

1988

# Kip Quinn v. Estate of Fenton Glade Quinn and Fenton Quinn, Jr. : Brief of Respondent

Utah Supreme Court

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Robert Felton, George H. Speciale; attorneys for respondents.

B. Kent Ludlow, Chris L. Schmutz, Nielsen & Senior; attorneys for appellants.

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## Recommended Citation

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO. 88-0504-CA THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

KIP QUINN, Personal  
Representative of the Estate  
of Dawna W. Quinn, and the  
ESTATE OF DAWNA W. QUINN,

Plaintiffs and  
Respondents,

vs.

ESTATE OF FENTON GLADE QUINN  
and FENTON QUINN, JR., the  
Personal Representative of the  
Estate of Fenton Glade Quinn,

Defendants and  
Appellants.

88-0504-

Case No. 870113  
Priority Classification 14b

\* \* \* \* \*

RESPONDENTS' BRIEF

---

Appeal from a Jury Verdict of the  
Third Judicial District Court of Salt Lake County  
Judge John A. Rokich

---

Robert Felton  
Attorney for Respondents  
310 South Main Street  
Suite 1309  
Salt Lake City, Utah 84101

B. Kent Ludlow  
Chris L. Schmutz  
NIELSEN & SENIOR  
Attorneys for Appellants  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

**FILED**  
MAR 14 1988

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Clerk, Supreme Court of Utah

THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

KIP QUINN, Personal	)	
Representative of the Estate	)	
of Dawna W. Quinn, and the	)	
ESTATE OF DAWNA W. QUINN,	)	
	)	
Plaintiffs and	)	
Respondents,	)	
	)	
vs.	)	
	)	
ESTATE OF FENTON GLADE QUINN	)	Case No. 870113
and FENTON QUINN, JR., the	)	Priority Classification 14b
Personal Representative of the	)	
Estate of Fenton Glade Quinn,	)	
	)	
Defendants and	)	
Appellants.	)	

\* \* \* \* \*

RESPONDENTS' BRIEF

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Appeal from a Jury Verdict of the  
Third Judicial District Court of Salt Lake County  
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Robert Felton  
Attorney for Respondents  
310 South Main Street  
Suite 1309  
Salt Lake City, Utah 84101

B. Kent Ludlow  
Chris L. Schmutz  
NIELSEN & SENIOR  
Attorneys for Appellants  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

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### **STATEMENT OF THE CASE**

This action arises out of the murder of Dawna Quinn by her husband on May 23, 1984. On that day Fenton Quinn shot and killed Dawna Quinn and thereafter committed suicide.

Both the Estate of Dawna Quinn and the Estate of Fenton Quinn were admitted to probate in the Third District Court of Salt Lake County, State of Utah. On or about August, 1984, Dawna Quinn's son, who had been appointed Personal Representative, filed a claim for her death against the Estate of Fenton Glade Quinn. Notice to creditors was published in the Fenton Quinn Estate and the claim was presented within the three month limitation set forth in § 75-3-803 U.C.A. (1953, amended 1975). Appellants do not challenge the timeliness of the claim.

The Defendants disallowed the claim on December 4, 1984 (R. p.12) and at that time no request for clarification as to the claim or objection to its adequacy was addressed. The Complaint seeking recovery for Mrs. Quinn's murder was filed within the 60 day time period prescribed in § 75-3-804 U.C.A. (1953, amended 1975) on January 24, 1985 (R. p.2).

Prior to the filing of an Answer in this action, the Defendants moved to dismiss the Complaint on the same grounds as presented in this Appeal; that the claim, while timely, was somehow technically deficient. That Motion was denied June 24, 1985.

On December 21, 1985 the District Court granted Partial Summary Judgment (Appendix 6) in favor of the Plaintiffs and against the Defendants as to liability ruling that "Fenton Glade

Quinn, deceased, did, on or about March 23, 1984, unlawfully take the life of Dawna W. Quinn (R. pp 132, 133). Thereafter the issue of damages was tried to a jury on December 16, 1986 and judgment entered in accordance with their findings in a total sum of \$451,476.00 (Appendix 7, R. pp.365, 366).

The Defendants do not appeal from the sufficiency or propriety of that judgment, but simply the technical sufficiency of the original claim.

### **SUMMARY OF ARGUMENT**

Two claims and a Petition describing the Plaintiff's cause were timely submitted to the Defendants. These complied with §§ 75-3-803 and 75-3-804 U.C.A. (1953, amended 1975). The claims were timely filed and delivered with descriptions of the nature of the claims. The claims were also signed by Kip Quinn, Personal Representative of the Estate of Dawna W. Quinn or his attorney; setting forth the full name and address as well as the amount claimed. The claims also designate, with reasonable specificity, the fact that it was based upon Mr. Quinn's murder of his wife (Appendix 1).

### **ARGUMENT**

#### **I.**

#### **PLAINTIFFS FILED A VALID CLAIM WHICH WAS TIMELY AND INTOTAL COMPLIANCE WITH THE STATUTORY REQUIREMENTS**

Section 75-3-803(a) specifies tha creditors' claims against an Estate are barred unless presented within three months of the

date of first publication of notice to creditors if that is given. The date of first publication of notice in the Estate of Fenton Glade Quinn was July 7, 1984. There is no contention that the claims, Appendix 1 and 2, were not filed within this prescribed period.

Section 75-3-804 U.C.A. (1953, amended 1975) sets forth the manner of presentation of claims (Appendix 8).

Subsection (a) of that Statute states in part:

"The claimant may deliver or mail to the Personal Representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court . . ." Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made. (emphasis added)

The claims (Appendix 1 and 2) identified that it was being made by the Personal Representative of the Estate of Dawna Quinn. They further state that the claim is based upon Mr. Quinn causing the death of Dawna Quinn; specifies designated amounts or as may otherwise be determined at trial; is signed by Kip Quinn, the appointed Personal Representative of the Estate of Dawna Quinn and his attorney; and gives the address of Kip Quinn and his attorney. The claims were mailed to Fenton Quinn, Jr., the Personal Representative of the Estate of Fenton Quinn and filed with the Court, as well as mailed to the attorney representing that Estate, Kent Ludlow. All of the operative requirements of the Statute were contained in the claim.

Defendants disallowed the claims on December 4, 1984. Section 75-3-806 U.C.A. (1953, amended 1975) provides that a



Court proceeding must be commenced within 60 days after such disallowance. The Complaint in this action was filed January 24, 1985 (R. p.2), well within the framework provided.

The entire thrust of the Appellant's Brief in this case is not that the claim was not timely filed or set forth the requirements of the Statute, but that it must delineate the statutory basis for recovery (such as wrongful death and survival statutes) as well as all legal theories upon which the creditor relies. In fact, the Appellant urges this Court to judicially alter the express language of § 75-3-804, which specifically provides that such detail is unnecessary, and impose upon the creditor the requirement that the claim assume the form of a complaint or legal memoranda. Such is not now nor has it ever been the purpose of the claim requirement. In fact, within the time allowed, Defendant was served a Petition describing Plaintiff's claim in order to determine the sequence of death (Appendix 5).

It goes without saying that the Appellants were acutely aware of the tragic circumstances which resulted in Mrs. Quinn's murder and Mr. Quinn's suicide. The Appellant's position relies on the mistaken assumption that the claim must specify the statutory basis upon which recovery is claimed rather than make a good faith attempt to notify the Personal Representative of the nature of the claim so that the Personal Representative may make a determination as to whether or not the claim should be allowed or rejected.

The claim which was filed by Kip Quinn made no attempt to designate a specific statute as a source of recovery, but was notice of a claim for the unlawful murder of his mother as required by the Utah Probate Code. The Complaint filed sets forth causes of action under both the survival statute, § 78-11-7 U.C.A. (1953) and § 78-11-12 U.C.A. (1953, amended 1977). Both of these statutes expressly provide that the cause of action is vested in the Personal Representative, Kip Quinn. Since the cause of action is vested by statute with the Personal Representative, the claim was properly signed and filed by the Personal Representative on behalf of the heirs.

Defendant never requested a clarification or explanation of the claims in their denials (Appendix 3 and 4) and certainly knew what happened and the surrounding basis for its submission.

The purpose of a claim is to expedite the efficient administration of the Estate and collection of just claims. The Editorial Board Comment to Part 8 of the Utah Probate Code, U.C.A. Vol. 8A, 1978, pp. 185, 186 provides:

"A need for uniformity of law regarding creditors' claims against estates is especially strong. Commercial and consumer credit depends upon efficient collection procedures. The cost of credit is pushed up by the cost of credit life insurance which becomes a practical necessity for lenders unwilling to bear the expense of understanding or utilizing the cumbersome collection procedures found in 50 codes of probate.

The sections which follow facilitate collection of claims against decedents in several ways. First a simple written statement mailed to the Personal Representative is a sufficient 'claim'."(emphasis added)

In **Tangren v. Snyder**, 13 Utah 2d 95, 368 P.2d 711 (1962) an attorney filed a claim on behalf of the Personal Representative

of a foreign estate and the claim was challenged on the basis that the representative had not qualified in this state (and was therefore not able to bring an action to enforce the claim) in that the Affidavit did not specify why the foreign representative, himself, was making the claim rather than the Personal Representative. This Court stated, at Page 97:

"We are of the opinion that the statutory requirements of the contents of the claim and affidavit in support thereof should be liberally construed and that such statutes were, as stated in United States Fidelity and Guarantee Company v. Keck (citation omitted) 'not intended to make it easier to avoid payment of a just claim, but were intended to make a claimant set forth his claim with such particularity that the executor or administrator in passing upon it would be fully advised as to just what was claimed . . .'"

In Peterson v. Jones, 15 Utah 2d 121, 396 P.2d 748 (1964) a lower court dismissed the Complaint because there had been no prior determination of heirship. This Court reversed determining there was no requirement to determine the heirs prior to the filing of a claim or commencing an action. Often, in fact, this would be impossible because of the strict time limitations set forth in the Probate Code.

The Personal Representative of the Estate of Dawna Quinn, her son, filed claims in this action because the Personal Representatives is one of the entities to whom the claim belongs and who is statutorial authorized to pursue it. In Switzer v. Reynolds, Utah, 606 P.2d 244 (1980) the proper party for bringing an action under the Wrongful Death Act, § 78-11-7 U.C.A. (1953) is:

"The actions must be brought in the name of the persons upon whom the right is conferred by statute."

The Court went on further to add:

"Whether the action be prosecuted by the Personal Representative or one or more of the heirs, it is for the benefit of all the heirs and all heirs are bound thereby."

As dictated by this authority and the statute, the Personal Representative is the statutory trustee for all of the heirs and since the heirs need not be named as specific parties in the action itself, Parmley v. Pleasant Valley Coal Company, Utah, 228 P.557 (1924) they are certainly not an essential element of the claim itself.

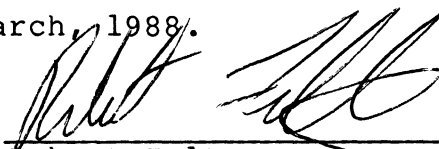
#### CONCLUSION

The Plaintiffs in this action filed an initial claim against this Estate for \$350,000.00 by mailing to the Personal Representative and his attorney (Appendix 2). Later that month, that claim was amended to increase the amount to \$650,000.00 (Appendix 1) and on August 10, 1984 a Petition for Order Determining that Fenton Quinn predeceased Dawna Quinn was sent to the Appellants which specifically described the act of murder upon which the Plaintiff's claim was founded (Appendix 5). Both of the claims were disallowed on December 4, 1984 (Appendix 3 and 4) and no request for clarification or indication that there was any uncertainty or deficiency with the claims was indicated.

It is not now, nor has it ever been, the intent of the Probate Code to turn claims into hypertechanical dissertations. The claims which were filed were timely and set forth each and every requirement under the statutes and Appellants' sole cause

for relief requests this Court to judicially amend §§ 75-3-803 and 75-3-804 U.C.A. (1953 as amended). Such an action would be one for the legislature, not the Appellate Courts.

DATED this 14th day of March, 1988.

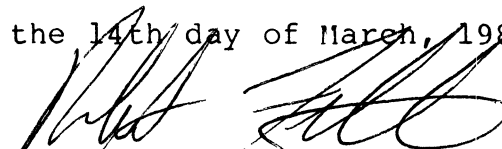


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Robert Felton

**MAILING CERTIFICATE**

I certify that I mailed four (4) true and correct copy of the foregoing RESPONDENTS' BRIEF by United States first-class mail, postage prepaid, to B. Kent Ludlow and Chris Schmutz, NIELSEN & SENIOR, 1100 Beneficial Life Tower, 36 South State, Salt Lake City, Utah 84111 on the 14th day of March, 1988.



---

## A P P E N D I X

EXHIBIT A

Robert Felton, 1056  
George H. Speciale, 3053  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180  
Phone: (801) 359-9216

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

In the Matter of the Estate of:	)	
	)	CLAIM AGAINST ESTATE
FENTON GLADE QUINN,	)	P84-547
	)	
Deceased.	)	

Claim is hereby made against the Estate of Fenton G. Quinn by Kip Quinn, Personal Representative of the Estate of Dawna W. Quinn for and on behalf of the Estate of said Dawna W. Quinn for personal injury. The basis of this claim is that on or about May 24, 1984, Fenton G. Quinn caused the death of Dawna W. Quinn and that said action was done in a willful and malicious manner with the premeditated attempt to cause the death of Dawna W. Quinn. The amount of this claim is for \$650,000.00 or such other amount as may be determined at trial, by the Court, or otherwise as a result of Decedent's Actions.

DATED this 30 day of August, 1984.

Kip Quinn  
7747 Biscayne Dr.  
Salt Lake City, Utah 84121

~~Law Office~~  
**SPECIALE & FELTON**  
Suite 220 CFS Financial Center  
324 South State Street  
Salt Lake City, Utah 84111-2303  
(801) 359-9216

August 6, 1984

Fenton Quinn, Jr.  
Personal Representative  
Estate of Fenton Quinn  
2601 West Rustic Road  
South Jordan, Utah 84065

RE: Claim regarding the Estate of Fenton G. Quinn, Deceased

Dear Mr. Quinn:

Would you please consider this letter as a claim for and on behalf of the Estate of Dawna Quinn for reimbursement and damages as follows:

1. \$50,000 as evidenced by the Trust Deed Note dated March 27, 1984 to Capital City Bank. A copy of the Trust Deed Note evidencing this indebtedness is attached to this claim.
2. \$300,000 for the felonious and wrongful death of Dawna Quinn by Fenton Quinn.
3. Proceeds of any bonds, life insurance policies or other contractual arrangements designating Fenton Quinn as beneficiary.

I would appreciate it if you would record this claim for your records. If you need any clarification regarding this claim please contact me and I will forward you the information I have. Also, you should be made aware that we have filed the claim for the personal injury with United Pacific Insurance Company which maintain the home owner's policy. I am including a copy of that policy for your information.

I would appreciate it if you would also file a claim for this damage with United Pacific Reliance Insurance Company, P.O. Box 6198, Salt Lake City, Utah 84106.

Very truly yours,

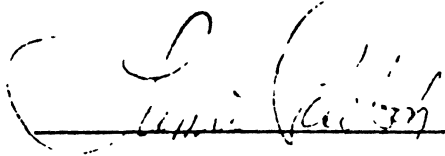
  
Robert Felton

RF/tp  
Enclosures  
cc: B. Kent Ludlow



**MAILING CERTIFICATE**

I, the undersigned do hereby certify that a true and correct copy of the foregoing instrument was mailed, postage prepaid, to Fenton Quinn, Jr. 2601 West Rustic Rd., South Jordan, Utah 84065 and to Kent Ludlow, 1100 Beneficial Life Tower, 34 South State Street, Salt Lake City, Utah 84111 on the 11 day of August, 1984.

  
\_\_\_\_\_

DEC 4 - 1984

H. Dixon, Judge, Third Judicial District Court  
By [Signature] Deputy Clerk

B. Kent Ludlow (2010)  
NIELSEN & SENIOR  
Attorneys at Law  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1900

---

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
COUNTY OF SALT LAKE

---

IN THE MATTER OF THE ESTATE	)	
OF	)	NOTICE OF DISALLOWANCE OF
	)	CLAIM
FENTON GLADE QUINN,	)	
	)	Probate No. P84-547
Deceased.	)	

---

TO: Kip Quinn, Personal Representative of the Estate of  
Dawna W. Quinn:

The undersigned, as Personal Representative of the above  
estate, hereby disallows all of your alleged claim for  
\$650,000.00 as set forth on Exhibit "A" attached and hereby  
incorporated herein.

Failure to protest the disallowance by filing a petition  
for allowance or commencing a proceeding within sixty days  
after the mailing of this notice shall result in your claim or  
the disallowed portion being forever barred.

[Signature]  
Fenton G. Quinn, Jr.  
2601 West Rustic Road  
South Jordan, Utah 84065  
Telephone: (801) 254-1847

CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the above Notice of Disallowance of Claim to the Claimant, Kip Quinn, Personal Representative of the Estate of Dawna W. Quinn, and to Claimant's Attorneys, Robert Felton and George H. Speciale, on the 4<sup>th</sup> day of December, 1984, by depositing it in the United States Mail, postage prepaid, addressed as follows:

Kip Quinn  
Personal Representative of the Estate  
of Dawna W. Quinn  
7747 Biscayne Drive  
Salt Lake City, Utah 84121

Robert Felton and  
George H. Speciale  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180

G. B. Kent Galloway

B. Kent Ludlow (2010)  
NIELSEN & SENIOR  
Attorneys at Law  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1900

Salt Lake County Utah

DEC 4 - 1984

H. Dixon Hinkley, Clerk of Dist. Court  
By H. Dixon Hinkley Deputy Clerk

---

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
COUNTY OF SALT LAKE

---

IN THE MATTER OF THE ESTATE	)	
OF	)	NOTICE OF DISALLOWANCE OF
	)	CLAIM
FENTON GLADE QUINN,	)	
	)	Probate No. P84-547
	)	
Deceased.	)	

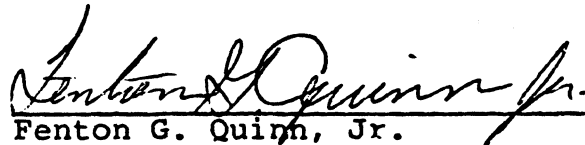
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TO: Kip Quinn, Personal Representative of the Estate of  
Dawna W. Quinn:

The undersigned, as Personal Representative of the above  
estate, hereby disallows all of your alleged claims totaling  
\$350,000.00 plus the proceeds of any bonds, life insurance  
policies or other contractual arrangements designating Fenton  
Quinn as beneficiary as set forth on Exhibit "A" attached and  
hereby incorporated herein.

Failure to protest the disallowance by filing a petition  
for allowance or commencing a proceeding within sixty days  
after the mailing of this notice shall result in your claim or

the disallowed portion being forever barred.



Fenton G. Quinn, Jr.  
2601 West Rustic Road  
South Jordan, Utah 84065  
Telephone: (801) 254-1847

CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the above Notice of Disallowance of Claim to the Claimant, Kip Quinn, Personal Representative of the Estate of Dawna W. Quinn, and to Claimant's Attorneys, Robert Felton and George H. Speciale, on the 4<sup>th</sup> day of December, 1984, by depositing it in the United States Mail, postage prepaid, addressed as follows:

Kip Quinn  
Personal Representative of the Estate  
of Dawna W. Quinn  
7747 Biscayne Drive  
Salt Lake City, Utah 84121

Robert Felton and  
George H. Speciale  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180



H. Dixon H. [unclear], [unclear]  
By \_\_\_\_\_

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

In the Matter of the Estate of: )  
 )  
 FENTON GLADE QUINN ) PETITION FOR ORDER  
 ) DETERMINING THAT FENTON  
 ) QUINN PREDECEASED DAWNA  
 Deceased. ) W. QUINN  
 ) Probate No. P-84-547  
 ) (Judge Wilkinson)

✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱

Kip Quinn, Personal Representative of the Estate of Dawna W. Quinn, by and through his attorneys, Robert Felton and George H. Speciale, hereby petition this Court for an Order and Judgment determining that for purposes of determination of heirship and distribution of the Estate of Fenton Glade Quinn that he predeceased his wife, Dawna W. Quinn.

As grounds for this Petition it is respectfully submitted as follows:

1. Fenton Glade Quinn died May 24, 1984 of a self-inflicted gunshot wound of the head.
2. Dawna W. Quinn died May 24, 1984 as a result of a gunshot wound of the head intentionally inflicted by Fenton Glade Quinn with the intent to cause the death of Dawna W. Quinn.
3. Fenton G. Quinn was the surviving spouse of Dawna W. Quinn immediately subsequent to her death on May 24, 1984.

Pursuant to Section 75-2-804, Utah Code Annotated, 1953, as amended, 1975 the Estate of Fenton G. Quinn passes as if he had predeceased Dawna W. Quinn.

NOW WHEREFORE, Petitioner requests this Court that a be held and that notice be given as provided by law and that Court enter a judgment and order as follows:

1. Fenton G. Quinn, the surviving spouse of Dawna W. Quinn did intentionally kill Dawna Quinn on May 24, 1984.

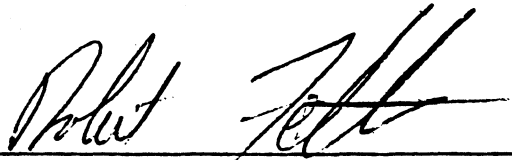
2. Under the provisions of Section 75-2-804, Utah Code Annotated (1953 as amended 1975) Fenton G. Quinn, for the purposes of distribution of the estate and determination of heirship, predeceased Dawna W. Quinn.

3. That Fenton G. Quinn has no right of survivorship as to any jointly held property or property held in any form of co-ownership with survivorship incidence.

4. That any bond, life insurance policy or other contractual arrangement naming Fenton G. Quinn as beneficiary is payable as though Fenton G. Quinn had predeceased Dawna W. Quinn.

5. For such other and further relief as the Court deems just in the premises.

DATED this 8 day of August, 1984.

  
\_\_\_\_\_  
Robert Felton

#### MAILING CERTIFICATE

I, the undersigned do hereby certify that a copy of the foregoing pleading was mailed, postage pre-paid, to Nielson & Senior, B. Kent Ludlow, 1100 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111.

DATED this 8 day of August, 1984.



Robert Felton, 1056  
George H. Specialer 33053  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180  
Phone: (801) 359-9216  
Attorney for Plaintiffs

FILED IN CLERKS OFFICE  
Salt Lake County Utah

DEC 27 1985

H. Dixon Hindley, Clerk of the Court  
By [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

KIP QUINN, Personal Repre-  
sentative of the Estate of  
Dawna W. Quinn and THE ESTATE  
OF DAWNA W. QUINN,

Plaintiffs,

vs.

THE ESTATE OF FENTON GLADE  
QUINN and FENTON QUINN, JR.,  
the Personal Representative  
of the Estate of Fenton Glade  
Quinn,

Defendants.

PARTIAL SUMMARY JUDGMENT

Civil No. C-85-165A  
Judge John Rokich

\* \* \* \* \*

This matter came on for hearing before the Honorable John  
Rokich, Judge of the above-entitled Court on the 3rd day of  
December, 1985 at the hour of 10:00 a.m.

Robert Felton appeared on behalf of the Plaintiffs and the  
Defendants were represented by Joy L. Sanders of the law offices  
of SNOW, CHRISTENSEN & MARTINEAU. B. Kent Ludlow of the law  
offices of NIELSON & SENIOR also appeared on behalf of the  
Defendants.

The matter before the Court was the Motion for Partial  
Summary Judgment made on behalf of the Plaintiffs pursuant to  
Rule 56 of the Utah Rules of Civil Procedure that the Defendants  
were, as a matter of law, liable to the Plaintiffs on the ground



that there was no genuine issue of fact that Fenton Glade Quinn did unlawfully take the life of Dawna W. Quinn.

Counsel for Plaintiffs and Defendants argued the matter before the Court and the Court, having heretofore made a ruling as to the negligence allegation of Plaintiff's Complaint took the matter under advisement. The Court having heard the arguments of counsel, having reviewed the pleadings and having read the depositions which were published in support of the Motion and for good cause appearing now enters its Order as follows:

1. The Court finds that there is no genuine issue of material fact as to the liability of the Defendants in this action.

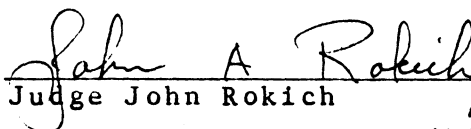
2. Fenton Glade Quinn, Deceased, did, on or about May 23, 1984 unlawfully take the life of Dawna W. Quinn.

Pursuant to Rule 56 of the Utah Rules of Civil Procedure Plaintiffs are entitled to and are hereby awarded Partial Summary Judgment against the Defendants as to the issue of liability.

All issues as to the amount of damages are reserved until trial.

DATED this 21 day of December, 1985.

By the Court:

  
Judge John Rokich

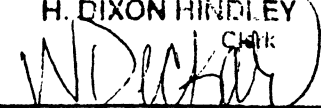
ATTEST

H. DIXON HINDLEY

Clerk

MAILING CERTIFICATE

By



Deputy Clerk

I certify that I mailed a true and correct copy of the

foregoing PARTIAL SUMMARY JUDGMENT postage prepaid, to B. Kent

Robert Felton, 1056  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180  
Phone: (801) 359-9216  
Attorney for Plaintiff

JUDGMENT

FILED IN CLERKS OFFICE  
SALT LAKE COUNTY, UTAH

FEB 9 1 04 PM '87

H. DIXON HINDLEY CLERK  
3RD DIST. COURT  
BY *Charles J. Simon*  
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

KIP QUINN, Personal  
Representative of the Estate  
of Dawna W. Quinn and THE  
ESTATE OF DAWNA W. QUINN,

Plaintiffs,

vs.

THE ESTATE OF FENTON GLADE  
QUINN and FENTON QUINN, JR.,  
Personal Representative of  
the Estate of Fenton Glade  
Quinn,

Defendants.

\* \* \* \* \*

BR 212 NO. 3851  
2-10-87 - 8:08 AM

JUDGMENT

Civil No. C85-165A  
Judge John Rokich

This matter came on for jury trial on the 16th day of  
December, 1986, the Honorable John Rokich presiding.

Robert Felton appeared for and on behalf of the Plaintiffs  
and the Defendants were represented by Richard Hincks and Chris  
Schmutz.

Upon conclusion of the evidence the Court required the jury  
to return a special verdict pursuant to Rule 49 of the Utah Rules  
of Civil Procedure. The jury did thereafter return its special  
verdict and in accordance therewith judgment is hereby entered in  
favor of the Plaintiffs and against the Defendants as follows:

- |                                  |              |
|----------------------------------|--------------|
| 1. Judgment for economic loss    | \$101,293.00 |
| 2. Judgment for funeral expenses | \$3,200.00   |

3. Judgment for value of loss of society, \$346,983.00  
love, companionship, affection and protection

**TOTAL** \$451,476.00

Signed under the direction of the Court and in accordance  
with the verdict of the jury this 6 day of ~~January~~ <sup>February</sup>, 1987.

By

John A. Bokuh  
~~Clerk~~  
Judge

ATTEST

H. DIXON HINDLEY  
CLERK

BY

Charles H. Dixon  
Deputy Clerk

Where claims were barred for failure to file on time, administratrix was without power to pay them, and any money paid thereon would be considered to come from her personal funds, and could not be considered as deduction from inheritance tax. *Jones v. State Tax Comm.*, 99 U. 373, 104 P. 2d 210.

Claims had to be filed, after proper notice, within time limit of statute, or be forever barred. *Jones v. State Tax Comm.*, 99 U. 373, 104 P. 2d 210.

Purpose of statute requiring presentation of claims within time stated in notice was to require publication of notice to creditors so as to shorten limitation period, and not to lengthen it because of neglect on part of personal representative or delay on part of creditor. *Gray Realty Co. v. Robinson*, 111 U. 521, 184 P. 2d 237.

Notice to creditors by administratrix, indicating that claims against estate could be filed before certain date, did not constitute waiver or abandonment of de-

fense of general statute of limitations available to administratrix in action by creditor. *Gray Realty Co. v. Robinson*, 111 U. 521, 184 P. 2d 237.

Statute requiring presentation of claims within time stated in notice was not a bar to action to impress judgment lien on property, where complaint alleged that property had been transferred to defraud creditors, and that property was held in trust for defendant. *Moulton v. Morgan*, 115 U. 119, 202 P. 2d 723.

#### Time limitations.

Demand against decedent's estate asserting that property was sold to claimant by deceased and asking the court to order the administrator to make a suitable conveyance was a petition for specific performance of a contract to convey property and was not subject to the one-year time limitation for presenting claims against an estate. *In re Estate of Sharp*, 537 P. 2d 1034.

**75-3-804. Manner of presentation of claims.—(1) Claims against a decedent's estate may be presented as follows:**

(a) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(2) If a claim is presented under subsection (1) (a) above, no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.