

2010

# In the matter of the state of Rosemary Cosby v. : Reply Brief

Utah Court of Appeals

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David O. Parkinson, Shawn Turner, Julie Bryan, Stephen Cook.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

**REPLY BRIEF**

IN THE MATTER OF THE ESTATE  
OF ROSEMARY COSBY

Appeal No. 20100099

Civil No.: 973900220

Judge:

---

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Appellee's Argument Demonstrates That as Special Administrator  
McCULLOUGH Was Motivated by His Own Self-Interest in Securing Payment of His  
Fees

In his brief, Appellee McCullough notes:

The Special Administrator spelled out in detail his rationale for resolving the Kennedy Action under a compromise. That formula included a common sense economic analysis which demonstrated that the Estate was likely to be insolvent, meaning that it would have nothing left to distribute to heirs, even if the Kennedy Action proceeded and the estate won everything on appeal.”

This statement is false and misleading. It was designed to cover up the Special Administrator's own conflict of interest and desire to be paid with the money in the estate. Judge Kennedy had ruled that attorneys' fees would be paid going forward. If that were the case, the Special Administrator's contention that the estate would be bankrupt even if it prevailed is simply false. This was nothing more than a “cop-out” to avoid addressing the merits of the litigation. The claim should not have been settled with this false representation to the court and over the objection of two of the heirs.

If the Special Administrator were concerned about not being paid, he should have declined the appointment, rather than drain estate of all of its assets and leave nothing for the heirs.

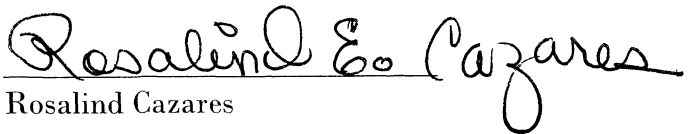
Mr. McCullough and his firm's retention of the estate proceeds under these circumstances is unethical and an embarrassment to the Utah judicial system. Mr. McCullough and his counsel were motivated by their own conflict of interest and fear of not being paid their enormous fees. This Court should not condone these abuses.

Instead, it should order this matter be remanded for further proceedings; namely, pursuant of the Kennedy case. Mr. McCullough cannot take everything from Rosalind Cazares and Earnest Walton under these circumstances.

Mr. McCullough's conflict of interest is also underscored by the fact that he has not challenged Judge Dever's erroneous finding regarding the value of the furniture. Rosemary Cosby and Robert Cosby signed a verified mortgage application just months before she died indicating that they had furniture valued at \$900,000. Why hasn't Mr. McCullough argued that Judge Dever erred by finding the furniture worth only \$6,000? If he were truly independent and concerned about maximizing the Estate's value, he would address these items, rather than just saying, "even if we won everything, the estate would have nothing to distribute." While this irrational non-sense may have been enough to convince Judge Dever that the settlement was "reasonable," this Court should not accept this same argument. It is simply not true.

At a minimum, Judge Dever should have held an evidentiary hearing to determine the strength of the claim and whether it should be pursued. Relying upon Mr. McCullough's irrational analysis, while at the same time awarding him with enormous attorneys' fees, was an abuse of discretion.

DATED this 12 day of May, 2011.

  
Rosalind Cazares

DATED this \_\_\_\_ day of May, 2011.

\_\_\_\_\_  
Ernest Walton

### CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of May, 2011, I caused to be mailed via first class U.S. mail, postage pre-paid, a true and correct copy of the foregoing Reply 13LR to the following:

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