

1989

Steve White v. Estate of Clarence Justheim : Brief of Appellant

Utah Court of Appeals

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Robert Macri; Attorney for Appellant.

Douglas G. Mortensen; Matheson, Mortensen and Olsen; Attorneys for Respondent.

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555 P 2d 281 (1976)

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Appellant Steven O. White feels honor-bound to submit the following brief to compare and contrast the viewpoint of the Judge to the evidence, a spartan review of the evidence, and the self-evident conclusion that it was an abuse of discretion for Judge Rigtrup to make a ruling in law which frustrated the intent of every single person involved.

JURISDICTIONAL STATEMENT AND CASE HISTORY

At a bench trial, Judge Kenneth Rigtrup decided that Clarence Justheim was so incompetent so as to preclude donative intent of a \$100,000 gift alleged against Clarence Justheim's Estate by Steve White, an intimate servant in the Justheim Family's latter years.

His Judgment was entered February 23, 1989, and other Motions to Amend Judgment and a follow-up decision by Judge Rigtrup affirming his Judgment was filed March 23, 1989. A Notice of Appeal to this Court was timely filed April 24, 1989.

STATEMENT OF ISSUES

Clarence Justheim intended to gift Steve White a gift. As early as his initial employment, he was promised great riches. At a point shortly after his employ by Justheim, he was given \$10,000 worth of Justheim Company. The \$100,000 gift widely announced and humbly anticipated by Steve White because he was the only person willing to undertake service for this cantakerous business genius and Mason. Mr.

White became a familiar friend and finally "son" to the childless Justheim and he announced his loyalty and willingness to serve Justheim and Justheim, while managing all his affairs, before his conservatorship, in a dispositional mind, realizing he was dying and he, no one except his bed-bound invalid wife, and in fear of rethomes, he encouraged Steve White to unbounded loyalty by promises and rewards of money.

Thus, Justheim achieved his artful, cagey, and efficient lifestyle, trading money which was meaningless to him, to assurance by Mr. White of lifetime service.

Mr. White was a hard working son of his restaurateur father to whom Mr. Justheim bragged of his intent to care for Steve.

We have business partners and doctors who testified of Mr. Justheim's statements to them that he, Justheim, planned to reward Steve White, given Steve White \$100,000 and told them and showed them the \$100,000 gift after its consumation some two years after the initial inducements, promises, and contracts.

We have self-serving statements of the profiteers of the Justheim Estate, the ones most feared by Clarence Justheim, who even state that Justheim wasn't incompetent.

We have one cardiologist report that he is out of his field, but that two or three weeks after the reward to Mr. White, who practically concludes that Justheim has some kind of senile dementia that started sometime and will probably get worse.

We have another doctor, much earlier; one who denied himself to the Court but in whose deposition admits that he thought Justheim was crazy because he wanted to give Steve White such a bountiful gift.

We learn later that this doctor had approached Steve White before this examination as a punk. Mr. White declined.

The Estate has been wasted away in legal fees by interested parties. Forgeries have emerged on other fronts and the Estate is a battle raging in the courts. Mrs. Justheim is dead. The only person draining the Estate now is old Ray Ebert, and the lawyers he hires and beneficiary of certain disputed properties (including a "gift" from the Justheim Estate about the same time as the gift was being given Steve White by Justheim, of the same general character of res, six (6) months earlier. Frank Allen is dead.

Steve White has financed a herculean effort to keep his Masonic bond with Clarence Justheim--employer, friend, and mentor. He knows the gift and has testified to it. It would be in his interest, and manifestly too, the interest of Clarence Justheim, for the gift to vest.

It would satisfy everyone (even the lawyers who donated their time on Steve White's behalf), and in the ancient Masonic dharmic agreement.

It would be in the interest of public policy.

A fully compassionate and equitable interpretation of the facts plainly manifest, would have required or could equally have supported a ruling that the gift was Clarence's true, long-standing purpose and executed accomplished fact and would satisfy everyone.

It is Appellant's point of view in this case at least, he has appealed the matter of bringing the discretion of our trial judges to harmony with the manifest intent of the entire circumstance.

The Issue then, is whether the Judge has a right to substitute

some nunc pro tunc legal fiction in view of the summum bonum of the entire matter.

ARGUMENT

I will let the parties introduce themselves, and proffer from their testimony, the facts of their viewpoints which are summarized above.

Steve O. White. Defendant. Young man induced to work for Clarence Justheim, doing all manner of personal service for Clarence and his wife, Margaret. He was a certified cook, handyman, did personal attending of the elderly Justheims and whose loyalty was solicited by Clarence with promises of gifts throughout their business arrangements, in keeping with a pattern established in his business career. He promised to make Steve rich. He told this to many people. He gave Steve a \$10,000 gift. Fourteen months later, with his life ending and fearful of the fate of his dear wife, he gave him \$100,000. The relationship is Steven White to Clarence Justheim--how each fit the needs and circumstances of the other, and how they both became loyal and united in their support for Clarence's widow-to-be.

Further, the evidence showed Clarence's continued donative intent, to others in his employ and circle. Everyone at trial who commented on the relationship between Steven and his employers and friends, the Justheims, suggested their relationship to be synergistic, symbiotic, and universally satisfying. That Steve White had apprenticed to this situation seeking great rewards for great heroic service is uncontroverted.

Over and over, Clarence bragged about his intent to make Steve rich. Steve White's father traces the whole sequence in his testimony. Clarence's early statements regarding the conditions of hire are included in his affidavit, attached, and his testimony Day 1, pp. 179-192. He acknowledged the gift as fait accompli (Day 1, P. 22, Lines 7-14).

To Ray Ebert, who is financing the whole razz-ma-tazz out of the Estate's remains, now that both Justheims are dead, the corpse of the Estate fed to him by a cosmic default, and the lawyers he hires who far more than Steve White's gift dissipate the Estate. How can such a manifestly unfair fate be permitted to fester?

Ray Ebert, according to Steven White's testimony, told Steve that he, Ray, could drain the Estate to keep Steve from getting Clarence's gift. Please recall that this is the same man who took the gift from Steve in Clarence's apartment, and said he would have his attorney cash it in and deliver it to Steve, as Clarence requested.

The self-same Ray Ebert who was receiving gifts from Clarence, gifts not publically disclosed, at about the same time he was petitioning to be Guardian over Clarence (a month after the gift to Steve was made and turned over to Ray Ebert to Frank Allen, Esq.).

Ray allowed Clarence to be responsible for the household, as evidenced by the extensive testimony of Clarence's dictation of checks to be made up by Ray Ebert until almost a month after the gift to Steven White.

Ray Ebert, by his testimony, worked for free for Clarence for many years and then has come into control of the Justheim headaches.

It was he who discharged Steven White just a few months after receiving the position of conservator over Justheim. Part of the reason for the conservatorship was the feeling that if he was intending to gift Steve White with \$100,000, he must be crazy.

Justheim gave to Ray Ebert unsigned stocks which gave him control of this great petroleum company (Day 1, P. 44, Lines 1-25).

To his personal physician neighbor, Wallace Clinger, M.D., we read in the Deposition that "Steve White was very faithful and very diligent, I thought" (P. 11 Deposition, Wallace Clinger, P. 11, Lines 22-23). Clarence told Dr. Clinger he was going to "take good care of Steve." Further, Dr. Clinger says, "I think (Clarence) was extremely rational when he mentioned his intentions to reward Steven White" (Deposition, P. 15, Lines 17-24). Steve had already been given \$100,000 in shares of Justheim Petroleum.

Truely, Dr. Wray testified that Clarence manifested "Some evidence of senile dementia" (especially since he didn't know who the President of the United States was during the one-hour interview. The degree was small and not totally debilitating.

And Dr. Henrie, a physician friend of Clarence, in his deposition in a related case, admitted in this case and declared that it was Clarence's intent to reward Steven O. White was evidence of softness in the head (S.L. Dist. Ct., Case P. 83-695, Deposition of John Henrie, attachment No. 2 hereto).

The donative intent has been proven by Steve White; his father, Wallace Klinger; John Henrie; and John Morgan. Even Ray Ebert believed Clarence sufficiently competent to give him gifts, dictate personal

business matters and supervise business meetings and other business transactions.

Clarence Justheim's intent to make Steve White a bounty for loyal personal service for him and his wife, and because he had no heirs but Margaret, and he had to have her cared for, and he saw the powers seeking to have him declared incompetent on the horizon. One can see him smiling, having given that gift in furtherance of his plans for disposition of his property.

When the decision of the Trial Court reached a result, clearly outside the framework of reason, may this Court send the matter back with instructions that the decision must conform to some satisfaction of factual desires and needs manifested in the parties' interchanges and purposes? See, for example, Peatross v. Bd. of Commissioners of Salt Lake, 555 P. 2d 281 (1976).

There are shadowy issues justifying Judge Rigtrup's decision. Clarence Justheim had a ten-year history of hallucinations all the time while running his vast business empire (presiding over meetings months prior to his gift; signing checks and managing his affairs).

John Morgan had known Clarence for 40 years and maintained a strong tie with him to his death.

He said Clarence has expressed an interest in protecting Steve.

He saw the gift given the day of the giving.

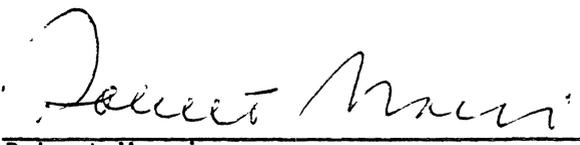
The contrary arguments are puerile.

CONCLUSION

The grant of no action against Appellant on account of a

speculative disability by Judge Rigtrup was an abuse of discretion because had he analyzed slightly differently on the same set of facts, he could have reached a satisfying and thus more just harmonious decision. Additionally, a persuasive argument there was a long-established donative intent which was executed in fact by delivery of the certificate to Steve White by Clarence Justheim.

DATED this November 6, 1989.


Robert Macri

CERTIFICATE OF MAILING

Four copies of foregoing mailed to Doug Mortensen, 648 East First South, Salt Lake City, Utah 84102, this 20th day of November, 1989.


Robert Macri

Table of Exhibits

1. William O. White Affidavit(synopsis of context of dispute)
2. Dr. Henrie's observation from his Deposition

AFFIDAVIT

COMES NOW WILLIAM A. WHITE, under oath, to declare:

1. My name is William A. White, 1355 South 2100 East, Salt Lake City. I am father to Steve White.

2. In 1972 I opened an Italian restaurant called "The Spaghetti House" in Salt Lake.

3. Within the first six months of our operation, Clarence Justheim and his wife "Chickie" came to eat in our restaurant.

4. Thereafter, Clarence and his wife would eat in our restaurant 3-4 times a month at irregular intervals; that is, sometimes he would come in several times in one week; other times he would miss several weeks. Clarence and Chickie usually came into the restaurant about 7:30 in the evening and would sit for 3-4 hours, and speak to me, and my four sons, including Steve, who was working at the restaurant. Clarence seemed interested in our operation and would come into the kitchen and chat in a very social manner.

5. Clarence came into the restaurant on a regular basis during the five years we were in operation. He seemed interested in religion and often our discussions were religious in nature.

6. During this period, and after, Clarence became friendly with me and often called me to his home to help him with various projects. Every Sunday morning, for example, I provided Clarence and his wife with food at their home. He always paid me for the food I provided. Once he gave me \$501; he said the \$500 was for services and the \$1 should be used for gas on the next project he would have for me.

7. When Clarence was not visiting at my store and when I was not visiting at his home, we stayed in touch by phone, speaking 3-5 times per week. I feel we were very close and that the only thing which prevented us from having an intimate friendship was that I performed a tradesman role with respect to the Justheims.

8. Steve and Clarence became associated through the restaurant. Steve worked in the restaurant with me from 1972-75.

9. As far as I know, Clarence and Steve had no contact until November 1981 when I was speaking with Clarence about Steve. I told Clarence that Steve was going into the Navy. Clarence said Steve should not go into the navy but should go to work for him and his wife.

10. I mentioned to Steve that Clarence had expressed interest in him going to work to help him and Chickie. I didn't think the two would be able to "hack" it since they were both such strong willed individuals so I advised Steve against going to work for Clarence.

11. After Steve went to work for Clarence, Clarence would call me and would make some critical remark about Steve that convinced me I had been right; then he would call again and say that Steve was doing very well in his work. Finally I was relieved when, after several months of employment had passed, Clarence called me and said to me, "You've lost your son; he's my son now."

12. Several times Clarence said to me, "Don't worry about Steve. I'll see that

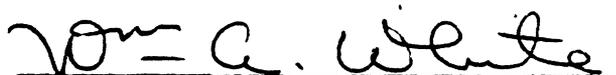
13. On one occasion Clarence called me and mentioned certain stock in Justheim Petroleum. He told me he wanted me to hold 3,000 shares for Steve until Steve reached 40-45 years of age. The stock was transferred and I am holding it now. When the shares were originally transferred they were worth \$10,000.

14. On another occasion Clarence called and asked me, "What would you think if I was to give Steve \$100,000?" I replied, "It's your money, you can do with it what you please." I asked him one favor, though and asked him not to give it to Steve at that time. We discussed the issue and agreed that the money should be put into trust for Steve until he got some sense between his ears and that he should only have interest from the money, after taxes, until he got to be 40-45. This conversation occurred about 3-6 months before Clarence went into the hospital.

15. My son never mentioned the gift of the \$100,000 until after the attorneys refused to complete the paperwork on Clarence's gift.

16. I know Clarence. I believe he was a generous man who believed in rewarding good service. I believe he intended to reward and did reward my son along the lines he had discussed with me. I think it is regrettable that those in charge of his estate refuse to comply with his wishes and question their motives for such refusal.

Dated this 20th February, 1984.


WILLIAM A. WHITE

State of Utah)
County of Salt Lake) ss

Subscribed and sworn before me by William White 20th February, 1984. 98


Notary Public, State of Utah
Residing in S.L. Co. MCE:9/27/86

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FURTHER EXAMINATION

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BY MR. BATTLE:

Q YOU MENTIONED SOME CONVERSATIONS YOU HAD WITH CLARENCE ABOUT THE POSSIBILITY OF GIFTS TO STEVE WHITE, THE NURSE. DO YOU RECALL HIM TELLING YOU OF HIS INTENTION TO MAKE ANY PARTICULAR GIFT TO MR. WHITE?

A NO, NO, HE DID NOT -- DID NOT TELL ME OF IT DIRECTLY HIMSELF. HE MENTIONED THE FACT THAT HE WAS THINKING ABOUT DOING IT OR -- I DON'T REMEMBER WHETHER HE ASKED ME WHETHER I THOUGHT IT WAS A GOOD IDEA OR EVEN HOW THE CONVERSATION CAME UP. BUT I REMEMBER THAT HE HAD MENTIONED TO ME THAT THIS WAS A POSSIBILITY, AND I HAD TALKED TO HIM AT THAT TIME WHEN I TOLD HIM, "CLARENCE, YOU DON'T NEED TO DO THESE THINGS. YOU NEED TO MAKE PROPER WAGE SETTLEMENTS WITH THIS BOY, AND THAT'S WHERE YOU OUGHT TO KEEP IT SO THAT YOU KEEP IT ON AN EMPLOYEE BASIS," JUST LIKE HE WOULD IF HE HAD A NURSE OR ANYTHING ELSE.

Q DID YOU EVER HAVE SIMILAR DISCUSSIONS CONCERNING ANYONE ELSE AROUND MR. JUSTHEIM?

A NO.

Q FOR EXAMPLE, MR. EBERT?

A NO.

Q OVER WHAT PERIOD DID YOU HAVE THESE DISCUSSIONS CONCERNING MR. WHITE AND POSSIBLE GIFTS?

A I DON'T KNOW.