

1981

In The Matter of the Estate of Gilma Wheeler Larsen : Respondent's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE)

OF)

CIIMA WHEELER LARSEN,)

Deceased.)

Supreme Court No. 17523

RESPONDENT'S BRIEF

Appeal from the Judgment of the Third District Court of Salt Lake County,
State of Utah, Honorable Kenneth Rigtrup, Judge

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Clerk, Supreme Court, Utah

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STATEMENT OF FACTS

Respondent generally agrees with the statement of facts set forth by the Appellant in pages 2, 3 and the top portion of page 4 of Appellant's Brief until the Appellant resorts to argument within the Statement of Facts.

Pertinent facts on this appeal concerns the death of William Richard Larsen, Jr., prior to total distribution of trust funds being distributed to him. The provision concerning distribution of William Richard Larsen, Jr.'s portion of the estate is worded different than the distribution of the estate of Dixie Larsen in the event she died prior to full distribution.

The respondent is the Executrix or Personal Representative of the estate of William Richard Larsen, Jr., wherein the estate of William Richard Larsen, Jr., is in probate. The will of William Richard Larsen, Jr., is included in the record on appeal.

The provision of the will of Wilma Wheeler Larsen for interpretation is as follows:

In the event of the death of William Richard Larsen, Jr., prior to his receiving his share of the estate either under the bequest or as beneficiary of said estate, I hereby give and devise and bequeath the share of estate to which the said William Richard Larsen, Jr., would be entitled to if living to any surviving issue and if no surviving issue one-half to my daughter Dixie Larsen and one-half to the issue of the brothers and sisters per stirpes of the brothers and sisters of my late husband, William Richard Larsen.

STATEMENT OF POINTS

POINT I

THE INTERPRETATION OF DECEDENT'S WILL AS DETERMINED BY THE DISTRICT COURT SHOULD BE AFFIRMED, TO WIT: THE TRUST IS FULLY SATISFIED AND THAT THE SHARE OF TRUST IN FAVOR OF WILLIAM RICHARD LARSEN, JR. SHOULD PASS TO HIS HEIRS AS PROVIDED IN HIS WILL.

ARGUMENT

In the case of William Richard Larsen, Jr., vs. Marsha Mann Paskett, 29 Utah 2nd, 360, the Supreme Court of Utah interpreted the provision in the Second Codicil concerning the disposition of the trust portion devised and bequeathed to Dixie Larsen. The Court in that decision ruled that the trust estate did not vest upon the death of Cilma Wheeler Larsen and the provision providing the disposition of this trust estate in the event of the death of Dixie Larsen prior to receiving her share of said estate was to be interpreted according to the ordinary and usual meaning of the words used.

The provision previously interpreted contained the following provision in the event Dixie Larsen died prior to receipt of trust distribution:

"Under the bequest or as beneficiary of said trust, I hereby give and devise and bequeath a share of said estate to which the said Dixie Larsen would be entitled if living, to any surviving issue and if no issue, one-half (1/2) to my friend Marsha Mann Paskett and one-half (1/2) to the issue of the brothers and sisters per stirpes of the brothers and sisters of my late husband, William Richard Larsen."

In the same paragraph of the Second Codicil, the provision referring to disposition of the estate or trust in the event of the death of William Richard Larsen, Jr., provides for a different disposition, to-wit:

"In the event of the death of William Richard Larsen, Jr., prior to receiving his share of said estate either under the bequest or as a beneficiary of said trust, I hereby give and devise and bequeath the share of said estate to which the said William Richard Larsen, Jr., would be entitled if living to any surviving issue and if no surviving issue one-half (1/2) to my daughter, Dixie Larsen, and one-half (1/2) to the issue of the brothers and sisters per stirpes of the brothers and sisters of my late husband, William Richard Larsen".


William Richard Larsen, Jr., had no surviving issue. Therefore, the balance of the trust should be distributed one-half (1/2) to Dixie Larsen and one-half (1/2) to the issue of the brothers and sisters per stirpes of the brothers and sisters of William Richard Larsen. The estate of Dixie Larsen was probated in the Third District Court of Salt Lake County No. 59207. Her estate was distributed to William Richard Larsen, Jr.. The omnibus clause of the Decree of Distribution, Paragraph 5, also, provided that any other property not known or discovered which belongs to said estate should go to William Richard Larsen, Jr..

As the lower court has found, the trust did not dispose of this one-third (1/3) interest of William Richard Larsen, Jr., other than provided in the will and that the purpose of the trust is fully completed. The only purpose of deferring final distribution of his share of the trust for ten (10) years was to create an incentive of abstinence from intoxication. The estate should now be fully distributed and the only problem in interpretation is that the beneficiary of Dixie Larsen appears to be the same William Richard Larsen, Jr., who is now deceased and the questioned portion of the estate should now pass through the estate of Dixie Larsen to William Richard Larsen, Jr., to his heirs provided in his will.

CONCLUSION

Although many years have elapsed since the death of Cilma Wheeler Larsen and both of her children have subsequently died prior to the full distribution of the trust provided, the Second Codicil of Cilma W. Larsen clearly provides the distribution of the balance of the trust of William Richard Larsen, Jr.. It is only confusing that William Richard Larsen, Jr., happens to be the sole heir of Dixie Larsen and that as the sole heir of Dixie Larsen, the heirs of William Richard Larsen, Jr., should be the recipient of one-half (1/2) of the balance held in trust for the benefit of William Richard Larsen, Jr..

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Everett E. Dahl", written over a horizontal line.

EVERETT E. DAHL

Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy of the
foregoing Respondent's Brief to:

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and that said Respondent's Brief was duly served according to law on
this 14th day of August, 1981.



EVERETT E. DAHL