

1988

Diane Laura McLaughlin and Eugene E. Perry v.
Kent McLaughlin and Carol McLaughlin:
Appellant's Citation to Supplemental Authority

Utah Supreme Court

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Recommended Citation

Supplemental Submission, *McLaughlin v. McLaughlin*, No. 882284.00 (Utah Supreme Court, 1988).

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COURT OF APPEALS

Attorneys for Eugene L. Perry,
Appellant

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

* * * * *

IN THE MATTER OF THE ESTATE)	APPELLANT'S CITATION TO
OF)	SUPPLEMENTAL AUTHORITY
)	
DIANE LAURA McLAUGHLIN,)	
Deceased)	
EUGENE L. PERRY, PERSONAL)	Case No. 880084-CA
)	
APPELLANT)	(District Court Case No.
v.)	P-85-893)
KENT McLAUGHLIN and CAROL)	
McLAUGHLIN,)	
)	
RESPONDENTS.)	

* * * * *

In accordance with Rule 24(j) of the Rules of the Utah Court of Appeals (1987), Eugene L. Perry, Appellant in this matter, files this supplementation of authority for his position in this appeal.

The Court of Appeals heard oral arguments in this case on April 25, 1988. Following oral argument, counsel for the Appellant discovered the case of Matter of Estate of Anderson, 671 P.2d 165 (Utah 1983).

In Estate of Anderson, the district court, sitting as a probate court, had entered an order pursuant to a stipulation between a protected person's prior guardian and her successor guardian. Pursuant to the stipulation, the order provided that the protected person's executed will was void and that the protected person could not execute any further wills without court approval. The Supreme Court held this judgment was void because it exceeded the probate court's subject matter jurisdictional authority. The Court stated:

A judgment by consent, in order to be valid, must be within the jurisdiction of the court. Provisions of judgments by consent which are beyond the jurisdiction of the court are not validated by the fact that the parties or their counsel consent to the judgment.

Estate of Anderson, 671 P.2d at 168-169.

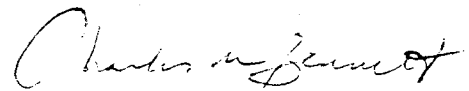
In reaching this conclusion, the Court implicitly acknowledged that the probate code does not specifically preclude the probate court from voiding an existing will during a person's lifetime, nor does it specifically preclude the probate court from enjoining the execution of a will without court approval. Instead, the Court found that the Court had exceeded its jurisdictional power by reviewing Sections 75-2-501 (restrictions on who can make a will), 75-5-408(1)(c) (neither court nor conservator can make a will for a protected

person), 75-5-408(2) (order of conservatorship does not affect capacity of protected person to make a will) and 75-5-422 (conflict of interest provision silent as to testamentary provisions). "Read in harmony, these sections specifically exclude from the power of the court all dispositions made by will" Estate of Anderson, 671 P.2d at 169.

This case supports Mr. Perry's position that the probate court has limited jurisdictional authority, that Utah law views the limits of that authority strictly, that a party cannot consent to give the court jurisdiction that it does not have and that, when the court exceeds its authority, its order is void and should be vacated. See, Appellant's Brief. Point I, pp. 13 - 18.

Dated May 5, 1988.

CALLISTER, DUNCAN & NEBEKER



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Attorneys for Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage fully prepaid, this 10th day of May, 1988, to the following:

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