

1981

# In The Matter of the Estate of Gilma Wheeler Larsen : Appellant's Reply Brief

Utah Supreme Court

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## Recommended Citation

Reply Brief, *In re: Larsen*, No. 17523 (Utah Supreme Court, 1981).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

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IN THE MATTER OF THE ESTATE )

OF )

CILMA WHEELER LARSEN, )

Deceased. )

Supreme Court No. 17523

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APPELLANT'S REPLY 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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FILED

AUG 31 1981

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Clk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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Appeal from the Judgment of the Third District Court of Salt  
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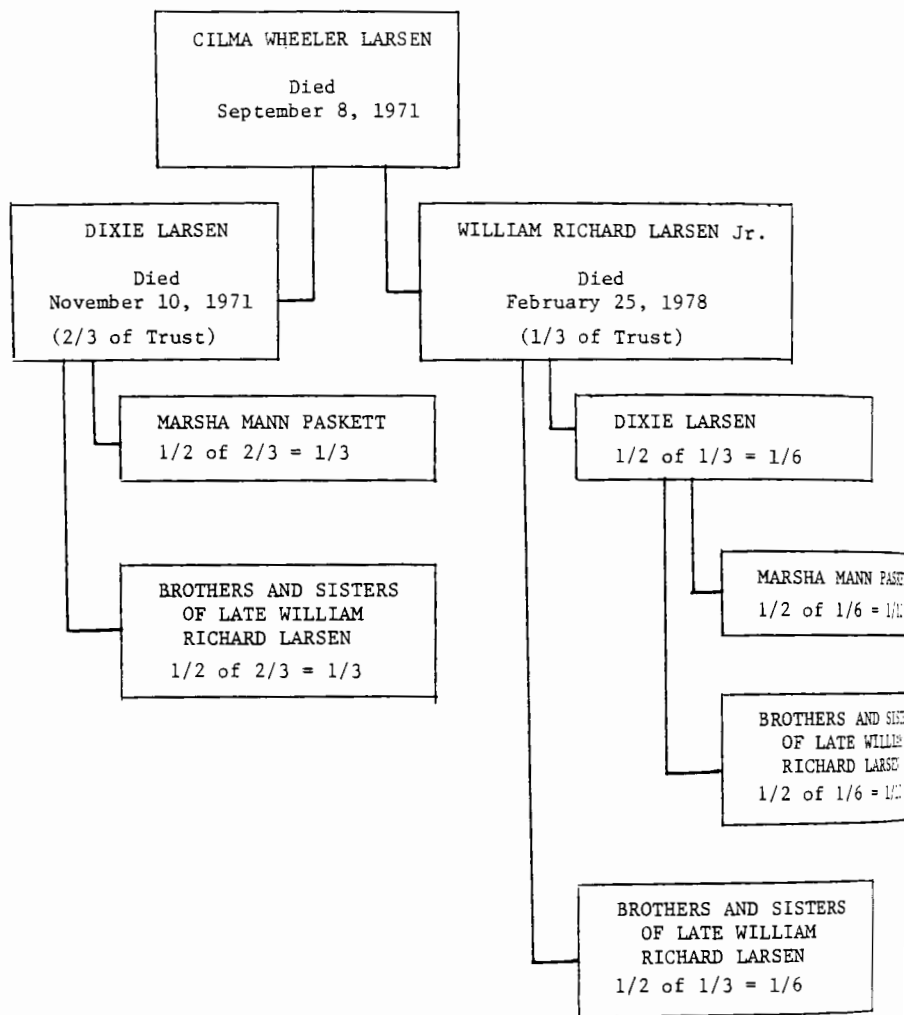
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STATEMENT OF POINTS

POINT I

THE TRUST AGREEMENT BEING CLEAR AND CONCISE SHOULD PREVAIL.



CILMA WHEELER LARSEN FULLY INTENDED THAT THE TRUST FUND BE DISTRIBUTED AS SET FORTH ABOVE. THE TRUST AGREEMENT IS CLEAR AND EXPLICIT AND THE ABOVE DIAGRAM IS MADE PART OF THE BRIEF FOR ILLUSTRATIVE PURPOSES.

REPLY BRIEF  
TO RESPONDENT'S ARGUMENT

Respondent in his brief has failed to show the status of the trust when William Richard Larsen, Jr. died on February 25, 1978. On this date all trust funds (the entire estate) was being held by Zion's First National Bank and said funds had not been received by William Richard Larsen Jr. either under the bequest or as a beneficiary of said estate. He died without issue, therefore, one-half of his one-third portion of the trust funds of necessity should be distributed under the trust to Dixie Larsen, one-half to Marsha Mann Paskett and one-half to the brothers and sisters per stirpes of the brothers and sisters of Cilma Wheeler Larsen's late husband, William Richard Larsen.

Cilma Wheeler Larsen died on September 8, 1971. Dixie Larsen died November 10, 1971. William Richard Larsen Jr. died February 25, 1978. All trust fund money remained intact up to and including the death of William Richard Larsen Jr.. Neither Dixie Larsen nor William Richard Larsen Jr. received his or her share of the estate either under the bequest or as beneficiary of the trust. Such being the case, the decision set forth in Larsen vs. Paskett, 29 Ut 2d. 360, should prevail. There was no vesting of trust funds. The omnibus clause of the Decree of Distribution of the estate of Dixie Larsen is foreign to and should have no bearing

on this case. The trust fund should be distributed as provided in the trust. To distribute the funds under a vested theory would be to disregard the true intent of the trust and to permit distribution of trust fund to distant relatives not considered or referred to in the trust.

#### SALIENT FACTS OMITTED FROM RESPONDENT'S BRIEF

The funds that are now in dispute consists of a testamentary trust in the hands of Zion's National Bank. William Richard Larsen Jr. had not come into actual possession of the property so held by the trustee. He had not received "the proceeds of the Testamentary Trust".

In construing a will the entire contents of the Will and Codicils are considered together and the intent of the testatrix as expressed in the will governs as stated in Larsen vs. Paskett, supra. The rule as to immediate vesting of property in an heir or devisee on decedent's death does not apply where it appears from the will that the testatrix had a different purpose in mind and the will states conditions precedent to vesting. The one-third of the funds which was awarded to William Richard Larsen Jr. were subject to the conditions that the said William Richard Larsen Jr. shall be capable and living worthy in the discretion of the trustee. This condition was in full force and effect when William Richard Larsen Jr. died on February 25, 1978.



The trust fund money, which is in dispute, remained undistributed and in the hands of the trustee. Neither William Richard Larsen Jr. nor Dixie Larsen had received their share of the trust nor had they come into actual possession of the property held by the trustee. Therefore, on the death of William Richard Larsen Jr. the one-half of the one-third, which was to be distributed to Dixie Larsen of necessity should have been added to and made part of the two-thirds previously awarded to Dixie Larsen under paragraph 5 of the Codicil.

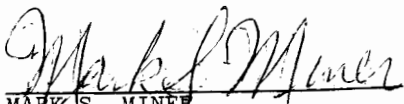
Cilma Wheeler Larsen, the testatrix herein, stated clearly through the trust her desires as to how the trust fund was to be distributed. It was never her intent that the trust funds vest immediately upon her death. She specifically provided conditions of a precedent gift over to Marsha Mann Paskett and to the heirs of the testatrix's husband to all trust fund money that remained in the possession of the trustee upon the death of either heir, to wit: Dixie Larsen, who died November 10, 1971; and/or William Richard Larsen Jr., who died February 25, 1978. It is the most fundamental rule relating to the interpretation of rules that the intent of the testatrix as intended in the Will governs. See 74-2-1, Utah Code Annotated, 1953 (Larsen vs. Paskett, 29 UT 2d. 360).

## CONCLUSION

The rule as to the immediate vesting of property in the heir or the devisee upon the decedent's death does not apply where it appears from the Will that the testatrix had a different purpose in mind and the Will states conditions precedent to such vesting. William Richard Larsen Jr. had not received through the estate any of the trust fund moneys which are now in dispute. Said funds were firmly held intact by the trustee subject to all terms and conditions of the trust. William Richard Larsen Jr. had no right to receive these trust funds on the date of his death. Therefore, the trust funds, as provided in the trust reverted to the trust funds previously awarded to Dixie Larsen and were to be distributed as provided by paragraph 5 of the Codicil.

The desires and intent of Cilma Wheeler Larsen should be carried out in accordance with her intent and desires as set forth in the trust.

Respectfully submitted,

  
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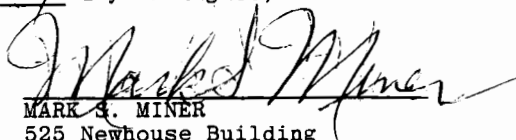
CERTIFICATE OF MAILING

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

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and that said Appellant's Reply Brief was duly served  
according to law on this 29 day of August, 1981.

  
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