florence Eunice Powell of Laurel, Montana, was one of the

named beneficiaries under the will. After appellant was appointed administratrix of the will and even after she had petitioned for resignation and appointment of the administrator herein to administer the estate, she failed to dispute the will and, in fact, would have been estopped from so doing by her own petitions and affidavits. Some two years after that event, she then stipulated to the entry of an order and judgment on distribution of the estate with her brothers and sisters and let the time for appeal on that judgment elapse. Now, at the point of final distribution of the estate, by this appeal, she attempts to resurrect the appeal from the first decision admitting the will to probate and from her own stipulation on distribution of the estate and asks this Court to remand the entire proceedings to undertake all evidentiary hearings anew, years after the time for appeal has expired.

CONCLUSION

Amicus Curiae submit to the Court that this appeal is without merit and would, in fact, require this Court to refute its own prior decisions and the long-standing law of this state. It would require this Court to reject the reasoning and judgment of this Court since its very inception that the time for appeal serves a valid and valuable requirement of the law in putting matters to rest. Amicus Curiae requests the Court to affirm the decision of Judge J. Robert Bullock

in granting the administrator's motion for declaratory judgmen defining the distribution of this estate.

Respectfully submitted,

M. Dayle Jeffs

M. Dayle Jeffs

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing Amicus Curiae Brief to Hugh W. Colton and Whitney D. Hammond, Colton & Hammond, 55 East Main Street, Vernal, Utah 84078, Attorneys for Appellant; and John L. Valentine and Jackson Howard, Howard, Lewis & Petersen, P. O. Box 778, Provo, Utah 84601, by placing the same in the United States Mails, postage prepaid, this 6th day of August, 1980.

M. Dayle Jeffs