

1957

In the Matter of the Estate of Phyllis Rosander Leigh : Brief of Appellant David K. Watkiss

Utah Supreme Court

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Case No. 8628

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IN THE SUPREME COURT
OF THE STATE OF UTAH
UNIVERSITY UTAH

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IN THE MATTER OF THE ESTATE

OF

PHYLLIS ROSANDER LEIGH,

Deceased.

APR 29 1957
Clerk, Supreme Court, Utah

BRIEF OF APPELLANT DAVID K. WATKISS

ADMINISTRATOR OF THE ESTATE OF
PHYLLIS ROSANDER LEIGH

KING AND HUGHES

*Attorneys for Administrator and
Appellant.*

By: Dwight L. King

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE

OF

PHYLLIS ROSANDER LEIGH,

Deceased.

Case

No 8628

BRIEF OF APPELLANT DAVID K. WATKISS

PRELIMINARY STATEMENT

This appeal is from a judgment of the trial court filed on December 10, 1956 vacating and setting aside the Order appointing the administrator.

The Order was made on petition of Farmers Mutual Automobile Insurance Company, a corporation. The basis of said petition is that it has a policy of public liability insurance which requires it to defend and pay

claims against the Estate of the deceased and would be put to great cost and expense in defending the action by Rawlinkiewicz.

The grounds for voiding the Order appointing the administrator was that there were no assets of Leigh within the State of Utah.

From the order voiding the appointment of David K. Watkiss as the administrator of the Estate of Leigh this appeal has been taken.

Throughout this brief the administrator will be referred to as appellant and the objector, Farmers Mutual Automobile Insurance Company will be referred to as respondent.

STATEMENT OF FACTS

Leigh died at Knolls, Tooele County, Utah on the 29th day of May, 1955. At the time of her death she was a resident of the State of Minnesota. In the collision causing the death of Leigh, Edward Rawlinkiewicz suffered serious personal injuries and damage to his automobile.

Other than the wrecked automobile Leigh had no assets within the State of Utah. On the 3rd of November, 1955 a petition was filed on behalf of Edward Rawlin-

kiewicz for the appointment of an administrator of the Estate of Leigh. The petition set forth the accident and the fact that no administrator had been appointed for Leigh and that there were assets within the State of Utah consisting of a public liability insurance policy covering the automobile that Leigh was driving.

An order fixing a time for hearing was set. No objections were filed. Notice of hearing was given by the County Clerk of Tooele County to J. B. Hagman, Jr., representative, Insurance Adjustment Company, Continental Bank Building, Salt Lake City, Utah.

On the 22nd day of December an order appointing David K. Watkiss as the administrator was signed. On the 4th of January, 1956 the petition to revoke letters of administration was filed by respondent.

The petition to revoke the letters of administration was heard before the Honorable R. L. Tuckett on the 2nd of November, 1956 and on December 10th, 1956 the order was made voiding and vacating the order appointing the administrator.

SUMMARY OF ARGUMENT

POINT I

THE COURT ERRED IN VOIDING AND VACATING THE ORDER APPOINTING THE ADMINISTRATOR.

A. THE PROBATE COURT HAS AUTHORITY TO APPOINT AN ADMINISTRATOR FOR THE PURPOSE OF ACQUIRING JURISDICTION OVER THE ESTATE SO THAT IT MAY BE PROPERLY ADMINISTERED.

B. THE EXERCISE OF SOUND DISCRETION ON THE PART OF THE PROBATE COURT REQUIRES THE APPOINTMENT OF AN ADMINISTRATOR OF THE ESTATE OF PHYLLIS ROSANDER LEIGH.

POINT II

RESPONDENT HAS COVENANTED TO DEFEND THE ACTION OF RAWLINKIEWICZ IN UTAH.

POINT III

THE LEGISLATIVE PURPOSE CAN ONLY BE SERVED BY PERMITTING SUIT IN UTAH ON INJURIES SUFFERED IN UTAH.

ARGUMENT

POINT I

THE COURT ERRED IN VOIDING AND VACATING THE ORDER APPOINTING THE ADMINISTRATOR.

The order voiding and vacating the appointment of the administrator states that the basis of the Court's action was that there are no assets of the Estate within the State of Utah.

This basic proposition was set forth in the petition of respondent to revoke the letters of administration and in addition the petition set forth that since the respondent was not authorized to do business within the State of Utah that the judgment which could be obtained against the administrator of the Estate of Leigh by Rawlinkiewicz would be ineffectual for any purpose. The petition also pointed out that Rawlinkiewicz was seeking as the creditor of the Estate of Leigh to have an administrator appointed so that there would be within the State of Utah a person who could be sued and that only where the respondent was authorized to do business could there be any effectual means of collection instituted and a judgment obtained against it.

The petition points out that the respondent would be put to great cost in order to defend the action instituted by Rawlinkiewicz. It apparently being the theory of respondent that the insurance company should not be required to defend an action against their insured in any state except where they are authorized to do business.

The action commenced by Rawlinkiewicz against the administrator of the Estate of Leigh was brought under the provisions of Section 78-11-12 Utah Code Annotated, 1953 which reads as follows:

“78-11-12. INJURY TO PERSON OR DEATH—NO ABATEMENT OF CAUSE OF ACTION UPON DEATH OF WRONGDOER—ACTION AGAINST PERSONAL REPRESENTATIVE OF WRONGDOER—EVIDENCE REQUIRED. Causes of action arising out of physical injury to the person or death, caused by the wrongful act or negligence of another, shall not abate upon the death of the wrongdoer, and the injured person or the personal representatives or heirs of one meeting death, as above stated, shall have a cause of action against the personal representatives of the wrongdoer; provided, however, that the injured person or the personal representatives or heirs of one meeting death shall not recover judgment except upon some competent satisfactory evidence other than the testimony of said injured person.”

The jurisdictional statutes covering the appointment of administrators is Section 75-1-2 Utah Code Annotated, 1953 which reads as follows:

“75-1-2. WHERE WILLS PROVED, AND LETTERS GRANTED. Wills must be proved and letters testamentary or of administration granted:

- (1) If the decedent was a resident of the state, in the county in which he had his residence at the time of his death.
- (2) If the decedent was a nonresident of the state: first, in the county in which he may have

died leaving estate therein; second, in any county in which any part of the estate may be, the decedent not having left estate in the county in which he died, or having died without the state.

(3) In all other cases, in the county where application for letters is first made.”

What the Legislature intended, when a resident person is injured by a negligent non-resident deceased, is the basic question presented by this appeal.

The mechanics of just how this action is to be brought was not covered completely by the survival statute, Section 78-11-12, however, the Utah Law, as it has developed, makes unnecessary any additional provision. Section 75-1-2 had been on the books of the State of Utah for many years and has been the subject of numerous decisions concerning jurisdiction of the Probate Court.

A. THE PROBATE COURT HAS AUTHORITY TO APPOINT AN ADMINISTRATOR FOR THE PURPOSE OF ACQUIRING JURISDICTION OVER THE ESTATE SO THAT IT MAY BE PROPERLY ADMINISTERED.

This Court has, on two separate occasions, had before it contentions that the Probate Court did not have jurisdiction to appoint an administrator because there were no assets within the State. Both cases de-

cided that it was not necessary that there be property within the State of Utah in order to appoint an administrator for the deceased person. Both cases interpret Subsection 3 of Section 75-1-2 which reads as follows:

“(3) In all other cases, in the county where application for letters is first made.”
to mean that in cases where there is no property appointment can be made where application is first made.

The first case to discuss the matter was *In re Tasanen's Estate*, 25 Utah 396, 71 Pac. 984. In Tasanen's estate a non-resident of the State of Utah was suing a non-resident corporation which was doing business within the State. Utah Savings and Trust Company had been appointed the administrator of the estate of deceased non-resident. Objection was made upon the grounds there was no jurisdiction to make the appointment. It was claimed and conceded that the undisputed evidence disclosed that the deceased was not a resident of Weber County, State of Utah, and did not leave an estate within the State of Utah. The Diamond Coal & Coke Company which petitioned to set aside and vacate the order appointing Utah Savings and Trust Company as the administrator set forth as a basis that there was no estate or assets within Utah which could be administered and as a consequence that the District Court of Weber County was without jurisdiction to appoint an

administrator for the deceased Tasanen. The district court sustained the administrator and the Diamond Coal & Coke Company appealed. The Court set up the basic questions in the following language:

“The main questions to be decided in this case are: (1) Can the district court appoint an administrator of the estate of a nonresident deceased, where the only assets of said estate consist of a right of action against a resident of this state, or (2) in case there are no assets at all?

“Section 3774 of the Revised Statutes of Utah of 1898 reads as follows:

‘Wills must be proved and letters testamentary or of administration granted:

‘(1) If the decedent be a resident of the state, in the county in which he had his residence at the time of his death.

‘(2) If the decedent be a non-resident of the state: First, in the county in which he may have died leaving estate therein; second, in any county in which any part of the estate may be, the decedent not having left estate in the county in which he died, or having died without the state.

‘(3) In all other cases, in the county where application for letters is first made.’

"The authorities seem to be divided on the question of whether a claim for death by wrongful act is an asset of the estate of the deceased. We think the weight, however, leans to the side that it is. In view of the last paragraph of section 3774 we deem it is not necessary to follow either line, as the Legislature evidently had in mind cases in which the deceased was not a resident, nor did he leave property in this state. We think that the case at bar is covered by this provision of the statute. If there should be nothing which the administrator could legally do, it could harm nobody. If there should be something which an administrator ought to do, then the appointment would be necessary.

"We hold that the appointment of the respondent as administrator by the district court was correct, and the action of the lower court in refusing to set aside the appointment was correct, and it is hereby affirmed, with costs."

The language of the third sub-section of 75-1-2 is the same as the language interpreted in Tasanen Estate. It is submitted that the Tasanen decision is conclusive as to jurisdiction of the Probate Court to appoint an administrator.

Since Tasanen there has been one additional interpretation of the Section by the Court. It is *In re Lowham's Estate*, 30 Utah 436, 85 Pac. 445. The Court specifically affirmed the holding which it had made in the Tasanen decision. The language in the Lowham case is as follows:

“While a claim for damages for death by wrongful act is not a general asset of the estate under the foregoing provisions of the Wyoming statutes, we think it is a sufficient asset of the estate for the purpose of appointing an administrator. This court, in effect, so held in the case of *In re Estate of Tasanen*, 25 Utah 396, 71 Pac. 984. The doctrine declared in that case is not only in harmony with the great weight of authority, but is, we think, supported by the better reason. *Brown v. Railroad Co.*, 97 Ky. 228, 30 S.W. 639; *Findlay v. Railroad Co.*, 106 Mich. 700, 64 N.W. 732; *Hutchins v. Railroad Co.*, 44 Minn. 5, 46 N.W. 79; *Merkle v. Bennington* (Mich.) 35 N.W. 846; *Griswold v. Griswold* (Ala) 29 South. 437; *Railway Co. v. Reeves* (Ind.App.) 35 N.E. 199; *Robertson v. Railroad Co.*, (Wis.) 99 N.W. 433; *Morris v. Railroad Co.*, (Iowa) 23 N. W. 143; 11 A. & E. Ency Law (2d Ed.) 828. Having determined that a claim for damages for death by wrongful act, under the statutes of Wyoming, is at least a special asset of the estate, the next question presented is, can the right thus given by the Wyoming statute be enforced in this jurisdiction through the medium of an administrator appointed by the courts of this state? This question was squarely presented and decided by this court in the case of *Utah Sav. & Trust Co. vs. Diamond Coal & Coke Co.*, 26 Utah, 299, 73 Pac. 524.

“In view of the elaborate discussion of this branch of the case by appellant, in its brief, we have again given the subject careful consideration, and while there appears to be some conflict in the authorities on this question, the doctrine declared in the case of *Utah Sav. & Trust Co. v.*

Diamond Coal & Coke Co., supra, is upheld by the the decided weight of authority. *Morris v. Chicago R. I. & P. R. Co.* (Iowa) 23 N.W. 143; *Stewart v. B. & O. R. Co.*, 168 U.S. 447, 18 Sup. Ct. 105, 42 L. Ed. 537; *Dennick v. Railroad Co.*, 103 U. S. 11, 26 L. Ed. 439; *Boston & M. R. Co. v. Hurd*, 108 Fed. 116, 47 C. C. A. 615, 56 L. R. A. 193; *Louisville & N. R.R. v. Shivell's Adm'r* (Ky.) 18 S.W. 944; *Sargent v. Sargent* (Mass.) 47 N.E. 121. It being admitted that the proceedings leading up to the issuance of letters of administration to A. I. Stone were in accordance with the provisions of the statute regulating such proceedings, we are of the opinion, and so hold, that the District Court of Weber County had jurisdiction to issue said letters, and that it did not err in dismissing appellant's petition to have them revoked."

In Bancroft's Probate Practice, Volume 1, Chapter 2, Section 30 page 57 it states:

"The sole purpose of instituting probate proceedings may, however, be to obtain necessary authority to commence a suit to recover for the conversion of the only property of the estate, or a suit to set aside a conveyance made by the testator prior to his death. And where the sole property of a decedent is an equitable claim, the court may, in its discretion, treat this as property and grant letters of administration. There is some doubt, however, as to whether the existence of assets is jurisdictional. According to the better view, it is not; the question is one of property and for the exercise of a sound discretion upon the part of the court to which application is made. Whenever, at least, there is a possible right of

action as for wrongful death, or in respect of any claim or chose in action upon which a fair-minded attorney would advise a client to bring suit, it would seem that such circumstance alone, in the absence of some inhibiting statute, should be and is sufficient to warrant the assumption of jurisdiction and the issuance of letters."

Bancroft cites as authority for the statement just quoted the Utah cases which are cited above namely, *In re Lowham's Estate* and *In re Tasanen's Estate*.

The Lowham and Tasanen cases have been relied upon and accepted as sound authority. The Court, of course, is familiar with quiet title practice in the State where an administrator is appointed solely for the purpose of showing that there was no assets in the estate but that due to some transaction during the life of the deceased there was what appeared on record to be some kind of an interest in property. If the existence of property is necessary then in the quiet title action where title is quieted and there is no right in the estate the appointment of the administrator would, of course, be void and the action to quiet title of no effect.

This Court, on one occasion, pointed out that since the appointment of an administrator was largely an in rem action on the part of the Court that if there were no assets then there could be no harm done and no one would be hurt by the appointment. This particular aspect of the Utah Code and this Court's interpretation

was commented upon in the case of *In re Lamont's Estate*, 95 Utah 219, 79 P. 2d. 649, where the following language indicates the principal was set forth:

“The guardianship of a person having no estate would partake largely of personal elements; but the appointment of a guardian solely for the determination of the nature and quantum of an estate, like an administration of an estate, is an action in rem. *Barrette v. Whitney*, 36 Utah 574, 106 P. 522, 37 L.R.A., N.S., 368. *In re Estate of Tasanen*, 25 Utah 396, 71 P. 984.”

It is submitted that in the light of the *Tasanen*, *Lowham* and *Lamont* cases there can be no doubt about the jurisdiction of the Probate Court to appoint an administrator even though there did not appear to be assets in the estate.

B. THE EXERCISE OF SOUND DISCRETION ON THE PART OF THE PROBATE COURT REQUIRES THE APPOINTMENT OF AN ADMINISTRATOR OF THE ESTATE OF PHYLLIS ROSANDER LEIGH.

A recent development in the law of automobiles concerns the correlation of the Non-Resident Motorists Statute, 41-12-8 U.C.A. 1953, and the survival statutes, such as the provisions in Section 78-11-12, U.C.A. 1953.

An examination of the two legislative enactments would indicate that what was intended was complete coverage regardless of whether a person lived or died or was a resident or a non-resident of the State of Utah

if injury was caused within Utah by his negligence then the injured person would be entitled to recover within this State for such injuries.

The correlation of the two statutes has caused considerable concern in other states, but it is respectfully submitted, should not cause difficulty here. The cases cited in the preceding sub point would indicate that it is not necessary for a deceased person to have estate within the State of Utah in order for an administrator to be appointed.

It is respectfully submitted that the problem suggests itself to the practical sense of the Court to carry out the Legislative intention. Two decisions which have solved the practical problem of the appointment of the administrator and the bringing of an action in the State where the accident causing injury has occurred are *In re Vilas' Estate*, 166 Ore. 115, 110 P. 2d, 940, and *In re Fagin's Estate*,Iowa 66 N.W. 2d, 920.

The Iowa Supreme Court considered at length attempts by an administrator to bring before the court the facts that there was a policy of indemnity insurance and by whom the insurance policy had been issued. This difficulty with which the Iowa court was concerned has been eliminated in our case. There has been presented a copy of the indemnity agreement between the insur-

ance company and the deceased.

The Supreme Court of Iowa set forth in its decision the common sense and practical solution to the problem which is now before this court. The one basic fact that the Supreme Court of Iowa did not have before it was the contractual obligation on the part of the insurance company to defend the deceased or her estate in every State of the Union and to appear on her behalf and to hold her harmless against judgment which might be entered in any State of the Union. This particular fact it is submitted is of extreme importance and should be considered by the court in arriving at a fair and equitable decision. Even without that fact before it the Iowa court came to a conclusion that the administrator should be appointed within the State of Iowa and that legal actions could properly be commenced against him there where the accident had occurred.

Its decision and reasoning which is in several respects similar to the principles which have been set down by our Utah Supreme Court in the Tasanen estate case is as follows:

“(10) VII. Finally, it should be remembered that proceedings such as are involved here, seeking the appointment of administrators, are not adversary nor personal. They are special proceedings in rem. 33 C.J.S. Executors and Administrators, Sec. 50; 21 Am. Jur., Executors and Administrators, Sec. 12. The legality of the appointment is not dependent upon acquiring

personal jurisdiction of any non-resident by personal or substituted service.

“This is not an action against a non-resident such as might have been brought against Mr. Fagin had he survived the collision in which the Pilgers claim they were injured. Nor is it an action against the administrator of Mr. Fagin’s estate in Illinois. The Legislation assuming to make such actions possible is in no way involved here.

“The Iowa administrator has jurisdiction only of whatever property of the estate may be in Iowa. If it shall develop there is none, or that Pilger’s have no enforceable claims, decedent’s general estate represented by appellant will have suffered no loss. Nor will appellant and the estate he represents suffer any damage if the Pilger claims be established. Appellee (Iowa administrator) will have recourse only against the Iowa property, viz., whatever insurance coverage decedent carried on his automobile subject to such claims. No one claims any other property is threatened.

“In ultimate effect appellant is not the real party in interest. The real party is the insurance company and the real issue whether it must defend in Iowa where the collision occurred, or in decedent’s home jurisdiction where there is pending general administration on his estate.

“A consideration of the entire record convinces us the decision of the trial court must be affirmed and it is so ordered.”

This Court has clearly recognized that the right

of a plaintiff to choose the place of trial is a substantial right and when he chooses as his forum place where the accident occurred then all of the reasons and considerations behind the venue statutes and the doctrine of forum non conveniens should apply. See *Petersen v. Ogden Union Railway and Depot Co.*, 110 Utah 573, 175 P. 2d 744; *Mooney v. Denver and Rio Grande Western Railroad Co.*, Utah 221 P. 2d 628.

POINT II

RESPONDENT HAS COVENANTED TO DEFEND THE ACTION OF RAWLINKIEWICZ IN UTAH.

One of the grounds the respondent cites in the petition to revoke the letters of administration is that the insurance company would not respond to any judgment obtained against the Estate of Leigh within the State of Utah.

This contention, it is respectfully submitted, is without any merit whatsoever. The policy of insurance which covered the automobile driven by the deceased is the document which will control the rights of the administrator and the obligations of the respondent. The insurance company should not be permitted to say to this Court, as a ground for revoking the letters of administration, that it will refuse to abide by and carry out its obligations solemnly undertaken in the policy.

The insuring agreement sub-paragraph II provides that the insurance company (a) shall defend any suit against the insured arising out of a use of an automobile and which results in bodily injury or property damage. Sub-paragraphs (b) and (c) of paragraph II of the policy at page 1 also requires of the insurance company that it pay all bonds or premiums that may be necessary and all expenses such as costs and any expenses such as attorney's fees, etc. This particular clause contains no territorial limitation whatsoever and it would appear that these costs of defense under the contract would be paid regardless of where the accident occurs.

Clause VIII on page 2 of the policy sets forth the provision that the policy applies to accidents while the automobile is within the United States of America, its territories or possessions, Canada or Newfoundland, or even when it is being transported between ports of the territories named.

A specially significant portion of the policy is found on page 3, paragraph numbered 8 entitled "Financial Responsibility Laws, Coverages A and B."

"Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the

coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph."

The provisions of the policy of insurance show beyond possible doubt that the respondent had contracted to defend lawsuits and to be financially responsible for any losses which arose out of a use of an automobile by deceased Leigh.

These contractual provisions, appellant respectfully submits, are a complete answer to the allegations on the part of the respondent that to defend a lawsuit in the State of Utah brought against the Estate of Leigh imposes upon respondent hardships and would be unfair or inequitable to it.

Deceased paid a premium for her policy, the respondent has received payment in full for the benefits which it agreed to provide for her. It was paid for the anticipated hardships and expense which it would be required to incur should the accident resulting in liability on the part of the insured occur in a state in which the respondent was not qualified to do business.

It would have been a simple matter for the respondent to provide in its policy that no suit would be defended

except in states where it had qualified to do business and where it had a local agent who could be served with a summons. It did not so provide. It provided that it would afford to the insured, during her lifetime and to her estate upon her death, protection against claims which would happen any place in the United States.

Appellant respectfully submits that the respondent having undertaken to defend actions throughout the United States and Canada should not be permitted to claim that to perform its contractual obligations imposes a hardship upon it, that it should not be required to bear.

POINT III

THE LEGISLATIVE PURPOSE CAN ONLY BE SERVED BY PERMITTING SUIT IN UTAH ON INJURIES SUFFERED IN UTAH.

This is a relatively new field of law which, it is respectfully submitted, the Court should approach with an eye single to accomplishing the purpose the Legislature had in mind.

It is clearly established by 78-11-12 U.C.A. 1953 that the estate of the deceased negligent person should be made responsible for the damage which the negligence has caused. It clearly established as public policy by 41-12-8 U.C.A. 1953 that non-residents should be required to defend actions arising out of automobile accidents happening within the State. The two statutes are in all respects compatible and, it is submitted, es-

tablish a legislative purpose of making the estates of non-residents responsible in Utah for damages caused by their negligence.

Our statutes which govern comparable actions are familiar to the Court. In them it is not necessary that the defendant have property in order for a personal representative to be appointed so that a proceeding can go forward. As an example, note the following statute:

Rule 17 (b) of the Rules of Civil Procedure read as follows:

“(b) INFANTS OR INCOMPETENT PERSONS. When an infant or an insane or incompetent person is a party, he must appear either by his general guardian, or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be an infant or an incompetent person.”

The reasoning and purposes of our Non-Resident Motorist Statute should be considered by the Court. Section 41-12-8 U.C.A. 1953 provides that where a non-resident operates a motor vehicle within the State of

Utah, the operation of the vehicle serves as an appointment by the non-resident of the Secretary of State of the State of Utah to be his true and lawful attorney upon whom all legal process may be served in any action or proceeding against the non-resident growing out of his use or operation of the motor vehicle within the State of Utah.

Our legislature has attempted to work out a system which will insure that a person injured by the negligence of a non-resident motorist can be indemnified through the institution of a legal action within the State of Utah. It is respectfully submitted that the policy should be carried out by Court decision when to do so is in complete harmony with established principles of law.

The respondent in this case would have the Court determine that because it is not qualified to do business within the State the Court should dismiss an action which has been commenced against a non-resident whose negligence has caused injury to a resident of the State of Utah. What difference should it make where the respondent is qualified to do business? It cannot be a party to the actions under any circumstance. The residence of the respondent or the State where it is qualified to do business is completely immaterial. Appellant does not believe at this stage of proceedings the respondent even has such an interest as to be able to object to the appointment. Section 75-14-14 U.C.A. 1953 grants only to parties interested the right to object. But assum-

ing it does have a right to object what difference can its place of business make? This consideration is especially immaterial when one considers the provisions of the insurance policy.

The new Non-abatement Statute in the case of a deceased wrongdoer, the Non-resident Service Act, the Probate Code and Title, and the Venue Statute, 78-13-7 U.C.A. 1953 would appear to show clearly the public policy of the State of Utah. The statutes establish the public policy which requires that a deceased wrongdoer shall be responsible for any damage caused by his negligence at the place where the damage occurred.

The State Legislature in 1953, when it passed Section 78-11-12, intended as the language states "that the person injured shall have a cause of action against the personal representative of the wrongdoer." The cause of action it created it certainly thought would be within the jurisdiction of the Courts of the State of Utah. It also seems reasonable to suppose with insurance so widespread and financial responsibility so well established it did not envision that before such a wrongdoer could be responsible he must have assets other than the insurance rights in his estate within the State of Utah.

If the Court should sustain the position of respondent in this matter it would cast grave doubt upon all of the quiet title actions. It is submitted the Court should follow the Tasanen case, *supra*, and the Fagin case,

supra. If there are no assets within this State then there can be no damage done by the appointment of an administrator. The Court in the Tasanen decision, supra, recognized the practical side of this problem and held that it was only for the purpose of having legal representation of the deceased's estate within the jurisdiction of this Court that made necessary the appointment of an administrator. The same thing is true where insane or minor persons who have no property are sued.

In this case, on behalf of Leigh, it is necessary that within the State of Utah an administrator appear to protect her interests. As a practical matter the respondent will be here to defend the Leigh Estate because of contractual obligations which it had with Leigh during her lifetime.

CONCLUSIONS

It is respectfully submitted that this Court should reverse the action of the Trial Court in revoking and vacating the Letters of Administration of David K. Watkiss and should order said Court to restore said David K. Watkiss to his former status as the administrator of the Estate of Phyllis Rosander Leigh.

Respectfully submitted,

KING and HUGHES

By Dwight L. King