

1990

Marjorie Paxman v. Hallalene M. Ryder : Reply Brief

Utah Court of Appeals

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900390-CA

IN THE UTAH COURT OF APPEALS

MARJORIE PAXMAN, Administratrix of
Ruth S. Hiltsley, personally,
and MARJORIE PAXMAN, Administratrix
of the Estate of Milton J. Hiltsley,
aka M.J. Hiltsley,

Plaintiffs and Appellants,

vs.

HALLALENE M. RYDER,

Defendant and Appellee,

ESTATE OF ETTA WOOD, by her Personal
Representative, Douglas P. Simpson,

Intervenor and Appellant.

Case No. 900390CA

REPLY BRIEF OF APPELLANTS

Appeal from Judgment of the
Third Judicial District Court for Salt Lake County
Hon. J. Dennis Frederick, Judge

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FILED

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 OF APPELLANTS

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This Reply Brief is filed on behalf of all appellants. Appellants believe that the matters set forth in its main brief were accurate and hereby incorporate its Statement of Jurisdiction of the Appellate Court, Issues Presented for Review, Ruth Hiltsley Claim, Issues Relating to Intervenor Etta Wood's Estate, Statement of the Case, and Statement of Facts as contained in appellants' original brief without restating the same herein.

POINT I

APPELLEE'S FAILURE TO ADDRESS THE ISSUE
OF RESULTING TRUST ADMITS THE SOUNDNESS
OF APPELLANTS' POSITION

Under Point I of its main brief, the appellant Estate of Etta Wood argues that the trial court failed to correctly apply the law applicable to the intervenor's claim. The doctrine of resulting trust is the basis of its claim.

Restatement of the Law of Trusts, § 440, provides that "where there is a transfer of property made by one person and the purchase price is paid by another, a resulting trust arises in favor of the person by whom the purchase price is paid." This principle has been applied and cited in many cases. Appellants' original brief cites many cases. It is appellants' position that this section of the Restatement of the Law of Trusts has been adopted and is the law of the State of Utah. See Point I of Appellants Brief on Appeal.

Appellee does not answer in any way the argument made by appellants concerning resulting or constructive trust.

The failure of appellee to discuss or in any way provide legal precedence refuting the arguments of appellant relating to constructive trusts, it is submitted, is tantamount to an acknowledgement that such arguments as are in appellants' brief under this point cannot be answered.

Relating to the application of constructive trust principles, the facts are clear and undisputed. There is no

dispute as to the fact that Etta Wood, the sister of Milton Hiltsley, was brought to Utah at the time she was dying and lived in the home of the Hiltsleys the last few months of her life.

It is undisputed that the assets that she had were transferred from New Mexico to Utah and were handled and controlled by deceased Milton Hiltsley during the last few months of his sister's life. These facts are acknowledged clearly in Hiltsley's own hand in his journal.

These facts, under the Restatement of the Law of Trusts, § 440, give rise to a presumption that Milton Hiltsley held the assets in trust for his sister, Etta Wood, and her estate after she died.

No written document existed relating to the Etta Wood assets. No writing exists other than the journal of Milton Hiltsley. It acknowledges Etta's interest. It is not necessary to show by clear and convincing evidence that it is a variation of a written instrument. The trial court was confused about this rule. It apparently thought it necessary to vary the terms of a written instrument, which would require clear and convincing evidence.

The estate of Milton J. Hiltsley, the estate of Ruth Hiltsley, and the estate of Etta Wood, all the parties who ever had an interest in the assets of the Wood Estate, concede that intervenor's position is sound.

Appellee's failure to answer the argument showing that the

rules and legal principles applying to resulting trusts was mistakenly applied by the trial court, appellants submit, concedes appellants' position.

CONCLUSION

It is respectfully submitted that appellants are entitled to have a constructive trust imposed on the assets in the hands of Milton Hiltsley and received by him from Etta Wood during her lifetime and which became assets of her estate upon her death.

POINT II

THE CROFT JUDGMENT AWARDING RUTH S. HILTSLEY AN INTEREST IN APPELLEE'S CONDO HAS NEVER BEEN REVERSED BY AN APPELLATE COURT. IT BECAME A FINAL JUDGMENT.

The Supreme Court decision does not discuss Croft's analysis of Ruth S. Hiltsley's interest in appellee's condo. The reversal was solely to join a non-party estate of Etta Wood. Footnote 5 reserved the question of constructive trust or resulting trust. It did not mention Ruth's interest in the condo, which was based on her status as a tenant in common in the American Savings and Loan account. See appellant's discussion in the main brief, Point I, re Ruth S. Hiltsley claim.

The other appellants do not oppose Ruth's position. They concede the correctness of her claims.

There is no evidence that Milton J. Hiltsley, in handling his sister's estate and his wife's interest in their bank account, was not just mistaken as to his duties and rights in his sister's and wife's assets. He may even have been mistaken as to

what effect his acts actually had on their interests. The interests of both these parties seems clearly established by Utah law.

CONCLUSION

It is respectfully submitted that the court should affirm the holding of Judge Croft that Ruth Hiltzley is entitled to a judgment for her one-half of the tenants in common account, which is the sum of \$4,924.66..

RESPECTFULLY SUBMITTED this ____ day of _____, 1990.

KING & ISAACSON, P.C.

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CERTIFICATE OF MAILING

Undersigned certifies that three copies of the foregoing Reply Brief of Appellants were mailed this ____ day of August, 1990 by depositing the same in the United States mail, postage prepaid, addressed to the following:

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