1982

In the matter of the estate of Louis A. Grossen : Reply Brief of Appellants

Utah Supreme Court

Clark R. Nielsen; Attorneys for Appellants;
William L. Crawford; Parsons, Behle & Latimer; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate of LOUIS A. GROSSEN, a/k/a LOUIS GROSSEN, MILTON GROSSEN, L. E. GROSSEN, LARRY GROSSEN and EDWARD GROSSEN, Deceased.	)	No. 18075
MAE ELEANOR GROSSEN VINCENT and LUCILLE M. GROSSEN TAYLOR, Appellants.	)	

REPLY BRIEF OF APPELLANTS

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

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REPLY BRIEF OF APPELLANTS

Appellants Mae Eleanor Grossen Vincent and Lucille M. Grossen Taylor submit the following Brief in response to the Brief submitted by Respondent. The purpose of this Reply Brief is to address Respondent's claims as to the application of Section 75-2-506 of the Utah Uniform Probate Code to the present proceeding.

ARGUMENT

A UTAH WILL OF A UTAH RESIDENT WHO DIED AFTER JULY 1, 1977, IS SUBJECT TO THE PROVISIONS OF THE UTAH UNIFORM PROBATE CODE AND MAY NOT BE VALIDATED BY REFERENCE TO UTAH LAW AT THE TIME OF EXECUTION.

Respondent's Brief places a great deal of emphasis on Section 75-2-506 of the Utah Uniform Probate Code. Based on the interpretative notes to Section 75-2-506 as adopted by the Utah Legislature, as well as judicial interpretation of an identical provision of the Uniform Probate Code as enacted in the State of Idaho, Respondent's reliance on Section 75-2-506 is misplaced.

Section 75-2-506 of the Utah Uniform Probate Code is a choice of law provisions in those cases where conflicting laws of different jurisdictions may be applied to a given will. When

the proper conditions are met, a will may be admitted to probate in the State of Utah if it satisfies either the current requirements of Utah law or the requirements of the law in force in the foreign jurisdiction where the will was executed.

The Official Comment to Section 75-2-506 adopted by the Utah Legislature with the section clarifies the language of the section by stating that this conflict of laws provision applies to wills "executed in another state or country." Respondent's assertion that the "literal and unambiguous language" of Section 75-2-506 applies to wills drafted within the State of Utah is erroneous and without support. (See Brief of Respondent, at pp. 6 and 7.)

Though the Utah Supreme Court has not reviewed this particular provision, a decision of the Idaho Supreme Court interpreting an identical provision of the Idaho Uniform Probate Code, Idaho Code, §15-2-506 (1971), has squarely rejected Respondent's argument. In Re Estate of Buffi, 98 Ida. 354, 564 P.2d 150 (1977). In Buffi, the Idaho Supreme Court followed the same reasoning that is conveyed in the Official Comment mentioned above: "[This provision] is a choice of laws provision dealing solely with the validity of wills made in other jurisdictions. It cannot be utilized here where the question is not the validity of a foreign will." 564 P.2d at 151 (emphasis in original). In Buffi, the appellant unsuccessfully argued that this conflict of laws section validated an Idaho nuncupative will, even though such wills were valid prior to the U.P.C. when the alleged will was first executed.

As indicated by the Official Comment and the holding of the Idaho Supreme Court in Buffi, Section 75-2-506 of the Utah

Uniform Probate Code is applicable only to wills made in foreign jurisdictions. Since Mr. Grossen's alleged will was executed in Utah and because he died here in 1981, Section 75-2-506 does not apply to it.

Section 75-8-101(2)(a) designates Utah's current Uniform Probate Code as the controlling law. In fact, Respondent concedes that if Section 75-2-506 does not apply, the Utah Uniform Probate Code is the controlling law and "the provisions of Section 75-2-505, requiring witnesses to a Will to be over age 18, deserve strict application." (Brief of Respondent at 7)

We submit that the policy argument advanced by Respondent in favor of applying Section 75-2-506 here is not persuasive. While it may be true that an underlying policy of the Code is to effect the intent of a decedent in the distribution of his property and to encourage uniformity of law among the various jurisdictions, reliance on those policy considerations does not justify ignoring a specific statutory requirement for execution of wills enacted by the Utah State Legislature. The requirement of Section 75-2-505 that witnesses to a will be at least 18 years of age is mandatory.

Indeed, the very issue of this case is whether the Respondent's claim is in reality the intent of the decedent. Appellants were erroneously prevented from showing that the decedent had contrary intentions.

Regardless of decedent's intent, if the purported will does not conform to the statutory requirements, it may not be admitted to probate. In Re Walcott's Estate, 54 Utah 165, 180 Pac. 169

(1919). The policy of effectuating the decedent's intent does not supercede the statutory execution requirements.

With respect to the policy of encouraging uniform laws, the Utah Legislature apparently felt that an age requirement for witnesses was more important than a supposed policy of establishing a probate statute identical with other jurisdictions that have adopted the Uniform Probate Code. Hence, the Legislature changed the uniform language of Section 2-205 to include the 18-year-old requirement. The fact that the uniform provision was changed indicates that the Legislature placed a great deal of importance on the age requirement.

In In Re Estate of Lane, 99 Ida. 850, 590 P.2d 577 (1979), the Idaho Supreme Court held that an age requirement for witnesses (which is identical to that enacted by the Utah Legislature in Section 75-2-505) is mandatory and that failure to comply therewith is fatal to the validity of a purported will. Appellants do not exclusively rely on Lane for the proposition that the Uniform Probate Code takes precedence over prior state probate law. That issue was previously resolved by the Idaho Supreme Court in Buffi and was not raised in Lane. Appellants do rely on Lane for the proposition that failure of a witness to meet a statutory age requirement that validly applies to an alleged testamentary document invalidates the purported will. This point is conceded by Respondent. (Brief of Respondent at 7)

It is neither novel nor unjust to state that a will is effective and ambulatory only upon the decedent's death and only upon compliance with the law at the time of death. However, it

is a novel and surprising argument that an estate plan created under former, repealed laws continues with the same force and effect even after the Legislature expressly stated that those repealed laws do not apply to decedents dying after 1976.

Therefore, because Section 75-2-506 does not apply in the present case, the age requirement of Section 75-2-505 must be strictly construed. The result of such construction is the invalidity of the purported will of Louis Grossen which was improperly admitted to probate in the district court below.

CONCLUSION

Section 75-2-506 does not apply to purported wills executed within the State of Utah and may not be relied upon to validate a will which does not conform to Utah law at the time of the decedent's death. Because the purported will, which is the subject of this appeal, fails to meet those requirements, the decision of the lower court must be reversed.

Respectfully submitted this 30th day of November, 1982.

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CERTIFICATE OF SERVICE

SERVED the foregoing Reply Brief of Appellants by mailing two copies thereof, postage prepaid, to William L. Crawford, attorney for Respondent Earl Louis Grossen, at 79 South State Street, P. O. Box 11898, Salt Lake City, Utah 84147, this 2 day of December, 1982.

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