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In the Matter of the estate of John William Ingram : Repsondents' Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate
of
JOHN WILLIAM INGRAM,

Deceased

} Case
No. 8542

Respondents' Brief

STATEMENT OF FACTS

The facts as set forth in the appellants' brief are substantially correct as far as the statement goes, but some additions to the statement are made by respondent to give the Court the view of respondents.

For many years before and after 1940 John William Ingram, also known as J. W. Ingram, and Uncle Will, lived near his brother, M. Smith Ingram, in Nephi, Utah. He visited frequently with Smith Ingram and Smith's

family, including the five children, Manila, Blain, Earl, Bonnie and Kenneth; and all of whom were nice to him and cared for and assisted him. He had been married in 1938, but only for less than a month.

In May 1940, J. W. Ingram wrote a letter to his niece, Manila Ingram Brock, named above, which has been offered herein as Exhibit 1 and admitted to probate by the trial court as the Olographic will of decedent, who hereafter will be referred to as testator. By said will whatever of his property was left was to be divided equally between the above-named nieces and nephews.

The brother and sisters of the testator, other than M. S. Ingram, had not visited with him; there had been trouble, one not speaking, although living near. The other brother and sisters are the objectors and appellants herein who are endeavoring to obtain whatever property J. W. Ingram left.

Eight days after said letter, testator executed deeds to his real estate, reserving a life estate therein, and bill of sale covering personal property, to Manila and her brother Blain. Thereafter other action was taken to transfer other property to Manila and Blain.

The records herein show that Attorney P. N. Anderson assisted testator in the transfers of his property; that he was the attorney who initiated this proceeding; and that he passed away in the early stages hereof.

THE EVIDENCE

The witness Paul E. Booth, manager of the Commercial Bank, Nephi office, testified that he had a conversation with John William Ingram, the testator, in which Ingram said "he was getting old and his health was getting bad, he wanted to fix his accounts, wanted to leave his accounts to his niece, Manila I. Brock." (Tr. 25) At first he said the conversation was about 1940 or 1941, and on re-checking testified that the conversation was on or about January 16, 1947, when a signature card was signed in the bank. (Tr. 44) He further testified that there was a bank ledger sheet in the names "J. W. Ingram or Manila Brock"; that the account was opened December 9, 1939, and the last entry was on June 25, 1940; that the two names appeared to have been typed on two different typewriters. (Tr. 51)

With regard to a sale of property that was made in about 1952 and the contract therefor placed in the bank for collection, Mr. Booth testified that the testator said he wanted the proceeds of the sale to go to Violet I. Brock. Violet I. Brock is the same as Violet Manila Ingram. (Tr. 26)

Mrs. Leora Belliston testified that she and her family rented part of the home of John William Ingram from 1936 until May of 1941. She testified that she witnessed the signing of the Nephi Irrigation Company Water Certificates, Exhibits 4 and 5, on May 28, 1940. (Transcript 34, 35) She said that "He had been quite sick a while be-

fore that, that same winter he had been awfully sick with the flu, and he was feeling a little bit better when he had these papers made out.” (Tr. 35, 36) She said that J. W. Ingram “said he was getting all the water stock fixed up so there wouldn’t no no trouble about it”; (Tr. 36) That several times right around the same period of time, she had conversations with Mr. Ingram regarding his property in which the subject of the disposition of his property was discussed. (Tr. 36, 37) That “he said he was having it all fixed up, he was going to get his deeds fixed in Smith’s kid’s names and that he had them recorded.” (Tr. 37) That at different times he mentioned all of the names of Smith Ingram’s children, Manila, Donna, Earl, Blaine, and Kenneth. He further told her “he was having it fixed for his (Smith’s) kids, having it fixed up so nobody else could touch it.” (Tr. 38) Mrs. Belliston related that the testator had told her they had some trouble one time and so he changed the name of Blanche on a life insurance policy, that the policy had been on (in) Nila and Blanche; that Blanche was a niece of testator, the daughter of one of the ojectors and appellants herein. (Tr. 37-9) As to the actions of Smith’s children toward John W. Ingram during that period, Mrs. Belliston testified, “Yes, they treated him nice. When he was sick, they would come there and get him and see if he needed anything.” “They came many times to his home”; that Mr. and Mrs. Smith Ingram came to the home and would bring J. W. Ingram something to eat and fix for him, bringing laundry, ironing, clothes, canned and bottled fruit (Tr. 41); that she did not recall of observing any one other than Smith Ingram and his wife and children

visiting with John William Ingram. (Tr. 41) With respect to statements made by Mr. Ingram as to what was and what was not to be done with his property, Mrs. Beliston testified, "Well, he told me that he had his *all* made out to Smith's kids and had his deeds recorded." (Tr. 44)

Mrs. Louise Ingram, sister-in-law of John William Ingram and mother of the proponents, testified that during the spring of 1940 Will Ingram had a sick spell, flu, and that during that period her children were frequent visitors to his home; that she and the children administered to his needs and wants during the year and prior thereto. (Tr. 64) That during that time J. W. Ingram called at her home and told her and her husband "he hadn't been feeling well, and he had fixed up his property, he had made his deeds out and fixed his will" (Tr 65); that he had written to Mrs. Ingram's daughter Manila at Green River and explained everything to her and what she should do; that he had everything fixed up the way he wanted it to go, and that there wouldn't be any trouble or anything else to follow; that he had everything fixed, and that he had left it to my (Mrs. Smith Ingram's) children (Tr. 66). She testified further that he used to say quite a few times that he had it all fixed up so that no one else could get it, because he wanted it to go to them, my children. (Tr. 67) She related that "one time he came out and we were talking about flowers, and he said his sister Olive had a plant that she would like — that he would like, and I said, 'Why don't you go get it, go ask for it.' And he said 'Oh, I haven't spoken to her for

eleven years' "; that that sister lived about a block from him (Tr. 67)

Violet Manila Ingram Brock identified the three documents, Exhibits 1, 2 and 6, as being written wholly in the handwriting of John William Ingram, and that the same were dated and signed by him and were received by her from him. That she received letters quite often from her uncle, John William Ingram. (Tr. 70, 72, 73, 74)

Bonnie Ingram Holm, a niece and proponent herein, related, as set forth, that as she came back into Uncle Will's hospital ward, he was handing Nila some papers, and said "Now, these are for you and Blain. Take care of them." (Tr. 90) She also said that "we grew up with the idea that what he had would be ours, and he always told us it was up to Nila and Blain to do it, to—"; (Tr. 91) that those papers and the other property of Uncle Will's were to be kept for distribution to all of the children in a fair manner. (Tr. 92)

Appellant states as a fact that "all of the brothers and sisters of the testator except said M. S. Ingram oppose the admission of the documents to probate as a will and oppose the appointment of M. S. Ingram as administrator with will annexed." (Tr. 1-2) The record shows on examination of appellant and cross-petitioner, Mrs. Maggie Coulson:

Q. Have you been requested by all of your brothers and sisters save and except Smith Ingram to petition for the position as administratrix of this estate?

A. No I haven't.

Q. Haven't they asked you?

A. No.

Q. Your brother Hugh did, didn't he?

A. Yes, and you did (Mr. Tanner).

Q. Did the other two make any expression directly to you?

A. No.

Q. Have they made an expression of dissatisfaction with your brother Smith?

A. I haven't heard of any because I haven't been around.

Q. You haven't talked with them.

A. I haven't. (Tr. 107-8)

The appellant (or appellants) did not challenge the fitness of M. S. Ingram to be and act as administrator. The objection was he would not try to take certain money and property away from his children which Will Ingram gave to them.

Concerning her own view about the estate of Will Ingram, or recovering property for the estate, she testified (Tr. 102, 103) :

Q. You want to be appointed administratrix of the estate of Will Ingram for the purpose of suing someone for some property?

A. No, sir.

Q. You don't? You don't want to sue anyone for any property?

A. No, sir, I don't.

Q. Is it your brother that wants to sue?

A. I don't have any knowledge of that.

Q. Is it your nieces or nephews who want to sue?

A. I have no knowledge of that.

Q. But you don't have any knowledge of any property in your brother Will's estate, do you?

A. No.

Q. So far as you know there isn't any.

A. Well, I know he had some.

Q. That was years ago?

A. That was about thirty years ago, before I left Nephi.

Q. And you haven't been acquainted with any assets or any property since that time?

A. No.

Q. And so that you haven't made any investigation of your own to determine what if any assets there are of this estate?

A. No. (Tr 102-3)

THE FINDINGS

From all of the evidence the court found, among other things, as appears from the Order Admitting Will to Probate and Appointing Administrator with the Will Annexed:

1. That the documents filed herein, respectively dated May 21, 1940 (Exhibit 1) and November 28, 1944 (Exhibit 6) were entirely written, dated and signed by said John William Ingram. (Findings 1 and 8; Tr. 7, 21, 22)

2. That at the time of writing and signing said documents, the said John William Ingram intended thereby to direct disposition of his property or some portions thereof after his death. (Findings 2, 9, 12)

3. The court also found that the decedent had testamentary capacity, and there was no revocation of the testamentary dispositions. (Findings 3, 10)

ARGUMENT

The points raised by appellants are of such nature that comments about particular points will be pertinent to the other points as well.

Respondents agree with the appellants that on or about May 28, 1940, testator executed and delivered warranty deeds to two of the respondents, of all of his real property. We differ with appellants that there were substantial bank accounts and receivables left by testator as part of his estate. The findings of the court do not sustain appellants' contention.

On May 21, 1940, the testator wrote a letter in his own handwriting, dated, and signed by him, advising that he was fixing up his property in the only way it will stand; that he was " 'deading' it to you (his niece) but reserve the right to control it 'til I die but iff I half to sell part of it to live on you would half to sign the deeds which I hope you will be willing to do. And what ever is left I want you to divide equilly with Earl-Bonie and Kennie and Blain and your self this way none of the other can do any thing iff I left the deads not recorded till I die then they could stop you from recording them and come for their share and besides Alice has come back. And if she is here when I go give her enought money to take her back are go where she pleases. I am sending the deads to you then you can send them back to the recorder and have them recorded. then send them back to me and I will put them in a safety box in at the bank in your and my name with other property and things of value I wish that I could talk to you. * * *"

Later a sale of the ranch was made with approval of said niece and a sale of part of the property in Nephi, Utah, with approval of Blain Ingram. (Tr. 26, 43) The

testator used money therefrom during the rest of his life for his needs. It is the residue of these funds, the appellants seek to have declared a part of testator's estate; and to use known assets of the estate to acquire the same.

We agree with the appellants that the deeds to said niece and the nephew, Blain Ingram, were executed, delivered and recorded on or shortly following May 28, 1940. (App. Brief 17, 27)

POINT I

THE PROPONENTS SUSTAINED THEIR BURDEN OF PROOF.

In Point I appellants claim that the proponents have failed to sustain some special burden of proof and overcome some presumption, and then cited 54 A.L.R., 932 in support of the claims made, in the case of informal instruments, such as a letter, not purporting on its face to be a will. It was then stated as being the rule in California and other states.

In this connection, it is interesting to note that the California Supreme Court did not allow any such rule or requirement to prevent a holding that a 24-word sentence out of a 700-word letter constituted a testamentary disposition. The sentence was as follows: "You can have the house on 25th Ave. and all the things of value so you won't be out any money on buying me." The Court also held that the fact the word "will" was not mentioned in the letter did not disprove writer's intention to make testamentary disposition. *In re Button's Estate*, 1930, California, 287 Pac. 964.

The able trial judge who sat in this case participated in the recent Utah Supreme Court case, *In re Swan's Estate*, 4 U. 2d 277, 293, P. 2d 682. In that case this Court stated, page 684:

“A will contest being an action at law, we are bound by the trial court's findings unless such findings are unreasonable in view of all of the evidence and all reasonable inference therefrom when considered in the light most favorable to supporting the judgment.”

Such case (Swan) fully treats the questions of presumptions. We submit that the trial court had that decision in mind and correctly applied the rules of law to the evidence in this case.

In passing, it is interesting to note that in this case there was evidence that testator considered that he had made a “will.” (Tr. 65) Further, the evidence is abundant that testator intended to make ultimate disposition of his property upon death, that he was thinking of the final disposition and distribution of his property upon death, and that such matter was in his mind at the time of writing the letter, Exhibit 1.

POINTS II, III AND IV.

POINTS II AND II — THE EVIDENCE SUSTAINED THE FINDINGS OF TESTAMENTARY INTENT WITH RESPECT TO EXHIBITS 1 AND 6.

POINT IV — LETTER OF NOVEMBER 28, 1954, VIEWED WITH SURROUNDING

FACTS AND CIRCUMSTANCES IS CAPABLE OF BEING ADMINISTERED AS A CODICIL TO A WILL.

That all of the formal requirements of the statute with regard to olographic wills were complied with has not been questioned by appellants. No contention was ever made that the testator did not intend that the four children, the proponents herein, should receive the whole of testator's property upon his passing. This Court, in view of the findings of the trial court, which findings are amply supported by the evidence, is not going to permit the amply proven intention of testator to be thwarted by the very people who were intended to be deprived of all benefit from testator's estate, in violation of the express and clear intention of testator.

That the testator took action in two different ways and at two different times to accomplish his purpose, such action not being inconsistent and being pursuant to and consistent with common and good legal practice, should only serve to fortify and aid the Court in accomplishing testator's intentions. As this Court said in *Johnson's Estate*, 1924, 65 Utah 114, 228 Pac. 748, at page 749,

"The intention of the testator is the ultimate object to be kept in mind and to which all rules must yield." (In re *Poppleton's Est.* 34 U. 285, 97 P. 138) and is the polar star which should guide the court in its decision. (In re *Campbell* 27 U. 361, 75 Pac. 851; *Rumel v. Solomon*, 54 U. 25, 180 Pac. 419.)

In *Murphy's Estate*, 71 Pac. (2d) 6,, the Washington Supreme Court said at page 11:

“The fact that an instrument of doubtful character is invalid if regarded as a conveyance, while valid if regarded as a will, has been referred to as a ground for regarding it as a will, and conversely, the fact that an instrument is invalid if regarded as a will has been considered a ground for regarding it as a conveyance. This view is based partly upon the policy of the courts to give to an instrument a legal operation wherever possible and partly upon the consideration that the maker of the instrument must have intended it to operate in the mode in which he rendered it capable of operating. 2 Tiffany Real Property (2nd Ed.) 1813, 4. Key 467; Read on Wills (2d Ed) 69 (Key) 75.”

Appellant seems to emphasize that all of testator's property was disposed of by gifts inter vivos in order to avoid probate. It was most reasonable for testator, on May 21, 1940, to provide by will for the disposition of his property and shortly thereafter to make conveyances to save expenses of probate. Testator told Mrs. Louise Ingram that he had made a will (Tr. 65), and the fact that he later executed deeds did not change the nature of the instrument he considered to be a will. Delivery of a will is not a prerequisite to its validity.

It is significant at this point also to observe that in the letter, Exhibit 1, the last part, it is provided:

“* * * I am sending the deeds to you then you can send them back to me and I will put them in a safety box in at the bank in your and my name

*with other property and things of value * * *."*
(Italics supplied)

It is apparent that the letter was to apply to more than just the deeds. The evidence is abundant that it was the intention of John William Ingram that his nieces and nephews, the proponents herein, should receive all of his property. Such intention was disclosed to the children themselves, to their parents, to his friends and associates; and in no instance was there a scintilla of evidence to show a contrary intent. By whatever means that intent was to be accomplished, it is clear that testator considered it to have been done.

It is submitted that the writing of an olographic will, as in this case, was an adequate means, and that such intention was accomplished in fact and law.

The respectable authority cited by appellants, page 23, *Page on Wills, Lifetime Edition*, contains a provision so pertinent to the facts of this case as to be worthy of repetition, "Section 46. Intention to Make Will — Use of the Word 'Will'":

"Animus testandi does not necessarily mean that the word 'will' or 'testament' must be used in the transaction. A man may make his will animo testandi, though he is so ignorant of law that he thinks it is called a deed or contract; or though he does not know what to call it. The test is not what he thinks is the legal name of the instrument which he is executing, but what its legal effect is in view of its nature, and of the real intention of the maker as deduced from the instrument and from all facts and circumstances. The fact that

the testamentary provisions form a very small part of the entire document, the bulk of which is not intended to operate as a will, does not make such small part of the instrument inoperative as a will.

* * * *

“The animus testandi, then, does not turn on the presence or absence of the words ‘will’ or ‘testament,’ but on the intention of the testator as shown by the nature of the instrument and the *surrounding facts and circumstances.*” (Italics supplied.)

The surrounding facts and circumstances and the evidence thereof, in this case are clear beyond dispute or question that it was the intention of the testator that the proponents, those nieces and nephews named in the letter of May 21, 1940, Exhibit 1, were intended by testator to receive all of his property, and that none of it was to “go to the sisters and brothers and they never done me any good.” He had not even spoken to one of the sisters for over eleven years, and she lived just a block away. (Tr. 67) And the witness who lived in part of testator’s house, in whom he confided and who was chosen by testator as a witness to his signature on the water stock certificates (Exhibits 8 and 9), and which witness was unprejudiced, had nothing to gain in the premises — such witness testified that she did not recall observing anyone other than Smith Ingram and his wife and children visiting with John William Ingram. (Tr. 41)

It is obvious from the express findings made by the Trial Judge that the evidence presented by proponents was believed. It is clear, further, that all of the technical

requirements were met in the two instruments, Exhibits 1 and 6, to constitute them as the last will and testament of testator and a codicil thereto. The evidence and circumstances are sufficiently clear to enable the court to determine the wishes of testator with respect to Exhibit 6, the codicil, without conjecture. As is said in *Jones on Evidence, Civil Cases, Fourth Edition, Volume 2, Sec. 475, page 907,*

“The court puts itself in the place of the person who executed the writing, in so far as that is possible, for the purpose of construing the will and determining the meaning of the words. Evidence of the surrounding facts may be shown on the issue as to due execution.

“While proof of the circumstances, situation and surroundings of the testator and of his property is admissible in order to place the court in the situation of the testator and thus to enable the court to understand the meaning and application of his language . . .”

There was not introduced by appellants, objectors, herein one scintilla of evidence which was inconsistent with the intentions expressed in the writing itself and with the intentions expressed by testator to others.

The codicil to any will may be construed in connection with the will itself, and with the surrounding circumstances. By so doing, and which the Trial Court did, the objection raised by appellant in Point IV is obviated. It is unnecessary to point out that such Point IV attempts to treat the codicil as the will itself.

Referring again to *Page on Wills, Lifetime Edition*, in Section 54, at page 122, there are some pertinent provisions :

“A will is not to be declared void for uncertainty if the intention of the testator can be determined from the will as interpreted by admissible evidence of the relations of parties and of the surrounding facts and circumstances.

“A rough memorandum which discloses testamentary intent is good, though extrinsic evidence may be necessary to identify the beneficiaries and the subject-matter.”

And at page 142, sentence 6 :

“If the instrument, on its face, shows that it was drawn by an inexperienced or illiterate layman, it will be construed all the more liberally than if it had been drawn by an expert.”

Reference in appellants' brief to “public policy for the avoidance of fraud” is considered to be uncalled for and directs attention to the testimony of the representative of the objectors, appellants herein (Transcript 100 to 108), and to the abundance of evidence as to the clear intention and desires of testator which would be thwarted by reversing the decision of the trial court herein.

When the testator wrote “Dear Nnese” and handed the writing to Manila Brock and said “these papers are yours and Blains—take care of them,” it certainly was a designation of the person to whom it was addressed. As a codicil to the first letter it is made definite and certain the persons to whom he referred by “Divide * * * these equil.”

The oral evidence adduced of all the witnesses is clear as to whom the testator designated as his beneficiaries. Such an application is made of similar facts in 54 A.L.R. at page 919.

We are unable to see that the Utah case of *Jensen's Estate*, 37 U. 428, 108 P. 927, referred to in the appellant's brief has any persuasive authority to this case.

No attack as such is made by the appellants upon the findings of the court, that they are not supported by the evidence; although recitation of some of the facts are made therein from which it appears it might have been so contended. We submit that all of the surrounding circumstances are proper as part of the consideration by the court to make its findings; and being amply supported by the evidence and reasonable inferences therefrom, the findings must stand.

CONCLUSIONS

It is submitted that the appeal should be denied and dismissed; the Order Admitting Will to Probate and Appointing Administrator with the Will Annexed is supported by the findings, the evidence and reasonable inferences therefrom, and should be affirmed, with costs to respondent.

Respectfully submitted,

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