

2003

Glade Leon Parduhn v. Natalie Buchi Bennett,  
Allison Buchi, Annabelle Buchi, Lance Buchi, and  
Jessica Buchi and Joanne Buchi, University Texaco :  
Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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GLADE LEON PARDUHN,  
Plaintiff and Appellant,

vs.

NATALIE BUCHI BENNETT,  
ALLISON BUCHI, ANNABELLE  
BUCHI, LANCE BUCHI, AND JESSICA  
BUCHI (THE "BUCHI CHILDREN")  
AND JOANNE BUCHI,

Defendants, Counterclaimants and  
Appellees.

UNIVERSITY TEXACO,  
Intervenor and Appellant

REPLY BRIEF OF  
INTERVENOR/APPELLANT  
UNIVERSITY TEXACO

Case No. 20030551-SC

Trial Court No. 030500159  
Judge: Bruce C. Lubeck

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**REPLY BRIEF OF INTERVENOR/APPELLANT**

Appeal from a Judgment entered by the  
Third Judicial District Court, Summit County  
Judge Bruce Lubeck

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## ARGUMENT IN REPLY

Once again, the Buchi Children and Joanne Buchi rely on allegations that never properly came before the court below, that have not been tested by the crucible of cross examination. They seek to avoid the lack of evidentiary foundation for the trial court's ruling by arguing that the equitable nature of this case requires this Court to affirm that ruling. Their arguments misconstrue the nature of review on appeal, the appropriate basis for an award in equity, and the language of Utah Code Annotated §31a-21-104(5). Moreover, the statute of limitations does not bar University Texaco's motion to intervene, which it filed shortly after this Court's order remanding the case.

Decisions in equity are no less appealable than decisions at law. Judicial discretion does not give a court *carte blanche* to ignore the rules of evidence. Nor does it allow a court to rule based on what the Judge would have done had he stood in the shoes of a party. Whether a court sits at law or in equity, it must rule on the facts properly presented to it and admitted by it as evidence. When the trial court does otherwise, as it did here, this Court must reverse. *See, e.g., Millard County v. Utah State Tax Commission*, 823 P.2d 459, 462 (Utah 1991) (court's exercise of discretion must have some factual basis); *Bellon v. Malnar*, 808 P.2d 1089, 1095 (Utah 1991) (Court must set aside lower court's decision where it has made a mistake of fact).

Both Parduhn and University Texaco argued on remand that the court could take additional evidence, and, based on footnote 3 of this Court's opinion on the first appeal,

*should* do so before ruling for any party other than the Partnership. Joanne Buchi and the Buchi Children successfully argued against opening the matter to hear new evidence. (Transcript of Hearing, May 9, 2003 (“Hr’g Tr.”) at 68-69.) Ironically, however, in both their arguments on remand and their briefs before this Court, Joanne Buchi and the Buchi Children rely almost entirely on facts never admitted into evidence. (See, e.g., Hr’g Tr. at 25-26, 27-28, 32-33, 36.) They ask this Court to assume without evidentiary basis, as the trial court did, the intent of Brad Buchi, the agreement of Glade Parduhn to that assumed intent, and the lack of equities favoring distribution to any other party.

When the Court focuses on the facts actually in the record, however, rather than suppositions or assumptions made by the Buchi Children and Joanne Buchi, the error of the **decision** below shows in stark relief. In its main brief, University Texaco demonstrated the **lack** of record support for the court’s decision and the facts and equities that favor an award of the Policy Proceeds to it. (See Brief of Intervenor/Appellant (“Main Brief”) at 23-28, 28-35 and 38-40.) Defendants’ responses contain much rhetoric, but no basis in the trial record for an award in equity to them. Instead, they **improperly** rely on their own arguments to the court and the court’s restatement of those arguments in its opinion. Such a tautology cannot sustain the opinion below.

For example, in their responsive brief, the Buchi Children state that the trial court “found” that the partners used Partnership funds to pay for many personal obligations. (Brief of Appellees (the Buchi Children) at 13-14.) They also argue that the Policy was not an asset

of the Partnership because it was not listed as one of the assets sold to Blackett Oil. (*Id.*) The trial court did indeed rely on both of these “facts;” but that reliance forms the very gist of this appeal, for neither of these “facts” has any basis in evidence.<sup>1</sup> Instead, the trial court merely regurgitated assertions made by the Appellees’ attorneys at the hearing on remand. (*See* discussion in Brief of Intervenor/Appellant at 23-28.) In support of their own equities, the Buchi Children assert that the trial court concluded “for many reasons” that the Buchi heirs should receive the Policy Proceeds. The Buchi Children can only articulate one reason in their Brief: their familial relationship (*see, e.g.*, Brief of Appellees (the Buchi Children) at 14). Perhaps this is because the Court also failed to articulate any reason beyond the familial relationships. (R. 1904.)

Joanne Buchi’s responsive brief suffers the same shortcomings. Her argument also rests primarily on the trial court’s opinion, drawn straight from the arguments of counsel, rather than the facts adduced at trial. (*See* Brief of Appellee Joanne Buchi at 19-20.) Joanne Buchi also argues that the decision is consistent with Brad Buchi’s “intent” that his family would receive the Policy Proceeds in a non-testamentary transfer, as shown by the Buy/Sell Agreement. (Brief of Appellee Joanne Buchi at 21.) Her argument ignores (a) this Court’s holding that the Buy/Sell Agreement terminated on the sale of the Partnership assets; (b) the plain wording of the Buy Sell Agreement, which provided that “the remaining partner shall

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<sup>1</sup> Moreover, even the trial court recognized the error of relying on the allegations about the sale to Blackett Oil. R. 1972-1973.

pay \$100,000 to the survivors of the deceased,” and (c) the fact that the only “evidence” of Brad Buchi’s intent admitted at trial was Lissa Buchi’s testimony about to her own desires for and understanding of the purchase of the Policy, the Partnership Agreement and Buy/Sell Agreement. (Trial Transcript (“Tr. Tr.”), Tab 3 in the Appendix to Main Brief, at 0097-98; 0101.) Notwithstanding Lissa Buchi’s intent, she never had any discussions with Glade about where the Policy Proceeds would go (Tr. Tr. at 0108-109 (“that was never an issue”)); Glade never had any discussions with Brad (or anyone else) about amending the Buy/Sell Agreement to increase the insurance from 100,000; and Glade never agreed to pay Brad’s family more than \$100,000 on Brad’s death. (Tr. Tr. at 0027-28.) Whatever conflicting conclusions may be drawn from the sketchy evidence about intent at the time of the purchase of the Policy, the evidence clearly and without contradiction establishes that Brad Buchi and Glade Parduhn never did amend the Buy/Sell Agreement to include in its provisions insurance above \$100,000. (Tr. Tr. at 0027.) If the court may properly examine that Agreement for guidance in distributing the Policy Proceeds in equity, it must examine the Agreement as it existed, not as the Buchi heirs wish it existed.<sup>2</sup>

The only established fact that supports the rights of the Buchi Children and Joanne

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<sup>2</sup> Interestingly, Lissa Buchi sought to divorce Brad Buchi just a year after the Partnership purchased the Policy. (Tr. Tr. at 109-110.) Thus, if one is arguing the “conceivable,” as Defendants do so often, it is quite conceivable that Brad actively chose *not* to amend the Buy Sell Agreement, and did not want his soon to be ex-wife and children to get the entire Policy Proceeds.

Buchi to the Policy Proceeds in equity is their familial relationship to Brad Buchi. However, that is not the only relationship of importance in this case. The trial court erred in awarding the Proceeds based on the family relationships, while completely disregarding the relationships between the other parties and Brad Buchi.

University Texaco does not dispute that Joanne Buchi was Brad Buchi's wife at his death (although they were not married at the time he took out the policy and they were in the process of a divorce at the time of his death). University Texaco does not dispute that the Buchi Children are Brad Buchi's biological children (albeit his ex-wife Lissa Buchi had custody of them).<sup>3</sup> Nor does University Texaco deny that such familial relationships should be considered in determining the proper distribution in equity of the Policy Proceeds. Indeed, the distribution proposed by University Texaco would give to the Buchi heirs a fair share of the Policy Proceeds.

However, Glade Parduhn and Intervenor University Texaco also had a relationship with Brad Buchi. No one has ever disputed that Glade Parduhn was Brad Buchi's long term business partner, and that together they operated University Texaco from 1979 until Brad's

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<sup>3</sup> Had the court allowed University Texaco to put additional evidence following remand, it would have established that Brad Buchi had satisfied that obligation. See discussion in Main Brief at 36. *See also* Settlement Statement, Trial Exhibit 11 (additional copy attached). The court also erred in assuming, when it awarded the entire Policy Proceeds to the Buchi heirs, that Mr. Parduhn was somehow adequately compensated by giving him the remainder of the Proceeds of the sale of the Partnership's services stations. As the Settlement Statement shows, Lissa Buchi got \$69,297.00 of the proceeds, and Joanne Buchi got \$60,000.00. (see also Addendum to Brief of Joanne Buchi at Tab 10.)



death in 1997 — nearly 20 years. (Tr. Tr. at 0022.) In fact, Glade and Brad had worked together even before Brad married his first wife, Lissa, and still worked together when Brad separated from his second wife, Joanne. (Tr. Tr. at 0021, 0150). Thus, the Partnership Glade Parduhn and Brad Buchi created, University Texaco, outlasted Brad Buchi's relationships with Joanne or his children. Though dissolved by the sale of its service stations, the Partnership did not terminate, and the business relationship continued until Brad Buchi's death.

The trial court refused to give any value to that business relationship, however, although it had no more evidence of the quality or context of the family relationships than it did of the business relationships. The court's failure to fully consider the circumstances of each claimant constitutes reversible error.

At the end of the day, this Court is left with these relevant facts:

1. Each claimant below, including University Texaco and Glade Parduhn, had a relationship with the insured. Of all the relationships, that of the Partnership lasted longer than the other relationships.
2. The Partnership paid the premiums on the Policy.
3. Lissa Buchi intended that the total Policy Proceeds would be paid to her and the Buchi Children when Brad Buchi died.
4. If Brad Buchi and Glade Parduhn ever shared that intent, they failed to take the actions needed to ensure that such an intent was carried out.

5. Brad and Lissa divorced after the Policy was purchased.
6. Utah Code Annotated §31A-21-104(5) provides that when the policy holder lacks an insurable interest, the policy is not void, and the court should order the proceeds paid to “some person equitably entitled to them” without regard to “insurable interest or consent.”
3. Awarding the proceeds to the Partnership will benefit all the claimants below. The Buchi Children, Joanne Buchi and Glade Parduhn would all share in the distribution according to the Partnership Agreement.

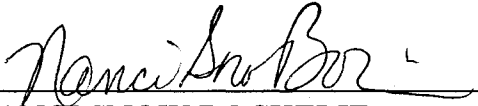
### CONCLUSION

An award of the Policy Proceeds to the Partnership is the only resolution consistent with the facts in evidence, rather than the arguments of counsel. Moreover, awarding the Policy Proceeds to the Partnership will benefit the most people. It will benefit all who had a relationship with Brad Buchi, whether monetary, business or familial. No one will get a windfall, and everyone will get something. An award of the Policy Proceeds in equity to the Partnership will thus provide the most equitable resolution of the issues in this case. Conversely, the award of the Policy Proceeds to the Buchi heirs is based on facts not admitted into evidence, is not supported by the evidence that was admitted, and does not do equity.

Given these circumstances, the court below erred in awarding the policy proceeds to the Buchi children and Joanne Buchi in equity. This Court should reverse that decision and

enter a decree ordering the policy proceeds to be paid over to University Texaco Partnership  
to be distributed in accordance with the partnership agreement.

Dated this 26 day of February, 2004.

  
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NANCI SNOW BOCKELIE  
Attorney for Intervenor, University Texaco

**CERTIFICATE OF MAILING**

On this 26 day of February, 2003, I deposited in the United States Mail,  
postage prepaid,, a true and correct copy of the foregoing REPLY BRIEF OF INTERVENOR  
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